

CLASS, COLLECTIVE, AND REPRESENTATIVE SETTLEMENT
AGREEMENT AND CLASS NOTICE

This Class, Collective, and Representative Action Settlement Agreement (“Agreement”) is made by and between plaintiff Dinesha White, (“Plaintiff”) and defendant Wing Pros, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1 “Action.” The case titled Dinesha White v. Wing Pros, Inc., et al., Sacramento Superior Court, No. 34-2021-00303521, filed on July 2, 2021, and includes any amended complaints. The Parties will stipulate to amend the complaint to include class claims.

1.2 “Aggrieved Employee.” All current and former non-exempt employees of Defendant who worked in the State of California at any time during the PAGA Period.

1.3 “Attorneys’ Fees and Costs.” The Attorneys’ Fees agreed upon by the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Action, and all costs incurred and to be incurred by Class Counsel in the Action, including, but not limited to, costs associated with documenting the Settlement, securing the Court’s approval of the Settlement, amending the complaint, any expert expenses, and securing an entry of Judgment on all claims in the Action which are covered by the Released Claims as defined herein. Class Counsel will request Attorneys’ Fees not to exceed 35% of the Class Settlement Amount of Two Hundred Thirty-Five Thousand Dollars and Zero Cents (\$235,000.00), which is estimated to be a total of Eighty-Two Thousand Two Hundred Fifty Dollars and Zero Cents (\$82,250.00). The Costs requested to be reimbursed will not exceed Seventeen Thousand Dollars and Zero Cents (\$17,000.00). The Attorneys’ Fees and Costs awarded are subject to the Court’s approval. Defendant has agreed not to oppose Class Counsel’s request for Attorneys’ Fees and Costs as set forth above. Such Attorneys’ Fees and Costs shall be paid from the Class Settlement Amount. Class Counsel will be issued an IRS Form 1099 for the Attorneys’ Fees and Costs detailed in this Section and shall be solely and legally responsible for paying all applicable taxes on the payment made pursuant to this Section. A reduction in the Attorneys’ Fees and/or Costs shall not be grounds to nullify this Agreement.

1.4 “Claims Administrator.” Phoenix Class Action Administration Solutions, the neutral entity the Parties have agreed to appoint to administer the Settlement. The Parties each represent that they do not have any financial interest in the Claims Administrator or otherwise have a relationship with the Claims Administrator that could create a conflict of interest.

1.5 “Claims Administration Costs.” The costs payable from the Class Settlement Amount to the Claims Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, calculating estimated amounts per Class Member, tax reporting, distributing the Class Settlement Amount, and providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement Agreement, and as requested by the Parties. The Claims Administration Costs will be paid from the Class Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Claims Administrator as being the maximum costs necessary to administer the Settlement. The Claims Administration Costs are currently estimated to be no more than Ten Thousand Dollars and Zero Cents (\$10,000.00). To the extent actual Claims Administration Costs exceed this amount, such excess amount will be deducted from the Class Settlement Amount, subject to the Court’s approval. The Claims Administration Costs will be paid no sooner than fifteen (15) calendar days following the Effective Date.

1.6 “Class Counsel” means Gaines & Gaines, APLC on behalf of Plaintiff and Class Members.

1.7 “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.

1.8 “Class Member(s)” or “Settlement Class.” All current and former non-exempt employees of Defendant who worked in the State of California at any time during the Class Period, of which there were approximately 337 at the time of the Parties’ mediation. This includes either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.9 “Class Member Address Search.” The Claims Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Claims Administrator with Class Members.

1.10 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.11 “Class Period” means the period beginning November 4, 2018, and continuing through to and including August 31, 2022, unless modified pursuant to paragraph 4.1 of this Agreement (the “Class Period End Date”).

1.12 “Class Representative.” The named Plaintiff, Dinesha White, in the Action seeking Court approval to serve as Class Representative.

1.13 “Class Representative Enhancement Payment.” The amount to be paid to Plaintiff in recognition of Plaintiff’s effort and work in prosecuting the Action on behalf of Class Members and for Plaintiff’s general release of all claims. Subject to the Court granting Final Approval of this Settlement Agreement, Plaintiff will request Court approval of a Class Representative Enhancement Payment of Ten Thousand Dollars and Zero Cents (\$10,000.00). Defendant will not oppose this request. Plaintiff will be issued an IRS Form 1099 in connection with Plaintiff’s Class Representative Enhancement Payment. Plaintiff shall be solely and legally responsible for paying any and all applicable taxes on these payments and shall hold Defendant harmless from any claim or liability for taxes, penalties or interest arising as a result of the payments. The Class Representative Enhancement Payment will be paid from the Class Settlement Amount and will be in addition to Plaintiff’s Individual Settlement Payment paid pursuant to the Settlement. Defendant made no representations as to the tax treatment or legal effect of the payment called for herein, and Plaintiff is not relying on any statement or representation by Defendant or Defendant’s counsel in this regard.

1.14 “Class Settlement Amount” or “Gross Settlement Amount.” The sum of Two Hundred Thirty-Five Thousand Dollars and Zero Cents (\$235,000.00), no more and no less, to be paid by Defendant in connection with this Agreement. The Class Settlement Amount includes all Individual Settlement Payments to Class Members, Individual PAGA Settlement Payments to Aggrieved Employees, the Class Representative Enhancement Payment to Plaintiff, Claims Administration Costs to the Claims Administrator, the LWDA Payment, and the Attorneys’ Fees and Costs to Class Counsel. Defendant will be responsible for any employer payroll taxes required by law, separate and in addition to the Class Settlement Amount, including the employer FICA, FUTA, and SDI contributions on the wage portion of the Individual Settlement Payments.

1.15 “Court” means the Superior Court of California, County of Sacramento.

1.16 “Defense Counsel” means Clark Hill LLP on behalf of Defendant.

1.17 “Effective Date.” The date on which the Judgment and order granting Final Approval become final. For purposes of this Section, the Judgment and order granting Final Approval “becomes final” only after the Court grants the Motion for Final Approval and upon service of the Notice of Entry of Order and/or Judgment, and upon the latter of: (i) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Order Granting Final Approval and/or Judgment (this time period shall not be less than sixty (60) calendar days after the Court’s Order is entered); (ii) the date of affirmance of an appeal of the Order Granting Final Approval and/or Judgment becomes final under the California Rules of Court; or (iii) the date of final dismissal of any appeal from the Order Granting Final Approval and/or Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Order Granting Final Approval and/or Judgment.

1.18 “Final Approval.” The Court’s order granting final approval of the Settlement.

1.19 “Final Approval Hearing.” The Court’s hearing on the Motion for Final Approval of the Settlement.

1.20 “Judgment.” The Judgment Entered by the Court upon granting Final Approval of the Settlement.

1.21 “Individual Class Payment.” The Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.22 “Individual PAGA Payment.” The Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.

1.23 “LWDA.” The California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.24 “LWDA PAGA Payment.” The 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.25 “Net Settlement Amount.” The Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.26 “Non-Participating Class Member.” Any Class Member who opts out of the Settlement by sending the Claims Administrator a valid and timely Request for Exclusion. Such Class Member shall still be bound by the PAGA Release.

1.27 “PAGA.” The Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

1.28 “PAGA Pay Period.” Any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.29 “PAGA Period.” The period from April 28, 2020, and continuing through to and including the Class Period End Date.

1.30 “PAGA Notice.” Plaintiff’s letter to Defendant and the LWDA, dated April 28, 2021, providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.31 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (Five Thousand Dollars and Zero Cents (\$5,000.00)), and the 75% to LWDA (Fifteen Thousand Dollars and Zero Cents (\$15,000.00)), in settlement of PAGA claims.

1.32 “Participating Class Member.” Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.33 “Plaintiff.” Dinesha White, the named plaintiff in the Action.

1.34 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.35 “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

1.36 “Released Class Claims” means the claims being released as described in Paragraph 5.3 below.

1.37 “Released PAGA Claims” means the claims being released as described in Paragraph 5.2 below.

1.38 “Released Parties” means Defendant and its past, present, and future parents, subsidiaries, affiliated companies, agents, managing agents, employees, servants, officers, directors, owners (whether direct or indirect), general partners, limited partners, trustees, representatives, shareholders, stockholders, members, mortgagees or ground lessors, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, potential and/or alleged joint employers, temporary staffing agencies, dual employers, potential and/or alleged dual employers, co-employers, potential and/or alleged co-employers, common law employers, contractors, affiliates, service providers, alter-egos, potential and/or alleged alter-egos, vendors, affiliated organizations, any person and/or entity with potential or alleged to have joint liability, and all of their respective past, present and future employees, directors, officers, members, owners, agents, representatives, payroll agencies, attorneys, stockholders, fiduciaries, parents, subsidiaries, other service providers, and assigns and any and all persons and/or entities acting under, by, through or in concert with any of them.

1.39 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.40 “Response Deadline” means sixty (60) calendar days after the Claims Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Claims Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline has expired.

1.41 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.42 “Workweek” means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

2.1 Plaintiff is alleged to be a former employee of Defendant.

2.2 On July 2, 2021, Plaintiff commenced the lawsuit Dinesha White v. Wing Pros, Inc., et al., Sacramento Superior Court, Case No. 34-2021-00303521, alleging causes of action against Wing Pros, Inc. for PAGA penalties pursuant to California Labor Code §§ 2698, et seq. Defendant denies the allegations in the operative Complaint, denies any failure to comply with the laws identified in the operative Complaint and denies any and all liability for the causes of action alleged.

2.3 Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave written notice to Defendant and the LWDA by sending the PAGA Notice on April 28, 2021 alleging Defendant’s violation of the following California Labor Code provisions: §§ 201-202, 226, 226.3, 226.7, 246, 351, 510, 512, 558, 1194, 1198, 2698, et seq., and 2699, the California Healthy Workplaces/Healthy Family Act of 2014, and IWC Wage Orders regarding an alleged: failure to pay for all hours worked, including overtime; failure to provide meal periods; failure to authorize and permit rest periods; failure to provide suitable seating; failure to maintain accurate records of hours worked and meal periods; failure to provide tips; failure to provide paid sick leave, failure to timely pay all wages at termination; and failure to furnish accurate itemized wage statements.

2.4 On November 3, 2022, the Parties participated in an all-day mediation presided over by Eve Wagner, Esq. which led to this Agreement to settle the Action.

2.5 The Parties will stipulate to amend the complaint to include class claims, in the form attached hereto as Exhibit B. Filing an amended complaint in the form attached hereto as Exhibit B is a condition precedent of this Agreement.

