

Larry W. Lee [CSB No. 228175]
lwlee@diversitylaw.com
Kristen M. Agnew [CSB No. 247656]
agnew@diversitylaw.com
Nicholas Rosenthal [CSB No. 268297]
nrosenthal@diversitylaw.com
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Tel: (213) 488-6555 | Fax: (213) 488-6554

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Misty M. Lauby [CSB No. 243009]
misty@lmlfirm.com
LAUBY, MANKIN & LAUBY, LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiffs, on a representative basis and on behalf of all others similarly situated
[Additional Counsel on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN

JODIE BLANTON JR., YAZMIN CORTES,
and GABRIELA ESCRIBA, individually, on a
representative basis, and on behalf of all others
similarly situated;

Plaintiffs,

vs.

COMMUNICATIONS TEST DESIGN, INC.,
a Pennsylvania Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: STK-CV-UOE-2021-0005136
*[Assigned to Hon. Judge Robert T. Waters,
Dept. 11B, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing
Date: TBD
Time: TBD
Dept.: 11B

Complaint filed: June 7, 2022

1 William L. Marder, Esq. [CSB No. 170131]
2 Polaris Law Group
3 501 San Benito Street, Suite 200
4 Hollister, CA 95023
5 Tel: (831) 531-4214 | Fax: (831) 634-0333

6 David G. Spivak [CSB No. 179684]
7 *david@spivaklaw.com*
8 THE SPIVAK LAW FIRM
9 8605 Santa Monica Blvd, PMB 42554
10 West Hollywood CA 90069
11 Tel: (213) 725-9094 | Fax: (213) 634-2485

12 Louis M. Benowitz [CSB 262300]
13 *louis@benowitzlaw.com*
14 BENOWITZ LAW CORPORATION
15 8605 Santa Monica Boulevard, PMB 97638
16 West Hollywood CA 90069
17 Tel: (818) 839-9610 | Fax: (818) 839-9610

18 Benjamin J. Smith [CSB 266712]
19 *Benjy@thesmithlawcorp.com*
20 SMITH LAW
21 4515 Van Nuys Blvd., Ste 302
22 Sherman Oaks CA 91403-5799
23 Tel: (818) 839-9607 | Fax: (818) 839-9700

24 Attorneys for Plaintiffs, on a representative basis and on behalf of all others similarly situated
25
26
27
28

1 I, Brian J. Mankin, state and declare:

2 1. I am an attorney licensed to practice before all of the courts of the State of
3 California. I manage the employment department within my firm where I am also a Partner. I
4 represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge
5 of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for
6 Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would
7 competently testify thereto.

8 **COUNSEL'S EXPERIENCE**

9 2. I have been a member, in good standing, of the State Bar of California since 2001.
10 I am admitted to practice in the United States District Courts for the Central and Southern
11 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
12 courts in California.

13 3. I have handled well over 500 employee vs. employer litigation matters during my
14 22 years in practice. Over the last 16 years, my practice has almost entirely consisted of
15 representing employees, the majority of which has included class action and representative
16 action wage and hour matters. In total, I have handled over 250 class action and representative
17 action wage/hour cases, and have been appointed by the court as class counsel and have received
18 final court approval and judgment in close to half of those actions to date, and anticipate
19 receiving final approval in many more of those in the future.

20 4. As part of these settlements and judgments, I have recovered in excess of \$250
21 million in damages for my clients and the class members (who often work as nurses, ambulance
22 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
23 countless other trades). As of the end of last year, my team and I held the record for the largest
24 known PAGA-only case in California's history as of that time - a \$12.5 million-dollar court
25 approved settlement, which followed extensive litigation, summary adjudication and writs to the
26 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior
27 Court).

28 ///

1 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
2 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior
3 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
4 against Walmart that was tried to the jury in District Court for the Central District, wherein the
5 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases
6 were appealed.

7 6. Over the last four or five consecutive years, I have been selected by my peers as a
8 “Super Lawyer” in Employment Litigation, a distinction that only 5% of lawyers receive.

9 **BRIEF SUMMARY OF THE SETTLEMENT**

10 7. Following a contested but productive mediation, Plaintiffs and Defendant
11 (collectively, the “Parties”) entered into a Class Action and PAGA Settlement Agreement
12 resolving the wage and hour claims of the putative class (the “Settlement Agreement”), which
13 is attached hereto as **Exhibit A**. The Settlement Agreement seeks to release and discharge
14 Defendant from the claims brought against it in exchange for Defendant’s agreement to pay
15 \$2,000,000 on a non-reversionary, non-claims made basis (each Class Member will receive
16 his/her share of the Net Settlement Amount without having to submit a claim form or take any
17 action, except for those who opt-out).

18 Plaintiffs seeks to represent a class of all current and former non-exempt employees who
19 worked at a CTDI Facility in California at any time during the Class Period of June 19, 2019,
20 through August 7, 2022, including Direct Hires of CTDI and Temporary Employees. Under the
21 terms of the Settlement Agreement, Defendant will not oppose Class Counsel’s application for a
22 reasonable award of attorneys’ fees not to exceed \$700,000, Class Counsel’s litigation expenses
23 not to exceed \$30,000, Settlement Administrator costs not to exceed \$50,000, PAGA Penalties of
24 \$200,000 of which \$150,000 will be paid to the LWDA and the remaining \$50,000 will be paid
25 to the Aggrieved Employees, and Service Awards totaling \$45,000 to Plaintiffs. After
26 subtracting the agreed-upon deductions from the Settlement Amount, approximately \$975,000
27 will be available to pay the Individual Settlement Amounts to approximately 3,500 Class
28 Members who do not opt-out of the settlement, as follows:

<i>Gross Settlement Amount</i>	\$ 2,000,000
Attorneys' Fees	\$ 700,000
Litigation Costs (not to exceed)	\$ 30,000
Administrator Costs (not to exceed)	\$ 50,000
PAGA Penalties	\$ 200,000
Class Representative Service Awards	\$ 45,000
<i>Net Settlement Amount</i>	\$ 975,000

8. Assuming approximately 3,500 total Class Members employed during the Class Period, each Class Member will receive approximately \$278 on average, and longer term Class Members who worked the full Class Period will receive close to \$1,000 each (based on the Class Members collectively working a total of approximately 180,000 Workweeks during the Class Period).

9. Each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Weeks Worked he/she is credited with working during the Class Period (attached hereto as **Exhibit B**).

PROCEDURAL BACKGROUND

10. My office and my co-counsel have performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case. Because of the risks involved in litigating the case and the contested legal and factual issues, I believe that this settlement to be fair, reasonable, and adequate.

11. After being retained by Plaintiff Yazmin Cortes in early 2021, my office submitted a March 5, 2021, letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), which is attached hereto as **Exhibit C**, and simultaneously sent a letter to Defendant requesting the production of Ms. Cortes' personnel and timekeeping records to further evaluate the wage and hour claims. The LWDA ultimately declined to assert jurisdiction over the PAGA, thereby

1 giving Plaintiff the right to bring PAGA claims. Two weeks later, we filed a class action and
2 PAGA action complaint in San Bernardino County Superior Court. Defendant removed the
3 action to federal court, and after a series of meet and confers, the case of modified by stipulation
4 and remanded to superior court.

5 12. Around this same time, we learned that two other related cases had been filed
6 against Defendant. In particular, Plaintiffs Jodie Blanton Jr., Yazmin Cortes, and Gabriela
7 Escriba filed separate class and PAGA actions against CTDI for wage and hour violations, which
8 were pending in various jurisdictions in California. In October 2021, Plaintiffs' counsel in each
9 case entered into a joint prosecution and fee sharing agreement, thereby coordinating and
10 consolidating their efforts in the three related cases (hereinafter, collectively referred to as the
11 "Consolidated Action").

12 13. Defendant CTDI retained counsel and began to aggressively defend each of the
13 cases, including removing the Cortes and Escriba cases to District Court, opposing a motion to
14 remand, and engaging in formal discovery. However, prior to engaging in a contested class
15 certification motion, counsel for the parties met and conferred and discussed staying formal
16 discovery in order to exchange informal discovery in preparation for mediation. Thereafter, the
17 Parties scheduled mediation with Mark Rudy.

18 14. In preparation for the mediation, the Parties informally exchanged documents and
19 information that allowed both sides to calculate the potential damages and evaluate potential risk,
20 including policies and procedures pertaining to each claim alleged, and statistics relating to the
21 number of current and former employees, number of shifts, pay periods worked and other things.
22 Defendant also provided its written policies and practices and a robust sampling of payroll and
23 timekeeping records for Class Members covering nearly 75,000 shifts worked. This information
24 enabled both parties and their experts to take a deep dive into the claims. Additionally, during
25 this process, Plaintiffs and their counsel analyzed, researched, and investigated the potential
26 issues, including matters related to the calculation of damages, trial, and appellate issues and
27 risks.

28 / / /

1 15. On June 7, 2022, the Parties participated in mediation before Mark Rudy, who is
2 one of the most highly experienced and respected class action mediators in California. The
3 matter resolved at mediation pursuant to a mediator's proposal, which, among other things,
4 called for the filing of a consolidated amended complaint in the Blanton action and the global
5 resolution of all claims alleged against Defendant.

6 16. The Parties entered into a Memorandum of Understanding and then filed a
7 Stipulation and Proposed Order to allow for the filing of the Consolidated Amended Complaint
8 in this Court, alleging claims for: (1) failure to pay minimum wages; (2) failure to pay overtime
9 wags; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to timely
10 pay final wages; (6) failure to provide accurate and itemized wage statements; (7) unfair and
11 unlawful competition; (8) PAGA assessment for failure to pay minimum wages; (9) PAGA
12 assessment for failure to pay overtime wages; (10) PAGA assessment for failure to provide meal
13 periods; (11) PAGA assessment for failure to provide rest breaks; (12) PAGA assessment for
14 failure to timely pay wages each period; (13) failure to timely pay final wages; (14) failure to
15 provide accurate itemized wage statements; and (15) failure to provide safe and healthful
16 working conditions.

17 17. Under the terms of the settlement, the Parties now seek preliminary approval of
18 the Settlement.

19 **THE WAGE AND HOUR CLAIMS AND CLASS COUNSEL'S INVESTIGATION**

20 18. The putative Class in this case consists of approximately 3,500 similarly situated
21 non-exempt employees who worked at a CTDI Facility in California at any time during the Class
22 Period, including Direct Hires of CTDI and Temporary Employees. Plaintiffs alleged numerous
23 wage and hour violations on behalf of the Class Members. However, Defendant vigorously
24 contested and denied each of Plaintiffs' material allegations on the merits and as to the propriety
25 of a class action or PAGA representative action, as discussed herein.

26 19. One of the primary claims in this action was for wage statement violations due to
27 Defendant's alleged failure to (1) show all applicable overtime, double time, double overtime,
28 shift differential, and meal premium rates and hours worked at each rate on its wage statements

1 as required by Labor Code § 226(a)(9); (2) failing to include the pay period start date in violation
2 of Labor Code § 226(a)(6); and (3) failure to identify accurate total hours worked under §
3 226(a)(2). Furthermore, Defendant contended that, even if Plaintiffs could identify technical
4 errors in some employees' wage statements, the claims still fail for multiple reasons, including
5 without limitation, because Plaintiffs cannot establish a "knowing and intentional" violation or
6 that Plaintiffs and other employees suffered an "injury" as required by Labor Code section
7 226(e). Defendant further contended that class treatment was inappropriate and that this matter
8 could not be manageably litigated on a representative basis.

9 20. Additionally, Plaintiffs alleged that Defendant failed to pay all required minimum
10 and overtime wages because they and other Class Members were forced to wait in lone lines at
11 the timeclock prior to clocking in at the start of the shift and the start and end of meal periods,
12 resulting in a loss of time of 5 minutes or more per shift. Second, during the COVID-19
13 pandemic, Defendant required Plaintiffs and the Class Members to wait in a temperature check
14 line before clocking in. Once they reached the front of the line, their supervisors checked their
15 temperature and provided them with personal protective equipment such as gloves. This process
16 took an additional few minutes to complete each shift which occurred off-the-clock. This
17 practice often resulted in unpaid wages at the overtime rate. Third, Defendant failed to
18 accurately record employees' meal periods by virtue of the fact that they were unable to clock
19 back in for lunch without waiting in line. As a result, employees were not relieved of duty for the
20 full 30-minute meal period and are therefore not compensated at the appropriate minimum and
21 overtime rate. Defendant raised multiple defenses to this claim, including the arguments that
22 there were plenty of timeclocks throughout the facilities to accommodate the number of
23 employees and eliminate standing in line, that meal periods were staggered which helped ensure
24 that lines did not form, that COVID protocols were short term, and Class Members were
25 directed to complete all work related tasks on-the-clock and employees were, in fact, clocked in
26 when performing work; therefore; any off-the-clock claim would fail. Defendant also argues that
27 the process was required by relevant health regulations – and was not put in place by choice of
28 the company itself – which rendered any such time *not* compensable.

1 21. Plaintiffs also argued that the Class Members were often denied compliant meal
2 and rest breaks, including when they were not provided 30-minute off-duty meal periods, as a
3 result of being forced to wait in lines when returning from their meal periods to clock back in for
4 work resulting in truncated meal periods, and when they were subjected to meal period violations
5 when they were: (1) unable to take a meal period due to the workload, (2) forced to take a meal
6 period after the 5th hour of work, and (3) not provided a mandated second meal period on shifts
7 in excess of 10 hours. Additionally, rest periods were not properly authorized and permitted.
8 However, Defendant argued that it provided and made available meal and rest breaks to all
9 employees, and any employee who did not take a meal or rest break did so entirely of his or her
10 own volition. In this regard, Defendant produced its written policies and practices, which it
11 argued show full compliance with the law. As such, Defendant argued that these claims were
12 without merit because, for each violation, a fact-finder would have to determine why a break was
13 noncompliant/nonexistent, because if it was by the employee's choice, no liability attaches to
14 Defendant.

15 22. Plaintiffs further alleged that Defendant failed to provide a safe working
16 environment due to its failure to provide PPE such as gloves that properly fit the employees.
17 Defendant argued that these claims were without merit.

18 23. Plaintiffs also alleged various other Class and PAGA claims, such as the failure to
19 timely pay all wages each period and owed upon termination, and other claims related to the
20 alleged violations mentioned above. However, Defendant argued that these other claims, as well
21 as the "derivative" claims, have no merit.

22 24. Nonetheless, the Parties concluded that further litigation of the Action would be
23 protracted and expensive, and that it is desirable that the Action be fully and finally settled in
24 order to limit further risk, expense and protracted litigation.

25 ///

26 ///

27 ///

28 ///

1 25. When factoring in the defenses and risks of ongoing litigation, Plaintiffs estimate
2 the risk-adjusted class recovery as follows:

3	Wage Statements	\$	3,130,290
4	Meal Periods	\$	262,484
5	Rest Breaks	\$	131,242
6	Unpaid Wages	\$	65,540
7	Waiting Time Penalties	\$	<u>770,420</u>
8	Total Risk Adjusted Value	\$	4,294,442

9 26. The reasonableness of the Settlement is apparent from the fact that the proposed
10 Settlement is 46.6% of the risk-adjusted class damages. For these reasons, the Parties submit that
11 the agreed-upon Settlement is fair and reasonable:

12 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

13 27. The settlement was the product of extensive arm's length negotiations, facilitated
14 by an experienced mediator. Though cordial and professional, the settlement negotiations were
15 adversarial and non-collusive in nature. The settlement reached is the product of substantial
16 effort by the parties and their counsel. Although we believed that there was a possibility of
17 certifying the claims, we recognized the potential risk, expense, and complexity posed by
18 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
19 on the damages awarded, and/or on an appeal that can take several more years to litigate.

20 28. The settlement will result in a fair payment to each class member based on the
21 number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiffs and their
22 counsel have diligently investigated the claims and defenses on behalf of the Class Members and
23 worked to achieve a resolution of the claims to maximize the recovery by avoiding further
24 expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with
25 further litigation described above and weighing them against the benefits of a known
26 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms
27 agreed to is believed to be in the best interest of Plaintiffs and the Class, and is a fair and
28 reasonable resolution of the claims alleged.

1 29. Plaintiffs' Counsel brought to bear a great deal of experience in negotiating the
2 settlement of this case. As detailed herein, Plaintiffs' counsel engaged in the necessary discovery
3 and investigation, making it possible to exercise informed judgment throughout the settlement
4 process, including significant document review (e.g. documents pertaining to Defendant's
5 policies and procedures, personnel documents, among others), and conducted an extensive
6 analysis of the detailed class-wide data provided by Defendant.

7 30. Based on my experience in other cases, including wage and hour matters, I
8 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
9 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
10 settlement at this time is in the best interests of the class. The settlement provides each class
11 member with compensation for the alleged violations when viewed in relation to the costs and
12 risks inherent in obtaining class certification and proceeding to trial.

13 31. Plaintiffs' counsel, as well as Defendant's counsel, fully endorse the terms and
14 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

15 32. Of course, the settlement amount represents a compromise figure, taking into
16 account the various risks surrounding class certification and the merits of Defendant's asserted
17 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
18 members, with no reversion to Defendant.

19 **PLAINTIFFS' REQUESTED ENHANCEMENT PAYMENT**

20 33. Plaintiffs seeks an enhancement payment of \$15,000 each for their service to the
21 class, which I believe is fair and warranted. They came forward in an effort to effectuate a
22 policy and practice change that benefitted all other Class Members, and to recover unpaid wages.
23 They assumed significant risk in bringing this litigation—namely, had they lost, they would have
24 been ordered to pay Defendant's costs.

25 34. Plaintiffs provided invaluable assistance to Class Counsel and the Class in this
26 case, including providing factual background for the Consolidated Complaint; reviewing the
27 litigation documents; providing information and documents about Defendant's policies and
28 practices; participating in phone calls to discuss litigation and settlement strategy; and reviewing

1 the settlement documents. Plaintiff agreed to participate in this case with no guarantee of
2 personal benefit. At final approval, Plaintiff will submit a comprehensive declaration setting
3 forth all of the reasons why he believes that the service award should be approved.

4 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
5 **REQUESTED FEES AND COSTS**

6 35. As set forth above, I have handled over 250 class and representative actions, have
7 been appointed as class counsel and have successfully resolved over half of those cases, and
8 many others remain pending and will successfully resolve in the future.

9 36. When this case was taken on a contingency fee basis, with Plaintiffs' counsel
10 agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain.
11 In the course of this litigation, my firm and my co-counsel paid all costs including filing fees,
12 court costs, research fees, and mediation costs. There was never a guarantee that we would
13 recoup those expenditures.

14 37. Under the terms of the Settlement Agreement, Class Counsel – which includes
15 numerous attorneys from six different law firms who have joined forces to represent the Class –
16 may seek attorneys fees totaling \$700,000, and reimbursement of litigations costs up to \$30,000.
17 These amounts are reasonable, given the facts and circumstances of the case and well within the
18 range approved by courts in California. *See, e.g., Laffitte v. Robert Half Int'l Inc.* (2016) 1
19 Cal.5th. 480 (approving a fee percentage in the amount of \$6.33 million at a 2.13 lodestar
20 multiplier, when class action litigation establishes a monetary fund for the benefit of the class
21 members, the trial court may determine the amount of a reasonable fee by choosing an
22 appropriate percentage of the fund created). Class Counsel have borne all the risks and costs of
23 litigation and will receive no compensation until recovery is obtained. Class Counsel are well-
24 experienced in wage-and-hour class action litigation and used that experience to obtain a fair
25 result for the Class. Considering the amount of the attorney fees requested, the work performed,
26 and the risks incurred, the requested fees and costs are reasonable and should be preliminarily
27 approved.

28 ///

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

SUBMISSION TO THE LWDA

39. Plaintiffs have concurrently submitted the settlement to the LWDA in accordance with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit E**.

EXHIBITS AND CONCLUSION

41. The proposed Class Notice is attached as Exhibit “B.”

42. A true and correct copy of the notice letter that my office submitted to the LWDA is attached as Exhibit “C.”

44. The LWDA's confirmation of receipt of this Motion and Declaration is attached hereto as Exhibit "E."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 20, 2023, at Riverside, California.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “A”

Brian J. Mankin [CSB No. 216228]
brian@lmlfirm.com
Misty M. Lauby [CSB No. 243009]
misty@lmlfirm.com
LAUBY MANKIN LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff Yazmin Cortes, and all others similarly situated

James E. Hart [CSB No. 194168]
jhart@littler.com
Leah E. Peterson [CSB No. 313302]
lwhitehead@littler.com
LITTLER MENDELSON P.C.
18565 Jamboree Road, Suite 800
Irvine, California 92612
Tel: (949) 705-3000 | Fax No.: (949) 724-1201

Attorneys for Defendant, Communications Test Design, Inc.

[Additional Counsel Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

JODIE BLANTON JR., YAZMIN CORTES
and GABRIELA ESCRIBA, on behalf of all
others similarly situated;

Plaintiffs,

vs.

COMMUNICATIONS TEST DESIGN, INC.,
a Pennsylvania Corporation, and DOES 1
through 20, inclusive;

Defendants.

AND THE CONSOLIDATED/RELATED
ACTIONS.

Case No.: STK-CV-VOE-2021-5136

**CLASS AND REPRESENTATIVE
ACTION SETTLEMENT AGREEMENT
AND RELEASE OF CLAIMS**

Consolidated/Related Actions:

- *Cortes v. Communications Test Design, Inc, et al.*; County of San Bernardino, Case No. CIVSB2108718;
- *Escriba v. Communications Test Design, Inc, et al.*; County of San Bernardino, Case No. CIVSB2115512; U.S.D.C., Central District of CA, Fed. Case No. 5-21-cv-01326-AB-KK

1 Larry W. Lee [CSB No. 228175]
2 *lwlee@diversitylaw.com*
3 Kristen M. Agnew [CSB No. 247656]
4 *agnew@diversitylaw.com*
5 Nicholas Rosenthal [CSB No. 268297]
6 *nrosenthal@diversitylaw.com*
7 DIVERSITY LAW GROUP, P.C.
8 515 S. Figueroa Street, Suite 1250
9 Los Angeles, CA 90071
10 Tel: (213) 488-6555 | Fax: (213) 488-6554

11 William L. Marder, Esq. [CSB No. 170131]
12 POLARIS LAW GROUP
13 501 San Benito Street, Suite 200
14 Hollister, CA 95023
15 Tel: (831) 531-4214 | Fax: (831) 634-0333

16 Attorneys for Plaintiff Jodie Blanton, Jr., and others similarly situated

17 David G. Spivak [CSB No. 179684]
18 *david@spivaklaw.com*
19 THE SPIVAK LAW FIRM
20 8605 Santa Monica Bl
21 PMB 42554
22 West Hollywood CA 90069
23 Tel: (213) 725-9094 | Fax: (213) 634-2485

24 Louis M. Benowitz [CSB 262300]
25 *louis@benowitzlaw.com*
26 BENOWITZ LAW CORPORATION
27 8605 Santa Monica Boulevard
28 PMB 97638
West Hollywood CA 90069
Tel: (818) 839-9610 | Fax: (818) 839-9610

Benjamin J. Smith [CSB 266712]
Benjy@thesmithlawcorp.com
SMITH LAW
4515 Van Nuys Blvd., Ste 302
Sherman Oaks CA 91403-5799
Tel: (818) 839-9607 | Fax: (818) 839-9700

Attorneys for Plaintiff Gabriela Escriba, and others similarly situated

1 This Class and Representative Action Settlement Agreement and Release of Claims is
2 entered into by and between Plaintiffs Yazmin Cortes, Jodie Blanton, Jr., and Gabriela Escriba,
3 individually, on a representative basis, and on behalf of all others similarly situated and the
4 interests of the California Labor and Workforce Development Agency (“LWDA”), and
5 Defendant Communications Test Design, Inc., and is approved by their respective counsel of
6 record, subject to the terms and conditions hereof and the Court’s approval.

7 **A. Definitions**

8 1. “Agreement,” “Settlement” or “Settlement Agreement” shall mean this Class and
9 Representative Action Settlement Agreement and Release of Claims, including any attached
10 Exhibits.

11 2. “Aggrieved Employees” means all current and former non-exempt employees
12 who worked at a CTDI Facility in California at any time during the PAGA Period, including
13 Direct Hires of CTDI and Temporary Employees.

