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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

AMY PHELAN, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

RLS-CMC, INC., a Delaware Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CVRI2101907
*[Assigned to Hon. Harold Hopp, Dept 1, for all
purposes]*

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

Hearing

Date: November 9, 2023

Time: 8:30 a.m.

Dept.: 1

Complaint filed: 4/13/2021

I, Brian J. Mankin, state and declare:

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

1 **COUNSEL’S EXPERIENCE**

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

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

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). At one point, my team and I held the record for the largest known
17 PAGA-only case in California’s history - a \$12.5 million-dollar court approved settlement,
18 which followed extensive litigation, summary adjudication and writs to the CA Supreme Court
19 against a Fortune 50 company (*Garcia v. Macy’s*, San Bernardino Superior Court).

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

26 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
27 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17
28 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I

1 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
2 only 5% of lawyers receive.

3 **BRIEF SUMMARY OF THE SETTLEMENT**

4 7. Following mediation, Plaintiff and Defendants (collectively, the “Parties”)
5 eventually entered into a Class and PAGA Settlement Agreement and Release of Claims
6 resolving the wage and hour claims of the putative class (the “Settlement Agreement” or “S.A.”),
7 which is attached hereto as **Exhibit A**.

8 8. The Settlement Agreement seeks to release and discharge Defendants from the
9 claims brought against it in exchange for Defendants’ agreement to pay \$250,000 (reduced by a
10 credit for “Prior Payments” already made) on a non-reversionary, non-claims made basis (each
11 Class Member will receive his/her share of the Net Settlement Amount without having to
12 submit a claim form or take any action, except for those who opt-out).

13 9. Plaintiff seeks to represent a class of all current and former nonexempt employees
14 employed by Defendants in California at any time during the Class Period (which is April 13,
15 2017, through May 2, 2023).

16 10. Under the terms of the Settlement Agreement, Defendants will not oppose
17 Plaintiff Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third
18 of the Settlement Amount, litigation expenses not to exceed \$20,000, Settlement Administrator
19 Costs of \$6,000, PAGA penalties of \$10,000 (with 75% to the LWDA and 25% to the Aggrieved
20 Employees on a pro rata basis), and a Service Payment of \$5,000 to Plaintiff. After subtracting
21 these deductions from the Settlement Amount, and after adding the credit for Prior Payments
22 made, approximately \$100,322.69 will be available to pay individual settlement amounts to
23 approximately 50 Class Members who do not opt-out of the settlement, as follows:

<i>Settlement Amount</i>	\$ 250,000.00
Attorneys’ Fees (1/3)	\$ 83,333.33
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 6,000.00
PAGA Penalties	\$ 10,000.00
Credit for Prior Payments made by Defendants	\$ 25,343.98
Class Representative Service Award	\$ 5,000.00
<i>Net Settlement Amount</i>	\$ 100,322.69

1 11. The Net Settlement Amount will be paid to the Class Members on a Share Point
2 basis, calculated by looking to the relative number of weeks worked by each class member in
3 certain time periods. And each Class Member will receive the Class Notice, explaining the
4 nature of the case, and the process for participating, objecting and opting-out, and advising of
5 his/her estimated settlement payment and the number of Share Points and weeks he/she is
6 credited with working during the applicable periods. True and correct copies of the Class
7 Notice, Request for Exclusion Form, Objection Form and Dispute Form are attached hereto as
8 **Exhibits B, C, D and E**, respectively.

9 **PROCEDURAL BACKGROUND**

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

16 13. After being retained by Geoffrey Kinzel, we submitted a letter to the Labor and
17 Workforce Development Agency (“LWDA”) for civil penalties under the Private Attorneys
18 General Act of 2004 (“PAGA”), and simultaneously sent a letter to RLS-CMC requesting the
19 production of personnel and timekeeping records to further evaluate his wage and hour claims.
20 The LWDA ultimately declined to assert jurisdiction over the PAGA, thereby giving Plaintiff the
21 right to bring PAGA claims. A true and correct copy of Mr. Kinzel’s LWDA Notice Letter is
22 attached hereto as **Exhibit F**.