2.6 Class Counsel has conducted a thorough investigation into the facts of the Action, including extensive informal discovery and exchange of a volume of documents and information, which included and was not limited to, Defendant’s production of a sampling of information/data for the putative class members to allow Plaintiff to perform an analysis and valuation of all claims. Prior to mediation the Parties exchanged information and documents to investigate the veracity, strength, and scope of the claims, and to allow analysis and evaluation of the claims and Defendant’s defenses thereto. The Class Representative has vigorously prosecuted this case, and Defendant has vigorously contested it. The Court has not granted class certification in the Action.

2.7 Without any admission of wrongdoing or liability by Defendant, it is the intention and agreement of the Parties to settle and dispose of, fully and completely, the Released Claims against the Released Parties (defined herein).

2.8 This Agreement is subject to the occurrence of the Effective Date of the Stipulation and Settlement of Class, Collective, and Representative Action.

2.9 This Agreement is also subject to an amendment to the complaint to include class claims.

2.10 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1 Gross Settlement Amount. Defendant promises to pay the total gross amount of Two Hundred Thirty-Five Thousand Dollars and Zero Cents (\$235,000.00) and no more as the Gross Settlement Amount, not including employer-side payroll taxes. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated herein. The Claims Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2 Payments from the Gross Settlement Amount. The Claims Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1 To Plaintiff. Class Representative Service Payment to the Class Representative of not more than Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member) in exchange for a general release of all claims, including a California Civil Code section 1542 waiver. Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Claims Administrator will retain the remainder in the Net Settlement Amount. The Claims Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment. A reduction of the Class Representative Service Payment shall not be grounds to nullify this Agreement.

3.2.2 To Class Counsel. A Class Counsel Fees Payment of not more than 35% of the Gross Settlement Amount, which is currently estimated to be Eighty-Two Thousand Two Hundred Fifty Dollars and Zero Cents (\$82,250.00) and a Class Counsel Litigation Expenses Payment of not more than Seventeen Thousand Dollars and Zero Cents (\$17,000.00). Defendant will not oppose a request for the payment provided that the request does not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Claims Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Claims Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and hold Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments. A reduction of the Class Counsel Fees Payment and/or Class Counsel Expenses Payment shall not be grounds to nullify this Agreement.

3.2.3 To the Claims Administrator. An Claims Administrator Expenses Payment not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) except for a showing of good cause and as

approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$10,000.00, the Claims Administrator will retain the remainder in the Net Settlement Amount for distribution on a pro rata basis to Alleged Aggrieved Employees and Participating Class Members.

3.2.4 To Each Participating Class Member. An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1 Tax Allocation of Individual Class Payments. Ten percent (10%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. Ninety percent (90%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest, penalties, and other non-wage damages (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Claims Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5 To the LWDA and Aggrieved Employees. PAGA Penalties in the amount of Sixteen Thousand Dollars and Zero Cents to be paid from the Gross Settlement Amount, with 75% (\$15,000.00), allocated to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Claims Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$5,000.00, by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Claims Administrator will allocate the remainder to the Net Settlement Amount for distribution to Participating Class Members. The Claims Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT DATA, FUNDING AND PAYMENTS.

4.1 Escalator Clause. Defendant estimates the number of Workweeks during the Class Period to be 13,000. If the actual number of Workweeks encompassed within the Class Period exceeds 13,000 by more than 10%, then, Defendant at its exclusive discretion may either (a) increase the Gross Settlement Amount by a pro-rata dollar value for those workweeks in excess of the escalation margin; or (b) change the Class Period End Date to occur on the date on which the number of workweeks is no more than 10% higher than 13,000. Under the latter option no additional payment is necessary. Defendant shall make this election prior to the mailing of the Class Notice to Class Members.

4.2 Class Data. Not later than fifteen (15) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Claims Administrator, in the form

of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Claims Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Claims Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Claims Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Claims Administrator no later than fourteen (14) business days following the Effective Date.

4.4 Payments from the Gross Settlement Amount. Within fourteen (14) calendar days after Defendant funds the Gross Settlement Amount, the Claims Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1 Distribution of Settlement Payments and Class Notice. The Claims Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (one-hundred eighty (180) calendar days after the date of mailing) when the check will be voided. The Claims Administrator will cancel all checks not cashed by the void date. The Claims Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Claims Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Claims Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Claims Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 Class Member Address Search. The Claims Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) calendar days of receiving a returned check the Claims Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Claims Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Claims Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3 Uncashed Settlement Checks. Any checks issued by the Claims Administrator to Class Members will be negotiable for one-hundred eighty (180) calendar days. After one-hundred eighty (180) calendar days from the date of mailing, the checks shall become null and void. Funds associated with cancelled checks will be donated to Legal Aid at Work, an organization that provides legal aid to low-income individuals and families including related to employment issues.

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

5. RELEASE. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties, as follows:

5.1 **Plaintiff's Released Claims.** Upon the Effective Date, and as a condition of receiving any portion of the Class Representative Enhancement Payment, Plaintiff shall fully and finally release the Released Parties from any and all claims, known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including but not limited to claims arising from or related to Plaintiff's employment with Defendant and Plaintiff's compensation while an employee of Defendant. Plaintiff's Released Claims include, but are not limited to, all claims asserted in, arising from, or related to the Action and any amended complaint, to include but not limited to the Released PAGA Claims and Released Class Claims. Plaintiff's Released Claims include all claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; failure to properly calculate the regular rate of pay and associated claims; wages related to alleged illegal time rounding; failure to pay wages at least twice each calendar month; failure to timely pay wages; failure to timely pay final wages; missed/short/late/interrupted meal period, rest period, and/or recovery period wages/premiums; failure to provide meal periods; failure to authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest period, and/or recovery period premiums; reimbursement for all necessary business expenses, including work-related cell-phone expenses and car mileage for work-related travel; payment for all hours worked, including off-the-clock work; failure to provide accurate itemized wage statements; deductions; failure to keep accurate records; failure to provide suitable seating; failure to maintain temperature providing reasonable comfort; unlawful deductions and/or withholdings from wages; unfair business practices; suitable seating; penalties, including, but not limited to, recordkeeping penalties, wage statement and payroll reporting penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs. Plaintiff's Released Claims include all claims arising under the California Labor Code (including, but not limited to, sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 204.1, 204.2, 206, 210, 216, 218, 218.5, 218.6, 221, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 247.5, 248.5, 256, 450, 510, 511, 512, 515, 516, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1197.2, 1198, 1198.5, 2698 et seq., 2699 et seq., 2802, and 2804); all claims arising under: the Wage Orders of the California Industrial Welfare Commission; the California Private Attorneys General Act of 2004 (PAGA); California Business and Professions Code section 17200, et seq.; the California Civil Code, to include sections 3287, 3336 and 3294; 8 CCR §§ 3203, 11070, 11090, 11100; California Code of Civil Procedure § 1021.5; all state and local ordinances related to COVID-19 right of recall; the California common law of contract; the FLSA, 29 U.S.C. §§ 201, et seq.; 29 CFR 778.223; 29 CFR 778.315; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001, et seq. (ERISA). Plaintiff's Released Claims also include all claims for lost wages and benefits, emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment, retaliation, and wrongful termination, such as, by way of example only, (as amended) 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and the California Fair Employment and Housing Act (FEHA); and the law of contract and tort. This release excludes the release of claims not permitted by law.

Plaintiff's Released Claims include all claims, whether known or unknown. Even if Plaintiff discovers facts in addition to or different from those that Plaintiff now knows or believes to be true with respect to the subject matter of Plaintiff's Released Claims, those claims will remain released and forever barred. Thus, Plaintiff expressly waives and relinquish the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

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

Additionally, as a condition of receiving the Class Representative Enhancement Payment, Plaintiff agrees to promptly initiate and seek the full dismissal, withdrawal and/or closure of all claims, grievances, charges or causes of action now pending against Defendant, in any forum, including but not limited to union, administrative or judicial forum and/or under any collective bargaining agreement, with the exception of those claims(s) in the Action, which are subject to the Agreement, and will be disposed of in accordance with the terms and conditions of the Agreement and related court orders. To the full extent permitted by law, Plaintiff irrevocably and absolutely agrees that Plaintiff will not prosecute nor allow to be prosecuted on Plaintiff's behalf, in any administrative agency, whether federal or state, or in any court, whether federal or state, any claim or demand of any type related to the matters released above, it being the intention of the Parties that with the execution by Plaintiff of this release, Defendant and all of the Released Parties will be absolutely, unconditionally and forever discharged of and from all obligations to or on behalf of Plaintiff related in any way to the matters discharged herein. Plaintiff represents and warrants that, as of the date Plaintiff signs this Agreement, Plaintiff has no charges, complaints, filings, claims or lawsuits of any kind pending against Defendant or any of the Released Parties other than the Action. Plaintiff will not directly or indirectly participate, assist, or cooperate in any lawsuit or complaint in a court of law against the Released Parties, including any class and/or representative action, with the exception of the Action which is subject to this Agreement, unless and to the extent required or compelled by law. Plaintiff also covenants and agrees that, to the full extent permitted by law, Plaintiff hereby waives and releases any and all rights or claims Plaintiff may have to any proceeds or awards to which Plaintiff may be entitled under any claims brought on Plaintiff's behalf against any of the Released Parties by any other person or entity. Nothing in this Agreement will prohibit Plaintiff from (a) complying with any valid subpoena or court order, or (b) cooperating with any official investigation conducted by a government or law enforcement agency.

5.1.1 No Conditional Payments Made By Medicare to Plaintiff. Plaintiff expressly acknowledges Medicare's statutory right to recovery of conditional payments for medical treatment and medical service rendered in connection with any illness or injury suffered by Plaintiff in the course of Plaintiff's employment with Defendant, and guarantees that Plaintiff is not a Medicare Beneficiary, and there are no outstanding Medicare or Medicaid claims or rights of recovery of conditional payments based on Plaintiff's application for, or receipt of, Medicare or Medicaid benefits. This specifically includes benefits arising out of or in any way connected with, directly or indirectly, the facts and/or allegations that form the basis of the Action, the occurrences described herein, and any consequences thereof. Additionally, Plaintiff warrants, represents, and guarantees that Plaintiff has no medical expenses arising out of or in any way connected with, directly or indirectly, the facts and/or allegations that form the basis of the Action, the occurrences described herein, and any consequences thereof, including any of Plaintiff's released claims, nor does Plaintiff anticipate any medical expenses arising out of or in any way connected with, directly or indirectly, the facts and/or allegations that form the basis of the Action, the occurrences described herein,

and any consequences thereof, including any released claims. In the event Medicare asserts such a claim or right of reimbursement now, or at any point in the future, all such claims or rights of reimbursement shall be satisfied from among the proceeds of this settlement, and no additional monies shall ever be requested from or paid by the Released Parties. This settlement is based upon a good faith determination of the Parties to resolve disputed claims. The Parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. § 1395y(b). The Parties resolved this matter in compliance with both state and federal law. The Parties made every effort to adequately protect Medicare's interest and incorporate such into the settlement terms. The Parties acknowledge and understand that any present or future action or decision by the Centers for Medicare & Medicaid Services ("CMS") or Medicare on this Agreement, or Plaintiff's eligibility or entitlement to Medicare or Medicare payments, will not render this release void or ineffective, or in any way affect the finality of this Agreement.