14 3. “Attorney’s Fees and Cost Award” shall have the meaning ascribed to it in
15 Paragraph 52(f) below.

16 4. “Class Counsel” refers to Brian Mankin and Misty Lauby of Lauby Mankin
17 Lauby LLP, Larry Lee, Kristen Agnew and Nick Rosenthal of Diversity Law Group, P.C., David
18 Spivak of The Spivak Law Firm. Louis Benowitz of Benowitz Law Corporation, and Benjamin
19 Smith of Smith Law.

20 5. “Class Data of CTDI” means a complete list that Defendant will diligently and in
21 good faith compile from its records and provide to the Settlement Administrator on one
22 spreadsheet and shall include the Direct Hires of CTDI’s full names; last known addresses;
23 telephone numbers; Social Security Numbers; the total Weeks Worked during the PAGA Period
24 for each Aggrieved Employee, and the total Weeks Worked during the Class Period for each
25 Settlement Class Member.

26 6. “Class Data of Staffing Agencies” means a list that Defendant will diligently and
27 in good faith compile from its records and from information sought from Staffing Agencies and
28 provide to the Settlement Administrator and shall include, on a spreadsheet, the Temporary

1 Employees' full names; Employee IDs; last known addresses; telephone numbers (if available);
2 Social Security Numbers; the total Weeks Worked during the PAGA Period for each Aggrieved
3 Employee, and the total Weeks Worked during the Class Period for each Settlement Class
4 Member. Defendant will initially work to obtain additional information from the Staffing
5 Agencies, including the Temporary Employees' last known addresses; telephone numbers; and
6 Social Security Numbers. However, to the extent Defendant is unable to do so, the Parties shall
7 make additional efforts to obtain the Temporary Employees' information, including by
8 subpoenas by Plaintiffs to the Staffing Agencies. The Parties and their counsel will
9 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related
10 to missing or omitted Class Data.

11 7. "Class Period" is deemed to be any time during the period of June 19, 2019,
12 through August 7, 2022.

13 8. "Class Representatives" or "Plaintiffs" means and refers to Yazmin Cortes, Jodie
14 Blanton, Jr., and Gabriela Escriba.

15 9. "Consolidated Action" or "Lawsuit" means and refers to the related and/or
16 consolidated actions of *Yasmin Cortes, et al v. Communications Test Design, Inc.* (San
17 Bernardino County Superior Court, Case No. CIVSB2108718) (the "Cortes Action"), *Gabriela*
18 *Escriba v. Communications Test Design, Inc., & ProTech Staffing* (San Bernardino County
19 Superior Court, Case No. CIVSB2115512, U.S.D.C., Central District of CA, Fed. Case No. 5-21-
20 cv-01326-AB-K) (the "Escriba Action"), and *Jodie Blanton Jr. v. Communications Test Design,*
21 *Inc.*, (San Joaquin County Superior Court, Case No. STK-CV-UOE-2021-5136 (the "Blanton
22 Action").

23 10. "Consolidated Complaint" refers to the operative complaints on file in the Cortes
24 Action, Escriba Action and Blanton Action, as well as the pending First Amended Complaint
25 that will be filed in the Blanton Action that will consolidate and incorporate the Cortes Action
26 and Escriba Action into the Blanton Action, and therein collectively allege the Class Claims and
27 Settled PAGA Claims. A copy of the First Amended Complaint is attached hereto as **Exhibit**
28 **"A."**

1 11. “Court” (or “Judge”) means the California Superior Court, County of San
2 Joaquin.

3 12. “CTDI Facility” means the warehouses and facilities in California that CTDI
4 owned or operated, including but not limited to in Livermore, San Diego, Fontana, Tracy, and
5 Rialto.

6 13. “Defendant” or “CTDI” means and refers to Communications Test Design, Inc.

7 14. “Defendant’s Counsel” or “Defense Counsel” means and refers to Jim Hart and
8 Leah Peterson of Littler Mendelson, P.C.

9 15. “Direct Hires of CTDI” or “Direct Hires” means and refers to individuals who
10 were hired directly by CTDI and employed to work at the CTDI Facility.

11 16. “Effective Date” means the latest of the following dates: (i) if no Class Member
12 timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil
13 Procedure § 663, then the date the Court enters an order granting Final Approval of the
14 Settlement; (ii) if a Class Member intervenes or files a motion to vacate the Judgment, then
15 sixty-one (61) calendar days following the date the Court enters an order granting Final
16 Approval, assuming no appeal is filed; or (iii) if a Class Member timely and properly intervenes
17 or files a motion to vacate the Judgment under Code of Civil Procedure § 663 or initiates another
18 collateral attack, and if a timely appeal is filed, then the date of final resolution of that appeal or
19 other collateral attack (including any requests for rehearing and/or petitions for *certiorari*),
20 resulting in final judicial approval of the Settlement.

21 17. “Escalator Clause” means if the number of Weeks Worked by the Settlement
22 Class from June 19, 2019 through May 22, 2022, is 10% greater or more than the estimated
23 180,000 Weeks Worked during that period (i.e., more than 198,000 workweeks), at the option of
24 Defendant: 1) the Gross Settlement Amount will increase pro rata per additional Week Worked;
25 or 2) Defendant shall have the option of ending the Class Period and PAGA Period on the date
26 on which the number of Weeks Worked does not exceed 198,000 workweeks (180,000+ 10%).

27 18. “Final Approval” refers to the order of the Court granting final approval of this
28 Settlement Agreement and entering a judgment approving this Agreement on substantially the

terms provided herein or as the same may be modified by subsequent agreement of the Parties.

19. “Final Settlement Class” means, collectively, all Settlement Class Members who have not opted out of the Settlement Class by submitting a timely Request for Exclusion.

20. “Gross Settlement Amount” or “GSA” shall have the meaning ascribed to it in Paragraph 53(a) below.

21. “Individual Settlement Payment” shall have the meaning ascribed to it in Paragraph 53(c) below.

22. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 53(b) below.

23. “Notice” means the notice of settlement of class action that will be sent to the Settlement Class Members, a copy of which is attached as **Exhibit “B.”**

24. “Notice Response Deadline” is 45 calendar days from the date the Notice is mailed to the Settlement Class Members.

25. “Objecting Settlement Class Member” means a Settlement Class Member, other than Plaintiffs, who submits a valid and timely objection to the terms of this Agreement with respect to the Settled Class Claims, pursuant to Paragraph 77(c) below.

26. “PAGA Penalties” means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well as the individual PAGA payment allocated to each Aggrieved Employee.

27. “PAGA Period” is deemed to be any time during the period of March 19, 2020, through August 7, 2022.

28. “Participating Class Member” means any and all Settlement Class Members who are deemed to participate, who will receive an Individual Settlement Payment, and who do not opt-out by submitting a timely valid Request for Exclusion.

29. “Parties” or “Settling Parties” mean Plaintiffs, the Settlement Class, and Defendant, collectively.

///

1 30. “Preliminary Approval Date” means the date the Court approves the Settlement
2 Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

3 31. “Preliminary Approval Order” means the judicial Order to be entered by the
4 Court, upon the application or motion of the Plaintiffs, preliminarily approving this Settlement
5 and providing for the issuance of the Notice to the Settlement Class, an opportunity to opt out of
6 the Settlement, an opportunity to submit timely objections to the Settlement, and setting a
7 hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and
8 costs. Defendant will not object to Plaintiffs’ motion for preliminary approval, but will be
9 provided with an opportunity to review and comment upon the motion at least ten days before it
10 is filed.

11 32. “QSF” means the Qualified Settlement Fund set up by the Settlement
12 Administrator for the benefit of the Final Settlement Class, and from which the settlement
13 payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue
14 Code Sec. 468.

15 33. “Released Parties” means Defendant and its affiliated companies, parents,
16 members, subsidiaries, related companies and business concerns, past and present, including
17 their predecessors and successors, and each of them, as well as each of their insurers, partners,
18 trustees, directors, owners, shareholders, officers, agents, attorneys, servants, joint employers and
19 employees, temporary service providers and Staffing Agencies employing Temporary
20 Employees, past and present, and each of them and anyone acting in concert with foregoing.

21 34. “Release” shall mean the release and discharge of the Settled Class Claims by
22 Plaintiffs and all of the Participating Class Members and the release and discharge of the Settled
23 PAGA Claims by Plaintiffs and all of the Aggrieved Employees. The *res judicata* effect of the
24 Judgment will be the same as that of the Release of the Settled Class Claims and Settled PAGA
25 Claims.

26 35. “Request for Exclusion” means and refers to a valid and timely request for
27 exclusion from the Settlement of the Settled Class Claims, which may be submitted by any
28 Settlement Class Member, other than Plaintiffs, pursuant to Paragraph 77(a) below.

1 36. “Service Payment” or “Service Award” means the amount approved by the Court
2 to be paid to the Class Representatives in addition to their Individual Settlement Payment as a
3 Participating Class Member.

4 37. “Settled Class Claims” or “Class Claims” by the Participating Class Members
5 upon Final Approval of the Settlement will include all causes of action and claims, charges,
6 complaints, liens, demands that were alleged in the Consolidated Complaint or reasonably could
7 have been alleged based on the allegations, the facts, statutory citation and/or legal theories
8 contained in the Consolidated Complaint, including all of the following claims for relief: (a)
9 failure to pay minimum wages, regular wages and/or overtime pay (including any theory of
10 failure to pay any and all wages for all time worked or earned); (b) failure to provide or pay
11 premium payments for meal periods; (c) failure to provide or pay premium payments for rest
12 periods; (d) failure to reimburse business expenses; (e) failure to provide complete and accurate
13 wage statements; (f) failure to pay wages upon termination; (f) violations of the California
14 Business & Professions Code §§ 17200 *et seq.* (g) failure to provide, pay, and/or post sick pay at
15 the appropriate rate of pay, and (h) reimbursement of business expenses. These claims include,
16 but are not limited to, California Labor Code sections 201, 202, 203, 226, 226.7, 227.3, 246, 510,
17 512, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802 and all related provisions of the California
18 Code of Regulations, the California Industrial Wage Orders, the California Business &
19 Professions Code sections 17200 *et seq.* The release of the foregoing claims, extends to all
20 theories of relief regardless of whether the claim is, was or could have been alleged as separate
21 claims, causes of action, lawsuits or based on other theories of relief, or different right or duty of
22 an alleged statute, whether under federal law, state law or common law (including, without
23 limitation, as violations of the California Labor Code, the Wage Orders, applicable regulations,
24 and California’s Business and Professions Code section 17200). “Settled Class Claims” includes
25 all types of relief available for the above-referenced claims, including, without limitation, any
26 claims for damages, restitution, losses, penalties, fines, liens, attorneys’ fees, costs, expenses,
27 debts, interest, injunctive relief, declaratory relief, or liquidated damages. The time period
28 governing the Settled Class Claims shall be the same as the Class Period.

1 38. “Settled PAGA Claims” means any and all claims for civil penalties under the
2 Private Attorneys General Act, Labor Code § 2698 *et seq.*, that Plaintiffs alleged against the
3 Released Parties, on behalf of Aggrieved Employees and State of California, based on the facts
4 stated in the Consolidated Complaint and in Plaintiffs’ notice letters to the LWDA (including any
5 amendments thereto), or reasonably could have been alleged based on the allegations, the facts,
6 statutory citation and/or legal theories under the PAGA contained in the Consolidated
7 Complaint, including all of the following claims for relief: (a) failure to pay minimum wages,
8 regular wages and/or overtime pay (including any theory of failure to pay any and all wages for
9 all time worked or earned); (b) failure to provide or pay premium payments for meal periods; (c)
10 failure to provide or pay premium payments for rest periods; (d) failure to reimburse business
11 expenses; (e) failure to provide complete and accurate wage statements; (f) failure to timely pay
12 each week; (g) failure to pay wages upon termination; (h) failure to provide safe and healthful
13 working conditions, (i) failure to provide, pay, and/or post sick pay at the appropriate rate of pay,
14 and (j) reimbursement of business expenses. These claims include, but are not limited to,
15 California Labor Code sections 201, 202, 203, 204, 226, 226.7, 227.3, 246, 510, 512, 1174,
16 1194, 1197, 1197.1, 1198, 2800, and 2802 and all related provisions of the California Code of
17 Regulations, and the California Industrial Wage Orders. The time period governing the Settled
18 PAGA Claims shall be any time during the PAGA Period. The Settled PAGA Claims do not
19 release any potential claims for wages or statutory penalties.

20 39. “Settlement Administrator” means and refers to ILYM Group, the third-party
21 class action settlement administrator based on low bid or mutually agreed to by the Parties that
22 will provide the Notice Packet to the Class Members and distribute the settlement amounts as
23 described in this Agreement.

24 40. “Settlement Administration Costs” means the costs payable from the Gross
25 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
26 but not limited to, printing, distributing, and tracking documents for this Settlement, tax
27 reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property
28 due diligence, reporting and remittance obligations, distributing the Gross Settlement Amount,

1 and providing necessary reports and declarations, as requested by the Parties. The Settlement
2 Administration Costs shall be paid from the Settlement Amount, including, if necessary, any
3 such costs in excess of the amount represented by the Settlement Administrator as being the
4 maximum costs necessary to administer the Settlement.

5 41. "Settlement Class" consists of all current and former non-exempt employees who
6 worked at a CTDI Facility in California at any time during the Class Period, including Direct
7 Hires of CTDI and Temporary Employees.

8 42. "Settlement Class Member" or "Class Member(s)" refers to individual members
9 of the Settlement Class.

10 43. "Staffing Agency" means and refers to a temporary staffing agency that employed
11 and assigned Temporary Employees to work at a CTDI Facility.

12 44. "Temporary Employees" refers to individuals who were employed by a Staffing
13 Agency and assigned to work at a CTDI Facility in California at any time during the Class
14 Period and/or PAGA Period.

15 45. "Weeks Worked" or "Eligible Weeks," in the context of Settlement Class
16 Members, means all weeks derived or estimated from Class Data of CTDI and Class Data of
17 Staffing Agencies during the Class Period in which the Settlement Class Member was employed
18 as a Direct Hire of CTDI or a Temporary Employee and worked at least one shift during the
19 week. Likewise, in the context of Aggrieved Employees, it means all weeks during the PAGA
20 Period derived or estimated from Class Data of CTDI and Class Data of Staffing Agencies in
21 which the Aggrieved Employee was employed as a Direct Hire of CTDI or a Temporary
22 Employee and worked at least one shift during the week.

23 **B. General Terms and Recitals**

24 46. The Cortes Action was initially filed as a class and representative action on March
25 19, 2021, in the San Bernardino County Superior Court before being removed to District Court
26 and then remanded back to Superior Court as a PAGA only case. The Escriba Action was also
27 filed in the San Bernardino Superior Court as a class action on June 4, 2021, and later amended
28 to include PAGA claims. The Escriba Action was removed to District Court on August 6, 2021.

1 The Blanton Action was filed on June 7, 2022, in the Court as a class and PAGA action. In
2 preparation for mediation, Plaintiffs agreed to proceed as a Consolidated Action.

3 47. Defendant denies Plaintiffs' claims and allegations and contends that the
4 Consolidated Action is not suitable for class certification or manageable as a class or
5 representative action.

6 48. The Class Representatives believe they can proceed with their representative and
7 class claims, that the Consolidated Action is meritorious, and that class certification is
8 appropriate.

9 49. The Parties have conducted a thorough investigation into the facts of the
10 Consolidated Action. In preparation for mediation, the parties exchanged discovery informally,
11 including Defendant's written policies and practices and the production of payroll and
12 timekeeping records for Settlement Class Members, which allowed Class Counsel and their
13 experts to evaluate hundreds of Class Members' time keeping and payroll records over the
14 course of 75,000 daily work shifts. Class Counsel represent, and Defendant understands, that
15 each has diligently pursued an investigation of the proposed Class Members' and Aggrieved
16 Employees' claims against Defendant and is both knowledgeable about the claims and damages,
17 and has done extensive research with respect to the applicable law and potential defenses to the
18 claims. Class Counsel represent, and Defendant understands, that each has diligently pursued an
19 investigation of the Class Members' claims against Defendant. Based on the foregoing data and
20 on their own independent investigation and evaluation, Class Counsel is of the opinion that the
21 settlement with Defendant for the consideration and on the terms set forth in this Settlement
22 Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members and
23 Aggrieved Employees/LWDA in light of all known facts and circumstances, including the risk of
24 significant delay and uncertainty associated with litigation, various defenses asserted by
25 Defendant, and numerous potential appellate issues.

26 50. On June 7, 2022, Plaintiffs and Defendant participated in mediation before Mark
27 Rudy, who is one of the most highly experienced and respected class action mediators in
28 California. The matter resolved at mediation globally pursuant to a mediator's proposal,

1 conditioned upon the filing of the Consolidated Complaint.

2 51. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
3 to be performed or judgments to be entered pursuant to the terms of the Settlement and
4 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
5 any statute or law or liability on the claims or allegations in the Action.

6 52. Stipulation for Class Certification and Representative Treatment. For settlement
7 purposes only, Defendant will stipulate that the Settlement Class Members described herein who
8 do not submit a Request for Exclusion from the Settlement Class may be conditionally certified
9 as a settlement class and that the Aggrieved Employees are appropriate for representative
10 treatment for purposes of settlement. This stipulation to certification and representative treatment
11 is in no way an admission that class action certification and/or representative treatment is proper
12 and shall not be admissible in this or in any other action except for the sole purposes of enforcing
13 this Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties'
14 stipulation to class certification and representative treatment as part of the Settlement shall
15 become null and void *ab initio* and shall have no bearing on, and shall not be admissible in
16 connection with, the issue of whether or not certification and/or representative treatment would
17 be appropriate in a non-settlement context. Defendant expressly reserves its rights and declares
18 that it would continue to oppose class certification, representative treatment, and the substantive
19 merits of the case should the Court decline to issue Final Approval. Plaintiffs expressly reserve
20 their rights and declare that they will continue to pursue class certification, representative
21 treatment, and a trial should the Court decline to issue Final Approval.

22 **C. Terms of Settlement**

23 53. The financial terms of the Settlement are as follows:

24 (a) Gross Settlement Amount: The Parties agree to settle this Consolidated
25 Action for Two Million Dollars and No Cents (\$2,000,000) ("the Gross Settlement Amount").
26 The Gross Settlement Amount is the maximum amount that will be paid by Defendant (except
27 for the employer's share of payroll taxes and withholdings), and includes Individual Settlement
28 Payments, Attorneys' Fees and Costs Award, the Service Payment to the Class Representatives,

all Settlement Administration Costs, and PAGA Penalties. Defendant shall separately pay the employers' share of applicable payroll tax obligations, which shall be reported through the Settlement Administrator.

(b) Net Settlement Amount: The "Net Settlement Amount" is defined as the Gross Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to the Class Representatives, as approved and awarded by the Court, the Settlement Administration Costs, as approved and awarded by the Court, and PAGA Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service Awards, or Settlement Administrator Costs, or either increases or decreases the amount allocated to the PAGA Penalties, the Net Settlement Amount shall be increased or decreased accordingly, and the increase or decrease shall not impact the validity and enforceability of the Settlement.

(c) Individual Settlement Payments for the Settlement Class: Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of Eligible Weeks a Settlement Class Member worked during the Class Period. Specific Calculations of Individual Settlement Payments will be made as follows:

- Defendant will calculate the total number of Weeks Worked by each Settlement Class Member, whether as a Direct Hire of CTDI or a Temporary Employee, during the Class Period and the aggregate total number of Weeks Worked by all Settlement Class Members during the Class Period.
- To determine each Settlement Class Member's estimated Individual Settlement Payment, the Settlement Administrator will use the following formula: The Net Settlement Amount will be divided by the aggregate total number of Weeks Worked, resulting in the "Week Value." Each Settlement Class Member's Individual Settlement Payment will be calculated by multiplying his or her total number of Weeks Worked during the Class Period by the Week Value.
- Individual Settlement Payments will be reduced by any required deductions for each Participating Class Member as specifically set forth herein, including

employee-side tax withholdings and deductions.

- The entire Net Settlement Amount will be disbursed to all Participating Class Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionally increase the Individual Settlement Payment for each Participating Class Member according to the number of Weeks Worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount.
- The Parties acknowledge and agree that the formula used to calculate Workweeks, individual Settlement Payments, PAGA Workweeks and PAGA payments does not imply that all of the elements of damages covered by the release are not being taken into account. The above formulas were devised as practical and logistical tools to simplify the payment process.

(d) Allocation of Individual Settlement Payments: The Individual Settlement Payments will be allocated based on the allegations in the Action as follows: 33% will be allocated as wages subject to withholding of all applicable local, state and federal taxes; 33% to interest and 34% to statutory penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226, 2699) from which no taxes will be withheld. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

(e) Service Payment to Class Representatives: The amounts, if any, awarded to the Class Representatives as a Service Payment will be set by the Court in its discretion in exchange for the services Plaintiffs performed on behalf of the Class and for entering into the general release of all claims discussed hereinafter. The Service Payments are not to exceed the following amounts: \$15,000 each to Yazmin Cortes, Jodie Blanton, Jr., and Gabriela Escriba, of which fifty percent (50%) will be deemed for the enhancement and fifty percent (50%) will be allocated to a general release, as discussed below. Defendant agrees not to oppose these requests. Plaintiffs will not request exclusion from the Settlement Class. The Service Payment to

1 Plaintiffs will be paid out of the Gross Settlement Amount. The Class Representatives will be
2 issued IRS Form 1099 in connection with this payment and shall be solely and legally
3 responsible to pay any and all applicable taxes on this payment. The Parties agree that any
4 amount awarded as the Service Payment to Plaintiffs less than the requested amount shall not be
5 a basis for Class Counsel to void this Settlement Agreement nor to appeal this aspect of the
6 Court's ruling. Should the Court approve a lesser amount for the Service Payment, the
7 difference shall be added to the Net Settlement Amount to be distributed to the Participating
8 Class Members.

9 (f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a
10 request by Class Counsel to the Court for an award of attorneys' fees of not more than thirty-five
11 percent (35%) of the Gross Settlement Amount (\$700,000), subject to Court approval, plus
12 reasonable litigation costs not to exceed \$30,000, which shall be allocated according to proof and
13 subject to Court approval ("Attorney's Fees and Cost Award"). Defendant agrees not to oppose
14 any contention by Class Counsel that attorneys' fees should be based on the common fund
15 theory. The Attorney's Fee and Cost Award shall be paid from the Gross Settlement Amount,
16 and except for this award, Defendant shall have no further obligation to pay any attorneys' fees,
17 costs or expenses to Class Counsel. Should the Court approve a lesser amount than what is
18 sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be
19 distributed to the Participating Class Members. The Parties agree that any amount awarded as
20 attorneys' fees and costs to Class Counsel less than the requested amount shall not be a basis for
21 Class Counsel to rescind or otherwise void this Settlement Agreement. The Settlement
22 Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys'
23 fees and costs awarded by the Court. As of the date on which the Gross Settlement Amount has
24 been fully funded and the Effective Date, and upon receipt by Class Counsel of the amounts
25 approved by the Court for Class Counsel's fees and expenses, and except as otherwise provided
26 by this Settlement Agreement, Class Counsel will waive any claim to costs or attorneys' fees or
27 other expenses against Defendant and the Released Parties arising from or related to the
28 Consolidated Action, including but not limited to claims based on the California Labor Code, the

1 California Code of Civil Procedure, and any other statute, law, or other legal or equitable
2 authority or theory.

3 (g) Settlement Administration Costs: The fees and other charges of the
4 Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed \$50,000
5 unless approved by all Parties and the Court.

6 (h) PAGA Penalties: The Parties agree that \$200,000 is allocated to PAGA
7 Penalties and is to be paid from the Gross Settlement Amount, subject to Court approval. Of this
8 amount, \$150,000 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
9 Private Attorney General Act of 2004 (“PAGA”) and \$50,000 (25%) will be paid to the
10 Aggrieved Employees on a Weeks Worked basis, which will be treated entirely as civil penalties
11 and shall be reported as required on an IRS Form 1099. Class Counsel shall give proper notice
12 to the LWDA of the Settlement.