23 14. On April 13, 2021, my office filed this class action, alleging that Defendant RLS-
24 CMC, Inc. (“RLS”) violated various sections of the Labor Code. Then, on August 19, 2021, my
25 office filed a First Amended Complaint adding PAGA causes of action. By August 31, 2021, the
26 Parties had scheduled mediation for March 29, 2022, with Hon. Carl West (Ret.).

27 15. However, in the lead-up to mediation, RLS-CMC contacted and obtained *Pick-Up*
28 *Stix* settlements from numerous class members. As a result, the mediation was cancelled, and

1 my office moved forward with discovery to prepare for class certification and to challenge and
2 invalidate the releases obtained from class members.

3 16. Then, on March 18, 2021, we added two new Defendants via Doe amendment:
4 Roger Lee Sanchez and Jasmine Bormann. However, soon after those Doe amendments,
5 Defendants filed a Notice of Removal (on April 8, 2022), removing this action to the United
6 States District Court for the Central District of California. On June 7, 2022, the Hon. Jesus G.
7 Bernal granted Plaintiff's Motion to Remand, sending this action back to Riverside County
8 Superior Court.

9 17. My office then resumed discovery and started the meet and confer process for
10 several discovery disputes. RLS then provided supplemental responses that resolved most of the
11 discovery disputes, and the Parties tabled any remaining disputes to attend mediation scheduled
12 for January 23, 2023.

13 18. Unfortunately, that mediation was cancelled after discovering that Mr. Kinzel
14 passed away on October 27, 2022. After that occurred, Plaintiff's counsel was retained by a
15 former employee, currently Plaintiff Amy Phelan, who wished to be added to continue litigating
16 the claims on behalf of the Class and under PAGA. Plaintiff Phelan then sent an Amended
17 LWDA Notice to the LWDA and to Defendants on March 10, 2023, advising of her intent to step
18 in the shoes of Mr. Kinzel and litigate the class and PAGA claims. Attached as **Exhibit G** is a
19 true and correct copy of Ms. Phelan's Amended LWDA Notice. Ultimately, the Parties agreed to
20 attend mediation with Amy Phelan serving as the class/PAGA representative.

21 19. In preparation for mediation, the Parties informally exchanged documents and
22 information that allowed both sides to calculate the potential damages and evaluate potential risk,
23 including policies and procedures pertaining to the claims, statistics relating to the number of
24 current and former employees, number of shifts, pay periods worked and other things, and a
25 sampling of payroll and timekeeping records for Class Members. This information included over
26 570 pages of documents and approximately 4,900 rows of excel data relating to the Class shift
27 and timekeeping data. In sum, this information exchange enabled both parties to take a deep
28 dive into the claims. Additionally, during this process, Plaintiff and her counsel analyzed,

1 researched, and investigated the potential issues, including matters related to the calculation of
2 damages, trial, and appellate issues and risks.

3 20. On May 2, 2023, Plaintiff and Defendants participated in mediation before Phillip
4 Cha, Esq. a well-respected employment mediator. The matter resolved at mediation and the
5 Parties entered into the Settlement Agreement submitted herewith. As part of the settlement, the
6 Parties stipulated to substitute Ms. Phelan into the case in place of deceased Mr. Kinzel, and the
7 operative SAC reflecting that change was filed on May 22, 2023. The Parties now seek the
8 Court's preliminary approval of the Settlement.

9 **SUMMARY OF THE CLAIMS AND DEFENSES**

10 21. Plaintiff alleged numerous wage and hour violations on behalf of the Class.
11 However, Defendants vigorously contested and denied each of Plaintiff's material allegations on
12 the merits and as to the propriety of a class action or PAGA representative action.

13 22. The primary claim in this action centered on Defendants' practice of paying the
14 Class (nonexempt employees) on a salary basis. Defendants' policy paid the Class on a salary
15 basis and that payment was intended to compensate for 10 hours of work each day – 8 hours of
16 regular time and 2 hours of overtime. However, Plaintiff alleged that this policy was unlawful
17 and led to a failure to pay required minimum and overtime compensation since California law
18 states that salary compensation (for a nonexempt employee) can only cover the first 8 hours in a
19 day. *See* Labor Code § 515(d)(2) ("Payment of a fixed salary shall be deemed to provide
20 compensation only for the employee's regular, nonovertime hours, notwithstanding any private
21 agreement to the contrary"). Thus, Plaintiff alleged that all hours above 8 were illegally unpaid.
22 However, based on information obtained in discovery, Defendant changed this practice and the
23 end date for liability (if liability attached) was April 30, 2021.