5.2 Released PAGA Claims. All Aggrieved Employees, including those who timely and effectively exclude themselves from the Settlement, shall nevertheless fully and finally release Released Parties of the Released PAGA Claims which arose during the PAGA Period, be bound by the Released PAGA Claims and shall receive a pro rata portion of 25% of the PAGA Settlement Amount. Aggrieved Employees who timely and effectively exclude themselves from the Settlement shall have their PAGA claims released only for the PAGA Period for periods of employment in a non-exempt position in California. The Released PAGA Claims include any and all claims for civil penalties asserted in the Action, and wage and hour claims, rights, demands, liabilities and causes of action of any nature or description under PAGA, arising from or related to the facts and claims alleged in the Action, or that could have been alleged in the Action under PAGA based on the facts and claims alleged in the Action, amended complaint, and/or Plaintiff's PAGA Notice identified on the LWDA's website as LWDA-CM-830588-21, including, without limitation, Labor Code sections 90.5(a), 201-203, 204, 226, 226.3, 226.7, 246, 350, 351, 510, 512, 558, 1194, 1194.2, 1197, 1198, 2698, et seq., 2699, et seq. 2699.3(a)(2)(A), the applicable Industrial Welfare Commission Wage Order(s), Code of Civil Procedure sections 395 and 474, and the California Healthy Workplaces/Healthy Family Act of 2014.

5.3 Released Class Claims. As of the date of the Order Granting Final Approval, and only after the Settlement has been fully funded by Defendant, all Class Members (which specifically includes Plaintiff) shall fully and finally release Released Parties of the Released Class Claims which arose during the Class Period during employment in a non-exempt position in California. The Released Class Claims include any and all claims, wage and hour claims, rights, demands, liabilities and causes of action of any nature or description alleged/asserted in the Action and amended complaint arising from the facts and claims alleged/asserted in the Action and amended complaint, that could have been alleged/asserted in the Action and amended complaint based on the facts and claims alleged in the Action and amended complaint, and the facts and claims asserted in or arising from the PAGA Notice identified on the LWDA's website as LWDA-CM--830588-21.

The Released Class Claims include all claims for failure to pay minimum wages (Cal. Labor Code §§ 204, 1194, 1194.2, and 1197); failure to pay overtime compensation (Cal. Labor Code §§ 1194 and 1198); failure to provide meal periods (Cal. Labor Code §§ 226.7, and 512); failure to authorize and permit rest breaks (Cal. Labor Code § 226.7); willful denial of rest periods or compensation in lieu thereof; willful denial of the payment of all gratuities during the course of employment; willful denial of meal periods or compensation in lieu thereof; willful denial of accurately itemized wage statements; denial of the timely payment of wages upon separation of employment; failure to timely pay final wages at termination (Cal. Labor Code §§ 201 – 203); failure to provide accurate itemized wage statements (Cal. Labor Code § 226); unfair business practices (Cal. Business and Profession Code §§ 17200, et seq.); and civil penalties under the Private Attorneys General Act (Cal. Labor Code §§ 2699, et seq.), as well as claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; failure to properly calculate the regular rate of pay

and associated claims; wages related to alleged illegal time rounding; failure to pay wages at least twice each calendar month; failure to timely pay wages; failure to timely pay final wages; missed/short/late/interrupted meal period, rest period, and/or recovery period wages/premiums; failure to provide meal periods; failure to authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest period, and/or recovery period premiums; payment for all hours worked, including off-the-clock work; failure to provide accurate itemized wage statements; deductions from gratuities; failure to keep accurate records; failure to provide suitable seating; unlawful deductions and/or withholdings from gratuities; unfair business practices; suitable seating; penalties, including, but not limited to, recordkeeping penalties, wage statement and payroll reporting penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs related to the Released Class Claims. The Released Class Claims also include but are not limited to all such claims arising under: 29 U.S.C. sections 201, et seq., 203(r)(1), 203(s)(1), 203(s)(1)(A), 206, 207, 207(a)(1), and 216(b), section 16(b) of the FLSA, California Labor Code sections Labor Code sections 90.5(a), 201-203, 226, 226.3, 226.7, 246, 350, 351, 510, 512, 558, 1194, 1198, 2698, et seq., 2699(f), (g)(1), the applicable Industrial Welfare Commission Wage Order(s), including IWC Wage Order 4-2001, Code of Civil Procedure sections 395 and 474, and the California Healthy Workplaces/Healthy Family Act of 2014; all claims arising under the California Private Attorneys General Act of 2004 ("PAGA") related to the Released Claims and Released PAGA Claims; and all claims relating to the Released Class Claims under the California Business and Professions Code sections 17200, et seq., 17201-17208. The Release shall also include all claims relating to the Released Claims under the applicable Wage Orders of the California Industrial Welfare Commission (including, but not limited to, IWC Wage Order Nos. 4-2001, 5-2001, 10-2001 and 8 CCR § 11100) for failure to provide accurate itemized wage statements, failure to provide right to inspect or copy personnel files, failure to keep accurate records, for civil and statutory penalties, including wage statement penalties, record keeping penalties, reporting time pay, and penalties for personnel file violations. The Released Class Claims include those under the Fair Labor and Standards Act ("FLSA"), including those related to recordkeeping obligations, 29 U.S.C. §211(c); 29 C.F.R. §§ 516, 778.223, 778.315, et seq.; all state and federal law equivalents arising from or related to the facts and claims alleged in the Action and/or PAGA Notice or that could have been alleged in the Action and/or PAGA Notice and amended complaint based on the facts pled therein; California Civil Code section 474; and California Code of Civil Procedure section 1021.5. This release excludes the release of claims not permitted by law, including but not limited to claims brought for workers' compensation benefits.

In connection with the above Released Class Claims, and in consideration of Defendant's payments of the Gross Settlement Amount, each and every Class Member who does not opt out, including Plaintiff, will be deemed also to have acknowledged and agreed that California Labor Code section 206.5 is not applicable to Defendant and the Class Members because there is a good faith dispute as to whether any wages are due at all to any Class Member. California Labor Code section 206.5 provides in pertinent part as follows:

AN EMPLOYER SHALL NOT REQUIRE THE EXECUTION OF A RELEASE OF A 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 THOSE WAGES HAS BEEN MADE.

The following language will be printed on the reverse of each Settlement Payment Check, or words to this effect: "By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in the Fair Labor Standards Act ("FLSA") portion of the Action, elect to participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement." Participating Class Members who cash their settlement checks will be deemed to have opted into the Action for purposes of the FLSA and will thereby release and waive any of their claims under the FLSA

Upon entry of Judgment, Participating Class Members who cash their settlement checks are precluded from filing a wage and hour action under the Fair Labor Standards Act against the Released Parties for claims and/or causes of action encompassed by the Released Claims which are extinguished and precluded pursuant to the holding in *Rangel v. PLS Check Cashers of California, Inc.*, 899 F.3d 1106 (2018). This release excludes the release of claims not permitted by law.

6. ADMINISTRATION OF TAXES.

6.1 Tax Treatment of Individual Settlement Payments. The Individual PAGA Payments will be allocated as 100% penalties and reported on an IRS-Form 1099. All Individual Settlement Payments will be allocated as follows: Ten percent (10%) of each Individual Settlement Payment will be allocated as wages and Ninety percent (90%) will be allocated as non-wages. The portion allocated to wages will be reported on an IRS Form W-2 and the portion allocated to non-wages will be reported on an IRS Form-1099 by the Claims Administrator. The Individual Settlement Payments will be reduced by any required legal deductions for each Class Member. All standard employee payroll deductions will be made for state and federal withholding taxes, including any other applicable payroll deductions owed by the Class Members as a result of the wage component, resulting in a net wage component. The Claims Administrator will issue a check and W-2 Form to each Class Member for the wage component. The Claims Administrator will issue a second check and IRS Form-1099 for the remaining non-wages component. No withholding shall be made on the non-wages portion of the Individual Settlement Payment. The Claims Administrator shall be responsible for issuing the payments and calculating and withholding all required state and federal taxes. The Claims Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement Agreement. Any disputes not resolved by the Claims Administrator concerning the administration of the Settlement will be resolved by the Court, under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of involving the Court.

6.2 Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff and Class Members are not relying on any statement, representation, or calculation by Defendant or by the Claims Administrator in this regard. Plaintiff and Class Members understand and agree they will be solely responsible for the payment of their share of any taxes and penalties assessed on the payments described herein.

6.3 CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE

CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS SETTLEMENT AGREEMENT.

7. MOTION FOR PRELIMINARY APPROVAL. Class Representative and Class Counsel agree to prepare and file a motion for preliminary approval ("Motion for Preliminary Approval").

7.1 Defendant's Declaration in Support of Preliminary Approval. Within ten (10) calendar days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Claims Administrator. In their Declarations, Defense Counsel and Defendant shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel for review prior to filing all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); and (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

7.3 Responsibilities of Counsel. Class Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than thirty (30) calendar days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Claims Administrator.

8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Claims Administrator. The Parties have jointly selected Phoenix Class Action Administration Solutions to serve as the Claims Administrator and verified that, as a condition of appointment, Phoenix Class Action Administration Solutions agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Claims Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2 Employer Identification Number. The Claims Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.

8.3 Qualified Settlement Fund. The Claims Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

8.4 Notice to Class Members.

8.4.1 No later than three (3) business days after receipt of the Class Data, the Claims Administrator shall notify Class Counsel that the list has been received and state the number of Class

Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

8.4.2 Using best efforts to perform as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class Data, the Claims Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Claims Administrator shall update Class Member addresses using the National Change of Address database.

8.4.3 Not later than three (3) business days after the Claims Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Claims Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Claims Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Claims Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

8.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the sixty (60) calendar days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Claims Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

8.4.5 If the Claims Administrator, Defendant, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Claims Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) calendar days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5 Requests for Exclusion (Opt-Outs).

8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Claims Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than sixty (60) calendar days after the Claims Administrator mails the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member’s election to be excluded from the Settlement and includes the Class Member’s name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

8.5.2 The Claims Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Claims Administrator shall accept any Request for Exclusion as valid if the Claims Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member’s desire to be excluded. The Claims Administrator’s determination shall be final and not appealable or otherwise susceptible to challenge. If the Claims Administrator has reason to question the authenticity of a Request for Exclusion, the Claims Administrator

may demand additional proof of the Class Member's identity. The Claims Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.2 of this Agreement and are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Workweeks. Each Class Member shall have sixty (60) calendar days after the Claims Administrator mails the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Claims Administrator via fax, email or mail. The Claims Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Claims Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Claims Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Claims Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Claims Administrator's determination the challenges.