13 (i) Tax Liability: Class Counsel, Defendant, and Defendant’s counsel make
14 no representations as to the tax treatment or legal effect of Settlement Amounts called for
15 hereunder, and Plaintiffs and the Settlement Class Members are not relying on any statement or
16 representation by Class Counsel, Defendant, or Defendant’s counsel in this regard. Plaintiffs,
17 Participating Class Members, and Aggrieved Employees understand and agree that they will be
18 solely responsible for the payment of any taxes and penalties assessed on their respective
19 Settlement Amounts described herein. The amount of federal income tax withholding will be
20 based upon a flat withholding rate for supplemental wage payments in accordance with Treas.
21 Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be
22 made pursuant to applicable state and/or local withholding codes or regulations. Forms W-2
23 and/or Forms 1099 will be distributed at times and in the manner required by the Internal
24 Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code, the
25 regulations promulgated thereunder, or other applicable tax law, are changed after the date of this
26 Agreement, the processes set forth in this Section may be modified in a manner to bring
27 Defendant into compliance with any such changes. Plaintiffs, Participating Class Members, and
28 Aggrieved Employees understand and agree that they will be solely responsible for the payment

1 of any taxes and penalties assessed on their respective payments described herein and will hold
2 Defendant harmless from and against any claims resulting from treatment of such payments as
3 non-taxable damages.

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

28 ///

1 54. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
2 Participating Class Members under this Agreement, as well as any other payments made
3 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
4 benefit plans to which any Settlement Class Members may be eligible, including, but not limited
5 to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of equity plans,
6 vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
7 intention that this Settlement will not affect any rights, contributions, or amounts to which any
8 Settlement Class Members may be entitled under any benefit plans. The Parties agree that the
9 amounts paid pursuant to this Settlement are not for days or hours worked, and are not included
10 toward any regular rate of pay calculation, or any benefit vesting or accrual purpose.

11 55. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
12 no circumstances will any portion of the Gross Settlement Amount revert to Defendant.
13 Participating Class Members will not have to make a claim in order to receive an Individual
14 Settlement Payment, and Aggrieved Employees will not have to make a claim in order to receive
15 their share of PAGA Penalties. Distributions, in the form of Individual Settlement Payments,
16 will be made directly to each Participating Class Member and Aggrieved Employee. The
17 Settlement Administrator shall be responsible for accurately and timely reporting and remittance
18 obligations with respect to unclaimed funds as a result of a Participating Class Member or
19 Aggrieved Employee not cashing an Individual Settlement Payment by the check cashing
20 deadline, as set forth herein.

21 56. Class Counsel and Plaintiffs believe that the Settlement is fair and reasonable, and
22 adequate, and will so represent same to the Court.

23 **D. Release by Participating Class Members, LWDA and Aggrieved Employees**

24 57. Settled Class Claims. Upon entry of the Final Approval Order and Defendant's
25 funding of the Settlement Amount, the Participating Class Members will forever completely
26 release and discharge the Released Parties from the Settled Class Claims for the Class Period. It
27 is the intent of the Parties that the Final Approval Order and judgment entered by the Court shall
28 have full equitable and collateral estoppel and *res judicata* effect and be final and binding upon

1 Participating Class Members regarding the Settled Class Claims.

2 58. Each Participating Class Member will be deemed to have made the foregoing
3 Release as if by manually signing it.

4 59. Plaintiffs and Defendant intend that the Settlement described in this Agreement
5 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
6 arbitration, demand, or other action of any kind, by each and all of the Participating Class
7 Members to obtain a recovery based on, arising out of, and/or related to any and all of the Settled
8 Class Claims. The Class Members shall be so notified in the Notice. This paragraph only applies
9 to Participating Class Members and, thus, does not apply to any Class Member who timely and
10 validly submits a Request for Exclusion, nor does it apply to Aggrieved Employees with respect
11 to the Settled PAGA Claims.

12 60. Settled PAGA Claims. Upon entry of the Final Approval Order and Defendant's
13 funding of the Settlement Amount, Plaintiffs, standing in the shoes of the Labor
14 Commissioner/LWDA, and on behalf of the State of California and all Aggrieved Employees,
15 will forever completely release and discharge the Released Parties from the Settled PAGA
16 Claims through the PAGA Period. It is the intent of the Parties that the Final Approval Order
17 and judgment entered by the Court shall have full equitable and collateral estoppel and *res*
18 *judicata* effect and be final and binding upon Aggrieved Employees regarding the Settled PAGA
19 Claims.

20 61. Plaintiffs and Defendant also intend that the Settlement described in this
21 Agreement will release and preclude any further PAGA claim to obtain a recovery based on,
22 arising out of, and/or related to any and all of the Settled PAGA Claims. The Aggrieved
23 Employees shall be so notified in the Notice and Class Counsel shall provide appropriate notice
24 to the LWDA of this Agreement prior to the filing of the Motion for Preliminary Approval. This
25 section is not intended to preclude any Aggrieved Employee other than Plaintiffs from bringing
26 any claim other than the Settled PAGA Claims.

27 62. Labor Code Section 206.5. Class Representatives, on behalf of themselves and
28 the Participating Class Members, acknowledge and agree that the claims, including claims for

1 unpaid wages and untimely payment of wages, are disputed, and that the payments set forth
2 herein constitute payment of all sums allegedly due to them. Class Representatives, on behalf of
3 themselves and the Participating Class Members, acknowledge and agree that California Labor
4 Code Section 206.5 is not applicable to the Parties hereto, except as provided for in the Settled
5 PAGA Claims and the Settled Class Claims. Section 206.5 provides in pertinent part as follows:

6 An employer shall not require the execution of any release of any claim or
7 right on account of wages due, or to become due, or made as an advance
8 on wages to be earned, unless payment of those wages has been made.

9 **E. Release by Plaintiffs/Class Representatives**

10 63. As a material inducement to Defendant to enter into this Settlement Agreement,
11 Class Representatives do hereby, for themselves and for their respective spouses, heirs,
12 successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators,
13 guardians, personal representatives, and assigns forever and completely release and discharge the
14 Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
15 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
16 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
17 damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever,
18 from the beginning of time through the execution of this Agreement, whether known or
19 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
20 upon, or relating to Class Representatives' employment with Defendant or the remuneration for
21 or termination of such employment (collectively, the "Class Representatives' Claims"). In
22 addition, Plaintiff Cortes and Defendant have agreed to enter into a confidential, individual
23 settlement agreement and general release.

24 64. Without limiting the generality of the foregoing, this general release by Class
25 Representatives includes all claims or rights arising out of alleged violations of any contracts,
26 express or implied (including but not limited to any contract of employment); any contract or
27 covenant of good faith or fair dealing (express or implied); any tort, including negligence, fraud,
28 misrepresentation under California Labor Code 970, negligent infliction of emotional distress,

1 intentional infliction of emotional distress, and defamation; any “retaliation” claims; any claims
2 relating to any breach of public policy; and all federal, state, local and other governmental
3 statutory claims, regulations, and ordinances, and federal and state common law claims
4 (including but not limited to those for contract, tort and equity), including without limitation the ,
5 Age Discrimination in Employment Act,), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor
6 Standards Act, the California Constitution, the California Unfair Competition Act (California
7 Business and Professions Code section 17200 et seq.), Title VII of the Civil Rights Act of 1964
8 (race, color, religion, sex, and national origin discrimination or harassment, including retaliation
9 for reporting discrimination or harassment), sections 503 and 504 of the Rehabilitation Act of
10 1973 (disability discrimination), the Equal Pay Act, 29 U.S.C. § 209(4)(1) (equal pay), the
11 Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability discrimination), the
12 Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical leave), the California
13 Fair Employment and Housing Act, Cal. Gov’t Code § 12900, *et seq.* (discrimination or
14 harassment in employment and/or housing, including discrimination or harassment based on
15 race, religious creed, color, national origin, ancestry, physical or mental disability, marital status,
16 sex (including pregnancy), sexual orientation, genetic, or age, including retaliation for reporting
17 discrimination or harassment), the California Family Rights Act, Cal. Gov’t Code § 12945.1, *et*
18 *seq.* (family/medical leave), the California Labor Code or any Industrial Welfare Commission
19 Wage Order, Executive Order 11246 (race, color, religion, sex, and national origin
20 discrimination or harassment), Executive Order 11141 (age discrimination), and the Employee
21 Retirement Income Security Act, 29 U.S.C. § 1000, *et seq.* (employee benefits).

22 65. Class Representatives agree that there is a risk that any injury that they may have
23 suffered by reason of the Released Parties’ relationship with them might not now be known, and
24 there is a further risk that said injuries, whether known or unknown at the date of this Settlement
25 Agreement, might possibly become progressively worse, and that as a result thereof further
26 damages may be sustained. Nevertheless, Class Representatives agree to forever and fully
27 release and discharge the Released Parties, and understands that by the execution of this
28 Settlement Agreement no further claims for any such injuries that existed at the time of the

1 execution of this Settlement Agreement may ever be asserted by Class Representatives with
2 respect to claims arising in the time period from the beginning of time to the execution of this
3 Settlement Agreement.

4 66. Class Representatives expressly waive and relinquish all rights and benefits
5 afforded by Section 1542 of the Civil Code of the State of California and do so understanding
6 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
7 Code of the State of California states:

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

13 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
14 full and complete release and discharge of all parties, Class Representatives and Class Counsel
15 expressly acknowledge that this Settlement Agreement is intended to include in its effect,
16 without limitation, all claims whether known or unknown, suspected or unsuspected, contingent
17 or non-contingent, that now exist, upon any theory of law or equity, including without limitation,
18 conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or
19 rule, without regard to the subsequent discovery or existence of such different or additional facts,
20 in favor of the Class Representatives against the Released Parties, or any of them, for the time
21 period from the beginning of time to the execution of this Settlement Agreement, and that this
22 Settlement Agreement contemplates the extinguishment of any such Class Representatives'
23 claims. Notwithstanding the above, the general release by Class Representatives shall not extend
24 to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
25 that may not be released by law.

26 **F. Interim Stay of Proceedings**

27 67. Pending completion of all of the prerequisites necessary to effectuate this
28 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action

except such as are necessary to effectuate the Settlement.

G. Notice Process

68. Appointment of Settlement Administrator. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice, using standard devices to obtain forwarding addresses, independently reviewing and verifying documentation associated with any claims or opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Settlement Payments, drafting and mailing the settlement checks to Participating Class Members, and Aggrieved Employees, issuing W-2 and 1099 Tax Forms, unclaimed funds due diligence, reporting and remittance obligations, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders. The Settlement Administrator (along with any of its agents) shall represent and warrant that it will: (a) provide reasonable and appropriate administrative, physical and technical safeguards for any personally identifiable information (“PII”), which it receives from Defendant and the Temporary Agencies; (b) not disclose the PII to Class Counsel, Plaintiffs, any party or third parties, including agents or subcontractors, without Defendant’s consent; (c) not disclose or otherwise use the PII other than to carry out its duties as set forth herein; (d) promptly provide Defendant with notice if PII is subject to unauthorized access, use, disclosure, modification, or destruction; and (e) continue to protect the PII upon termination of its services.

69. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until Plaintiffs and Defendant notify the Court that all payments and obligations contemplated by this Settlement Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiffs, Participating Class Members, Aggrieved Employees, and Class Counsel any W-2, 1099, or other Tax Forms as may

1 be required by law for all amounts paid pursuant to this Agreement. The Settlement
2 Administrator shall also be responsible for setting up all necessary tax accounts and forwarding
3 all payroll taxes and penalties to the appropriate government authorities.

4 70. Class Data of CTDI. Within 21 days after entry of the Preliminary Approval
5 Order, Defendant shall provide the Class Data of CTDI to the Settlement Administrator. The
6 Settlement Administrator will run a check of the Class Members' addresses against those on file
7 with the U.S. Postal Service's National Change of Address List. The Class Data provided to the
8 Settlement Administrator will remain confidential, shall be used solely to administer the
9 Settlement, and it will not be used or disclosed to anyone (including Class Counsel), except as
10 required by applicable tax authorities, pursuant to Defendant's express written consent, or by
11 order of the Court. Although Class Counsel will not be provided with the list of Class Data,
12 nothing herein shall prevent Class Counsel from communicating with Class Members regarding
13 the Action and Settlement. The Settlement Administrator will be required to sign and provide to
14 Defendant a Certification Regarding Confidential Discovery Materials and to be bound by a
15 Stipulated Protective Order as entered by the Court.

16 71. Class Data of Staffing Agencies. Within 14 days of the execution of this
17 Agreement, Defendant will begin making a good faith effort to identify the full name, last known
18 address, full social security number and number of weeks at issue for the Temporary Employees,
19 including contacting the Staffing Agencies and requesting that they agree to informally provide
20 the Class Data for Staffing Agencies. Within 15 days of the execution of this Agreement,
21 Defendant will inform Plaintiffs whether it was able to obtain the information informally. To the
22 extent Defendant is unable to obtain the Staffing Agencies cooperation to provide the requested
23 information informally, Plaintiffs shall issue subpoenas to the Staffing Agencies (whom are
24 identified below by Defendant) within 21 days of being informed by Defendant, to obtain the
25 Temporary Employees' full names, last known addresses, full social security numbers and
26 Weeks Worked for the full duration of the Class Period. Class Counsel shall provide said
27 information to Defendant's counsel within 14 days of Class Counsel's receipt of said information
28 from Staffing Agencies so that Defendant's counsel may incorporate such information into Class

1 Data of Staffing Agencies to be provided to the Settlement Administrator. To the extent that
2 Temporary Employees cannot be located through the means noted above, Class Counsel may be
3 required to determine a method acceptable by the applicable court (such as public notice) to
4 provide notice of, and payment to, Temporary Employees as part of the settlement.

5 72. Staffing Agencies. The following is a list of Staffing Agencies that Defendant
6 represents assigned Temporary Employees to the CTDI Facility during the Class Period: a)
7 Adecco, b) Horizon, c) ProDrivers, d) Protech Staffing, e) Randstad, f) Transforce, and g) Volt.

8 73. Combined Class Data. Upon receipt of the Class Data of CTDI and the Class
9 Data of Staffing Agencies, the Settlement Administrator will combine the lists (the “Combined
10 Class Data”) and run a check of the Class Members’ addresses against those on file with the U.S.
11 Postal Service’s National Change of Address List. The Combined Class Data provided to the
12 Settlement Administrator will remain confidential, shall be used solely to administer the
13 Settlement, and it will not be used or disclosed to anyone (including Class Counsel), except as
14 required by applicable tax authorities, pursuant to Defendant’s express written consent, or by
15 order of the Court. Although Class Counsel will not be provided with the list of Combined Class
16 Data, nothing herein shall prevent Class Counsel from communicating with Class Members
17 regarding the Consolidated Action and Settlement. Ten days prior to mailing the Notice, the
18 Settlement Administrator shall provide the Parties with a (redacted of names and private
19 information) spreadsheet containing the estimated payments from the GSA, the total number of
20 Class Members, the total Weeks Worked by the Settlement Class and a summary (with names
21 and private information redacted) of the payments to each Settlement Class Member.

22 74. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
23 Administrator to the Settlement Class Members, by first class mail, in English and Spanish,
24 within thirty (30) calendar days following the Settlement Administrator’s receipt of the
25 Combined Class Data. The Settlement Administrator shall use standard devices, including a skip
26 trace, to obtain forwarding addresses of Settlement Class Members if any envelopes are returned.

27 75. Returned Notices. The Settlement Administrator will take steps to ensure that the
28 Notice is received by all Settlement Class Members, including utilization of the National Change

1 of Address Database maintained by the United States Postal Service to review the accuracy of
2 and, if possible, update a mailing address. Notices will be re-mailed to any Settlement Class
3 Member for whom an updated address is located within ten (10) calendar days following both
4 the Settlement Administrator learning of the failed mailing and its receipt of the updated address.
5 The Notice shall be identical to the original Notice, except that it shall notify the Settlement
6 Class Member that the exclusion (opt-out) request or objection must be returned by the later of
7 the Notice Response Deadline or fifteen (15) days after the remailing of the Notice.

8 76. Disputes Regarding Information on Notices. Class Members are deemed to
9 participate in the Settlement, unless they opt-out, and Aggrieved Employees may not opt out of
10 the Settled PAGA Claims. The Notice will inform Class Members of his/her estimated Individual
11 Settlement Payment and the number of Weeks Worked during the Class Period and during the
12 PAGA Period. Class Members may dispute their Weeks Worked if they feel they should be
13 credited with more Eligible Weeks than the Combined Class Data shows by timely submitting
14 evidence to the Settlement Administrator. The Combined Class Data will be presumed
15 determinative absent reliable evidence to rebut it, but the Settlement Administrator will evaluate
16 the evidence submitted by the Class Member and provide the evidence submitted to Class
17 Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to
18 determine the Class Member's actual number of Weeks Worked and estimated Individual
19 Settlement Payment. If Class Counsel and Defense Counsel are unable to agree, they agree to
20 submit the dispute to the Settlement Administrator to render a final decision. Class Members
21 will have until the Notice Response Deadline to dispute Weeks Worked, object or opt out, unless
22 extended by the Court. In the event that the Settlement Administrator increases the number of
23 Weeks Worked for any Settlement Class Member, then the Settlement Administrator will
24 recalculate the Participating Class Members' Individual Settlement Payments; accordingly, in no
25 event will Defendant be required to increase the Gross Settlement Amount.

26 77. Settlement Class Members' Rights. Each Settlement Class Member will be fully
27 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
28 Settled Class Claims, and the ability to opt-out or request exclusion from the Settlement with

1 respect to the Settled Class Claims. The Notice will inform the Settlement Class Members of the
2 Court-established deadlines for filing objections or requesting exclusion from the Settlement
3 with respect to the Settled Class Claims in accordance with the following guidelines:

4 (a) Requests for Exclusion from Participating in the Settlement Class. Any
5 Settlement Class Member, other than Plaintiffs, may request to be excluded from the Settlement
6 Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on
7 or before the Notice Response Deadline. The Request for Exclusion should state:

8 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT
9 CLASS IN THE CTDI LAWSUIT. I UNDERSTAND THAT IF I
10 ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I
11 WILL NOT RECEIVE ANY MONEY FROM THE
12 SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT."

12 To be valid, any Request for Exclusion must include the full name, address, telephone
13 number, last four digits of the social security number or date of birth, and signature of the
14 Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by
15 mail to the Settlement Administrator at the specified address or fax number. Any such Request
16 must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will
17 be timely only if postmarked by the Notice Response Deadline, unless the Parties otherwise
18 agree in writing. Any Settlement Class Member who timely requests exclusion in compliance
19 with these requirements: (i) will not have any rights under this Agreement with respect to the
20 Settled Class Claims, including the right to object, appeal, or comment on the Settlement; (ii)
21 will not be entitled to receive any payments under this Agreement for the Settled Class Claims;
22 and (iii) will not be bound by this Agreement, or the Judgment, with respect to the Settled Class
23 Claims. Any Aggrieved Employee who requests timely exclusion will still be subject to the
24 Settled PAGA Claims to the fullest extent permitted by law and shall be sent his or her share of
25 PAGA Penalties.

26 (b) Binding Effect on Participating Class Members. Except for those
27 Settlement Class Members who exclude themselves in compliance with the procedures set forth
28 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for

1 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
2 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
3 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
4 reasonableness, and adequacy of the Settlement.

5 (c) Objections to Settlement of the Settled Class Claims. Any Settlement
6 Class Member, other than Plaintiffs, may object to the terms of this Agreement, except as to the
7 Settled PAGA Claims. To object, a Settlement Class Member shall inform the Settlement
8 Administrator, in writing, of his or her objection which must be postmarked by the Notice
9 Response Deadline at the address set forth in the Notice. Such objection shall include the
10 objecting Settlement Class Member's full name, address, telephone number, and dates of
11 employment with Defendant, the case name and number, the basis for the objection, including
12 any legal support and each specific reason in support of the objection, as well as any
13 documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is
14 represented by counsel, the name and address of his or her counsel. The Settlement
15 Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within
16 three (3) calendar days of receipt, and the Settlement Administrator shall attach the same to its
17 declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any
18 Participating Class Member who files an objection remains eligible to receive monetary
19 compensation from the Settlement. Plaintiffs and Defendant shall not be responsible for any
20 fees, costs, or expenses incurred by any Class Member and/or his or her counsel related to any
21 objections to the Settlement. Submitting an objection does not preserve the right to appeal a
22 final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely
23 and properly intervening or filing a motion to vacate the judgment under Code of Civil
24 Procedure Section 663. To the extent a Class Member submits a Request for Exclusion and
25 objection, the objection shall be disregarded and the Class Member shall be excluded from the
26 Class. Settlement Class Members and Aggrieved Employees may not object to or opt-out of the
27 Settlement with respect to the PAGA Claims.

28 ///

1 (d) Failure to Object. Any Settlement Class Member who desires to object to
2 the Settled Class Claims in the Settlement but fails to timely submit a written objection or in
3 person objection at the Final Approval Hearing waives any right to object and will be foreclosed
4 from making any objection to this Settlement. Any Settlement Class Member who does not
5 timely and properly become a party of record by intervening or filing a motion to vacate the
6 judgment waives any and all rights to appeal from the Judgment, including all rights to any post-
7 judgment proceeding and appellate proceeding, such as a motion to vacate judgment, motion for
8 new trial, a motion under California Code of Civil Procedure Section 473, and extraordinary
9 writs.

10 (e) Responses to Objections. Counsel for the Parties may file a response to
11 any objections submitted by objecting Settlement Class Members at least five (5) court days
12 before the date of the Final Approval Hearing.

13 (f) Settlement Class Members will have until the Notice Response Deadline
14 to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
15 Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what
16 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
17 request of Class Counsel or Defense Counsel.

18 (g) Defective Submissions. If a Settlement Class Member's Request for
19 Exclusion or objection is defective as to the requirements listed herein, that Settlement Class
20 Member will be given an opportunity to cure the defect(s). The Settlement Administrator will
21 mail the Settlement Class Member a cure letter within three (3) business days of receiving the
22 defective submission to advise the Settlement Class Member that his or her submission is
23 defective and that the defect must be cured to render the Request for Exclusion or objection
24 valid. The Settlement Class Member will have the later of (i) the Notice Response Deadline or
25 (ii) 15 calendar days from the date of the cure letter to postmark or fax a revised Request for
26 Exclusion or objection. If the revised Request for Exclusion or objection is not postmarked or
27 received by fax within that period, it will be deemed untimely.

28 ///

1 78. Declaration of Due Diligence. The Settlement Administrator shall provide
2 counsel for the Parties, at least twenty-five (25) calendar days prior to the final approval hearing,
3 a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

4 79. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
5 the QSF of the Gross Settlement Amount within forty-five (45) calendar days after the Effective
6 Date. Defendant separately shall pay into the QSF its share of employer payroll taxes as
7 calculated and directed by the Settlement Administrator, which shall be distributed and reported
8 by the Settlement Administrator. Once Defendant has complied with its obligation set forth in
9 this paragraph, it shall be deemed to have satisfied all of the terms and conditions of this
10 Agreement, shall be entitled to all the protections afforded it under the Agreement, and shall
11 have no further obligations under the Agreement. The Settlement Administrator (and not
12 Defendant) shall issue the applicable W-2s and IRS Form 1099 reflecting all payments to the
13 Class Members and Aggrieved Employees.

14 80. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
15 Gross Settlement Amount into the QSF, the Settlement Administrator will mail the Individual
16 Settlement Payments to the Participating Class Members, the payment to Class Counsel for the
17 Attorneys' Fees and Costs Award, any Service Payment to the Class Representatives, the
18 payment to the LWDA for PAGA penalties, and will pay itself the Settlement Administration
19 Costs. To comply with California Rules of Court, rule 3.771, settlement checks shall include the
20 following language on the check: "A Court has approved settlement of the class action and
21 PAGA representative actions and entered judgment for claims asserted in Jodie Blanton Jr, et al.
22 v. Communications Test Design, Inc., consolidated case number San Joaquin Superior Court
23 Case No. STK-CV-VOE-2021-5136."