24 23. Plaintiff also alleged other claims; for instance, Plaintiff alleged that Defendants
25 did not provide all required meal and rest breaks for the Class. However, Defendants raised
26 numerous arguments in response to this claim, including that it maintained fully compliant
27 written policies and specifically authorized the Class Members to take meal and rest breaks,
28 meaning that no one had a reason or cause to miss a break or take a short/late break. Therefore,

1 Defendants asserted that a fact-finder would have to determine for each Class Member whether a
2 break was missed and why, and why a break was noncompliant or nonexistent, because if it was
3 by the employee's choice, no liability attaches to Defendants.

4 24. Additionally, Plaintiff alleged that Defendant failed to reimburse Class Members
5 for business-related expenses incurred on behalf of their employment with Defendant, such as
6 traveling between Defendant's warehouses on the same day without being reimbursed for
7 mileage or gas expenses.

8 25. Plaintiff also alleged that the unpaid wage and meal/rest break claims trigger
9 various penalties, including inaccurate wage statements under Labor Code § 226 and 30-days of
10 pay as a waiting time penalty for each former employee under Labor Code § 203.

11 26. Moreover, Plaintiff alleged that during the same period when Defendants were
12 paying the Class on a salary basis (with no pay for hours above 8), Defendants also provided
13 wage statements to the Class that violated Labor Code § 226 because the document did not
14 include any information about "total hours worked." Like the unpaid wage claim, this alleged
15 violation was also corrected during litigation and the liability (if any) ends on April 30, 2021.

16 **CMO COMPLIANCE**

17 27. In accordance with CMO ¶ G, this section will specifically identify and address
18 each CMO requirement. This information was compiled with the assistance of Peter Carlson,
19 who was responsible for preparing the pre-mediation data and calculations, and primarily
20 assisted in the preparation of the *Kullar* analysis. As such, the following is based largely on
21 information and belief, as it was largely prepared with Mr. Carlson's assistance (but I reviewed
22 all of the information).

23 **CMO ¶ G(3)(a)(i)**

24 28. Based on information obtained in formal discovery and through informal
25 discovery before mediation, I estimate that there are 50 individuals that fall within the Class
26 definition and 30 of those individuals are also "Aggrieved Employees" under PAGA.

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28 ///

CMO ¶ G(3)(a)(ii), CMO ¶ G(3)(a)(iii), CMO ¶ G(9)(b)

29. The following paragraphs provide the maximum and risk-adjusted value for each claim, and this includes all claims on a class and PAGA basis as required by the CMO.

30. The calculations below are based upon data points obtained through formal and informal discovery, from which Plaintiff's counsel estimated the following through mediation: (1) 50 Class Members, (2) 20 *former* Class Members for purposes of Labor Code § 203, (3) 3,600 workweeks, (4) 16,200 shifts worked, and (4) approximately 1,600 biweekly wage statements during the PAGA Period.

Unpaid Wage Claims (Minimum and Overtime)

31. Plaintiff's primary claim was for unpaid minimum and overtime wages based on Defendants' policy which required Class Members to work 10-hour days, yet Defendants paid the Class on a salary basis without any separate payment for hours above 8. Plaintiff alleges that this violated California law on each such occasion (and resulted in unpaid minimum and overtime wages) since Labor Code § 515(d) holds that a salary paid to nonexempt employees can only compensate for the first 8 hours in a day.

32. This claim, although strong, was limited in terms of exposure because: (a) Defendants only began doing business in California in 2020, and (b) Defendants changed their allegedly illegal salary pay policy at the end of April 2021. Thus, based on information obtained via informal discovery, Plaintiff calculated that this violation only occurred during 48 calendar weeks, and only occurred for 2,700 shifts worked by Class Members.

33. CMO ¶ G(3)(a)(ii): we calculated the maximum potential damages for the unpaid minimum and overtime wages as \$243,000. This was calculated by multiplying the number of violative shifts (2,700) by the alleged number of unpaid hours per shift (2) by the applicable rate of pay (\$45.00 – the overtime rate since these were hours above 8) [2,700 shifts x 2 hours per day x \$45 per hour = \$243,000].