8.7 Objections to Settlement.

8.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

8.7.2 Participating Class Members may send written objections to the Claims Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Claims Administrator must do so not later than sixty (60) calendar days after the Claims Administrator's mailing of the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice was re-mailed).

8.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

8.8 Claims Administrator Duties. The Claims Administrator has a duty to perform or observe all tasks to be performed or observed by the Claims Administrator contained in this Agreement or otherwise.

8.8.1 Website, Email Address and Toll-Free Number. The Claims Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Claims Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Claims Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) business days after the expiration of the deadline for submitting Requests for Exclusion, the Claims Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

8.8.3 Weekly Reports. The Claims Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Claims Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

8.8.4 Workweek and/or Pay Period Challenges. The Claims Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Claims Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

8.8.5 Claims Administrator’s Declaration. Not later than fourteen (14) calendar days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Claims Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Claims Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Claims Administrator’s declaration(s) in Court.

8.8.6 Final Report by Settlement Claims Administrator. Within ten (10) calendar days after the Claims Administrator disburses all funds in the Gross Settlement Amount, the Claims Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) calendar days before any deadline set by the Court, the Claims Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Claims Administrator’s declaration in Court, if the Court requires it.

9. DEFENDANT'S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% (ten percent) of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. If the complaint is not amended to include class claims, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven (7) business days after the Claims Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. NULLIFICATION OF AGREEMENT. In the event: (i) the Court does not enter the Preliminary Approval Order and approve the Released Claims specified herein; (ii) the Court does not finally approve the Settlement as provided herein; (iii) Defendant exercises its option to nullify the Settlement Agreement, as described in the above Section; or (iv) the Settlement does not become final for any other reason (*e.g.*, an objection by the LWDA), this Settlement Agreement shall be null and void. A reduction of the Attorneys' Fees and Costs and/or any Class Representative Enhancement Payment shall not be grounds for nullification of this Settlement. If the Settlement is nullified, any order or judgment entered by the Court in furtherance of this Settlement Agreement shall be treated as void from the beginning, and the Stipulations and Recitals contained herein shall be of no force or effect, and shall not be treated as an admission by the Parties or their counsel. In such a case, the Parties and any funds to be awarded under this Settlement Agreement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Settlement Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that any fees already incurred by the Claims Administrator shall be paid equally by both Parties. The Parties agree that they will cooperate and take all steps necessary in order to obtain preliminary and/or final approval in the event that the Court raises issues or questions about this Settlement or anything pertaining to this Settlement (including, but not limited to, the motion for preliminary approval and motion for final approval).

11. MOTION FOR FINAL APPROVAL. Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

11.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Claims Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this Paragraph.

11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Attorneys' Fees and Costs Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

13. ADDITIONAL PROVISIONS.

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

13.2 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this Paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

13.3 Confidentiality. Neither Plaintiff nor Plaintiff's Counsel shall issue any press release or announcement of any kind related in any way to the Settlement. Plaintiff and Plaintiff's Counsel agree that, prior to Preliminary Approval of the Settlement, they will keep the terms of this Settlement confidential except for purposes of communicating with Plaintiff only. Plaintiff shall be informed that the Settlement is confidential and shall be advised to keep the Settlement confidential. From and after Preliminary Approval of the Settlement, the Plaintiff and Class Counsel may: (1) as required by law; (2) as required under the terms of the Settlement; or (3) as required under counsel's duties and responsibilities as Class Counsel, comment regarding the specific terms of the Settlement. In all other cases, Plaintiff and Class Counsel agree to limit their statements regarding the terms of the Settlement, whether oral, written or electronic (including the world wide web), to say the Action have been resolved and that Plaintiff and Class Counsel are satisfied with the Settlement terms. Nothing in this Section is intended to interfere with Class Counsel's duties and obligations to faithfully discharge their duties as Class Counsel, including but not limited to, communicating with Class Members regarding the Settlement. This Settlement shall not be advertised or mentioned on any source, including Plaintiff's Counsel's personal or firm website(s).

The parties stipulate and agree, pursuant to California Code of Civil Procedure section 583.330(a), to extend the time within which this action must be brought to trial pursuant to Code of Civil Procedure sections 583.310 through 583.360, by that period of time from Preliminary Approval to the date of entry of Judgment or upon written notice from either party of an intent to resume litigation, and that said period of time shall not be included in the computation of the five-year period specified in Code of Civil Procedure section 583.310.

13.4 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.

13.5 Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

13.6 Contractual Terms. Each term of this Agreement is contractual and not merely a recital.

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

13.8 Modifications. The Parties agree that the provisions of this Agreement may not be modified by any subsequent agreement unless the modifying agreement is: (i) in writing; (ii) specifically references this Agreement; (iii) signed by Plaintiff; and (iv) signed and approved by an authorized officer of Defendant.

13.9 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

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

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

13.12 Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including electronic signatures (e.g., DocuSign), facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument. The Parties expressly agree to the use of authorized electronic signature (e.g., DocuSign).

13.13 Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of Eve Wagner, Esq. (mediator) to resolve such disagreement.

13.14 Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

13.15 Captions. The captions and section numbers in this Settlement Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Settlement Agreement.

13.16 Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

13.17 Enforcement Action. The Court shall retain jurisdiction to enforce the Judgment and this Settlement pursuant to Code of Civil Procedure 664.6 and as otherwise allowed by law. If one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement action.

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

13.19 Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement and that this Settlement Agreement has been executed with the consent and advice of counsel and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

13.20 Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to class certification only for purposes of the Settlement. If, for any reason, the Settlement is not approved, the stipulation to certification will be void. The Parties further agree that certification for purposes of the Settlement is not an admission that class action certification is proper under the standards applied to contested certification motions and that this Settlement Agreement will not be admissible in this or any other proceeding as evidence that either: (a) a class action should be certified or (b) Defendant is liable to Plaintiff or any Class Member, other than according to the Settlement's terms.

13.21 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or legal holiday, such date or deadline shall be on the first business day thereafter.

13.22 Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law. Plaintiff, and not Plaintiff's representative(s), must personally execute this Settlement Agreement.

13.23 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 Claims Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Claims Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.

13.24 Miscellaneous. The Parties have full authority to enter into this Agreement and to be bound by it. The Parties are voluntarily entering into this Agreement free of any duress or coercion. This Agreement may be executed by the Parties in any number of counterparts, which are defined as duplicate originals, all of which taken together shall be construed as one document. A signature by facsimile on this Agreement shall be as legally binding as an original signature. This Agreement shall be construed and governed by the laws of the State of California.

PLEASE READ CAREFULLY

**THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE INCLUDES
A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS**

The Settlement Agreement consists of 22 pages with signatures appearing below.

PLAINTIFF Dinesha White

Signature: 

Date: 04 / 22 / 2023

DEFENDANT Wing Pros, Inc.

Print Name: _____

Date: _____

13.20 Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to class certification only for purposes of the Settlement. If, for any reason, the Settlement is not approved, the stipulation to certification will be void. The Parties further agree that certification for purposes of the Settlement is not an admission that class action certification is proper under the standards applied to contested certification motions and that this Settlement Agreement will not be admissible in this or any other proceeding as evidence that either: (a) a class action should be certified or (b) Defendant is liable to Plaintiff or any Class Member, other than according to the Settlement's terms.

13.21 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or legal holiday, such date or deadline shall be on the first business day thereafter.

13.22 Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law. Plaintiff, and not Plaintiff's representative(s), must personally execute this Settlement Agreement.

13.23 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 Claims Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Claims Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.

13.24 Miscellaneous. The Parties have full authority to enter into this Agreement and to be bound by it. The Parties are voluntarily entering into this Agreement free of any duress or coercion. This Agreement may be executed by the Parties in any number of counterparts, which are defined as duplicate originals, all of which taken together shall be construed as one document. A signature by facsimile on this Agreement shall be as legally binding as an original signature. This Agreement shall be construed and governed by the laws of the State of California.

PLEASE READ CAREFULLY

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS

The Settlement Agreement consists of 22 pages with signatures appearing below.

PLAINTIFF Dinesha White

Signature: _____

Date: _____

DEFENDANT Wing Pros, Inc.

Print Name: Dinesha White

Date: 5/5/2023

Title: CO-Owner

Signature: Dennis Robbins

Exhibit A

COURT APPROVED NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING DATE FOR COURT APPROVAL

Dinesha White v. Wing Pros, Inc., et al.
Superior Court of California, County of Sacramento
Case No. 34-2021-00303521

To: All current and former non-exempt employees of Wing Pros, Inc. who worked in the State of California at any time during the period beginning November 4, 2018, and continuing through to and including August 31, 2022.

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.

You are receiving this notice because Wing Pros, Inc.'s ("Defendant") records indicate that you may be entitled to participate in this class action and representative action settlement.

The following recitation does not constitute the findings of the Court. Defendant adamantly denies any and all liability. This notice should not be understood to be an expression of the Court's views on the merits of any claim or defense raised by the parties.

I. WHY IT IS IMPORTANT TO READ THIS NOTICE:

The Superior Court of the State of California for the County of Sacramento (the "Court") has granted preliminary approval of a proposed Settlement (defined below) of a class action lawsuit and representative action regarding wage and hour claims of all current and former non-exempt employees of Defendant who worked in the State of California at any time during the period beginning November 4, 2018, and continuing through to and including August 31, 2022.

Because your rights may be affected by the Settlement (defined below), it is important that you read this notice carefully. Defendant's records show that you were employed by Defendant sometime during the period beginning November 4, 2018, and continuing through to and including August 31, 2022 ("Class Period"). Therefore, you are a "Class Member" in this lawsuit.

The purpose of this notice is to provide you with a brief description of the class action lawsuit and representative action, what investigation of the claims has taken place, to inform you of the terms of the proposed Settlement (defined below) and to discuss your rights and options in connection with the lawsuit and the Settlement (defined below).