24 81. Deadline for Cashing Settlement Checks. Participating Class Members and
25 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
26 Administrator to cash their settlement checks. If any Participating Class Member's or Aggrieved
27 Employee's check is not cashed within that period, the check will be void and a stop-payment
28 will be issued, and the Settlement Administrator shall issue the unclaimed funds to the California

1 State Controller's Office in the name of the Settlement Class Member or Aggrieved Employee,
2 or as otherwise directed by the Court. Should a cy pres fund be required, subject to Court
3 instruction, the Settlement Administrator shall alternatively forward the entire amount of any
4 amounts remaining from uncashed checks, plus any interest that has accrued thereon, to CASA
5 (see <http://www.casaforchildren.Org/site/c.mt.ISJ7MPIsE/b.5301295/k.BE9A/Home.htm>). The
6 release will be binding upon all Participating Class Members and Aggrieved Employees who do
7 not cash their checks within the 180-day period. In the event that any settlement check is
8 returned to the Settlement Administrator within 180 days of mailing, the Settlement
9 Administrator will, within five (5) business days of receipt of the returned settlement check,
10 perform a skip trace to locate the individual, and notify Defense Counsel and Class Counsel of
11 the results. If a new address is located by these means, the Administrator will have ten (10)
12 business days to re-issue the check. Neither Defendant, Defense Counsel, Class Counsel,
13 Plaintiffs, nor the Settlement Administrator will have any liability for lost or stolen settlement
14 checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks.
15 Without limiting the foregoing, in the event a Participating Class Member or Aggrieved
16 Employee notifies the Settlement Administrator that he or she believes that a settlement check
17 has been lost or stolen, the Settlement Administrator shall immediately stop payment on such
18 check. If the check in question has not been negotiated prior to the stop payment order, the
19 Settlement Administrator will issue a replacement check.

20 82. No person shall have any claim against Defendant (or their designees),
21 Defendant's Counsel, Plaintiffs, Class Counsel, or the Settlement Administrator based on
22 mailings, distributions, payments or reports made in accordance with or pursuant to this
23 Agreement. This provision does not, however, prevent a Party from seeking enforcement of this
24 Agreement.

25 83. Without prejudice to any other remedies, the Settlement Administrator shall agree
26 to be responsible for any breach of its obligations (whether committed by the Settlement
27 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless
28 from and against all liabilities, claims, causes of action, costs and expenses (including legal fees

and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

H. Duties of the Parties Prior to the Court's Approval

84. Promptly after execution of this Settlement Agreement, the Parties shall execute a joint stipulation and take other action needed to join and transfer the Cortes Action and Escriba Action to San Joaquin Superior Court and therein consolidate the matters with the Blanton Action into the Consolidated Complaint, a draft of which is attached hereto as Exhibit "A." The Answer on file in the Blanton Action shall be deemed the answer to the Consolidated Complaint in the event Defendant does not file an answer within 30 days of the filing of the Consolidated Complaint. Upon the filing of the Consolidated Complaint, counsel in the Cortes Action and Escriba Action may file a dismissal without prejudice of those actions in their respective jurisdictions, thereby leaving only the Consolidated Complaint pending in San Joaquin Superior Court. Plaintiffs will thereafter move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

(a) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and a hearing on fees, costs and the Service Payments;

(b) Approving as to form and content the proposed Notice (attached hereto as Exhibit B);

(c) Directing the mailing of the Notice by first class mail to the Settlement Class Members;

(d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the class for purposes of this Settlement.

85. Reallocation of Settlement Proceeds. In the event the Court fails, on its first hearing, to approve this Agreement because the amount of the PAGA Penalties is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, in order to try to achieve Final Approval of the Agreement upon any subsequent Court hearings.

///

1 **I. Duties of the Parties Following Court's Final Approval**

2 86. In connection with the Final Approval Hearing provided for in this Settlement
3 Agreement, Class Counsel shall submit a proposed Final Approval Order:

4 (a) Approving the Settlement, adjudging the terms thereof to be fair,
5 reasonable and adequate, and directing consummation of its terms and provisions;

6 (b) Approving Class Counsel's application for an award of attorneys' fees and
7 reimbursement of litigation costs and expenses, the Service Payment to the Class
8 Representatives, and the payment to the Settlement Administrator for costs of administering the
9 settlement; and

10 (c) Entering judgment approving settlement, thereby permanently barring all
11 Participating Class Members from prosecuting any Settled Class Claims against any of the
12 Released Parties and permanently barring all Aggrieved Employees and the LWDA from
13 prosecuting any Settled PAGA Claims against any of the Released Parties.

14 87. Final Judgment. The Settlement Administrator shall give the Participating Class
15 Members and Aggrieved Employees notice of the entry of Final Judgment on a postcard or letter
16 that will be included with the Individual Settlement Payments. A copy of the proposed Final
17 Judgment is attached hereto as **Exhibit "C."** If any amended judgment is required under Code
18 of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and
19 a proposed amended judgment.

20 **J. Voiding the Agreement**

21 88. If the number of Class Members whose share of the Net Settlement Amount is
22 three percent (3%) or more of the total Settlement Class timely and properly Requests Exclusion
23 from the Settlement, Defendant will have, in its sole discretion, the right to rescind and terminate
24 the Settlement Agreement, without prejudice to its pre-settlement positions and defenses, by
25 giving written notice to the Settlement Administrator and Class Counsel within 14 days of the
26 end of the Notice Response Deadline. Should Defendant withdraw from the Settlement under
27 this Provision, and Defendant shall be responsible for paying any expenses incurred by the
28 Settlement Administrator.

1 89. All Parties, signatories and their counsel shall not encourage opt-outs or
2 objections to this Agreement. The Parties specifically agree not to solicit opt-outs, directly or
3 indirectly, through any means.

4 90. If the Settlement is voided or fails for any reason, Plaintiffs and Defendant will
5 have no further obligations under the Settlement, including any obligation by Defendant to pay
6 the Gross Settlement Amount, or any amounts that otherwise would have been owed under this
7 Settlement.

8 91. If the Settlement is voided or fails for any reason (other than Defendant's
9 withdraw due three percent [3%] or more of the Settlement Class opting out), any costs incurred
10 by the Settlement Administrator shall be borne equally by Defendant and Plaintiffs, unless
11 otherwise specified in this Agreement.

12 **K. Other Terms**

13 92. Waiver. The waiver by one Party of any breach of this Agreement by another
14 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

15 93. Full and Complete Defense. This Agreement may be pleaded by any Released
16 Party as a full and complete defense to, and may be used as the basis for an injunction against,
17 any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted,
18 asserting any Released Claim.

19 94. Parties' Authority. The signatories hereto represent that they are fully authorized
20 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
21 hereof.

22 95. No Publicity. Communications regarding this Settlement prior to the Preliminary
23 Approval Date shall be limited to Court-Approved Notices in the Action. After the Preliminary
24 Approval Date, Class Counsel and Class Representatives agree that they will not publicize this
25 Settlement on their website, social media, blogs, micro-blog, vlogs or any other media,
26 including, reporting to Jury Verdicts or any other reporting services and agree that any breach of
27 this paragraph is a material breach of the Settlement Agreement. Nothing herein shall be
28 construed to prevent Class Counsel from the public filing of motions or other case materials in

1 the Action related to seeking and obtaining Court approval of this Settlement and the related
2 awards of attorneys' fees and costs, or to communications with Settlement Class Members or
3 their representatives about this Settlement, including through the posting of Court-filed
4 documents on Class Counsel's websites for access solely by the Settlement Class Members, or to
5 prevent the Parties or their representatives from communicating with financial or legal advisors
6 regarding the Settlement. In response to any media inquiry, Class Counsel may state only that
7 the Action has been settled on terms mutually agreeable to the Parties.

8 96. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
9 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
10 such documents and to take such other action as may reasonably be necessary to implement the
11 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
12 best efforts, including all efforts contemplated by this Settlement Agreement and any other
13 efforts that may become necessary by order of the Court, or otherwise, to effectuate this
14 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
15 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
16 Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary
17 and final approval of the settlement, and the final entry of judgment. Class Counsel shall provide
18 Defendant's Counsel with copies of the Preliminary Approval Motion and Final Approval
19 Motion for review at least five days prior to the filing deadline.

20 97. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
21 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
22 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
23 cause of action or rights released and discharged by this Settlement Agreement.

24 98. No Admission. Defendant denies any and all liability to Plaintiffs and/or any
25 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
26 that might have been asserted in this Action. Nothing in this Settlement Agreement is intended
27 or shall be construed as an admission of liability, fault or wrongdoing by Defendant. Nothing in
28 this Settlement Agreement shall operate or be construed as an admission of any liability or that

1 class certification is appropriate in any context other than this Settlement Agreement.
2 Nonetheless, Defendant wishes to settle and compromise the matters at issue in the Complaint to
3 avoid further substantial expense and the inconvenience and distraction of protracted and
4 burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent
5 in litigation, and without conceding any infirmity in the defenses that they have asserted or could
6 assert against Plaintiffs, have determined that it is desirable and beneficial that Plaintiffs' claims
7 be settled in the manner and upon the terms and conditions set forth in this Agreement.

8 99. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
9 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
10 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
11 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into
12 this Settlement Agreement with the intention of avoiding further disputes and litigation with the
13 attendant inconvenience and expenses. This Settlement Agreement is a settlement document,
14 and it, along with all related documents such as the notices, and motions for preliminary and
15 final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of
16 Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to
17 approve the settlement, and/or interpret or enforce this Settlement Agreement and corresponding
18 judgment. The stipulation for class certification as part of this Settlement Agreement is for
19 settlement purposes only and if, for any reason the settlement is not approved, the stipulation will
20 be of no force or effect.

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

25 ///

26 ///

27 ///

28 ///

To the Settlement Class Members and Aggrieved Employees:

Brian Mankin
brian@LMLfirm.com
Lauby Mankin Lauby LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

David Spivak
david@spivaklaw.com
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood CA 90069
Tel: (213) 725-9094 | Fax: (213) 634-2485

Larry Lee
lwlee@diversitylaw.com
Nicholas Rosenthal
nrosenthal@diversitylaw.com
Diversity Law Group, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Tel: (213) 488-6555 | Fax: (213) 488-6554

To Defendant:

James Hart
jhart@littler.com
Leah Peterson
peterson@littler.com
Littler Mendelson P.C.
18565 Jamboree Road, Suite 800
Irvine, California 92612
Tel: (949) 705-3000 | Fax No.: (949) 724-1201

101. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Settlement Agreement. Plaintiffs and Defendant expressly waive the common-law and statutory

rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

102. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital other than paragraphs 45-51.

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

104. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiffs and Defendant agree to seek the help of the mediator identified in this Agreement to resolve any dispute they are unable to resolve informally. During this period, the Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiffs or Defendant.

105. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents and obligations of this Agreement.

106. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b), this Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible in a court of law.

107. Choice of Law. This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California.

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

6 109. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
7 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
8 successors and assigns.

9 110. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
10 because the members of the Settlement Class are numerous, it is impossible or impractical to
11 have each Class Member execute this Settlement Agreement. The Notice will advise all
12 Settlement Class Members of the binding nature of the releases provided herein and such shall
13 have the same force and effect as if this Settlement Agreement were executed by each Settlement
14 Class Member.

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

19 112. No Collateral Attack. This Settlement Agreement shall not be subject to
20 collateral attack by any Settlement Class Member, Aggrieved Employee, or any recipient of the
21 Class Notice after the Effective Date. Such prohibited collateral attacks shall include but not be
22 limited to claims that the Settlement Class Member or Aggrieved Employee failed for any reason
23 to receive timely notice of the procedure for disputing the calculation of her or his Individual
24 Settlement Payment and/or individual PAGA payment.

25 113. Arbitration. The submission of Settled Class Claims to the Court is solely for the
26 purposes settlement and shall not be deemed as an invalidation, waiver, voidance of the
27 arbitration agreements (whether with CTDI or any Staffing Agency), and shall have no negative
28 impact on their alleged continuing validity. By failing to request exclusion with an opt-out

request, any Participating Class Member will be deemed to agree to the provisions of this Paragraph.

114. **Use and Return of Class Data.** Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all paper and electronic versions of Class Data received from Defendant.

115. **Counterparts.** This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. A manual "wet" signature is required although a legible faxed and scanned copy/pdf of the manual ("wet") signature may be used as an original for all purposes.

January 13, 2023
Dated: December 13, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:


Yazmin Cortes

Dated: December __, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

Jodie Blanton, Jr.

Dated: December __, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

Gabriela Escriba

request, any Participating Class Member will be deemed to agree to the provisions of this Paragraph.

114. **Use and Return of Class Data.** Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all paper and electronic versions of Class Data received from Defendant.

115. **Counterparts.** This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. A manual "wet" signature is required although a legible faxed and scanned copy/pdf of the manual ("wet") signature may be used as an original for all purposes.

Dated: December __, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

Yazmin Cortes

Dated: ~~December~~ January 12, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

Jodie Blanton, Jr.

Dated: December __, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

Gabriela Escriba

1 request, any Participating Class Member will be deemed to agree to the provisions of this
2 Paragraph.

3 114. Use and Return of Class Data. Information provided to Class Counsel pursuant
4 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
5 Counsel by Defendant in connection with the mediation, other settlement negotiations, or in
6 connection with the Settlement, may be used only with respect to this Settlement, and no other
7 purpose, and may not be used in any way that violates any existing contractual agreement,
8 statute, or rule of court. Not later than 90 days after the date when the Court discharges the
9 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement
10 funds, Plaintiffs shall destroy, all paper and electronic versions of Class Data received from
11 Defendant.

12 115. Counterparts. This Settlement Agreement may be executed in counterparts, and
13 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
14 deemed an original, and, when taken together with other signed counterparts, shall constitute one
15 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. A
16 manual "wet" signature is required although a legible faxed and scanned copy/pdf of the manual
17 ("wet") signature may be used as an original for all purposes.

18
19 Dated: December __, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

20
21 Yazmin Cortes

22 Dated: December __, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

23
24 Jodie Blanton, Jr.

25 Dated: December __, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

26 01-19-2023

27 Gabriela Escriba
28

1 Dated: December 15, 2022

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP



Brian Mankin
Attorneys for Plaintiffs

6 Dated: December ___, 2022

CLASS COUNSEL:
THE SPIVAK LAW FIRM

9
10 David Spivak
Attorneys for Plaintiffs

11 Dated: December ___, 2022

CLASS COUNSEL:
BENOWITZ LAW CORPORATION

14
15 Louis Benowitz
Attorneys for Plaintiffs

16 Dated: December ___, 2022

CLASS COUNSEL:
SMITH LAW

19
20 Benjamin Smith
Attorneys for Plaintiffs

21 Dated: December ___, 2022

CLASS COUNSEL:
DIVERSITY LAW GROUP, P.C

24
25 Larry Lee
Attorneys for Plaintiffs

1 Dated: November __, 2022

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

2
3
4
5 12/19/2022
6 Dated: November __, 2022

Brian Mankin
Attorneys for Plaintiffs

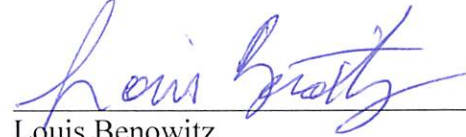
CLASS COUNSEL:
THE SPIVAK LAW FIRM

7
8 

9 _____
David Spivak
Attorneys for Plaintiffs

10 January 12, 2023
11 Dated: November __, 2022

CLASS COUNSEL:
BENOWITZ LAW CORPORATION

12 

13 _____
Louis Benowitz
Attorneys for Plaintiffs

14
15 Dated: November __, 2022

CLASS COUNSEL:
SMITH LAW

16
17
18
19 _____
Benjamin Smith
Attorneys for Plaintiffs

20
21 Dated: November __, 2022

CLASS COUNSEL:
DIVERSITY LAW GROUP, P.C

22
23
24 _____
Larry Lee
Attorneys for Plaintiffs

1 Dated: December __, 2022

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

2
3
4

Brian Mankin
Attorneys for Plaintiffs

5
6 Dated: December __, 2022

CLASS COUNSEL:
THE SPIVAK LAW FIRM

7
8
9

David Spivak
Attorneys for Plaintiffs

10
11 Dated: December __, 2022

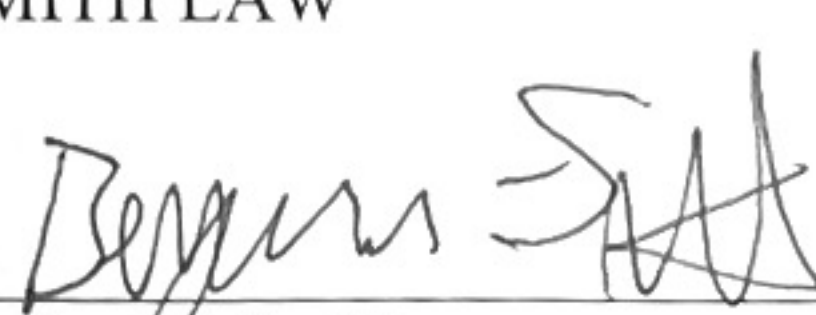
CLASS COUNSEL:
BENOWITZ LAW CORPORATION

12
13
14

Louis Benowitz
Attorneys for Plaintiffs

15 *January 2023*
16 Dated: ~~December~~ 18, ~~2022~~

CLASS COUNSEL:
SMITH LAW

17 
18

Benjamin Smith
Attorneys for Plaintiffs

19
20
21 Dated: December __, 2022

CLASS COUNSEL:
DIVERSITY LAW GROUP, P.C

22
23
24

Larry Lee
Attorneys for Plaintiffs

1 Dated: December ___, 2022

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

2
3
4 _____
Brian Mankin
Attorneys for Plaintiffs

5
6 Dated: December ___, 2022

CLASS COUNSEL:
THE SPIVAK LAW FIRM

7
8
9 _____
David Spivak
Attorneys for Plaintiffs

10
11 Dated: December ___, 2022

CLASS COUNSEL:
BENOWITZ LAW CORPORATION

12
13
14 _____
Louis Benowitz
Attorneys for Plaintiffs

15
16 Dated: December ___, 2022

CLASS COUNSEL:
SMITH LAW

17
18
19 _____
Benjamin Smith
Attorneys for Plaintiffs

20
21 Dated: December 19, 2022

CLASS COUNSEL:
DIVERSITY LAW GROUP, P.C

22
23 _____
24 
Larry Lee
Attorneys for Plaintiffs

1 Dated: December __, 2022

DEFENDANT:

COMMUNICATIONS TEST DESIGN, INC.

2
3 

4 By: Marlene Indovina

5 Title: Associate General Counsel

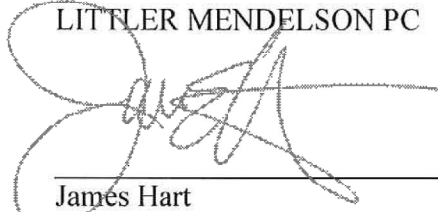
6 **APPROVED ONLY AS TO FORM:**

7
8 Dated: ~~December~~ __, 2022

9 1/19/2023

DEFENDANT'S COUNSEL:

LITTLER MENDELSON PC

10
11 

12 James Hart

Attorneys for Defendant

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
END OF DOCUMENT

EXHIBIT “A”

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder, Esq. (State Bar No. 170131)
Polaris Law Group LLP
501 San Benito Street, Suite 200
Hollister, CA 95023
Tel: (831) 531-4214
Fax: (831) 634-0333

Attorneys for Plaintiff Jodie Blanton Jr. and the Class

[Additional Counsel on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

JODIE BLANTON JR., YAZMIN CORTES,
and GABRIELA ESCRIBA, individually, on
a representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

COMMUNICATIONS TEST DESIGN, INC.,
a Pennsylvania Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: STK-CV-UOE-2021-0005136
*[Assigned to Hon. Judge Robert T. Waters,
Dept. 11B, for all purposes]*

CONSOLIDATED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Timely Pay Final Wages;
- (6) Failure to Provide Accurate Itemized Wage Statements;
- (7) Unfair and Unlawful Competition;

PAGA CLAIMS

- (8) Failure to Pay Minimum Wages;
- (9) Failure to Pay Overtime Wages;
- (10) Failure to Provide Meal Periods;
- (11) Failure to Provide Rest Breaks;
- (12) Failure to Timely Pay Wages Each Period;
- (13) Failure to Timely Pay Final Wages; and
- (14) Failure to Provide Accurate Itemized Wage Statements
- (15) Failure to Provide Safe and Healthful Working Conditions

1 Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
2 Misty M. Lauby, Esq. [CSB No. 243009]
misty@lmlfirm.com
3 LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
4 Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

5 Attorneys for Plaintiff Yazmin Cortes, on a representative basis and on behalf of all others
6 similarly situated

7 David G. Spivak (SBN 179684)
david@spivaklaw.com
8 THE SPIVAK LAW FIRM
16530 Ventura Blvd., Ste 203
9 Encino, CA 91436
Telephone (213) 725-9094
10 Facsimile (213) 634-2485

11 Louis M. Benowitz, Esq. (SBN 262300)
BENOWITZ LAW CORPORATION
12 8605 Santa Monica Blvd., PMB 97638
West Hollywood, CA 90069-4109
13 Tel: (818) 839-9610

14 Attorneys for Plaintiff Gabriela Escriba, and all others similarly situated
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Plaintiff Jodie Blanton Jr (“Plaintiff Blanton”), Plaintiff Yazmin Cortes (“Plaintiff
2 Cortes”), and Plaintiff Gabriela Escriba (“Plaintiff Escriba”) (collectively “Plaintiffs”) on behalf
3 of themselves, on a representative basis, and on behalf of others similarly situated, complain and
4 allege as follows.

5 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

6 1. Plaintiffs bring this action against their current and/or former employer(s),
7 Defendants Communications Test Design, Inc. (“Defendant CTDI”), a Pennsylvania
8 Corporation, Protech Staffing Services, Inc. (“Defendant Protech”), and DOES 1 through 20,
9 inclusive, (collectively, “Defendants”) on behalf of all current and former employees employed
10 by Defendants in California (the “Class” or “Represented Employees”), for California Labor
11 Code violations stemming from Defendants’ failure to pay all wages owed, including minimum,
12 regular, and overtime wages, failure to provide meal periods, failure to provide rest breaks,
13 failure to timely pay wages, and failure to provide accurate itemized wage statements, and failure
14 to provide safe and healthful working conditions.

15 2. Plaintiff Blanton has been employed by Defendant CTDI since approximately
16 October 2019.

17 3. Plaintiff Cortes was employed by Defendant CTDI from approximately February
18 2019 through present.

19 4. Plaintiff Escriba was jointly employed by Defendant CTDI and Defendant
20 Protech from approximately February 12, 2020 through May 25, 2020.

21 5. Plaintiffs allege on information and belief that the Represented Employees were
22 subjected to the same policies, working conditions, and corresponding wage and hour violations
23 to which Plaintiffs were subjected during their employment.

24 6. Plaintiffs and the Represented Employees were not provided proper minimum,
25 regular, and overtime wages due to Defendants’ failure to accurately record and compensate for
26 all hours worked.

27 7. Also, at all relevant times, Plaintiffs and the Represented Employees were denied
28 30-minute off-duty meal periods, as mandated by California law, during their employment with

1 Defendants. As a result of Defendants' policies and practices, Plaintiffs and the Represented
2 Employees were subjected to meal period violations when they were: (1) unable to take meal
3 periods due to workload, (2) forced to take on-duty meal period while under the control of
4 Defendants, (3) forced to take meal periods, if such a meal occurred, after the 5th hour of work,
5 and (4) not provided a mandated second meal period for shifts in excess of 10 hours.

6 8. Defendants also failed to provide Plaintiffs and the Represented Employees with
7 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
8 mandated by California law. Defendants did not schedule rest breaks and the Represented
9 Employees were often not authorized and/or permitted to take mandated rest breaks due to being
10 overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiffs and the
11 Represented Employees worked in excess of 10 hours in a shift, Defendants failed to authorize
12 and/or permit a third mandated rest break.

13 9. Plaintiffs also alleges that she and the Represented Employees were not paid all
14 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
15 within the time required by Labor Code §§ 201 – 203. Plaintiffs further allege that Defendants
16 engaged in the practice of failing to pay all wages due and owing to Plaintiffs and the
17 Represented Employees at the time their employment ended with Defendants, including, but not
18 limited to minimum, regular, and overtime wages, wage premiums, accrued and unused PTO /
19 vacation, among others.