34. CMO ¶ G(3)(a)(iii): we calculated the risk-adjusted value of these unpaid minimum and overtime claims as \$142,155, which takes into account difficulties of proof, Defendants' defenses at certification and on the merits, and other risks. We put very little risk

(10%) at the class certification stage given that this presents a straightforward legal question (did the salary policy fail to pay for hours above 8?). We felt extremely confident on the merits as well since Labor Code § 515(d) sets forth controlling law on this issue and its application leads to likely liability for Defendants. However, we had to account for several risks after class certification unrelated to the merits of the claim. For instance, we had to factor in potential evidentiary concerns since Plaintiff and the other Class Members may have had difficulty proving they worked 2 hours of overtime every day. And we also had to take into account that Defendants obtained settlements and releases from 17 Class Members, and it was unclear whether those releases would be valid or overturned under Labor Code § 206.5. Thus, although we did not see much risk of losing on the merits, there was risk of diminished value of the claim at trial given these factors, and we placed a 35% post-certification reduction on the value. This results in the total risk-adjusted value of \$142,155.

35. CMO ¶ G(9)(b): as for the PAGA penalty claims on these issues, Plaintiff calculated the maximum potential PAGA penalty at trial as \$52,900 based on a 100% violation rate for the 529 biweekly wage statements issued during the period when the salary was in effect multiplied by the standard \$100 PAGA penalty. Like above, we put very little (to no) risk on the merits of this claim because Labor Code § 515(d) is very clear that salary paid to a nonexempt employee only compensates for 8 hours. However, we recognize that there were certain factors that reduce the value at trial. Specifically, when considering the amount of discretionary reduction to apply against the maximum penalties, we believe the Court would consider that Defendants promptly changed their salary policy upon filing of the lawsuit. And we believe the Court would give credit to the settlements obtained from the 17 Class Members, as Defendants provided separate compensation (without requiring a signed release) for the amounts they alleged to be owed. Thus, we believe the Court would review Defendants' policy which, although allegedly invalid, attempted to compensate for all hours worked, and when paired with the good faith effort to change the practice and pay amounts owed, reduce the PAGA penalties by 40%, leading to a risk-adjusted value of \$31,740.

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Meal and Rest Break Claims

36. Plaintiff also alleged meal and rest break claims against Defendants, and this section provides CMO-compliant information as to the value and basis for such claims.

37. CMO ¶ G(3)(a)(ii): we calculated the maximum potential damages as follows. For the meal period claims, we calculated 9,720 violations (60% violation out of 16,200 total shifts) and multiplied that by \$30.00 (the applicable premium rate under Labor Code § 226.7) to arrive at maximum potential damages of \$291,600. For the rest break claims, we calculated 8,100 violations (50% violation out of 16,200 total shifts) and multiplied that by \$30.00 to arrive at maximum potential damages of \$243,000.

38. CMO ¶ G(3)(a)(iii): we calculated the risk-adjusted value of the meal period claims as \$87,480 and for the rest break claim as \$60,750. These risk-adjusted figures are based on the numerous defenses and risks attached to such claims. For instance, Defendants raised numerous arguments in response to this claim, including that it maintained fully compliant written policies and specifically authorized the Class Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a short/late break. Therefore, Defendants asserted that a fact-finder would have to determine for each Class Member whether a break was missed and why, and why a break was noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to Defendants. These defenses are factored into Plaintiff's analysis in two ways. First, these issues raise questions regarding whether the meal and rest break claims could be certified, and Plaintiff placed a 40% risk at the class certification stage for meal periods and a 50% risk for rest breaks. Second, these defenses also go toward the merits given the evidentiary question of proving the number of meal and rest violations. As such, Plaintiff placed a 40% risk on the merits for meal breaks, and an additional 40% risk on the merits for rest breaks. This returns risk-adjusted values for meal periods of \$87,480 [$\$291,600 \times 40\% \text{ class cert risk} \times 50\% \text{ merits risk}$] and for rest breaks of \$60,750 [$\$243,000 \times 50\% \text{ cert risk} \times 50\% \text{ merits risk}$].