II. WHAT YOU NEED TO DO IN RESPONSE TO THIS NOTICE:

You have received this notice because Defendant's records indicate that you are a member of the conditionally certified Class (defined below). You have the following options:

- 1. IF YOU WISH TO PARTICIPATE IN THE CLASS ACTION SETTLEMENT AND REMAIN A MEMBER OF THE SETTLEMENT CLASS AND BE ISSUED A PAYMENT UNDER THE SETTLEMENT, YOU (or in the event of a deceased Class Member, the estate or authorized beneficiary) ARE NOT REQUIRED TO TAKE ANY FURTHER ACTION.** You will be issued payment if the Court grants final approval of the Settlement (defined below) and judgment becomes final, and you will release the Released Parties for the Released Claims (see section VIII below for definitions of "Released Claims" and "Released Parties"). If you wish to receive a payment under the Settlement, you must not "opt out" of the Settlement. **To ensure receipt of your payment, you must make sure that your correct mailing address is on file with the Settlement Administrator.**
- 2. YOU MAY ELECT TO "OPT OUT" OF THE SETTLEMENT CLASS AND THUS EXCLUDE YOURSELF FROM THE SETTLEMENT.** If you wish to opt out of the Settlement and exclude yourself from the Settlement, you must mail, fax, or email to the Settlement Administrator the enclosed Opt-Out Form or a

written request (“Request for Exclusion”) postmarked, faxed, or emailed on or before [TBD]. A Request for Exclusion must include: (1) your full name, address, and telephone number or email address; (2) the case name and number of the action (i.e., *Dinesha White v. Wing Pros, Inc., et al.*, case number 34-2021-00303521); and (3) a statement indicating that you wish to be excluded from the Settlement. If a timely and complete Opt-Out Form or Request for Exclusion is not received by the Settlement Administrator on or before [TBD], you will be deemed to have forever waived your right to opt out of the Settlement. Class Members who do not properly opt out of the Settlement shall be “Settlement Class Member(s).” Class Members who do properly opt out of the Settlement shall not be bound by the terms of the Settlement, shall not be allowed to object to this Settlement, and shall not be entitled to any benefits as a result of this Settlement, including payment of any Individual Settlement Amount (defined below), except a portion of the PAGA payment, if applicable, in the estimated amount of [\$]. All current and former non-exempt employees of Defendant who worked in the State of California at any time during the period from April 28, 2020, and continuing through to and including August 31, 2022 have no right or ability to opt out of the portion of this Settlement releasing Labor Code Private Attorneys General Act of 2004 (“PAGA”) claims. The Settlement Administrator’s mailing address, email address, and fax number are:

[Settlement Administrator]
[mailing address, email address and fax number]

3. **PROVIDED YOU DO NOT OPT OUT OF THE SETTLEMENT CLASS, YOU MAY OBJECT TO THE SETTLEMENT.** You may object to the Settlement by mailing a written objection (“Objection”) to the Settlement Administrator, on or before [TBD], to the address listed in section II.2 above. The Objection must (1) contain your full name, dates of employment as an employee of Defendant, and signature; (2) the case name and number of the action (*Dinesha White v. Wing Pros, Inc., et al.*); (3) the reason(s) for the objection (if any); and (4) identify any counsel representing you in connection with the Objection. You may attend the Settlement Hearing (defined below), including by audio or visual technology, and may ask to speak regarding your objections, regardless of whether you submitted an Objection. More information can be found at www.saccourt.ca.gov. If you take no action, you will remain a member of the Class. A Class Member who does not opt out of participation in the Settlement will be bound by the judgment and be issued payment under the Settlement (defined below). If you remain a member of the Class, you will be represented by the following attorneys who have been designated by the Court as Class Counsel:

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Evan S. Gaines, Esq.
GAINES & GAINES, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
(866) 550-0855
attorneys@gaineslawfirm.com

INFORMATION REGARDING FINAL APPROVAL HEARING. The Final Approval Hearing determines whether the Settlement should be finally approved as fair, reasonable, and adequate and whether the Service Award (defined below) to Plaintiff, Administration Expenses (defined below) to the Settlement Administrator, and attorneys’ fees and costs to Class Counsel should be awarded. That hearing will be held on [TBD] at [TBD] before the Hon. Richard K. Sueyoshi, in Department 53 of the Sacramento Superior Court located at 720 9th Street, Sacramento, California 95814 (“Settlement Hearing”).

If the Court enters judgment based on the Settlement (defined below), the judgment will be posted on the Settlement Administrator’s website. The Settlement Administrator’s website address is [Website Address].

You are not required to attend the Settlement Hearing, although you are welcome to attend.

III. WHAT THE CASE IS ABOUT:

On behalf of herself and on behalf of other employees, Dinesha White ("Class Representative" or "Plaintiff") claims that Defendant has, with respect to Plaintiff and the Class Members, allegedly failed to pay all wages due (FLSA 29 U.S.C. §§ 206 and 207), failed to pay all wages due (Labor Code §§ 510 and 1194; IWC Wage Order 4-2001), failed to provide rest periods or compensation in lieu thereof (Labor Code § 226.7; IWC Wage Order 4-2001), failed to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7 and 512; IWC Wage Order 4-2001), knowingly and intentionally failed to comply with itemized employee wage statement provisions (Labor Code § 226(a), (e)), failed to pay all gratuities (Labor Code §§ 350 and 351), failed to pay wages due at separation of employment (Labor Code §§ 201-203), and violated Business and Professions Code §§ 17200, *et seq.* The operative complaint also alleges Defendant is liable under PAGA. On behalf of herself and other employees of Defendant, Plaintiff seeks, *inter alia*, damages, unpaid wages, liquidated damages, restitution, prejudgment and post-judgment interest, penalties, attorneys' fees, and costs.

Defendant adamantly denies each, every, and all of the allegations of the lawsuit, and maintains that it complied with all Federal and California wage and hour laws, such that the Class Representative cannot properly recover any damages including but not limited to civil penalties under California law. Although Defendant denies Plaintiff's allegations, Defendant has chosen to resolve the matter based upon the terms and conditions set forth in the Class, Collective, and Representative Settlement Agreement and Class Notice ("Settlement Agreement" or "Settlement"). The Court will determine whether or not to grant final approval of the Settlement.

The Settlement provides for the certification, for settlement purposes only, of all current and former non-exempt employees of Defendant who worked in the State of California at any time during the period beginning November 4, 2018, and continuing through to and including August 31, 2022.

IV. THE SETTLEMENT OF THE CLAIMS:

On November 3, 2022, the parties participated in a full-day mediation before an employment law mediator, Eve Wagner, Esq., which lead to settlement of the entire action.

The Class Representative and Class Counsel believe the Settlement is in the best interest of the Class.

Through the Settlement, neither Defendant nor any of its employees have admitted any liability or wrongdoing and, in fact Defendant expressly denies any wrongdoing. The Court did not decide in favor of Plaintiff or Defendant. The Settlement Agreement has been preliminarily approved by the Court. A full copy of the Settlement Agreement, embodied in the document entitled "Class, Collective, and Representative Action Settlement Agreement" as preliminarily approved by the Court, as well as other public documents filed in this case, can be inspected in the Office of the Court Clerk located at 720 9th Street, Sacramento, California 95814.

V. THE TERMS OF THE CONDITIONAL CLASS ACTION SETTLEMENT:

On behalf of the Class Members, the Class Representative has reached a Settlement with Defendant and on [TBD] the Court conditionally certified a class, for settlement purposes only, comprised of the following persons (collectively, the "Class"):

All current and former non-exempt employees of Defendant who worked in the State of California at any time during the period beginning November 4, 2018, and continuing through to and including August 31, 2022.

Without admitting liability, Defendant has agreed to pay \$235,000.00 (the "Gross Settlement Amount") for a release of Defendant and all Released Parties (defined below) from the Released Claims (defined below) (see below for more information). This is a non-reversionary settlement. Settlement Class Members will be bound by the Settlement and will release Defendant and all Released Parties (defined below) from the Released Claims (defined below) (see below for more information).

This Settlement is conditioned upon the Superior Court of the State of California for the County of Sacramento entering an order at or following the Settlement Hearing finally approving the Settlement as fair, reasonable, adequate, and in the best interests of the Class.

The following payments will be sought, subject to final approval by the Court, from the Gross Settlement Amount:

- (1) Payment in the amount of up to \$10,000.00 to the Class Representative ("Service Award") in addition to the sums that she will receive as a Settlement Class Member, to compensate her for acting on behalf of the Class, including the time she expended to fulfill the role of Class Representative (e.g., assisting with the investigation of the claims, etc.) and for a general release and waiver of Civil Code section 1542;
- (2) Payment to the Settlement Administrator for the fees and costs of administering this Settlement ("Administration Expenses"), in the estimated maximum amount of \$10,000.00;
- (3) Payment in an amount of \$20,000.00 ("PAGA Settlement Amount") for penalties pursuant to the California Labor Code Private Attorney General Act of 2004 ("PAGA"), of which 75% of the amount (\$15,000.00) will be distributed to the California Labor Workforce and Development Agency ("LWDA") and the remaining 25% of the amount (\$5,000.00) of the penalties will be distributed to all current and former non-exempt employees of Defendant who worked in the State of California at any time from April 28, 2020, and continuing through to and including August 31, 2022 based on the number of pay periods worked during this time frame ("PAGA Pay Periods");
- (4) Payment in an amount of up to \$82,250.00 to Class Counsel as attorneys' fees, to compensate them for their services in litigating this case for approximately 2 years on a contingency basis; and
- (5) Payment in an amount of up to \$17,000.00 to Class Counsel, to reimburse Class Counsel for actual litigation costs and expenses expended in this matter by Class Counsel.

The "Net Settlement Amount" is the Gross Settlement Amount less the above-mentioned requested payments which are subject to final approval by the Court. The Net Settlement Amount will be automatically distributed to Settlement Class Members, and these gross individual shares are known as the "Individual Settlement Amount." The Individual Settlement Amount for each Settlement Class Member shall be determined on a *pro rata* basis based on his or her number of Workweeks (defined below) as compared to the total Workweeks of all Settlement Class Members. Workweeks are calculated by determining the number of days between the Settlement Class Member's start and end dates of employment from November 4, 2018, and continuing through to and including August 31, 2022 and then dividing by seven (7). If a Settlement Class Member was hired prior to November 4, 2018, then his or her "start date" will be November 4, 2018.

VI. WHAT IS YOUR EXPECTED SHARE:

As discussed above, the Net Settlement Amount will be automatically distributed to Class Members who do not opt out of this Settlement, based on their respective number of Workweeks.

Defendant's records reflect that you worked [insert number of workweeks] workweeks during the Class Period, and based on this number of Workweeks, your gross Individual Settlement Amount is estimated to be [insert estimated amount]. Defendant's records also reflect that you worked [insert number of PAGA Pay Periods] Pay Periods during the PAGA Period (April 28, 2020 through August 31, 2022), and based on this number of PAGA Pay Periods, your gross PAGA Payment is estimated to be [insert estimated amount].