20 10. Plaintiffs further allege that Defendants failed to provide accurate itemized wage
21 statements that fully complied with the requirements of Labor Code § 226(a).

22 11. Plaintiffs allege that Defendants' violations of the wage and hour components of
23 the Labor Code and IWC Wage Orders enabled it to decrease expenses and to increase its level
24 of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its
25 competitors.

26 12. At all material times, Defendants and DOES 1 through 20 were and/or are the
27 Represented Employees' employers or persons acting on behalf of the Represented Employees'
28 employer, within the meaning of California Labor Code § 558, who violated or caused to be

1 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
2 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are
3 subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under
4 California law.

5 13. Plaintiffs bring this lawsuit seeking declaratory, injunctive, equitable, and
6 monetary relief against Defendants and each of them, on behalf of themselves and the
7 Represented Employees to recover, among other things, unpaid wages and benefits, interest,
8 attorneys' fees, penalties, costs and expenses pursuant to California Labor Code §§ 200, 201,
9 202, 203, 204, 218.6, 223, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1174, 1194, 1194.2,
10 1197, 1198, and 1199 among possibly other sections inadvertently omitted. Plaintiffs also
11 reserve the right to name additional representatives throughout the State of California.

12 **II. JURISDICTION**

13 14. This Court has jurisdiction over the claims for relief of Plaintiffs and the
14 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

15 **III. VENUE**

16 15. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
17 Procedure § 395(a). Defendants transact business in San Joaquin County and the unlawful acts
18 alleged herein have a direct effect on Plaintiffs and the Represented Employees in San Joaquin
19 County. Furthermore, Defendants employed or employ Plaintiffs and Represented Employees in
20 San Joaquin County.

21 **IV. PARTIES**

22 **Plaintiffs**

23 16. Plaintiff Blanton employed by Defendants from approximately October 2019
24 through present and performed work for Defendants in San Joaquin County.

25 17. Plaintiff Cortes was employed by Defendants from approximately February 2019
26 through present and performed work for Defendants who operate in San Joaquin County.

27 18. Plaintiff Escriba was employed by Defendants from approximately February
28 through May 2020 and performed work for Defendants who operate in San Joaquin County.

1 **Defendants**

2 19. Plaintiffs are informed and believe and thereon allege that Defendant
3 Communication Test Design, Inc. is a Pennsylvania corporation authorized to and doing business
4 in San Joaquin County, California, and is and/or was the legal employer of Plaintiffs and the
5 Represented Employees during the applicable statutory periods.

6 20. Plaintiffs are informed and believe and thereon allege that Defendant Protech
7 Staffing Services, Inc. is a corporation organized under the laws of California and authorized to
8 and doing business in San Joaquin County, California, and/or was the legal employer of
9 Plaintiffs and the Represented Employees during the applicable statutory periods.

10 21. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of
11 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
12 inclusive, but on information and belief alleges that those Defendants are legally responsible for
13 the payment of penalties and damages to Plaintiffs and all Represented Employees by virtue of
14 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
15 names. Plaintiffs will amend this complaint to allege the true names and capacities of the DOE
16 Defendants when ascertained.

17 **V. CLASS ACTION ALLEGATIONS**

18 22. Plaintiffs incorporate the preceding paragraphs of the Second Amended
19 Complaint as if fully alleged herein.

20 23. Plaintiffs bring this action on behalf of themselves and all others similarly situated
21 as a class action, pursuant to Code of Civil Procedure § 382.

22 24. The relevant time period for this class action is defined as the time period
23 beginning June 19, 2019 until class certification (the "Relevant Time Period").

24 25. The Class, also referred to as the "Represented Employees," that Plaintiffs seek to
25 represent is defined as follows:

26 ///

27 ///

28 ///

1 **California Class**

2 All current and former employees employed by Defendants
3 in the State of California during the Relevant Time Period.

4 26. Plaintiffs also seek to represent the following subclasses:

5 **Overtime Subclass**

6 All nonexempt Represented Employees who worked a
7 shift(s) in excess of 8 and/or 12 hours in a day or 40 hours
8 in a week during the Relevant Time Period.

9 **Meal Break Subclass**

10 All nonexempt Represented Employees who worked a shift
11 in excess of 5 hours during the Relevant Time Period.

12 **Rest Break Subclass**

13 All nonexempt Represented Employees who worked a shift
14 of at least 3.5 hours during the Relevant Time Period.

15 **Waiting Time Penalties Subclass**

16 All Represented Employees who separated from their employment with
17 Defendants during the period three years before the filing of this action
18 and ending when final judgment is entered.

19 **Wage Statement Penalties Subclass**

20 All Represented Employees during the period one year before the filing of
21 this action and ending when final judgment is entered.

22 27. Plaintiffs reserves the right to amend or modify the class description with greater
23 specificity or further division into subclasses or limitation to particular issues as appropriate.

24 28. Plaintiffs, as Class Representatives, are members of the class and subclasses that
25 they seek to represent.

26 29. This action has been brought and may properly be maintained as a class action
27 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
28 litigation and the proposed class is easily ascertainable from Defendants' personnel and payroll

1 records.

2 30. **Numerosity:** The potential members of the Class as defined are so numerous that
3 a joinder of all Represented Employees is impracticable. Although the exact number is currently
4 unknown to Plaintiffs, this information is easily ascertainable from Defendants' payroll and
5 personnel records.

6 31. **Commonality:** There are questions of law and fact common to the class which
7 predominate over any questions affecting only individual members of the class, including
8 without limitation:

9 i. Whether Defendants violated the California Labor Code and applicable
10 IWC Wage Order by failing to pay wages to Plaintiff and the Represented Employees for all
11 hours worked;

12 ii. Whether Defendants violated the California Labor Code and applicable
13 IWC Wage Order by failing to pay proper overtime and/or shift-differential wages to Plaintiffs,
14 the Represented Employees, and the Overtime Subclass for hours above 8 and/or 12 per day
15 and/or 40 per week;

16 iii. Whether Defendants violated the California Labor Code and applicable
17 IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Meal Break
18 Subclass and whether Defendants failed to compensate Plaintiff and the Meal Break Subclass
19 with one additional hour of wages at the regular rate of pay for each instance when a compliant
20 meal period was not provided;

21 iv. Whether Defendants violated the California Labor Code and applicable
22 IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break
23 Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass
24 with one additional hour of wages at the regular rate of pay for each instance when a paid rest
25 break was not provided;

26 v. Whether Defendants violated the California Labor Code by failing to
27 timely pay all wages due upon separation of employment between Defendants and Plaintiff and
28 the Waiting Time Penalties Subclass, whether such separation was voluntary or involuntary;

1 vi. Whether Defendants violated the California Labor Code by failing to
2 provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized
3 wage statements;

4 vii. Whether Defendants violated California Business & Professions Code §§
5 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
6 breaks, failure to provide mandated meal periods, failure to pay vested vacation, failure to
7 reimburse business expenses, and failure to timely pay final wages; and

8 viii. Whether Plaintiff and Represented Employees are entitled to equitable
9 relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

10 32. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the
11 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants'
12 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all
13 wages owed, failure to provide mandated meal periods, failure to provide mandated paid rest
14 breaks, failure to reimburse business expenses, to timely pay final wages, and failure to provide
15 accurate itemized wage statements.

16 33. **Adequacy of Representation.** Plaintiffs, as the Class Representatives, will fairly
17 and adequately represent and protect the interests of the Class. Plaintiffs' interests are not in
18 conflict with those of the Class. Class Representatives' counsel are competent and experienced in
19 litigating large employment class actions and other complex litigation matters, including cases
20 like this case.

21 34. **Superiority of Class Action.** Class certification is appropriate because a class
22 action is superior to other available means for the fair and efficient adjudication of this
23 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
24 law and fact common to the Class predominate over any questions affecting only individual
25 members of the Class. Each Represented Employee has been damaged and is entitled to
26 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
27 treatment will allow those similarly situated persons to litigate their claims in the manner that is
28 most efficient and economical for the parties and the judicial system.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

4 (*Plaintiffs and the Represented Employees Against All Defendants*)

5 35. Plaintiffs incorporate the preceding paragraphs of the Second Amended
6 Complaint as if fully alleged herein.

7 36. Plaintiffs and the Represented Employees were not exempt from the requirement
8 to be paid at least the applicable California minimum wage throughout the statutory period for
9 each hour worked.

10 37. Plaintiffs and the Represented Employees were not provided proper minimum and
11 regular wages due to Defendants' failure to accurately record and compensate for all hours
12 worked.

13 38. As a result of Defendants' policies or practices described above, Plaintiffs and the
14 Represented Employees were required to perform off-the-clock work that Defendants either
15 knew or should have known they were performing.

16 39. Consequently, Defendants violated California Labor Code laws and minimum
17 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
18 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

19 40. Plaintiffs are informed and believes and thereon alleges that Defendants
20 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
21 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

22 41. Defendants' conduct was willful, as Defendants knew that Plaintiffs and the
23 Represented Employees were entitled to be paid wages throughout the statutory period for each
24 hour worked, including proper minimum wages, yet Defendants chose not to pay them in
25 accordance thereto.

26 42. At all material times, Defendants DOES 1 through 20 were and/or are the
27 employer of Plaintiffs and the Represented Employees were persons acting on behalf of said
28 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be

1 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
2 Labor Code regulating hours and days of work respectively.

3 43. During employment of Plaintiffs and the Represented Employees, Defendants
4 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

5 44. As a result of the Defendants' wrongful conduct, Plaintiffs and the Represented
6 Employees have been damaged in amounts to be proven at trial.

7 45. Plaintiffs, on behalf of themselves, and the Represented Employees seek recovery
8 of all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs
9 of suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be
10 proven at trial.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY OVERTIME WAGES**

13 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

14 (*Plaintiffs and the Overtime Subclass Against All Defendants*)

15 46. Plaintiffs incorporate the preceding paragraphs of the Second Amended
16 Complaint as if fully alleged herein.

17 47. Plaintiffs, the Represented Employees, and the Overtime Subclass were
18 employees of Defendants who did not receive proper protections and benefits of the laws
19 governing payment of overtime wages.

20 48. Labor Code § 204 requires that the employer timely pay all overtime wages to its
21 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
22 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
23 any one workweek shall be compensated at the rate of no less than one and one-half times the
24 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
25 in one workday shall be compensated at twice the regular rate of pay for an employee.

26 49. At all relevant times, Plaintiffs and the Represented Employees were required by
27 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
28 Defendants' failure to accurately record and compensate for all hours, Plaintiffs and the

1 Represented Employees did not receive proper overtime compensation.

2 50. Defendants also failed to properly calculate the regular rate of pay, and
3 corresponding overtime rate and wages, on occasions that Plaintiff and the Overtime Subclass
4 earned multiple rates of pay during the same workweek. Defendants failed to pay proper
5 overtime compensation for hours worked in excess of 8 and/or 12 per day and/or 40 per week to
6 the Overtime Subclass on such occasions.

7 51. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
8 Order § 3(A) every pay period with respect to Plaintiff, the Represented Employees, and the
9 Overtime Subclass because Defendants required its employees to work hours in excess of 8
10 and/or 12 per day and/or 40 per week without proper overtime compensation.

11 52. Plaintiffs are informed and believe and thereon allege that Defendants
12 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiffs, the
13 Represented Employees, and the Overtime Subclass in violation of Labor Code §§ 204, 221-223,
14 510, 1194 and 1197.

15 53. Defendants' conduct was willful, as Defendants knew that Plaintiffs, the
16 Represented Employees, and the Overtime Subclass were entitled to be paid proper overtime
17 wages throughout the statutory period, yet Defendants chose not to pay them in accordance
18 thereto.

19 54. At all material times, Defendants DOES 1 through 10 were and/or are the
20 employer of Plaintiffs, the Represented Employees, and the Overtime Subclass or were persons
21 acting on behalf of said employer(s), within the meaning of California Labor Code § 558, who
22 violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2,
23 Chapter 1 of the California Labor Code regulating hours and days of work respectively.

24 55. During the employment of Plaintiffs, the Represented Employees, and the
25 Overtime Subclass, Defendants failed to pay them all wages to which they were entitled, thereby
26 receiving an economic benefit.

27 56. As a result of Defendants' wrongful conduct, Plaintiffs, the Represented
28 Employees, and the Overtime Subclass have been damaged in amounts to be proven at trial.

1 57. Plaintiffs, on behalf of themselves, the Represented Employees, and the Overtime
2 Subclass, seek recovery of all unpaid overtime wages, penalties, interest, attorneys' fees, and
3 costs of suit against Defendants in an amount to be proven at trial.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PROVIDE MEAL PERIODS**

6 (Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

7 *(Plaintiff and the Meal Break Subclass Against All Defendants)*

8 58. Plaintiffs incorporate the preceding paragraphs of the Second Amended
9 Complaint as if fully alleged herein.

10 59. Plaintiffs and the Meal Break Subclass are and/or were employees of Defendants
11 who did not receive proper protections and benefits of the laws governing mandatory meal
12 periods.

13 60. Labor Code § 226.7 requires employers, including Defendants, to provide
14 employees with meal periods as mandated by the Industrial Welfare Commission.

15 61. Labor Code § 512(a), in part, provides that employers, including Defendants, may
16 not employ an employee for a work period of more than five hours per day without providing an
17 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
18 except that if the total work period per day of the employee is no more than six hours, the meal
19 period may be waived by mutual consent of both the employer and the employee. Employers
20 may not employ an employee for a work period more than 10 hours per day without providing
21 the employee with a second meal period of not less than 30 minutes.

22 62. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
23 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
24 pay for each meal period that is missed.

25 63. At all relevant times herein, Plaintiffs and the Meal Break Subclass were denied
26 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
27 practices, Plaintiffs and the Represented Employees were subjected to meal period violations
28 when they were: (1) unable to take meal periods due to workload, (2) forced to take on-duty meal

1 period while under the control of Defendants, (3) forced to take meal periods, if such a meal
2 occurred, after the 5th hour of work, (4) not provided a mandated second meal period for shifts
3 in excess of 10 hours, and (5) subject to shortened meal periods due to policies and practices
4 such as requiring Represented Employees to walk distances to the break room after clocking out,
5 to wait in line while off-the-clock to clock back in for meal periods, and/or to don and doff
6 personal protective equipment while off-the-clock.

7 64. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
8 Order every pay period because Plaintiffs and the Meal Break Subclass were not provided with
9 all mandatory meal periods and Defendants failed to pay Plaintiffs and the Meal Break Subclass
10 one additional hour of compensation at the regular rate of pay in lieu thereof.

11 65. At all relevant times herein, Defendants failed to provide Plaintiffs and the Meal
12 Break Subclass all mandated meal periods and failed to pay wage premiums in lieu of mandated
13 meal or rest periods, thereby receiving an economic benefit.

14 66. On information and belief, Plaintiffs and the Meal Break Subclass did not
15 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
16 obtained from Plaintiffs and the Meal Break Subclass were not willfully obtained, were not
17 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
18 unlawful adhesion. Defendants did not permit or authorize Plaintiffs and the Meal Break
19 Subclass to take meal periods in accordance with California law.

20 67. By their failure to provide Plaintiffs and the Meal Break Subclass with meal
21 periods as required by California law, and failing to pay one hour of additional wages in lieu of
22 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
23 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at
24 the employee's regular rate of compensation for each workday that a meal period was not
25 lawfully provided in an amount to be proven at time of trial.

26 68. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
27 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiffs and the Meal
28 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST BREAKS**

3 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

4 (*Plaintiffs and the Rest Break Subclass Against All Defendants*)

5 69. Plaintiffs incorporate the preceding paragraphs of the Second Amended
6 Complaint as if fully alleged herein.

7 70. Plaintiffs and the Rest Break Subclass are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

9 71. Labor Code § 226.7 requires employers, including Defendants, to provide rest
10 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

11 72. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
12 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
13 each work period. Employees shall receive a 10-minute rest period every four hours or major
14 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
15 hours worked, for which there shall be no deduction from wages.

16 73. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
17 Order, Defendants shall pay Plaintiffs and the Represented Employees one additional hour of pay
18 at her regular rate of compensation for each day that the rest period is not provided.

19 74. At all relevant times, Defendants also failed to provide Plaintiffs and the Rest
20 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
21 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the
22 Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks due
23 to being overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and
24 the Rest Break Subclass worked in excess of 10 hours in a shift, Defendants failed to authorize
25 and/or permit a third mandated rest break.

26 75. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
27 Order every pay period because Plaintiffs and the Rest Break Subclass were not provided with
28 all mandatory rest periods and Defendants failed to pay Plaintiffs and the Represented

1 Employees one additional hour of compensation in lieu thereof.

2 76. At all relevant times herein, Defendants failed to provide Plaintiffs and the Rest
3 Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of mandated
4 rest periods, thereby receiving an economic benefit.

5 77. By their failure to provide Plaintiffs and the Rest Break Subclass with rest breaks
6 as required by California law, and failing to pay one hour of additional wages in lieu of each rest
7 break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage
8 Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the
9 employee's regular rate of compensation for each workday that a paid rest break was not
10 lawfully provided in an amount to be proven at time of trial.

11 78. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
12 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiffs and the Rest
13 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO TIMELY PAY FINAL WAGES**

16 (Labor Code §§ 201 – 203)

17 *(Plaintiff and the Waiting Time Penalties Subclass against All Defendants)*

18 79. Plaintiffs incorporate the preceding paragraphs of the Second Amended
19 Complaint as if fully alleged herein.

20 80. Plaintiffs and the Waiting Time Penalties Subclass are and/or were employees of
21 Defendants who did not receive proper protections and benefits of the laws governing the timing
22 and payment of wages.

23 81. Labor Code § 201 requires that the employer immediately pay any wages, without
24 abatement or reduction, to any employee who is discharged.

25 82. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
26 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
27 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

28 ///

1 83. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
2 penalty from the due date thereof at the same rate until paid or until an action therefore is
3 commenced, but the wages shall not continue for more than thirty (30) days.

4 84. At all relevant times, Defendants employed a policy and practice whereby
5 Plaintiffs and the Waiting Time Penalties Subclass were not paid all wages due and owing upon
6 separation of employment within the time required by Labor Code §§ 201 and 202.

7 85. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
8 wages due and owing to Plaintiffs and the Waiting Time Penalties Subclass upon separation of
9 employment, including, but not limited to, minimum, regular, and overtime wages, vested and
10 unused vacation/PTO wages, as well as meal and rest period premiums.

11 86. Plaintiffs alleges that, at all times material to this action, Defendants had a
12 planned pattern and practice of failing to timely pay Plaintiffs and the Waiting Time Penalties
13 Subclass all wages due and owing upon separation of employment as required by Labor Code §§
14 201 and 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiffs and the
15 Waiting Time Penalties Subclass the above-described waiting time penalty, all in an amount to
16 be shown according to proof at trial and within the jurisdiction of this Court.

17 **SIXTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

19 (Labor Code § 226)

20 *(Plaintiffs and the Wage Statement Penalties Subclass against All Defendants)*

21 87. Plaintiffs incorporate the preceding paragraphs of the Second Amended
22 Complaint as if fully alleged herein.

23 88. Plaintiffs and the Wage Statement Penalties Subclass are and/or were employees
24 of Defendants who did not receive proper protections and benefits of the laws governing the
25 provision of accurate itemized wage statements.

26 89. Labor Code § 226(a) requires an employer to provide its employees with itemized
27 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
28 inclusive dates of the pay period, the employee's name and the last four digits of his or her

1 Social Security number (or employee identification number), the name and address of the legal
2 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee.

4 90. Defendants violate Labor Code § 226(a) every pay period with respect to
5 Plaintiffs and the Wage Statement Penalties Subclass because Defendants failed to provide a
6 wage statement to Plaintiffs and the Wage Statement Penalties Subclass that complied with the
7 requirements of Labor Code § 226(a). Specifically, Defendants' wage statements failed to state
8 the overtime rate of pay, failed to state the applicable rate of pay for work at rates other than the
9 base rate, and failed to state the start date of the pay period. Additionally, the wage statements
10 also failed to accurately state gross wages earned, total hours worked, all deductions, and net
11 wages earned.

12 91. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
13 to Plaintiffs and the Wage Statement Penalties Subclass because Defendants failed to provide a
14 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
15 requirements of Labor Code § 226.2(a)(2).

16 92. Defendants' failure to provide the required writing deprived Plaintiffs and the
17 Wage Statement Penalties Subclass of the ability to know, understand, and question the
18 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
19 Plaintiffs and the Wage Statement Penalties Subclass had no way to dispute the resulting
20 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
21 Defendants. As a direct result, Plaintiffs and the Wage Statement Penalties Subclass have
22 suffered and continue to suffer, substantial losses related to the use and enjoyment of such
23 wages, lost interest on such wages and expenses and attorney's fees in seeking to compel
24 Defendants to fully perform its obligation under state law, all to their respective damages in
25 amounts according to proof at trial.

26 93. As a result of Defendants' knowing and intentional failure to comply with Labor
27 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
28 that each was prevented from knowing, understanding and disputing the wage payments paid to

1 them. Furthermore, Plaintiffs and the Wage Statement Penalties Subclass have each suffered an
2 injury in that the failure to show all wages earned on the itemized wage statements resulted in
3 Plaintiffs and the Represented Employees being denied all necessary deductions, payments, and
4 withholdings owed by the employer, including, but not limited to, the failure to make all
5 necessary contributions for unemployment benefits, social security benefits, proper payment of
6 taxes and withholdings, and other mandated state and federal benefits.

7 94. Plaintiffs have also been injured as a result of having to bring this action to
8 attempt to obtain correct wage information following Defendants' refusal to comply with many
9 of the mandates of California's Labor Code and related laws and regulations.

10 95. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
11 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
12 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
13 attorney's fees and costs, to Plaintiffs and the Wage Statement Penalties Subclass who were
14 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the
15 applicable penalty is all in an amount to be shown according to proof at trial.

16 **SEVENTH CAUSE OF ACTION**

17 **UNFAIR AND UNLAWFUL COMPETITION**

18 (Business and Professions Code § 17200 *et seq.*)

19 (*Plaintiffs and the Represented Employees against All Defendants*)

20 96. Plaintiffs incorporate the preceding paragraphs of the Second Amended
21 Complaint as if fully alleged herein.

22 97. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
23 competition, which includes any "unlawful, unfair or fraudulent business act or practice." The
24 Represented Employees, including Plaintiffs, have suffered and continue to suffer injuries in
25 fact, due to the unfair and unlawful business practices of Defendants as alleged herein.

26 98. Defendants, and each of them, are "persons" as defined under Business &
27 Professions Code § 17021.

28 ///

1 99. As alleged herein, Defendants engaged in conduct that violated California's wage
2 and hour laws, including failure to pay minimum, regular, overtime, and vacation/PTO wages,
3 failure to provide mandated meal periods and rest breaks, failure to reimburse business expenses,
4 and failure to timely pay final wages, all to decrease their costs and increase their profits.

5 100. At all times relevant herein, Defendants did not pay Plaintiffs and the Represented
6 Employees wages and monies and other financial obligations to which they were entitled.

7 101. As a result of Defendants' failure to comply with the Labor Code and IWC
8 Orders, Represented Employees, including Plaintiffs, suffered a loss of wages and monies, all in
9 an amount to be shown according to proof at trial. Defendants' ongoing violations of the
10 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

11 102. Defendants' violations of the California Labor Code and IWC Wage Orders and
12 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
13 practices because it was done in a systematic manner over a period of time to the detriment of the
14 Plaintiffs and all others similarly-situated.

15 103. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
16 unlawful, and harmful to Plaintiffs, other Represented Employees, and to the general public.
17 Plaintiffs seek to enforce important rights affecting the public interest within the meaning of
18 Code of Civil Procedure § 1021.5.

19 104. A violation of California Business & Professions Code § 17200, *et seq.* may be
20 predicated on the violation of any state or federal law. All of the acts described herein as
21 violations of, among other things, the California Labor Code and IWC Wage Orders, are
22 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
23 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
24 practices in violation of California Business and Professions Code §§ 17200, *et seq.*

25 105. Plaintiffs, individually, and on behalf of the Represented Employees, has no plain,
26 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
27 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
28 the unfair, unlawful and/or fraudulent business practices described above, Plaintiffs, individually,

1 and on behalf of the Represented Employees, have suffered and will continue to suffer
2 irreparable harm unless Defendants, and each of them, are restrained from continuing to engage
3 in said unfair, unlawful and/or fraudulent business practices.