If you wish to dispute the number of Workweeks or PAGA Pay Periods attributed to you, you may do so by submitting a written dispute ("Dispute") to the Settlement Administrator at the address listed in section II.2 (above), postmarked on or before [TBD]. A Dispute must state: (a) your full name, address, email address, telephone number, last four digits of your social security number, and signature; (b) the case name and number of the action (*Dinesha White v. Wing Pros, Inc., et al.*, case number 34-2021-00303521); (c) contain a statement indicating your intent to dispute or challenge the number of Workweeks credited to you and clearly identify the number of Workweeks or PAGA Pay Periods you contend should be credited to you; and (d) include any records or documentation to support the Dispute.

The amount stated herein as your estimated Individual Settlement Amount may change depending on the number of Class Members who do not opt-out and the Court's order with respect to the requests for attorneys' fees, litigation costs and expenses, award to class representative, administration expenses, and PAGA payment. Further, your gross Individual Settlement Amount will be allocated as 10% wages (reported on an IRS Form W-2), and 90% interest and penalties

(reported on an IRS Form 1099). The wage portion is subject to employee's and employer's share of state and federal employment and payroll taxes and withholdings prior to distribution. Your share of the PAGA payment is 100% penalties (reported on an IRS Form 1099).

VII. WHEN CAN I EXPECT TO RECEIVE MY SHARE OF THE SETTLEMENT:

The Settlement Administrator will distribute the settlement funds after the Court enters the final approval order and judgment. Based on the current projected timelines, this should occur around [insert date 14 days after funding], but it may be delayed based on appeals or for other reasons.

VIII. RELEASE OF CLAIMS OF SETTLEMENT CLASS MEMBERS:

"Action" means case titled *Dinesha White v. Wing Pros, Inc., et al.*, Sacramento Superior Court, No. 34-2021-00303521, filed on July 2, 2021, and includes any amended complaints.

"PAGA Notice" means Plaintiff's letter to Defendant and the LWDA, dated April 28, 2021, providing notice pursuant to Labor Code section 2699.3, subd.(a).

"Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

"Released Parties" means Defendant and its past, present, and future parents, subsidiaries, affiliated companies, agents, managing agents, employees, servants, officers, directors, owners (whether direct or indirect), general partners, limited partners, trustees, representatives, shareholders, stockholders, members, mortgagees or ground lessors, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, potential and/or alleged joint employers, temporary staffing agencies, dual employers, potential and/or alleged dual employers, co-employers, potential and/or alleged co-employers, common law employers, contractors, affiliates, service providers, alter-egos, potential and/or alleged alter-egos, vendors, affiliated organizations, any person and/or entity with potential or alleged to have joint liability, and all of their respective past, present and future employees, directors, officers, members, owners, agents, representatives, payroll agencies, attorneys, stockholders, fiduciaries, parents, subsidiaries, other service providers, and assigns and any and all persons and/or entities acting under, by, through or in concert with any of them.

As of the date of the Order Granting Final Approval, and only after the Settlement has been fully funded by Defendant, all Class Members (which specifically includes Plaintiff) shall fully and finally release Released Parties of the Released Class Claims (defined below) which arose during the Class Period during employment in a non-exempt position in California. The Released Class Claims include any and all claims, wage and hour claims, rights, demands, liabilities and causes of action of any nature or description alleged/asserted in the Action and amended complaint arising from the facts and claims alleged/asserted in the Action and amended complaint, that could have been alleged/asserted in the Action and amended complaint based on the facts and claims alleged in the Action and amended complaint, and the facts and claims asserted in or arising from the PAGA Notice identified on the LWDA's website as LWDA-CM--830588-21.

The Released Class Claims include all claims for failure to pay minimum wages (Cal. Labor Code §§ 204, 1194, 1194.2, and 1197); failure to pay overtime compensation (Cal. Labor Code §§ 1194 and 1198); failure to provide meal periods (Cal. Labor Code §§ 226.7, and 512); failure to authorize and permit rest breaks (Cal. Labor Code § 226.7); willful denial of rest periods or compensation in lieu thereof; willful denial of the payment of all gratuities during the course of employment; willful denial of meal periods or compensation in lieu thereof; willful denial of accurately itemized wage statements; denial of the timely payment of wages upon separation of employment; failure to timely pay final wages at termination (Cal. Labor Code §§ 201 – 203); failure to provide accurate itemized wage statements (Cal. Labor Code § 226); unfair business practices (Cal. Business and Profession Code §§ 17200, et seq.); and civil penalties under the Private Attorneys General Act (Cal. Labor Code §§ 2699, et seq.), as well as claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; failure to properly

calculate the regular rate of pay and associated claims; wages related to alleged illegal time rounding; failure to pay wages at least twice each calendar month; failure to timely pay wages; failure to timely pay final wages; missed/short/late/interrupted meal period, rest period, and/or recovery period wages/premiums; failure to provide meal periods; failure to authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest period, and/or recovery period premiums; payment for all hours worked, including off-the-clock work; failure to provide accurate itemized wage statements; deductions from gratuities; failure to keep accurate records; failure to provide suitable seating; unlawful deductions and/or withholdings from gratuities; unfair business practices; suitable seating; penalties, including, but not limited to, recordkeeping penalties, wage statement and payroll reporting penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs related to the Released Class Claims. The Released Class Claims also include but are not limited to all such claims arising under: 29 U.S.C. sections 201, et seq., 203(r)(1), 203(s)(1), 203(s)(1)(A), 206, 207, 207(a)(1), and 216(b), section 16(b) of the FLSA, California Labor Code sections Labor Code sections 90.5(a), 201-203, 226, 226.3, 226.7, 246, 350, 351, 510, 512, 558, 1194, 1198, 2698, et seq., 2699(f), (g)(1), the applicable Industrial Welfare Commission Wage Order(s), including IWC Wage Order 4-2001, Code of Civil Procedure sections 395 and 474, and the California Healthy Workplaces/Healthy Family Act of 2014; all claims arising under the California Private Attorneys General Act of 2004 ("PAGA") related to the Released Claims and Released PAGA Claims; and all claims relating to the Released Class Claims under the California Business and Professions Code sections 17200, et seq., 17201-17208. The Release shall also include all claims relating to the Released Claims under the applicable Wage Orders of the California Industrial Welfare Commission (including, but not limited to, IWC Wage Order Nos. 4-2001, 5-2001, 10-2001 and 8 CCR § 11100) for failure to provide accurate itemized wage statements, failure to provide right to inspect or copy personnel files, failure to keep accurate records, for civil and statutory penalties, including wage statement penalties, record keeping penalties, reporting time pay, and penalties for personnel file violations. The Released Class Claims include those under the Fair Labor and Standards Act ("FLSA"), including those related to recordkeeping obligations, 29 U.S.C. §211(c); 29 C.F.R. §§ 516, 778.223, 778.315, et seq.; all state and federal law equivalents arising from or related to the facts and claims alleged in the Action and/or PAGA Notice or that could have been alleged in the Action and/or PAGA Notice and amended complaint based on the facts pled therein; California Civil Code section 474; and California Code of Civil Procedure section 1021.5. This release excludes the release of claims not permitted by law, including but not limited to claims brought for workers' compensation benefits.

The following language will be printed on the reverse of each Settlement Payment Check, or words to this effect: "By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in the Fair Labor Standards Act ("FLSA") portion of the Action, elect to participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement." Participating Class Members who cash their settlement checks will be deemed to have opted into the Action for purposes of the FLSA and will thereby release and waive any of their claims under the FLSA

Upon entry of Judgment, Participating Class Members who cash their settlement checks are precluded from filing a wage and hour action under the Fair Labor Standards Act against the Released Parties for claims and/or causes of action encompassed by the Released Claims which are extinguished and precluded pursuant to the holding in *Rangel v. PLS Check Cashers of California, Inc.*, 899 F.3d 1106 (2018). This release excludes the release of claims not permitted by law.

In connection with the above Released Claims, and in consideration of Defendant's payments of the Gross Settlement Amount, each and every Class Member who does not opt out, including Plaintiff, will be deemed also to have acknowledged and agreed that California Labor Code section 206.5 is not applicable to Defendant and the Class Members because there is a good faith dispute as to whether any wages are due at all to any Class Member. California Labor Code section 206.5 provides in pertinent part as follows:

AN EMPLOYER SHALL NOT REQUIRE THE EXECUTION OF A RELEASE OF A 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 THOSE WAGES HAS BEEN MADE.

IX. RELEASE OF CLAIMS OF PAGA GROUP MEMBERS:

"Aggrieved Employee" means all current and former non-exempt employees of Defendant who worked in the State of California at any time during the PAGA Period.

“PAGA Period” means the period from April 28, 2020, and continuing through to and including August 31, 2022.

All Aggrieved Employees, including those who timely and effectively exclude themselves from the class action part of the Settlement, shall nevertheless fully and finally release Released Parties of the Released PAGA Claims (defined below) which arose during the PAGA Period, be bound by the Released PAGA Claims (defined below) and shall receive a pro rata portion of 25% of the PAGA Settlement Amount. Aggrieved Employees who timely and effectively exclude themselves from the class action part of the Settlement shall have their PAGA claims released only for the PAGA Period for periods of employment in a non-exempt position in California. The Released PAGA Claims include any and all claims for civil penalties asserted in the Action, and wage and hour claims, rights, demands, liabilities and causes of action of any nature or description under PAGA, arising from or related to the facts and claims alleged in the Action, or that could have been alleged in the Action under PAGA based on the facts and claims alleged in the Action, amended complaint, and/or Plaintiff’s PAGA Notice identified on the LWDA’s website as LWDA-CM-830588-21, including, without limitation, Labor Code sections 90.5(a), 201-203, 204, 226, 226.3, 226.7, 246, 350, 351, 510, 512, 558, 1194, 1194.2, 1197, 1198, 2698, et seq., 2699, et seq. 2699.3(a)(2)(A), the applicable Industrial Welfare Commission Wage Order(s), Code of Civil Procedure sections 395 and 474, and the California Healthy Workplaces/Healthy Family Act of 2014..

X. HOW TO OBTAIN ADDITIONAL INFORMATION:

This Notice is only a summary of the class action lawsuit and the associated Settlement. For more information, you may inspect the Court files and the Settlement Agreement at the Sacramento Superior Court, located at 720 9th Street, Sacramento, California 95814.

You may also contact Class Counsel, the Settlement Administrator, and/or Defendant’s Counsel for more information:

<u>Class Counsel:</u> Daniel F. Gaines, Esq. Alex P. Katofsky, Esq. Evan S. Gaines, Esq. GAINES & GAINES, APLC 4550 E. Thousand Oaks Blvd., Suite 100 Westlake Village, CA 91362 Telephone: (866) 550-0855 Facsimile: (818) 703-8984 attorneys@gaineslawfirm.com	<u>Defendant’s Counsel:</u> Beth A. Kahn, Esq. Ryan C. McKim, Esq. CLARK HILL LLP 555 South Flower Street, 24 th Floor Los Angeles, CA 90071 Telephone: (213) 891-9100 Facsimile: (213) 488-1178 bkahn@clarkhill.com rmckim@clarkhill.com
<u>Settlement Administrator:</u> [Name] [Address] [Telephone] [Facsimile] [Email]	

PLEASE DO NOT CALL OR WRITE TO THE COURT ABOUT THIS NOTICE.

Opt-Out Form

Dinesha White v. Wing Pros, Inc., et al.

Case No. 34-2021-00303521

If you wish to opt out of the Settlement and request to exclude yourself from the Settlement, complete this Opt-Out Form and mail, email or fax it to [Settlement Administrator] at the contact information below so that it is postmarked or otherwise transmitted no later than [TBD]. For additional information about the Settlement, please review the accompanying Notice of Proposed Class Action Settlement & Hearing Date for Court Approval.

Full name: _____

Address: _____

Telephone or email address: _____

Signature: _____

Settlement Administrator:

[Name]

[Address]

[Telephone]

[Facsimile]

[Email]

Exhibit B

DANIEL F. GAINES, ESQ. SBN 251488
 daniel@gaineslawfirm.com
 ALEX P. KATOFISKY, ESQ. SBN 202754
 alex@gaineslawfirm.com
 EVAN S. GAINES, ESQ. SBN 287668
 evan@gaineslawfirm.com
GAINES & GAINES, APLC
 27200 Agoura Rd., Suite 101
 Calabasas, CA 91301
 Telephone: (818) 703-8985
 Facsimile: (818) 703-8984

Attorneys for Plaintiff Dinesha White on behalf of herself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SACRAMENTO**

DINESHA WHITE, on behalf of herself and
 all “aggrieved employees” pursuant to Labor
 Code § 2698 *et seq.*,

Plaintiffs,

v.

WING PROS, INC., a California corporation,
 and DOES 1 through 10, inclusive,

Defendants.

CASE NO: 34-2021-00303521

*Assigned to the Hon., Richard K. Sueyoshi,
 Dept. 38*

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

**1. FAILURE TO PAY ALL WAGES DUE
 (FLSA 29 U.S.C. §§ 206 AND 207)**

**2. FAILURE TO PAY ALL WAGES DUE
 (LABOR CODE §§ 510 AND 1194; IWC
 WAGE ORDER 4-2001)**

**3. FAILURE TO PROVIDE REST
 PERIODS OR COMPENSATION IN LIEU
 THEREOF (LABOR CODE § 226.7; IWC
 WAGE ORDER 4-2001)**

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

**5. KNOWING AND INTENTIONAL
 FAILURE TO COMPLY WITH ITEMIZED
 EMPLOYEE WAGE STATEMENT
 PROVISIONS (LABOR CODE § 226(a), (e))**

**6. FAILURE TO PAY ALL GRATUITIES
 (LABOR CODE §§ 350 AND 351)**

7. FAILURE TO PAY WAGES DUE AT SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)

8. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200

9. PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 226(a), 226.7, 350, 351, 510, 512, 1194, AND 1198 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3, 246, AND 558

DEMAND FOR JURY TRIAL

Complaint Filed: July 2, 2021

Plaintiff DINESHA WHITE (“Plaintiff”), individually and on behalf of all similarly situated individuals (the “Class” or “Class Members”), on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of WING PROS, INC., a California corporation, and any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”), and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class, Collective, and Representative Action, pursuant to Code of Civil Procedure § 382, 29 U.S.C. §§ 206 and 207 *et seq.*, and Labor Code §§ 2698 *et seq.*, on behalf of Plaintiff and all other non-exempt employees who work or formerly worked for Defendants within the State of California.

2. The Fair Labor Standards Act of 1938, as amended 29 U.S.C. §§ 201 *et seq.*, (hereinafter referred to as “FLSA”) provides for minimum standards for both wages and overtime entitlement, and details administrative procedures by which covered work time must be compensated. The provisions of the FLSA provide the Courts with substantial authority to stamp out abuses of child labor, equal pay, portal-to-portal activities as well as the overtime pay provisions at issue in this Action.

1 3. The California Labor Code provides for more protective, more rigid, and more
2 extensive labor standards which apply to all California employees.

3 4. For at least four (4) years prior to the filing of this action and continuing to the present
4 (the “liability period”) Defendants have had a consistent policy of failing to pay all wages due to
5 Class Members (as defined below); pay all gratuities due; provide legally compliant meal and rest
6 periods or compensation in lieu thereof to Class Members; to provide accurately itemized wage
7 statements to Class Members; and to timely pay certain Class Members all wage dues at the separation
8 of their employment.

9 5. Plaintiff, on behalf of herself and members of the Class, brings this action pursuant to
10 Labor Code §§ 201, 202, 226(a), 226.3, 226.7, 350, 351, 510, 512, 558, 1194, 2698 *et seq.*, IWC
11 Wage Order 4-2001, and 29 U.S.C. §§ 206 and 207, seeking compensation for all unpaid wages, civil
12 and statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

13 6. Plaintiff, on behalf of herself and Class Members, and pursuant to Business &
14 Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all
15 benefits Defendants enjoyed from their failure to pay all wages due.

16 7. Plaintiff, on behalf of herself and all Class Members, pursuant to FLSA §§ 6 and 7, 29
17 U.S.C. §§ 206 and 207, also seeks liquidated damages for Defendants’ failure to pay all overtime
18 wages due.

19 8. Plaintiff, on behalf of herself and all aggrieved employees pursuant to Labor Code §§
20 2698 *et seq.*, seeks penalties and wages for Defendants’ various violations of the California Labor
21 Code.

22 9. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395
23 because Defendants employed Plaintiff and Class Members throughout the State of California,
24 including Sacramento County.

25 \\\

26 \\\

27 \\\

28 \\\

II.**PARTIES****A. Plaintiff**

10. Plaintiff DINESHA WHITE was employed by Defendants from August 2016 through July 2020 as non-exempt employee in Sacramento County, California.

11. During her work with Defendants, Plaintiff was:

- a. Willfully denied the payment of all wages due;
- b. Willfully denied rest periods or compensation in lieu thereof;
- c. Willfully denied the payment of all gratuities during the course of employment;
- d. Willfully denied meal periods or compensation in lieu thereof;
- e. Willfully denied accurately itemized wage statements; and
- f. Denied the timely payment of wages upon separation of her employment.

B. Defendants

12. Defendant WING PROS, INC., is a California corporation. Defendant WING PROS, INC. employed Plaintiff and Aggrieved Employees throughout the State of California, including Sacramento County, California.

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

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

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

III.

CLASS ACTION ALLEGATIONS

16. Plaintiff brings this action on behalf of herself, and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the following Classes composed of and defined as follows:

All non-exempt California employees employed by Defendants at any time from November 4, 2019 through August 31, 2022.

17. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify these class descriptions with greater specificity or further division into subclasses or limitation to particular issues.

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

A. Numerosity

19. The potential members of the Class as defined are so numerous that joinder of all Class Members is impracticable. While the precise number of members of the class has not been ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants currently employ, and during the relevant time periods employed, over 100 persons in the State of California who fall within the class definition.

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

B. Commonality

1 21. There are questions of law and fact common to the Class that predominate over any
2 questions affecting only individual Class Members. These common questions of law and fact include,
3 without limitation:

- 4 a. Whether Defendants failed to pay all wages due during employment to Plaintiff
5 and Class Members, in violation of Labor Code §§ 510 and 1194 and the
6 FLSA, 29 U.S.C. §§ 206 and 207;
- 7 b. Whether Defendants fail to pay all wages due to Plaintiff and Class Members,
8 in violation of Labor Code §§ 510 and 1194 and IWC Wage Order 4-2001;
- 9 c. Whether Defendants failed to properly provide rest periods or compensation in
10 lieu thereof to Plaintiff and Class Members, in violation of Labor Code § 226.7
11 and IWC Wage Order 4-2001;
- 12 d. Whether Defendants failed to properly provide meal periods or compensation
13 in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§
14 226.7 and 512 and IWC Wage Order 4-2001;
- 15 e. Whether Plaintiffs and the Class were denied the payment of all gratuities
16 during the course of employment, in violation of Labor Code §§ 350 and 351;
- 17 f. Whether Defendants failed to provide Plaintiff and Class Members with
18 accurately itemized wage statements, in accordance with Labor Code § 226(a)
19 and (e);
- 20 g. Whether Defendants failed to timely pay Plaintiffs and Class Members all
21 wages due and owing at the separation of their employment, in violation of
22 Labor Code §§ 201-203; and
- 23 h. Whether Plaintiffs and Class Members are entitled to equitable relief pursuant
24 to Business & Professions Code § 17200 *et seq.*

25 **C. Typicality**

26 22. The claims of the named Plaintiff are typical of the claims of members of the Class.
27 Plaintiff and Class Members sustained injuries and damages arising out of and caused by Defendants'
28

1 common course of conduct in violation of laws, regulations that have the force and effect of law, and
2 statutes as alleged herein.

3 **D. Adequacy of Representation**

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

7 **E. Superiority of Class Action**

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

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

17 **IV.**

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

21 **FAILURE TO PAY ALL WAGES DUE**

22 **(FLSA, 29 U.S.C. §§ 206 AND 207)**

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

25 27. Plaintiff brings this count as a collective action under Section 16(b) of the FLSA.

26 28. This count arises from Defendants' violation of the FLSA, 29 U.S.C. § 201 *et seq.*, for
27 their failure to pay all wages due to Plaintiff and FLSA Class Members. At all relevant times hereto,
28

1 Defendants have been an “enterprise engaged in commerce or in the production of goods for
2 commerce,” as defined under 29 U.S.C. § 203(s)(1).

3 29. Defendants, individually and collectively, are Plaintiff’s “employer” as defined by the
4 FLSA.

5 30. Defendants, individual and collectively, are an “enterprise” as defined by Section
6 3(r)(1) of the FLSA, 29 U.S.C. § 203(r)(1).

7 31. Defendants, individual and collectively, are an enterprise engaged in commerce or in
8 the production of goods for commerce within the meaning of Section 3(s)(1)(A) of the FLSA, 29
9 U.S.C. § 203(s)(1)(A).

10 32. Defendants’ annual gross volume of sales made, or business done, individual and
11 collectively, has exceeded \$500,000 in each of the last three calendar years.

12 33. Plaintiff is an “employee” of Defendants as defined by the FLSA.

13 34. During the entire course of their employment by Defendants, Plaintiff and Class
14 Members have not been exempt from the overtime provisions of the FLSA.