4 106. Plaintiffs, individually, and on behalf of the Represented Employees, are entitled
5 to, and does, seek such relief as may be necessary to disgorge the profits which Defendants have
6 acquired, or of which Plaintiffs and Represented Employees have been deprived, by means of the
7 above-described unfair, unlawful and/or fraudulent business practices. Plaintiffs and the
8 Represented Employees are not obligated to establish individual knowledge of the unfair
9 practices of Defendants in order to recover restitution.

10 107. Plaintiffs, individually, and on behalf of the Represented Employees, are further
11 entitled to and do seek a declaration that the above described business practices are unfair,
12 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
13 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
14 the future.

15 108. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiffs and
16 Represented Employees are entitled to restitution of the wages withheld and retained by
17 Defendants during a period that commences four years prior to the filing of this complaint; a
18 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and
19 Represented Employees; an award of attorneys' fees pursuant to California Code of Civil
20 Procedure § 1021.5 and other applicable laws; and an award of costs.

21 **VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION**
22 **(Cal. Lab. Code. §§ 2698 – 2699.5)**

23 109. Plaintiffs is an “aggrieved employee” under the PAGA as they was employed by
24 Defendants during the applicable statutory period and suffered one or more of the Labor Code
25 violations alleged herein. As such, Plaintiffs may recover the remedies described herein in a civil
26 action filed on behalf of themselves and all other similarly situated current and former aggrieved
27 employees in California against whom one or more of the alleged violations was committed
28 (hereinafter the “Aggrieved Employees”).

1 110. Plaintiffs seek to recover all applicable and available PAGA remedies pursuant to
2 Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by
3 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
4 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiffs are not required to, nor
5 do they, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

6 111. Pursuant to Labor Code § 2699.3(a), on March 5, 2021, Plaintiff Cortes gave
7 written notice by online filing to the Labor and Workforce Development Agency ("LWDA") and
8 by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
9 violated, including the facts and theories to support the alleged violations.

10 112. Therefore, more than sixty-five (65) days have passed since the date of notice,
11 Plaintiffs have fully satisfied the administrative prerequisites to suit under the PAGA. Plaintiffs
12 seek to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as
13 well as attorneys' fees, costs, and/or other damages as permitted by PAGA through a
14 representative action pursuant to the PAGA and the California Supreme Court in *Arias v.*
15 *Superior Court* (2009) 46 Cal. 4th 969.

16 **EIGHTH CAUSE OF ACTION**

17 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

18 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

19 (*Plaintiffs and the Aggrieved Employees against All Defendants*)

20 113. Plaintiffs incorporate paragraphs 1-21 and 109-112 of the Second Amended
21 Complaint as if fully alleged herein.

22 114. Plaintiffs and the Aggrieved Employees were not exempt from the requirement to
23 be paid at least the applicable California minimum wage throughout the statutory period for each
24 hour worked.

25 115. Plaintiffs and the Aggrieved Employees were not provided proper minimum and
26 regular due to Defendants' failure to accurately record and compensate for all hours worked.

27 ///

28 ///

1 116. Consequently, Defendants violated California Labor Code laws and minimum
2 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
3 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

4 117. Plaintiffs are informed and believe and thereon allege that Defendants
5 intentionally, willfully, and improperly failed to pay wages to Plaintiffs and the Aggrieved
6 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

7 118. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
8 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
9 and seek to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

10 **NINTH CAUSE OF ACTION**

11 **PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES**

12 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

13 (*Plaintiffs and the Aggrieved Employees against All Defendants*)

14 119. Plaintiff incorporate paragraphs 1-21 and 109-118 of the Second Amended
15 Complaint as if fully alleged herein.

16 120. Plaintiffs and the Aggrieved Employees were “nonexempt” employees of
17 Defendants who did not receive proper protections and benefits of the laws governing payment
18 of overtime wages.

19 121. Labor Code § 204 requires that the employer timely pay all overtime wages to its
20 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
21 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
22 any one workweek shall be compensated at the rate of no less than one and one-half times the
23 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
24 in one workday shall be compensated at twice the regular rate of pay for an employee.

25 122. At all relevant times, Plaintiffs and the Aggrieved Employees were required by
26 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
27 Defendants' failure to accurately record and compensate for all hours worked, Plaintiffs and the
28 Aggrieved Employees did not receive proper overtime compensation.

1 123. Defendants also failed to properly calculate the regular rate of pay, and
2 corresponding overtime rate and wages, on occasions that Plaintiffs and the Aggrieved
3 Employees earned multiple rates of pay during the same workweek. Therefore, Defendants
4 failed to pay proper overtime compensation for hours worked in excess of 8 and/or 12 per day
5 and/or 40 per week on such occasions.

6 124. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
7 Order § 3(A) every pay period with respect to Plaintiffs and the Aggrieved Employees because
8 Defendants failed to pay Plaintiffs and the Aggrieved Employees for all overtime hours worked,
9 and required Plaintiffs and the Aggrieved Employees to work without being properly
10 compensated for all overtime wages earned.

11 125. Plaintiffs are informed and believe and thereon allege that Defendants
12 intentionally, willfully, and improperly failed to pay wages to Plaintiffs and the Aggrieved
13 Employees for each hour worked in violation of Labor Code §§ 204, 221-223, 510, 1194 and
14 1197.

15 126. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
16 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
17 and seek to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

18 **TENTH CAUSE OF ACTION**

19 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

20 (Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

21 *(Plaintiffs and the Aggrieved Employees against All Defendants)*

22 127. Plaintiffs incorporate paragraphs 1-21 and 109-126 of the Second Complaint as if
23 fully alleged herein.

24 128. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
25 who did not receive proper protections and benefits of the laws governing mandatory meal
26 periods.

27 129. Labor Code § 226.7 requires employers, including Defendants, to provide
28 employees with meal periods as mandated by the Industrial Welfare Commission.

1 130. Labor Code § 512(a), in part, provides that employers, including Defendants, may
2 not employ an employee for a work period of more than five hours per day without providing an
3 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
4 except that if the total work period per day of the employee is no more than six hours, the meal
5 period may be waived by mutual consent of both the employer and the employee. Employers
6 may not employ an employee for a work period more than 10 hours per day without providing
7 the employee with a second meal period of not less than 30 minutes.

8 131. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
9 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
10 pay for each meal period that is missed.

11 132. At all relevant times herein, Plaintiffs and the Aggrieved Employees were denied
12 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
13 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
14 they were: (1) unable to take meal periods due to workload, (2) forced to take on-duty meal
15 period while under the control of Defendants, (3) forced to take meal periods, if such a meal
16 occurred, after the 5th hour of work, (4) not provided a mandated second meal period for shifts
17 in excess of 10 hours, and (5) subject to shortened meal periods due to policies and practices
18 such as requiring Represented Employees to walk distances to the break room after clocking out,
19 to wait in line while off-the-clock to clock back in for meal periods, and/or to don and doff
20 personal protective equipment while off-the-clock.

21 133. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
22 Order every pay period with respect to Plaintiffs and the Aggrieved Employees because
23 Plaintiffs and the Aggrieved Employees were not provided with all mandatory meal periods and
24 Defendants failed to pay Plaintiffs and the Aggrieved Employees one additional hour of
25 compensation at the regular rate of pay in lieu thereof.

26 134. On information and belief, Plaintiffs and the Aggrieved Employees did not
27 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
28 obtained from Plaintiffs and the Aggrieved Employees were not willfully obtained, were not

1 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
2 unlawful adhesion. Defendants did not permit or authorize Plaintiffs and the Aggrieved
3 Employees to take meal periods in accordance with California law.

4 135. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
5 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
6 and seek to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

7 **ELEVENTH CAUSE OF ACTION**

8 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

9 (Labor Code § 226.7 and 512; IWC Wage Order § 12)

10 (*Plaintiffs and the Aggrieved Employees against All Defendants*)

11 136. Plaintiffs incorporate paragraphs 1-21 and 109-135 of the Second Amended
12 Complaint as if fully alleged herein.

13 137. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
14 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

15 138. Labor Code § 226.7 requires employers, including Defendants, to provide rest
16 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

17 139. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
18 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
19 each work period. Employees shall receive a 10-minute rest period every four hours or major
20 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
21 hours worked, for which there shall be no deduction from wages.

22 140. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
23 Order, Defendants shall pay Plaintiffs and the Aggrieved Employees one additional hour of pay
24 at her regular rate of compensation for each day that the rest period is not provided.

25 141. Defendants failed to provide Plaintiffs and the Aggrieved Employees with 10
26 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated
27 by California law. Defendants did not schedule rest breaks and the Aggrieved Employees were
28 often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by

1 their hectic workload. Furthermore, on occasions when Plaintiffs and the Aggrieved Employees
2 worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third
3 mandated rest break.

4 142. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
5 Order every pay period with respect to Plaintiffs and the Aggrieved Employees because
6 Plaintiffs and the Aggrieved Employees were not provided with all mandatory rest periods and
7 Defendants failed to pay Plaintiffs and the Aggrieved Employees one additional hour of
8 compensation in lieu thereof.

9 143. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
10 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
11 and seek to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

12 **TWELFTH CAUSE OF ACTION**

13 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

14 (Labor Code § 204)

15 *(Plaintiffs and the Aggrieved Employees against All Defendants)*

16 144. Plaintiffs incorporate paragraphs 1-21 and 109-143 of the Second Amended
17 Complaint as if fully alleged herein.

18 145. Plaintiffs and the Aggrieved Employees are and/or were "nonexempt" employees
19 of Defendants who did not receive proper protections and benefits of the laws regarding the
20 timing of payment of wages each period.

21 146. Labor Code § 204(a) states that all wages earned by a person are due and payable
22 twice during each calendar month, and further states that wages earned during the first through
23 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
24 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
25 the following month.

26 147. Furthermore, Labor Code § 204(d) states "[t]he requirements of this section shall
27 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
28 the wages are paid not more than seven calendar days following the close of the payroll period."

1 148. At all relevant times herein, Defendants did not provide Plaintiffs and the
2 Aggrieved Employees with all wages due and owing each period within the time required by
3 Labor Code § 204. Moreover, Defendants did not provide Plaintiffs and the Aggrieved
4 Employees with all wages due and owing each pay period, including, but not limited to,
5 minimum, regular, and overtime wages, as well as meal and rest period premiums, within the
6 time specified by Labor Code § 204.

7 149. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
8 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
9 and seek to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

10 **THIRTEENTH CAUSE OF ACTION**

11 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

12 (Labor Code §§ 201 – 203)

13 *(Plaintiffs and the Aggrieved Employees against All Defendants)*

14 150. Plaintiffs incorporate paragraphs 1-21 and 109-149 of the Second Amended
15 Complaint as if fully alleged herein.

16 151. Plaintiffs and the Aggrieved Employees are and/or were “non-exempt” employees
17 of Defendants who did not receive proper protections and benefits of the laws governing the
18 timing and payment of final wages.

19 152. Labor Code § 201 requires that the employer immediately pay any wages, without
20 abatement or reduction, to any employee who is discharged.

21 153. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
22 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
23 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

24 154. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
25 penalty from the due date thereof at the same rate until paid or until an action therefore is
26 commenced, but the wages shall not continue for more than thirty (30) days.

27 155. At all relevant times here, Defendants did not provide Plaintiffs and the
28 Aggrieved Employees with all wages due and owing upon separation of employment, including,

1 but not limited to, minimum, regular, overtime, and vacation/PTO wages, as well as meal and
2 rest period premiums, within the time specified by Labor Code §§ 201 – 203.

3 156. Plaintiffs allege that, at all times material to this action, Defendants had a planned
4 pattern and practice of failing to timely pay to Plaintiffs and the Aggrieved Employees all wages
5 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

6 157. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
7 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
8 and seek to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

9 **FOURTEENTH CAUSE OF ACTION**

10 **PAGA ASSESSMENT FOR**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

12 (Labor Code § 226)

13 *(Plaintiffs and the Aggrieved Employees against All Defendants)*

14 158. Plaintiffs incorporate paragraphs 1-21 and 109-157 of the Second Amended
15 Complaint as if fully alleged herein.

16 159. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
17 who did not receive proper protections and benefits of the laws governing the provision of
18 accurate itemized wage statements.

19 160. Labor Code § 226(a) requires an employer to provide its employees with itemized
20 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
21 inclusive dates of the pay period, the employee's name and the last four digits of his or her
22 Social Security number (or employee identification number), the name and address of the legal
23 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
24 corresponding number of hours worked at each hourly rate by the employee.

25 161. Defendants violate Labor Code § 226(a) every pay period with respect to
26 Plaintiffs and the Aggrieved Employees because Defendants failed to provide a wage statement
27 to Plaintiffs and the Aggrieved Employees that complied with the requirements of Labor Code §
28 226(a). Specifically, Defendants' wage statements failed to state the overtime rate of pay, failed

1 to state the applicable rate of pay for work, and failed to state the start date of the pay period.
2 Additionally, the wage statements also failed to accurately state gross wages earned, total hours
3 worked, all deductions, and net wages earned.

4 162. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
5 to Plaintiffs and the Aggrieved Employees because Defendants failed to provide complete and
6 accurate wage statements to Plaintiffs and the Aggrieved Employees that complied with the
7 requirements of Labor Code § 226(a).

8 163. As a result of the Defendants' violations of Labor Code §226(a), Plaintiffs seek
9 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
10 and seek to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.
11 See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 ("Section
12 226.3 provides the civil penalty for failure to comply" with Labor Code § 226).

13 **FIFTEENTH CAUSE OF ACTION**

14 **PAGA ASSESSMENT FOR**

15 **FAILURE TO PROVIDE SAFE AND HEALTHFUL WORKING CONDITIONS**

16 (Labor Code § 6400-6403)

17 (*Plaintiffs and the Aggrieved Employees against All Defendants*)

18 164. Plaintiffs incorporate paragraphs 1-21 and 109-163 of this Second Amended
19 Complaint as if fully alleged herein.

20 165. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
21 who did not receive proper protections and benefits of the laws governing workplace health and
22 safety.

23 166. Labor Code § 6400(a) requires "[e]very employer to furnish employment and a
24 place of employment that is safe and healthful for the employees therein. Labor Code § 6401
25 requires that "[e]very employer shall furnish and use safety devices and safeguards, and shall
26 adopt and use practices, means, methods, operations, and processes which are reasonably
27 adequate to render such employment and place of employment safe and healthful. Every
28 employer shall do every other thing reasonably necessary to protect the life, safety, and health of

employees.” Labor Code § 6402 states that, “[n]o employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.” Further, Labor Code § 6403 imposes a duty on employer, “(a) [t]o provide and use safety devices, and safeguards reasonably adequate to render the employment and place of employment safe; (b) [t]o adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and (c) [t]o do every other thing reasonably necessary to protect the life, safety, and health of employees.”

167. Plaintiffs allege that at all relevant times, she and the Aggrieved Employees were not furnished safe and healthful place of employment and were not provided necessary safety devices to render the place of employment safe in accordance with Labor Code §§ 6400-6403.

168. As a result of the Defendants’ violations of Labor Code §§ 6400-6403, Plaintiffs seek the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seek to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, on a representative basis, and all others similarly situated, prays for judgment and relief against Defendants, jointly and severally, as follows:

1. As to the Eighth through Fifteenth Causes of Action, the assessment of all applicable and available remedies under the PAGA;
2. For reasonable attorneys’ fees and costs as permitted under the PAGA;
3. That the First through Seventh Causes of Action be certified as a class action;
4. That Plaintiffs be appointed as Class Representative;
5. That counsel for Plaintiffs be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Seventh Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;

///

1 7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
2 law, including those pursuant to the Labor Code;

3 8. For injunctive relief and/or restitution as provided by the Labor Code and
4 Business and Professions Code § 17200, *et seq.*;

5 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
6 201, 202, 203, 204, 218.6, 223, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1174, 1194, 1194.2,
7 1197, 1198, and 1199, among other sections inadvertently omitted;

8 10. For an award of damages in the amount of unpaid compensation including, but
9 not limited to, unpaid wages, benefits, and penalties according to proof, including interest
10 thereon;

11 11. For pre- and post-judgment interest; and

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

13
14 Dated: January 10, 2023

DIVERSITY LAW GROUP, P.C.

15
16 BY: 

Larry W. Lee, Esq.
Kristen M. Agnew, Esq.
Nicholas Rosenthal, Esq.
Attorneys for Plaintiff Jodie Blanton Jr.

17
18
19 Dated: January 10, 2023

POLARIS LAW GROUP, LLC

20
21 BY: 

William L. Marder, Esq.
Attorneys for Plaintiff Jodie Blanton Jr.

22
23
24 Dated: January 10, 2023

LAUBY, MANKIN & LAUBY LLP

25
26 BY: 

Brian J. Mankin, Esq.
Misty M. Lauby, Esq.
Attorneys for Plaintiff Yazmin Cortes

1 Dated: January 10, 2023

THE SPIVAK LAW FIRM

2
3 BY: 
4 David G. Spivak, Esq.
5 Caroline Tahmassian, Esq.
Attorneys for Plaintiff Gabriela Escriba

6 Dated: January 10, 2023

BENOWITZ LAW CORP.

7
8 BY: 
9 Louis Benowitz, Esq.
Attorneys for Plaintiff Gabriela Escriba

EXHIBIT “B”

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

Blanton et al. v. Communications Test Design, Inc.
Superior Court of the State of California, County of San Joaquin
Case No. STK-CV-VOE-2021-5136

To: all current and former non-exempt employees who worked at a CTDI Facility in California at any time between June 19, 2019, and August 7, 2022, including Direct Hires of CTDI and Temporary Employees (the “Class”):

As used herein, “Direct Hires” refers to individuals hired directly by CTDI and employed to work at a CTDI Facility, whereas “Temporary Employees” refers to individuals who were employed by a Staffing Agency and assigned to work at a CTDI Facility in California. Both Direct Hires and Temporary Employees who worked at a CTDI Facility in California between June 19, 2019 and August 7, 2022 (the “Class Period”) are included in this Settlement and collectively referred to as “Class Members.”

THIS NOTICE is of a proposed settlement of a class action and representative lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on [REDACTED], 2023, to address whether the proposed settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

You have been identified as a Class Member and Aggrieved Employee in the above lawsuit. Under the terms of the proposed settlement, you are estimated to receive approximately **\$INSERT AMOUNT** as your share of the Settlement should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share may be more or less than this estimate. Your estimate is based on the number of Weeks Worked by you at a CTDI Facility in California during the Class Period. Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section IV.
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion from the Settlement Class by [REDACTED], 2023 (see Section V for more details on how to opt-out). If you opt-out of the settlement of the Class Claims, you will no longer be a Class Member, and you will (1) <u>not</u> receive any settlement payment for the Class Claims, but you will preserve your right to pursue the Settled Class Claims described in Section IV subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You still will receive a payment as part of the civil penalties paid pursuant to the California Private Attorneys General Act of 2004 (“PAGA”) and will release your claims for such civil penalties.
OBJECT	If you decide to object to the settlement with respect to the Settled Class Claims because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement by [REDACTED], 2023 (see Section V for more details on how to object).
DISPUTE YOUR NUMBER OF PAY PERIODS CREDITED	If you believe the number of weeks that you were credited with working during the Class Period is incorrect, you may submit a written dispute to the Settlement Administrator (see Section IV for more details on how to dispute your credited weeks). CTDI’s records will be presumed correct, but you may provide evidence to the Settlement Administrator showing that the Weeks Worked calculation is inaccurate.

I. Why did I get this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Blanton v. Communications Test Design, Inc., et al.*, San Joaquin County Superior Court Case No. STK-CV-VOE-2021-5136 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You received this notice because the records show that you were employed and worked at a CTDI Facility, either as a Direct Hire or Temporary Employee, as a non-exempt employee (meaning you were paid hourly or otherwise eligible for overtime pay) at some point between June 19, 2019, and August 7, 2022 (“Class Period”). The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you meet the definition of a Class Member and received this Notice, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

Three Plaintiffs/Class Representatives (who are current and former employees of CTDI and Staffing Agencies) filed class and representative action lawsuits against CTDI on behalf of the Class Members. All of the Plaintiffs joined forces and agreed to combine their actions into one action. To that end, a Consolidated Complaint was filed on about [REDACTED], 2022, combining all three cases into one case (which will be referred to as the “Action” or “Lawsuit”). The pending Action alleges the following Class Claims against CTDI on behalf of the Class Members: (a) failure to pay minimum wages, regular wages and/or overtime pay (including any theory of failure to pay any and all wages for all time worked or earned); (b) failure to provide or pay premium payments for meal periods; (c) failure to provide or pay premium payments for rest periods; (d) failure to reimburse business expenses; (e) failure to provide complete and accurate wage statements; (f) failure to pay wages upon termination; (f) violations of the California Business & Professions Code §§ 17200 *et seq.* (g) failure to provide, pay, and/or post sick pay at the appropriate rate of pay, and (h) reimbursement of business expenses (the “Class Claims”). The Lawsuit also sought civil penalties on behalf of the California Labor Workforce Development Agency (“LWDA”). The civil penalty claims are called “PAGA Claims” and the relevant period for PAGA Claims is March 19, 2020, to August 7, 2022 (“PAGA Period”).

CTDI has denied, and continues to deny, the factual and legal allegations in the Lawsuit and believes that it has valid defenses to Plaintiffs’ claims. By agreeing to settle, CTDI is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action and/or a representative action. CTDI has agreed to settle the case as part of a compromise with Plaintiffs and the Class Members.

The Court has not ruled on the merits of Plaintiffs’ claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, CTDI and Plaintiffs have concluded that it is in their respective best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. After providing extensive information to Class Counsel, the Settlement was reached following an arm’s length mediation with a respected and experienced mediator, who is also a retired judge. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

The Class Representatives and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to CTDI, the risk of denial of class certification or representative status, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed as a Direct Hire or Temporary Employee, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, CTDI will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member's participation or decision not to participate in this Settlement. If a Class Member does not participate as to the Class Claims, his/her share of the settlement of the Class Claims will be paid to those who do participate.

III. Who are the Relevant attorneys?

<u>Attorneys for the Class Members</u> <u>("Class Counsel"):</u>	<u>Attorneys for CTDI:</u>
Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Misty Lauby, Esq. <i>misty@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444 David Spivak <i>david@spivaklaw.com</i> The Spivak Law Firm 8605 Santa Monica Bl PMB 42554 West Hollywood CA 90069 Tel: (213) 725-9094 Larry Lee <i>lwlee@diversitylaw.com</i> Nicholas Rosenthal <i>nrosenthal@diversitylaw.com</i> Diversity Law Group, P.C. 515 S. Figueroa Street, Suite 1250 Los Angeles, CA 90071 Tel: (213) 488-6555	James Hart Leah Peterson Littler Mendelson P.C. 18565 Jamboree Road, Suite 800 Irvine, California 92612 Tel: (949) 705-3000

IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all current and former non-exempt employees who worked at a CTDI Facility in California at any time during the Class Period, including Direct Hires and Temporary Employees (the "Settlement Class" or "Class Members") and approved a representative class of all current and former non-exempt employees who worked at a CTDI Facility in California at any time during the PAGA Period, including Direct Hires of CTDI and Temporary Employees ("Aggrieved Employees"). Class Members who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, will become "Participating Class Members" and will be mailed Settlement checks, and in exchange will be bound by the Settlement and release of certain wage and penalty claims against CTDI.