15 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
16 required, or require, Class Members, as part of their employment, to work without being paid all
17 wages, pursuant to 29 U.S.C § 207(a)(1). That section provides the following:

18 Except as otherwise provided in this section, no employer shall employ
19 any of his employees . . . for a workweek longer than forty hours unless
20 such employee receives compensation for his employment in excess of
21 the hours above specified at a rate which is not less than one and one-
22 half times the regular rate at which he is employed.

23 36. In the performance of their duties for Defendants, Class Members often worked more
24 than forty hours per week and did not receive all overtime compensation for the work, labor and
25 services they provided to Defendants, as required by the FLSA, 29 U.S.C. §§ 206 and 207.
26 Specifically, they were not paid overtime wages at the rate of one and one-half times their regular
27 rate for all hours worked over 40 in one week. They were also not paid properly for all hours worked,
28 thereby denying them all minimum wages due.

37. The precise amount of unpaid wages will be proven at trial.

38. Plaintiff proposes to undertake appropriate proceedings to have Class Members aggrieved by Defendants' unlawful conduct notified of the pendency of this action and join this action as plaintiffs, pursuant to 29 U.S.C. § 216(b), by filing written consents to joinder with the Court.

39. Defendants' violations of the FLSA were willful within the meaning of the statute and interpretive case law.

40. As a result of the foregoing, Plaintiff seeks judgment against Defendants on her own behalf, and on behalf of Class Members similarly situated who file written consents to joinder in this action, for all unpaid wages owed by Defendants to Plaintiff and Class Members, pursuant to 29 U.S.C. §§ 206 and 207, together with an award of an additional equal amount as liquidated damages, and costs, interest, and reasonable attorneys' fees, as provided for under 29 U.S.C. § 216(b).

V.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PAY ALL WAGES DUE

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

41. Plaintiff incorporates paragraphs 1 through 40 of this Complaint as though fully set forth herein.

42. Defendants fail to pay all overtime wages due, in violation of Labor Code §§ 510 and 1194 and IWC Wage Order 4-2001. Defendants failed to properly compute bonus wages and other non-base hourly wages earned by Plaintiff and Class Members into their regular rate of pay for purposes of paying them overtime wages at the correct rates, in violation of Labor Code §§ 510, 558 and 1194. Defendant failed to properly blend these bonus wages and other non-base hourly wages and instead paid Plaintiff and Class Members overtime based only on the base hourly rate of pay, thus depriving Plaintiff and Class Members of all wages earned, in violation of Labor Code §§ 510, 558 and 1194.

43. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due, Plaintiff and members of the California Class have been deprived of wages in amounts to be

1 determined at trial and are entitled to restitution and recovery of such amounts, plus interest thereon,
2 attorneys' fees, and costs, pursuant to Labor Code § 1194.

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

4 **VI.**

5 **THIRD CAUSE OF ACTION**

6 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

7 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

8 **(LABOR CODE § 226.7 AND IWC WAGE ORDER 4-2001)**

9 44. Plaintiff incorporates paragraphs 1 through 43 of this Complaint as though fully set
10 forth herein.

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

14 46. Defendants fail to pay premium wages to Plaintiff and Class Members who are denied
15 rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 4-2001. Plaintiff and Class
16 Members are often denied the ability to take an off-duty 10-minute rest period for every four (4) hours
17 of work or major fraction thereof. When they were able to take a rest period, they were oftentimes
18 late, cut short or on-duty, in violation of Labor Code §§ 226.7, 558 and IWC Wage Order No. 4-2001.

19 47. Pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001, Plaintiff seeks the
20 payment of all rest period compensation which she and Class Members are owed, according to proof.

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

22 **VII.**

23 **FOURTH CAUSE OF ACTION**

24 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

25 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

26 **(LABOR CODE §§ 226.7 AND 512; IWC WAGE ORDER 4-2001)**

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

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

50. Defendants fail to pay premium wages to Plaintiff and Class Members who are denied meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001. Plaintiff and Class Members are routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeds five hours, or a second proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeds ten hours, but are not paid proper premium wages of one hour's pay for each missed first or second meal period. When they were able to take a meal period, they were oftentimes, late, cut short, or on-duty, in violation of Labor Code §§ 226.7, 512 and 558 and IWC Wage Order 4-2001.

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

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

VIII.

FIFTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED

EMPLOYEE WAGE STATEMENT PROVISIONS

(LABOR CODE § 226(a), (e))

52. Plaintiff incorporates paragraphs 1 through 51 of this Complaint as though fully set forth herein.

53. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee

1 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
2 for which the employee is paid, (7) the name of the employee and only the last four digits of his or
3 her social security number or an employee identification number other than a social security number,
4 (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates
5 in effect during the pay period and the corresponding number of hours worked at each hourly rate by
6 the employee. Defendants have knowingly and intentionally failed to comply with Labor Code §
7 226(a).

8 54. Defendants fail to issue Plaintiff and Class Members wage statements that fully and
9 accurately itemized the requirements set forth in Labor Code § 226(a). As Plaintiff and Class
10 Members are not paid all wages due, as stated above, the wage statements provided by Defendants
11 fail to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours
12 worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code §
13 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding
14 number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9). Separately, the
15 wage statements issued to Plaintiff and Class Members failed to set forth either the last four digits of
16 their social security number or their employee identification number, in violation of Labor Code §
17 226(a)(7).

18 55. As a consequence of Defendants' willful conduct in failing to provide Class Members
19 with accurate itemized wage statements, Plaintiff and members of the Class have been injured because
20 they have not been paid all wages due and were issued wage statements which do not reflect, and fail
21 to state, all information required by Labor Code § 226(a). The missing information cannot be
22 discerned at all from the face of the wage statements themselves. Plaintiff and Class Members are
23 entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or
24 \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in
25 a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled
26 to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

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

28 **IX.**

SIXTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PAY ALL WAGES AND GRATUITIES

(LABOR CODE §§ 350 AND 351)

56. Plaintiffs incorporate paragraphs 1 through 55 of this Complaint as though fully set forth herein.

57. Defendants failed to pay Plaintiff and Class Members all gratuities due, in violation of Labor Code §§ 350 and 351.

58. Plaintiffs and Class Members were forced to pay out their tips based on the percentage of total *sales* made and not actual tips earned, in violation of Labor Code § 351, which states, in pertinent part, that “[n]o employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer.”

59. As a result of the unlawful acts of Defendants in willfully failing to pay all gratuities due, Plaintiff and Class members have been deprived of gratuities in amounts to be determined at trial, and are entitled to restitution and recovery of such amounts, plus interests thereon, attorneys’ fees, and costs pursuant to Labor Code § 351.

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

X.

SEVENTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

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

60. Plaintiff incorporates paragraphs 1 through 59 of this Complaint as though fully set forth herein.

61. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor

Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

62. Defendants paid Plaintiff and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. As stated herein, Plaintiff and Class Members were not paid all wages due, during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of Plaintiff and Class Members no longer employed by Defendants. Separately, when Plaintiff ended her employment with Defendant, she was not provided her final wages within 72 hours. Instead, Defendant paid her one week after her last date of employment, in violation of Labor Code § 201.

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

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

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

XI.

EIGHTH CAUSE OF ACTION

PLAINTIFF AND THE CALIFORNIA CLASS AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

65. Plaintiff incorporates paragraphs 1 through 64 of this Complaint as though fully set forth herein.

66. This is a Class Action for Unfair Business Practices. Plaintiff, on her own behalf and on behalf of the general public, and on behalf of others similarly situated, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this

1 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public,
2 and California Class Members. Plaintiff seeks to enforce important rights affecting the public interest
3 within the meaning of Code of Civil Procedure § 1021.5.

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

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

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

15 70. Defendants have violated statutes and public policies. Through the conduct alleged
16 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
17 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
18 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
19 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
20 guaranteed to all employees under law.

21 71. Defendants’ conduct, as alleged herein, constitutes unfair competition in violation of
22 §17200 *et seq.* of the Business & Professions Code.

23 72. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
24 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
25 17200 *et seq.* of the Business & Professions Code.

26 73. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and
27 California Class Members have been damaged in a sum as may be proven.
28

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

XII.

NINTH CAUSE OF ACTION

PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS

PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF

LABOR CODE §§ 201, 202, 226(a), 226.7, 350, 351, 510, 512, 1194, AND 1198

AND PURSUANT TO LABOR CODE § 2699(a)

FOR VIOLATIONS OF LABOR CODE §§ 226.3, 246, AND 558

75. Plaintiff incorporates paragraphs 1 through 74 of this Complaint as though fully set forth herein.

76. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

77. Furthermore, and independent of the above allegations, Defendants failed to provide suitable seats to Plaintiff and other Aggrieved Employees. Many job positions reasonably permit the use of seating, but Defendant did not provide it and Aggrieved Employees were not permitted to sit down during the course of their employment. This practice violates California Labor Code § 1198 and Wage Order 4-2001, § 14, which provides as follows: “(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

78. Defendants also failed to provide Plaintiff and other non-exempt Aggrieved Employees with any paid sick leave, as required by the California Healthy Workplaces/Healthy Families Act of 2014 (the “Act”), codified at Labor Code § 246(d). Pursuant to the Act, at a minimum, employers must provide employees with 24 hours or three days of accrued sick leave for each year of employment. Defendant failed to provide any paid sick leave, in violation of the Act, and resulting in a failure to pay all wages due, in violation of Labor Code §§ 246(d), 510, 558, and 1194.

79 For each such violation of the Labor Code, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 350, 351, 510, 512, 1194, and 1198; and
- b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 226.3, 246, and 558.

80. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected aggrieved employees.

81. On April 28, 2021, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of April 28, 2021. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the aggrieved employees she seeks to represent request relief as described below.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For recovery of all unpaid wages and liquidated damages, pursuant to the FLSA, 29 U.S.C. § 201 *et seq.* with respect to Plaintiff and Class Members;

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

3. For compensatory damages pursuant to Labor Code § 351 in the amount of all unpaid gratuities due to Plaintiffs and Class Members;

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

5. For compensatory damages in the amount of one hour of wages for each day on which a meal period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§ 226.7 and 512;

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

7. For penalties pursuant to Labor Code § 203 for Plaintiffs and members of the Class;

8. An award of prejudgment and post-judgment interest;

9. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;

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

11. An award providing for payment of costs of suit pursuant to Labor Code §§ 226(h), 2699(g)(1), and other applicable law;

12. An award of attorneys' fees pursuant to Labor Code §§ 226(h), 2699(g)(1), and other applicable law; and

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

Dated: April 17, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: _____
DANIEL F. GAINES
EVAN S. GAINES
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

Dated: April 17, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: _____
DANIEL F. GAINES
EVAN S. GAINES
Attorneys for Plaintiff