Without admitting any wrongdoing, CTDI has agreed to pay \$2,000,000 (the "Gross Settlement Amount") to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Gross Settlement Amount:

Settlement Administration Costs. The Court has approved **XX** to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, approximately **\$XX** will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

Penalties to the California Labor Workforce and Development Agency. The Labor Code Private Attorneys General Act ("PAGA") authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other PAGA Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$200,000 of the Gross

Settlement Amount will be allocated to Plaintiffs' PAGA Claims. Of this amount, \$150,000 will be paid to the LWDA in satisfaction of the claims for civil penalties under PAGA, and the remaining \$50,000 will be divided between all Aggrieved Employees based on the number of weeks worked during the PAGA Period, regardless of their receipt of payments for settlement of the Class Claims. You do not have the right to opt-out or exclude yourself from receiving the civil penalties paid to pursuant to PAGA. Aggrieved Employees includes "all current and former non-exempt employees who worked at a CTDI Facility in California at any time during the PAGA Period, including Direct Hires of CTDI and Temporary Employees." Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$50,000 allocation:

Do you Qualify as an Aggrieved Employee?	Weeks Worked as an Aggrieved Employee	Your Share of PAGA Penalties
YES/NO	INSERT	\$INSERT

Service Payment to Class Representatives. Class Counsel will ask the Court to award the Class Representatives a Service Payment to compensate them for their service and extra work provided on behalf of the Class Members and in exchange for a general release of claims totaling \$15,000 each to Yazmin Cortes, Jodie Blanton, Jr., and Gabriela Escriba. The Class Representatives also will receive their individual share of the Settlement as Class Members.

Attorneys' Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or costs. Class Counsel will ask for fees of 35 percent of the common fund Gross Settlement Amount (which is \$700,000) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$30,000 for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above from the Gross Settlement Amount, the balance will form the Net Settlement Amount for distribution to Participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately \$. Individual Settlement Payments to Class Members will be calculated and apportioned from the Net Settlement Amount based on the number of weeks a Class Member is credited with working during the Class Period. A Class Member is credited with one Week Worked each time the Class Member works at least one shift in a week as a Direct Hire or Temporary Employee in a CTDI Facility in California. Specific calculations of Individual Settlement Payments will be made as follows: the Settlement Administrator will divide the total Weeks Worked by all Settlement Class Members into the Net Settlement Amount to determine a per "Workweek Value." The Workweek Value will be multiplied by the number of Weeks Worked by each Settlement Class Member during the Class Period to determine the Individual Settlement Payment, prior to legal deductions/withholdings, for each Class Member. If any Class Member opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members (i.e., those who do not opt-out).

Weeks Worked as a Class Member During the Class Period	Your Share of the Net Settlement Amount
INSERT	\$INSERT

Disputes to Pay Periods Credited. For each Settlement Class Member, the Weeks Worked at a CTDI Facility during the Class Period will be calculated from available records. These records indicate that you worked for **[TOTAL WEEKS]** **Work Weeks** at a CTDI Facility during the Class Period. If you disagree with this number, you may submit evidence to the Settlement Administrator on or before , 2023, with documentation to establish the number of eligible Workweeks you claim to have actually worked at a CTDI Facility in California between June 19, 2019, and August 7, 2022. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINSTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Settlement Administrator will render a final decision.

Payments to Class Members. After the Court grants Final Approval of the Settlement and after Judgment is entered, settlement checks will be mailed to all Participating Class Members who did not timely request to be excluded. For those Aggrieved Employees who requested to be excluded from the settlement of the Class Claims, their settlement checks will be for their share of PAGA civil penalties only for release of the PAGA Claims, and they will not include any payment for settlement of the Class Claims. Participating Class Members and Aggrieved Employees will have 180 days from the

issuance of the last check to cash all of the checks. In the event that any Participating Class Member or Aggrieved Employee fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller's Office in the name of the Participating Class Member or Aggrieved Employee, so that the Participating Class Member or Aggrieved Employee can attempt to collect the funds at a later date.

Allocation and Taxes. One-third (33.33%) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining two-thirds (66.67%) will be considered and reported as interest and penalties (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, the payments will be reported on IRS Form 1099 as income. Payments for PAGA Claims shall be paid one hundred percent (100%) as civil penalties for which no taxes shall be withheld and for which payment will be reported on IRS Form 1099. Participating Class Members and Aggrieved Employees are responsible for the proper income tax treatment of the Individual Settlement Payments and their payments for PAGA Claims. The Settlement Administrator, CTDI and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments or payments for PAGA Claims. Participating Class Members and Aggrieved Employees will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments or payments for PAGA Claims. Accordingly, Participating Class Members and Aggrieved Employees should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release of Class Claims (aka the "Settled Class Claims"). Once the Court approves the proposed Settlement and enters Judgment, and CTDI funds the Settlement, then the Settlement Agreement will bind all Class Members who have not opted out of the Settlement and will bar them from bringing the Class Claims against Defendant CTDI and the Released Parties (defined below). Specifically, the Participating Class Members will fully release and discharge the Released Parties of any and all causes of action and claims, charges, complaints, liens, demands that were alleged in the Consolidated Complaint or reasonably could have been alleged based on the allegations, the facts, statutory citation and/or legal theories contained in the Consolidated Complaint, including all of the following claims for relief: (a) failure to pay minimum wages, regular wages and/or overtime pay (including any theory of failure to pay any and all wages for all time worked or earned); (b) failure to provide or pay premium payments for meal periods; (c) failure to provide or pay premium payments for rest periods; (d) failure to reimburse business expenses; (e) failure to provide complete and accurate wage statements; (f) failure to pay wages upon termination; (g) violations of the California Business & Professions Code §§ 17200 *et seq.* (h) failure to provide, pay, and/or post sick pay at the appropriate rate of pay, and (i) reimbursement of business expenses. These claims include, but are not limited to, California Labor Code sections 201, 202, 203, 226, 226.7, 227.3, 246, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802 and all related provisions of the California Code of Regulations, the California Industrial Wage Orders, the California Business & Professions Code sections 17200 *et seq.* The release of the foregoing claims, extends to all theories of relief regardless of whether the claim is, was or could have been alleged as separate claims, causes of action, lawsuits or based on other theories of relief, or different right or duty of an alleged statute, whether under federal law, state law or common law (including, without limitation, as violations of the California Labor Code, the Wage Orders, applicable regulations, and California's Business and Professions Code section 17200). "Settled Class Claims" includes all types of relief available for the above-referenced claims, including, without limitation, any claims for damages, restitution, losses, penalties, fines, liens, attorneys' fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated damages. The time period governing these Settled Class Claims shall be at any time from June 19, 2019, through August 7, 2022 ("Class Period").

Release of PAGA Claims (aka the "Settled PAGA Claims"). Also upon the Court's approval of the Settlement, entry of Judgment, and Communications Test Design, Inc.'s funding of the Settlement Amount, the Settlement Agreement will bind the LWDA, Plaintiff, and all Aggrieved Employees, and will bar them from bringing PAGA claims against CTDI and the Released Parties based on the facts stated in the Consolidated Complaint and in Plaintiffs' notice letters to the LWDA (including any amendments thereto), or reasonably could have been alleged based on the allegations, the facts, statutory citation and/or legal theories under the PAGA contained in the Consolidated Complaint, including all of the following claims for relief: (a) failure to pay minimum wages, regular wages and/or overtime pay (including any theory of failure to pay any and all wages for all time worked or earned); (b) failure to provide or pay premium payments for meal periods; (c) failure to provide or pay premium payments for rest periods; (d) failure to reimburse business expenses; (e) failure to provide complete and accurate wage statements; (f) failure to timely pay each week; (g) failure to pay wages upon termination; (h) failure to provide safe and healthful working conditions, (i) failure to provide, pay, and/or post sick pay at the appropriate rate of pay, and (j) reimbursement of business expenses. These claims include, but are not limited to, California Labor Code sections 201, 202, 203, 204, 226, 226.7, 227.3, 246, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802 and all related provisions of the California Code of Regulations, and the California Industrial Wage Orders. The

time period governing the Settled PAGA Claims shall be any time during the PAGA Period. The Settled PAGA Claims do not release any potential claims for wages or statutory penalties.

Released Parties. “Released Parties” means Defendant CTDI and its affiliated companies, parents, members, subsidiaries, related companies and business concerns, past and present, including their predecessors and successors, and each of them, as well as each of their insurers, partners, trustees, directors, owners, shareholders, officers, agents, attorneys, servants, joint employers and employees, temporary service providers and Staffing Agencies employing Temporary Employees, past and present, and each of them and anyone acting in concert with foregoing.

Waiver of Labor Code Section 206.5(e). Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. That section provides in pertinent part as follows:

“No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.”

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. What options do I have?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive an Individual Settlement Payment unless you exclude yourself from the settlement by following the opt-out procedure set forth below. If you disagree with the number of Weeks Worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described above. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Payment.

If you are a current employee, your decision as to whether or not to participate in this Settlement will not be considered by Communications Test Design, Inc., who will not take any adverse employment action against you based on your participation in the Settlement.

- B. **Exclude Yourself from the Class Claims in the Settlement.** If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion from the Class Claims in the Class Action Settlement” letter/card postmarked no later than [REDACTED], 2023 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE CTDI LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator, [ADDRESS], postmarked no later than [REDACTED], 2023. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement with respect to the Class Claims, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any money for the Class Claims under this Settlement; and (3) will not be bound by this Settlement, or the Judgment, with respect to the Class Claims. You still will be bound by this Settlement with respect to the release of the PAGA Claims.

- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement with respect to the Class Claims if you believe they are unfair or unreasonable. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Class Claims portion of the Settlement, you must submit a written objection stating your full name, address, telephone number, dates of employment at

Communications Test Design, Inc., the case name and number, the name and address of your attorney(s) if you are represented, each specific reason in support of your objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed to the Settlement Administrator, [ADDRESS], by no later than [REDACTED], 2023. Objections that do not include all required information, or that are not submitted timely, may not be considered by the Court. **You need not object to the Settlement if you only dispute the number of Weeks Worked.**

If you choose to object to the Class Claims portion of the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2023, at XX a.m. in Department XX of the San Joaquin County Superior Court, located at XX. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [REDACTED], 2023. All objections or other correspondence must state the name and number of the case. If you wish to appear at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment. If you submit an objection and a request for exclusion (opt out request), the objection will be ignored and request for exclusion will be operative.

VI. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by Communications Test Design, Inc. or worked as a temporary worker and were placed at Communications Test Design, Inc. in California at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the Settled Class Claims (described above in section IV above). All Aggrieved Employees will be deemed to have entered into a release of the Settled PAGA Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue and the releases will not take effect and payments will not be made.

VII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, and Class Counsel's request for attorneys' fees and reimbursement of documented litigation costs and the Service Payment to the Class Representatives on [REDACTED], 2022 at XX a.m. in Department XX of the San Joaquin County Superior Court, located at XX.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

VIII. How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Class Action Settlement Agreement at Office of the Clerk, San Joaquin County Superior Court, XX, during regular court hours. You may also contact Class Counsel or the Settlement Administrator using the contact information listed above for more information.

IX. Reminder as to time limits.

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion from the Settled Class Claims is [REDACTED], 2023. The deadline for mailing an objection to the Settlement Administrator is [REDACTED], 2023. These deadlines will be strictly enforced.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

EXHIBIT “C”

Brian J. Mankin [CSB No. 216228]
brian@lmlfirm.com
Misty M. Lauby [CSB No. 243009]
misty@lmlfirm.com
LAUBY MANKIN LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff Yazmin Cortes, and all others similarly situated

[Additional Counsel Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

JODIE BLANTON JR., YAZMIN CORTES
and GABRIELA ESCRIBA, on behalf of all
others similarly situated;

Plaintiffs,

vs.

COMMUNICATIONS TEST DESIGN, INC.,
a Pennsylvania Corporation, and DOES 1
through 20, inclusive;

Defendants.

AND THE CONSOLIDATED/RELATED
ACTIONS.

Case No.: STK-CV-VOE-2021-5136

[PROPOSED] FINAL ORDER
APPROVING THE JOINT STIPULATION,
SETTLEMENT, AND JUDGMENT

Consolidated/Related Actions:

- *Cortes v. Communications Test Design, Inc, et al.*; County of San Bernardino, Case No. CIVSB2108718;
- *Escriba v. Communications Test Design, Inc, et al.*; County of San Bernardino, Case No. CIVSB2115512; U.S.D.C., Central District of CA, Fed. Case No. 5-21-cv-01326-AB-KK

1 Larry W. Lee [CSB No. 228175]

2 *lwlee@diversitylaw.com*

3 Kristen M. Agnew [CSB No. 247656]

4 *agnew@diversitylaw.com*

5 Nicholas Rosenthal [CSB No. 268297]

6 *nrosenthal@diversitylaw.com*

7 DIVERSITY LAW GROUP, P.C.

8 515 S. Figueroa Street, Suite 1250

9 Los Angeles, CA 90071

10 Tel: (213) 488-6555 | Fax: (213) 488-6554

11 William L. Marder, Esq. [CSB No. 170131]

12 POLARIS LAW GROUP

13 501 San Benito Street, Suite 200

14 Hollister, CA 95023

15 Tel: (831) 531-4214 | Fax: (831) 634-0333

16 Attorneys for Plaintiff Jodie Blanton, Jr., and others similarly situated

17 David G. Spivak [CSB No. 179684]

18 *david@spivaklaw.com*

19 THE SPIVAK LAW FIRM

20 8605 Santa Monica Bl

21 PMB 42554

22 West Hollywood CA 90069

23 Tel: (213) 725-9094 | Fax: (213) 634-2485

24 Louis M. Benowitz [CSB 262300]

25 *louis@benowitzlaw.com*

26 BENOWITZ LAW CORPORATION

27 8605 Santa Monica Boulevard

28 PMB 97638

West Hollywood CA 90069

Tel: (818) 839-9610 | Fax: (818) 839-9610

Benjamin J. Smith [CSB 266712]

Benjy@thesmithlawcorp.com

SMITH LAW

4515 Van Nuys Bl

Ste 302

Sherman Oaks CA 91403-5799

Tel: (818) 839-9607 | Fax: (818) 839-9700

Attorneys for Plaintiff Gabriela Escriba, and others similarly situated

1 The Motion for Final Order Approving the Joint Stipulation and Settlement and Judgment (the
2 “Final Approval Motion”) and the Motion for Attorneys’ Fees and Costs of Plaintiffs Yazmin Cortes,
3 Jodie Blanton, Jr., and Gabriela Escriba (“Plaintiffs”) were concurrently heard on [REDACTED], before the
4 above-entitled court. The Final Approval Motion was unopposed by Communications Test Design,
5 Inc. (“Defendant”). Having considered the Final Approval Motion, the Settlement, the Motion for
6 Attorneys’ Fees and Costs, the Declarations, and all other materials properly before the Court and
7 having conducted an inquiry pursuant to California Rules of Court, rule 3.769(g), the Court finds that
8 the Settlement Agreement was entered by all parties in good faith, and the Settlement Agreement is
9 approved. Due and adequate notice having been given to the Class, and the Court having considered
10 the Settlement Agreement, all papers filed and proceedings had herein, and having reviewed the record
11 in this Litigation, and good cause appearing, IT IS HEREBY ORDERED, JUDGED, AND DECREED
12 AS FOLLOWS:

13 1. All terms used in this Final Approval Order shall have the same meanings given as
14 those terms are used and/or defined in the Parties’ Settlement Agreement.

15 2. The Court has jurisdiction over the subject matter.

16 3. The Court is satisfied that ILYM, which functioned as the Settlement Administrator,
17 completed the distribution of the Notices of Settlement to the Settlement Class Members in a manner
18 that comports with the requirements of California Code of Civil Procedure section 382, California
19 Civil Code section 1781, California Rules of Court 3.766 and 3.769, the California and United States
20 Constitutions, and other applicable law, and constitutes the best notice practicable under the
21 circumstances. The notice of Settlement informed the Settlement Class Members of the Settlement
22 terms, their rights to do nothing and receive their Individual Settlement Payment, their rights to submit
23 a Request for Exclusion, their rights to comment on or object to the Settlement, and their rights to
24 appear at the final approval hearing and be heard regarding approval of the Settlement. Adequate
25 periods of time to respond and to act were provided by each of these procedures. Based on evidence
26 and other material submitted, the actual notice to the class was adequate.

27 4. The Court finds that the instant action presented a good faith dispute of the claims
28 alleged, and the Court finds in favor of settlement approval.

1 5. Class Members submitted a request for exclusion, who include the following .

2 6. Class Members submitted an objection.

3 7. The Court approves the Settlement of the above-captioned action, as set forth in the
4 Settlement Agreement and each of the releases and other terms, as being entered into in good faith,
5 fair, just, reasonable, and adequate as to the settling Parties, the class and all interested. The Court
6 finds that the Settlement is the result of arms-length negotiations conducted after Class Counsel had
7 adequately investigated the claims and become familiar with the strengths and weaknesses of the
8 claims. The assistance of an experienced mediator in the Settlement process supports the Court's
9 conclusion that the Settlement is non-collusive.

10 8. The settlement of class-action related claims and settlement of claims under the Private
11 Attorney General Act ("PAGA") set forth in the Stipulation of Settlement between Plaintiff and
12 Defendant is approved as proper and within the range of a fair, reasonable and adequate settlement,
13 including pursuant to the requirements of Labor Code section 2699.3(b)(4).

14 9. The Settling Parties are to bear their own costs, except as otherwise provided in the
15 Settlement Agreement.

16 10. For settlement purposes only, the Court finally certifies the Class as defined in the
17 Parties' Settlement Agreement and as follows:

18 All current and former employees who worked at a CTDI Facility in California at any
19 time during the Class Period, including Direct Hires of CTDI and Temporary
20 Employees of a) Adecco, b) Horizon, c) ProDrivers, d) Protech Staffing, e) Randstad,
21 f) Transforce, and g) Volt ("Staffing Agencies") at any time from June 19, 2019 and
22 ending on August 7, 2022 (the "Class Period").

23 11. The Court deems these definitions sufficient for the purpose of California Rule of Court
24 3.765(a), and solely for the purpose of effectuating the Settlement. The Court also finds and concludes
25 that: (a) the Participating Class Members are ascertainable and so numerous that joinder of all members
26 is impracticable; (b) there are questions of law or fact common to the Participating Class Members,
27 and there is a well-defined community of interest among the Participating Class Members with respect
28 to the subject matter of the Action; (c) the claims of the Class Representatives are typical of the claims
of the Participating Class Members; (d) the Class Representatives have fairly and adequately protected

1 the interests of the Participating Class Members; (e) a class action is superior to other available
2 methods for an efficient adjudication of this controversy; and (f) the counsel of record for the Class
3 Representatives, *i.e.*, Class Counsel are qualified to serve as counsel for Plaintiffs in their individual
4 and representative capacity and for the Participating Class Members and for the PAGA claims, and
5 interests of the LWDA and Aggrieved Employees.

6 12. The Court appoints Plaintiffs Yazmin Cortes, Jodie Blanton, Jr., and Gabriela Escriba
7 as Class Representatives.

8 13. The Court finds Brian Mankin and Misty Lauby of Lauby Mankin Lauby LLP, Larry
9 Lee, Kristen Agnew and Nick Rosenthal of Diversity Law Group, P.C., David Spivak of The Spivak
10 Law Firm, Louis Benowitz of Benowitz Law Corporation, and Benjamin Smith of Smith Law to be
11 adequate Class Counsel.

12 14. Upon the Effective Date (the date of entry of this Order), the Class Representatives and
13 each of the Participating Class Members and Aggrieved Employees and LWDA shall be deemed to
14 have, and by operation of this Order and Judgment shall have, fully, finally, and forever released,
15 relinquished, and discharged the Settled Class Claims and Settled PAGA Claims, as defined in the
16 Settlement Agreement. Upon the Effective Date, all Settlement Class Members and Aggrieved
17 Employees and LWDA shall be and are hereby permanently barred and enjoined from the institution
18 or prosecution of any and all of the Settled Class Claims and Settled PAGA Claims as provided by the
19 terms of the Settlement.

20 15. Neither the Settlement, nor any act performed or document executed pursuant to or in
21 furtherance of the Settlement Agreement (i) is or may be deemed to be or may be used as an admission
22 of, or evidence of, the validity of any of the Settlement Class Members' Settled Class Claims, or of
23 any wrongdoing or liability of Defendant or any of the other Released Parties; or (ii) is or may be
24 deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendant
25 or any of the other Released Parties in any civil, criminal, or administrative proceeding in any court,
26 administrative agency, or other tribunal.

27 16. The Gross Settlement Amount to be funded under the Settlement Agreement is Two
28 Million Dollars and Zero Cents (\$2,000,000.00). From this amount, Class Counsel sought an award

1 of attorneys' fees of Seven Hundred Thousand Dollars and Zero Cents (\$700,000.00) and costs of
2 Thirty Thousand Dollars and No Cents (\$30,000.00), an enhancement and general release from each
3 of the class representatives Yazmin Cortes, Jodie Blanton, Jr., and Gabriela Escriba of Fifteen
4 Thousand Dollars and No Cents (\$15,000.00) to each class representative; and Settlement
5 Administration costs on behalf of [REDACTED] of \$[REDACTED]. Defendant does not oppose these requests.

6 17. The Court finds that the Amount to be funded is fair, reasonable, adequate, and awards
7 the payments set forth below from the Amount to be funded. The Court approves and orders the
8 following amounts be paid according to the terms of the Settlement Agreement:

- 9 a. \$700,000.00 to Class Counsel for attorneys' fees;
10 b. \$30,000.00 to Class Counsel for litigation costs/expense reimbursements;
11 \$15,000.00 each to class representatives Jodie Blanton Jr., Yazmin Cortes and Gabriela
12 Escriba as an enhancement and general release;
13 c. \$[REDACTED] to the Settlement Administrator ILYM; and
14 d. PAGA Payment to the LWDA of \$200,000 (broken out as 75% of the \$200,000 or
15 \$150,000 in PAGA penalties recovered under the settlement to the LWDA and 25% or
16 \$50,000 to the Aggrieved Employees).
17 e. After deducing the foregoing payments from the Gross Settlement Amount, the
18 remainder of \$[REDACTED] shall form the Net Settlement Amount payable to the
19 Participating Class Members and shall be distributed as set forth in and in accordance
20 with the Settlement Agreement and as set forth in Settlement Agreement.

21 18. The Court approves the Settlement pursuant to the PAGA, including Labor Code
22 section 2699(1)(2) and orders that the PAGA Payment be distributed according to the Agreement.

23 19. The Court orders any unclaimed amounts be sent to the California State Controller's
24 Office in the name of the Settlement Class Member or Aggrieved Employee, pursuant to the terms of
25 the Settlement.

26 20. The Court shall hold a compliance hearing on [REDACTED], at [REDACTED] a.m. in Department
27 ____ unless the Court decides to amend the judgment via stipulation to facilitate the distribution of
28 funds under Code of Civ. Proc. section 384.

1 21. Upon entry of this Order and judgment, compensation to the Settlement Class shall be
2 effected pursuant to the terms of the Settlement.

3 22. This Judgment is intended to be a final disposition of the class action and representative
4 claims in the above-captioned action, and is intended to be immediately applicable.

5 23. This document shall constitute a Judgment for purposes of California Rule of Court
6 3.769(h). The Court reserves exclusive and continuing jurisdiction over the Action, the Class
7 Representatives, the Class Members, and Defendants for purposes of supervising the implementation,
8 enforcement, construction, administration, and interpretation of the Settlement Agreement and this
9 Judgment.

10
11 Date: _____

HON. ROBERT T. WATERS

12
13
14 4853-3589-3824.2 / 071850-1063
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “B”

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

Blanton et al. v. Communications Test Design, Inc.
Superior Court of the State of California, County of San Joaquin
Case No. STK-CV-VOE-2021-5136

To: all current and former non-exempt employees who worked at a CTDI Facility in California at any time between June 19, 2019, and August 7, 2022, including Direct Hires of CTDI and Temporary Employees (the “Class”):

As used herein, “Direct Hires” refers to individuals hired directly by CTDI and employed to work at a CTDI Facility, whereas “Temporary Employees” refers to individuals who were employed by a Staffing Agency and assigned to work at a CTDI Facility in California. Both Direct Hires and Temporary Employees who worked at a CTDI Facility in California between June 19, 2019 and August 7, 2022 (the “Class Period”) are included in this Settlement and collectively referred to as “Class Members.”

THIS NOTICE is of a proposed settlement of a class action and representative lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on [REDACTED], 2023, to address whether the proposed settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

You have been identified as a Class Member and Aggrieved Employee in the above lawsuit. Under the terms of the proposed settlement, you are estimated to receive approximately **\$INSERT AMOUNT** as your share of the Settlement should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share may be more or less than this estimate. Your estimate is based on the number of Weeks Worked by you at a CTDI Facility in California during the Class Period. Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section IV.
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion from the Settlement Class by [REDACTED], 2023 (see Section V for more details on how to opt-out). If you opt-out of the settlement of the Class Claims, you will no longer be a Class Member, and you will (1) <u>not</u> receive any settlement payment for the Class Claims, but you will preserve your right to pursue the Settled Class Claims described in Section IV subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You still will receive a payment as part of the civil penalties paid pursuant to the California Private Attorneys General Act of 2004 (“PAGA”) and will release your claims for such civil penalties.
OBJECT	If you decide to object to the settlement with respect to the Settled Class Claims because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement by [REDACTED], 2023 (see Section V for more details on how to object).
DISPUTE YOUR NUMBER OF PAY PERIODS CREDITED	If you believe the number of weeks that you were credited with working during the Class Period is incorrect, you may submit a written dispute to the Settlement Administrator (see Section IV for more details on how to dispute your credited weeks). CTDI’s records will be presumed correct, but you may provide evidence to the Settlement Administrator showing that the Weeks Worked calculation is inaccurate.

I. Why did I get this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Blanton v. Communications Test Design, Inc., et al.*, San Joaquin County Superior Court Case No. STK-CV-VOE-2021-5136 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You received this notice because the records show that you were employed and worked at a CTDI Facility, either as a Direct Hire or Temporary Employee, as a non-exempt employee (meaning you were paid hourly or otherwise eligible for overtime pay) at some point between June 19, 2019, and August 7, 2022 (“Class Period”). The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you meet the definition of a Class Member and received this Notice, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

Three Plaintiffs/Class Representatives (who are current and former employees of CTDI and Staffing Agencies) filed class and representative action lawsuits against CTDI on behalf of the Class Members. All of the Plaintiffs joined forces and agreed to combine their actions into one action. To that end, a Consolidated Complaint was filed on about [REDACTED], 2022, combining all three cases into one case (which will be referred to as the “Action” or “Lawsuit”). The pending Action alleges the following Class Claims against CTDI on behalf of the Class Members: (a) failure to pay minimum wages, regular wages and/or overtime pay (including any theory of failure to pay any and all wages for all time worked or earned); (b) failure to provide or pay premium payments for meal periods; (c) failure to provide or pay premium payments for rest periods; (d) failure to reimburse business expenses; (e) failure to provide complete and accurate wage statements; (f) failure to pay wages upon termination; (f) violations of the California Business & Professions Code §§ 17200 *et seq.* (g) failure to provide, pay, and/or post sick pay at the appropriate rate of pay, and (h) reimbursement of business expenses (the “Class Claims”). The Lawsuit also sought civil penalties on behalf of the California Labor Workforce Development Agency (“LWDA”). The civil penalty claims are called “PAGA Claims” and the relevant period for PAGA Claims is March 19, 2020, to August 7, 2022 (“PAGA Period”).

CTDI has denied, and continues to deny, the factual and legal allegations in the Lawsuit and believes that it has valid defenses to Plaintiffs’ claims. By agreeing to settle, CTDI is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action and/or a representative action. CTDI has agreed to settle the case as part of a compromise with Plaintiffs and the Class Members.

The Court has not ruled on the merits of Plaintiffs’ claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, CTDI and Plaintiffs have concluded that it is in their respective best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. After providing extensive information to Class Counsel, the Settlement was reached following an arm’s length mediation with a respected and experienced mediator, who is also a retired judge. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

The Class Representatives and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to CTDI, the risk of denial of class certification or representative status, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed as a Direct Hire or Temporary Employee, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, CTDI will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member's participation or decision not to participate in this Settlement. If a Class Member does not participate as to the Class Claims, his/her share of the settlement of the Class Claims will be paid to those who do participate.

III. Who are the Relevant attorneys?

<u>Attorneys for the Class Members</u> <u>("Class Counsel"):</u>	<u>Attorneys for CTDI:</u>
Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Misty Lauby, Esq. <i>misty@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444 David Spivak <i>david@spivaklaw.com</i> The Spivak Law Firm 8605 Santa Monica Bl PMB 42554 West Hollywood CA 90069 Tel: (213) 725-9094 Larry Lee <i>lwlee@diversitylaw.com</i> Nicholas Rosenthal <i>nrosenthal@diversitylaw.com</i> Diversity Law Group, P.C. 515 S. Figueroa Street, Suite 1250 Los Angeles, CA 90071 Tel: (213) 488-6555	James Hart Leah Peterson Littler Mendelson P.C. 18565 Jamboree Road, Suite 800 Irvine, California 92612 Tel: (949) 705-3000

IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all current and former non-exempt employees who worked at a CTDI Facility in California at any time during the Class Period, including Direct Hires and Temporary Employees (the "Settlement Class" or "Class Members") and approved a representative class of all current and former non-exempt employees who worked at a CTDI Facility in California at any time during the PAGA Period, including Direct Hires of CTDI and Temporary Employees ("Aggrieved Employees"). Class Members who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, will become "Participating Class Members" and will be mailed Settlement checks, and in exchange will be bound by the Settlement and release of certain wage and penalty claims against CTDI.

Without admitting any wrongdoing, CTDI has agreed to pay \$2,000,000 (the "Gross Settlement Amount") to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Gross Settlement Amount:

Settlement Administration Costs. The Court has approved **XX** to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, approximately **\$XX** will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

Penalties to the California Labor Workforce and Development Agency. The Labor Code Private Attorneys General Act ("PAGA") authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other PAGA Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$200,000 of the Gross

Settlement Amount will be allocated to Plaintiffs' PAGA Claims. Of this amount, \$150,000 will be paid to the LWDA in satisfaction of the claims for civil penalties under PAGA, and the remaining \$50,000 will be divided between all Aggrieved Employees based on the number of weeks worked during the PAGA Period, regardless of their receipt of payments for settlement of the Class Claims. You do not have the right to opt-out or exclude yourself from receiving the civil penalties paid to pursuant to PAGA. Aggrieved Employees includes "all current and former non-exempt employees who worked at a CTDI Facility in California at any time during the PAGA Period, including Direct Hires of CTDI and Temporary Employees." Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$50,000 allocation:

Do you Qualify as an Aggrieved Employee?	Weeks Worked as an Aggrieved Employee	Your Share of PAGA Penalties
YES/NO	INSERT	\$INSERT

Service Payment to Class Representatives. Class Counsel will ask the Court to award the Class Representatives a Service Payment to compensate them for their service and extra work provided on behalf of the Class Members and in exchange for a general release of claims totaling \$15,000 each to Yazmin Cortes, Jodie Blanton, Jr., and Gabriela Escriba. The Class Representatives also will receive their individual share of the Settlement as Class Members.

Attorneys' Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or costs. Class Counsel will ask for fees of 35 percent of the common fund Gross Settlement Amount (which is \$700,000) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$30,000 for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above from the Gross Settlement Amount, the balance will form the Net Settlement Amount for distribution to Participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately \$. Individual Settlement Payments to Class Members will be calculated and apportioned from the Net Settlement Amount based on the number of weeks a Class Member is credited with working during the Class Period. A Class Member is credited with one Week Worked each time the Class Member works at least one shift in a week as a Direct Hire or Temporary Employee in a CTDI Facility in California. Specific calculations of Individual Settlement Payments will be made as follows: the Settlement Administrator will divide the total Weeks Worked by all Settlement Class Members into the Net Settlement Amount to determine a per "Workweek Value." The Workweek Value will be multiplied by the number of Weeks Worked by each Settlement Class Member during the Class Period to determine the Individual Settlement Payment, prior to legal deductions/withholdings, for each Class Member. If any Class Member opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members (i.e., those who do not opt-out).

Weeks Worked as a Class Member During the Class Period	Your Share of the Net Settlement Amount
INSERT	\$INSERT

Disputes to Pay Periods Credited. For each Settlement Class Member, the Weeks Worked at a CTDI Facility during the Class Period will be calculated from available records. These records indicate that you worked for **[TOTAL WEEKS]** **Work Weeks** at a CTDI Facility during the Class Period. If you disagree with this number, you may submit evidence to the Settlement Administrator on or before , 2023, with documentation to establish the number of eligible Workweeks you claim to have actually worked at a CTDI Facility in California between June 19, 2019, and August 7, 2022. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINSTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Settlement Administrator will render a final decision.

Payments to Class Members. After the Court grants Final Approval of the Settlement and after Judgment is entered, settlement checks will be mailed to all Participating Class Members who did not timely request to be excluded. For those Aggrieved Employees who requested to be excluded from the settlement of the Class Claims, their settlement checks will be for their share of PAGA civil penalties only for release of the PAGA Claims, and they will not include any payment for settlement of the Class Claims. Participating Class Members and Aggrieved Employees will have 180 days from the

issuance of the last check to cash all of the checks. In the event that any Participating Class Member or Aggrieved Employee fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller's Office in the name of the Participating Class Member or Aggrieved Employee, so that the Participating Class Member or Aggrieved Employee can attempt to collect the funds at a later date.

Allocation and Taxes. One-third (33.33%) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining two-thirds (66.67%) will be considered and reported as interest and penalties (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, the payments will be reported on IRS Form 1099 as income. Payments for PAGA Claims shall be paid one hundred percent (100%) as civil penalties for which no taxes shall be withheld and for which payment will be reported on IRS Form 1099. Participating Class Members and Aggrieved Employees are responsible for the proper income tax treatment of the Individual Settlement Payments and their payments for PAGA Claims. The Settlement Administrator, CTDI and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments or payments for PAGA Claims. Participating Class Members and Aggrieved Employees will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments or payments for PAGA Claims. Accordingly, Participating Class Members and Aggrieved Employees should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release of Class Claims (aka the "Settled Class Claims"). Once the Court approves the proposed Settlement and enters Judgment, and CTDI funds the Settlement, then the Settlement Agreement will bind all Class Members who have not opted out of the Settlement and will bar them from bringing the Class Claims against Defendant CTDI and the Released Parties (defined below). Specifically, the Participating Class Members will fully release and discharge the Released Parties of any and all causes of action and claims, charges, complaints, liens, demands that were alleged in the Consolidated Complaint or reasonably could have been alleged based on the allegations, the facts, statutory citation and/or legal theories contained in the Consolidated Complaint, including all of the following claims for relief: (a) failure to pay minimum wages, regular wages and/or overtime pay (including any theory of failure to pay any and all wages for all time worked or earned); (b) failure to provide or pay premium payments for meal periods; (c) failure to provide or pay premium payments for rest periods; (d) failure to reimburse business expenses; (e) failure to provide complete and accurate wage statements; (f) failure to pay wages upon termination; (g) violations of the California Business & Professions Code §§ 17200 *et seq.* (h) failure to provide, pay, and/or post sick pay at the appropriate rate of pay, and (i) reimbursement of business expenses. These claims include, but are not limited to, California Labor Code sections 201, 202, 203, 226, 226.7, 227.3, 246, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802 and all related provisions of the California Code of Regulations, the California Industrial Wage Orders, the California Business & Professions Code sections 17200 *et seq.* The release of the foregoing claims, extends to all theories of relief regardless of whether the claim is, was or could have been alleged as separate claims, causes of action, lawsuits or based on other theories of relief, or different right or duty of an alleged statute, whether under federal law, state law or common law (including, without limitation, as violations of the California Labor Code, the Wage Orders, applicable regulations, and California's Business and Professions Code section 17200). "Settled Class Claims" includes all types of relief available for the above-referenced claims, including, without limitation, any claims for damages, restitution, losses, penalties, fines, liens, attorneys' fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated damages. The time period governing these Settled Class Claims shall be at any time from June 19, 2019, through August 7, 2022 ("Class Period").

Release of PAGA Claims (aka the "Settled PAGA Claims"). Also upon the Court's approval of the Settlement, entry of Judgment, and Communications Test Design, Inc.'s funding of the Settlement Amount, the Settlement Agreement will bind the LWDA, Plaintiff, and all Aggrieved Employees, and will bar them from bringing PAGA claims against CTDI and the Released Parties based on the facts stated in the Consolidated Complaint and in Plaintiffs' notice letters to the LWDA (including any amendments thereto), or reasonably could have been alleged based on the allegations, the facts, statutory citation and/or legal theories under the PAGA contained in the Consolidated Complaint, including all of the following claims for relief: (a) failure to pay minimum wages, regular wages and/or overtime pay (including any theory of failure to pay any and all wages for all time worked or earned); (b) failure to provide or pay premium payments for meal periods; (c) failure to provide or pay premium payments for rest periods; (d) failure to reimburse business expenses; (e) failure to provide complete and accurate wage statements; (f) failure to timely pay each week; (g) failure to pay wages upon termination; (h) failure to provide safe and healthful working conditions, (i) failure to provide, pay, and/or post sick pay at the appropriate rate of pay, and (j) reimbursement of business expenses. These claims include, but are not limited to, California Labor Code sections 201, 202, 203, 204, 226, 226.7, 227.3, 246, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802 and all related provisions of the California Code of Regulations, and the California Industrial Wage Orders. The

time period governing the Settled PAGA Claims shall be any time during the PAGA Period. The Settled PAGA Claims do not release any potential claims for wages or statutory penalties.

Released Parties. “Released Parties” means Defendant CTDI and its affiliated companies, parents, members, subsidiaries, related companies and business concerns, past and present, including their predecessors and successors, and each of them, as well as each of their insurers, partners, trustees, directors, owners, shareholders, officers, agents, attorneys, servants, joint employers and employees, temporary service providers and Staffing Agencies employing Temporary Employees, past and present, and each of them and anyone acting in concert with foregoing.

Waiver of Labor Code Section 206.5(e). Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. That section provides in pertinent part as follows:

“No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.”

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. What options do I have?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive an Individual Settlement Payment unless you exclude yourself from the settlement by following the opt-out procedure set forth below. If you disagree with the number of Weeks Worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described above. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Payment.

If you are a current employee, your decision as to whether or not to participate in this Settlement will not be considered by Communications Test Design, Inc., who will not take any adverse employment action against you based on your participation in the Settlement.

- B. **Exclude Yourself from the Class Claims in the Settlement.** If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion from the Class Claims in the Class Action Settlement” letter/card postmarked no later than [REDACTED], 2023 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE CTDI LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator, [ADDRESS], postmarked no later than [REDACTED], 2023. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement with respect to the Class Claims, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any money for the Class Claims under this Settlement; and (3) will not be bound by this Settlement, or the Judgment, with respect to the Class Claims. You still will be bound by this Settlement with respect to the release of the PAGA Claims.

- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement with respect to the Class Claims if you believe they are unfair or unreasonable. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Class Claims portion of the Settlement, you must submit a written objection stating your full name, address, telephone number, dates of employment at

Communications Test Design, Inc., the case name and number, the name and address of your attorney(s) if you are represented, each specific reason in support of your objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed to the Settlement Administrator, [ADDRESS], by no later than [REDACTED], 2023. Objections that do not include all required information, or that are not submitted timely, may not be considered by the Court. **You need not object to the Settlement if you only dispute the number of Weeks Worked.**

If you choose to object to the Class Claims portion of the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2023, at [REDACTED] a.m. in Department [REDACTED] of the San Joaquin County Superior Court, located at [REDACTED]. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [REDACTED], 2023. All objections or other correspondence must state the name and number of the case. If you wish to appear at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment. If you submit an objection and a request for exclusion (opt out request), the objection will be ignored and request for exclusion will be operative.

VI. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by Communications Test Design, Inc. or worked as a temporary worker and were placed at Communications Test Design, Inc. in California at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the Settled Class Claims (described above in section IV above). All Aggrieved Employees will be deemed to have entered into a release of the Settled PAGA Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue and the releases will not take effect and payments will not be made.

VII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, and Class Counsel's request for attorneys' fees and reimbursement of documented litigation costs and the Service Payment to the Class Representatives on [REDACTED], 2022 at [REDACTED] a.m. in Department [REDACTED] of the San Joaquin County Superior Court, located at [REDACTED].

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

VIII. How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Class Action Settlement Agreement at Office of the Clerk, San Joaquin County Superior Court, [REDACTED], during regular court hours. You may also contact Class Counsel or the Settlement Administrator using the contact information listed above for more information.

IX. Reminder as to time limits.

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion from the Settled Class Claims is [REDACTED], 2023. The deadline for mailing an objection to the Settlement Administrator is [REDACTED], 2023. These deadlines will be strictly enforced.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

EXHIBIT “C”



LAUBY, MANKIN & LAUBY LLP

March 5, 2021

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Communications Test Design, Inc.
1373 Enterprise Drive
West Chester, PA 19380

CSC – Lawyers Incorporating Service
Agent of Service for Communications Test Design, Inc.
2710 Gateway Oaks Drive, Ste. 150N
Sacramento, CA 95833

Re: Wage/Hour and Penalty Claims of Yazmin Cortes v. Communications Test Design, Inc.

To the Labor and Workforce Development Agency, Communications Test Design, Inc., and/or any affiliated entities:

Pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s), this letter shall serve as the wage/hour and penalties claim of aggrieved employee Yazmin Cortes (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against her employer(s) Communications Test Design, Inc. and/or any affiliated entities (collectively the “Company”).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately February 2019 through the present. Claimant alleges that, at all relevant times, she and all other employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during her employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours

worked. Additionally, at all relevant times, the Company utilized a rounding policy and practice that routinely undercompensated Claimant and resulted in a net benefit to the Company and a net loss for Claimant.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, Claimant was subjected to meal period violations when Claimant was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period on occasions for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks and Claimant was often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by the hectic workload. Additionally, Claimant was often not permitted to leave the premises for his rest breaks, in violation of California law. Also, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

Furthermore, at all relevant times, the Company had a policy whereby Claimant and the Aggrieved Employees accrued vacation and/or paid time off. Pursuant to Labor Code § 227.3, an employer is required to pay a departing employee for all vested vacation and/or paid time off at his final rate of pay. However, upon Claimant's separation of employment, the Company failed to pay Claimant for his vested but unused vacation in compliance with § 227.3.

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company via phone and text message.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, and meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Moreover, at all relevant times, the Company provided inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Moreover, Plaintiff and Aggrieved Employees were forced to work in unsafe conditions cleaning and refurbishing cables that arrive covered in debris and unknown substances. Additionally, chemical disinfectants were regularly sprayed in the work area. At all relevant times, the Company failed to provide the necessary and properly fitting PPE to the employees to protect them from such hazards in violation of Labor Code §§ 6400-6403.

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

///

///

///

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

Claimant and the Aggrieved Employees were not paid all minimum, regular wages, and/or overtime wages for time spent subject to the control of the Company, including instances of underpayment due to the illegal rounding policy and the failure to accurately record hours worked. Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. For example, the Company required Claimant and the Aggrieved Employees to acquire and maintain a smart phone and related monthly data plan to communicate with the Company via phone and text message. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802. Furthermore, Labor Code § 2802(b) states that “[a]ll awards made by a Court for

reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in civil actions, and said interest will accrue from the date on which the employee incurred the necessary expenditure or loss including, but not limited to, reasonable costs and attorney’s fees incurred by the employee enforcing her rights granted pursuant to Labor Code § 2802.

**PAGA ASSESSMENT FOR FAILURE TO PAY VESTED VACATION / PAID TIME OFF UPON AN
EMPLOYEE’S SEPARATION FROM EMPLOYMENT**
(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon termination, pay to the employee all vested, but unused, vacation and/or paid time off at his or her final rate of pay. Here, the Company failed to pay all vested and unused vacation/PTO to Claimant and the Aggrieved Employees upon separation of employment, in direct violation of Labor Code § 227.3. Labor Code § 2699 imposes civil penalties for such violations and the penalties specific in Labor Code §§ 203 and 256 also apply for the failure to pay all wages due and owing upon separation of employment.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**
(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimant and all Aggrieved Employees due to the failure to state the start period date, the overtime rate of pay on its wage statements, as well as the failure to state the applicable rate of pay for work. In addition, Defendant violated Labor Code § 226(a) due to the: failure to accurately state gross wages earned; failure to accurately state total hours worked; failure to accurately state all deductions; failure to state the start and end date of the pay period; failure to accurately state net wages earned; failure to state the name and address of the legal entity that is the employer; and failure to accurately state the corresponding number of hours worked at each hourly rate. Accordingly, Claimant is entitled to damages under Labor Code § 226(e), including reasonable attorneys’ fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**
(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company's failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to

Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202(a) states in pertinent part "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours' previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Labor Code § 203(a) states "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a "waiting time penalty." (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE SAFE AND HEALTHFUL WORKING
CONDITIONS**

(Labor Code § 6400-6403)

Labor Code § 6400(a) requires "[e]very employer to furnish employment and a place of employment that is safe and healthful for the employees therein. Labor Code § 6401 requires that "[e]very employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees." Labor Code § 6402 states that, "[n]o employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful." Further, Labor Code § 6403 imposes a duty on employer, "(a) [t]o provide and use safety devices, and safeguards reasonably adequate to render the employment and place of employment safe; (b) [t]o adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and (c) [t]o do every other thing reasonably necessary to protect the life, safety, and health of employees."

As set forth above, the Company did not furnish employment and a place of employment safe and healthful and failed to provide necessary safety devices to render the place of employment safe in accordance with Labor Code §§ 6400-6403. As a result of violations described herein, the Company is subject to civil penalties in accordance with Labor Code § 2699.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimant seeks the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimant is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimant's notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to her employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Sincerely,



By: Misty M. Lauby, Esq.

E-mail: Misty@LMLfirm.com

EXHIBIT “D”

Case Name: Escriba v. Communications Test Design, Inc.

Tuesday, August 23, 2022

Requesting Law Firm
Law Firm Contact
E-Mail Address
ILYM Contact
E-Mail Address
Contact Number

The Spivak Law Firm
Emily HOUNG Ly
emily@spivaklaw.com
Sean Hartranft
Sean@ilymgroupclassaction.com
949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

Opt-Out

ASSUMPTIONS	
Total Number of Class Members	3,500
Estimated Percentage of Undeliverable Mail	20%
NCOA	Yes
One-Page Notice Posted to ILYM Group Website	Yes
Certified Spanish Translations	Yes

Activity	Rate Type	Unit Cost	Volume	Amount
----------	-----------	-----------	--------	--------

CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	6	\$900.00
Programming of Class Database	Hourly	\$175.00	6	\$1,050.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$1,950.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	12	\$1,440.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	\$70.00	6	\$420.00
Staff Hours for Processing Returned Mailed	Hourly	\$70.00	3	\$210.00
Report Processing	Hourly	\$70.00	10	\$700.00
NCOA	Per Piece	\$350.00	1	\$350.00
Toll-Free Call Center	Flat Fee	\$475.00	1	\$475.00
ILYM Group Static Website, Includes Hosting	Flat Fee	\$750.00	1	\$750.00
Certified Spanish Translation	Flat Fee	\$1,250.00	1	\$1,250.00
Weekly Reports	Flat Fee	\$500.00	1	Waived

Subtotal \$5,595.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
----------	-----------	-----------	--------	--------

NOTIFICATION/MAILING

Fulfillment Notice, English & Spanish	Per Piece	\$1.50	3,500	\$5,250.00
USPS First Class Postage	Per Piece	\$0.50	3,500	\$1,750.00
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	700	\$1,400.00
Storage, Photocopies, Deliveries	Flat Fee	\$300.00	1	\$300.00

Subtotal \$8,700.00

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)

Distribution Setup & Management	Hourly	\$150.00	10	\$1,500.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	10	\$1,250.00
Check, Print & Mail (Including W2/1099 Stub & Release)	Per Check	\$1.25	3,500	\$4,375.00
USPS First Class Postage	Per Piece	\$0.50	3,500	\$1,750.00
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	700	\$1,400.00
Reminder Postcard, Includes Postage	Per Piece	\$1.00	1050	\$1,050.00
Preparation of Taxes	Hourly	\$120.00	20	\$2,400.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

***Additional Bank fees may apply*

Subtotal \$15,225.00

CASE CONCLUSION

Data Manager Final Reporting	Hourly	\$100.00	9	\$900.00
Project Manager Final Reporting	Hourly	\$120.00	9	\$1,080.00
Process Unclaimed Funds to State Controller's Office	Flat Fee	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	4	\$500.00

Subtotal \$3,230.00

Total Case Estimate: \$34,700.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT “E”