39. CMO ¶ G(9)(b): as for the PAGA penalty claims on these issues, Plaintiff calculated the maximum potential PAGA penalty at trial as \$160,000 for meal period and

1 \$160,000 for rest breaks based on a 100% violation rate (*i.e.*, one violation in a biweekly pay
2 period) for the 1,600 biweekly wage statements issued during the period multiplied by \$100. But
3 these claims faced the same merits and evidentiary risks discussed above, so we applied a 40%
4 risk on the merits for each claim. Then we also assumed that the Court, when considering what
5 discretionary reduction to apply, would give credit to Defendants' attempt to enact and apply a
6 compliant written meal and rest period policy. And, as a result, we estimated that the Court
7 would apply a discretionary reduction of 75%, leading to risk-adjusted PAGA values of \$24,000
8 for meal periods and \$24,000 for rest breaks.

9 *Unreimbursed Expense Claims*

10 40. Here, Plaintiff alleged that Defendants failed to reimburse her and other Class
11 Members for expenses incurred carrying out their duties for Defendants, such as cellular phones.

12 41. CMO ¶ G(3)(a)(ii): we calculated the maximum potential value of the
13 unreimbursed expense claim as \$36,000, based on \$10 of unreimbursed cellular phone expenses
14 per workweek (\$10 x 3,600 class workweeks).

15 42. CMO ¶ G(3)(a)(iii): we calculated the risk-adjusted value of the unreimbursed
16 expense claim as \$15,120. This figure includes a 30% risk at the class certification stage based
17 on the Defendants' intended argument that these claims require precisely the type of
18 individualized inquiry that requires denial of class certification (did each class member use their
19 phone? Was it required? Was it necessary? How often and for how long?). Additionally, on the
20 merits, this claim also faced strong defenses, as Defendants argued that it reimbursed the Class
21 Members for all expenses (if any) and that the Class Members were not required to use their cell
22 phones for work purposes (and, under controlling law, Defendants are not liable unless the cell
23 phone use is required or "necessary"). Thus, we applied a 40% risk on the merits, which set the
24 risk-adjusted value of this claim as \$15,120.

25 43. CMO ¶ G(9)(b): as for the PAGA penalty claims on these issues, Plaintiff
26 calculated the maximum potential PAGA penalty at trial as \$160,000 for unreimbursed expense
27 claims based on a 100% violation rate for the 1,600 biweekly wage statements issued during the
28 period multiplied by \$100. However, these PAGA claims faced the same merits defenses noted

1 above, so we discounted the value by 40% for risk. Additionally, if this claim were successful at
2 trial, we believe that the Court would exercise its discretion to reduce the PAGA penalties by
3 80% to fall in line with the Class damages (since Defendants would likely argue it is “unjust” to
4 impose more PAGA penalties than the amount of unreimbursed expenses), thus setting the risk-
5 adjusted value of this PAGA claim as \$19,200.

6 *Wage Statement Claims*

7 44. Plaintiff alleged two distinct subsets of wage statement claims. First, during the
8 period when the salary pay policy was in effect, Defendants’ wage statements failed to state
9 “total hours worked” as required by Labor Code § 226, so Plaintiff brings direct violations.
10 Second, in the period thereafter, Plaintiff brings claims for derivative violations of Labor Code §
11 226 (e.g., because did not pay meal/rest premiums, the net wages were incorrect). This section
12 provides CMO-compliant information as to the value and basis for such claims.

13 45. CMO ¶ G(3)(a)(ii): based on the formula under Labor Code § 226(e) (\$50 for
14 initial violation and \$100 for subsequent violations), we calculated the maximum class wage
15 statement penalties as \$158,500. Since there were 1,600 wage statements, and 30 Class
16 Members during the applicable period, that means there were 30 “initial violations” and 1,570
17 “subsequent” violations ($[30 \times \$50] + [1,570 \times \$100] = \$158,500$).

18 46. CMO ¶ G(3)(a)(iii): we calculated the risk-adjusted value of the class wage
19 statement claims as \$79,119. This analysis necessitated breaking the claim into two components:
20 (1) the direct claim for failing to state total hours worked (covering 529 wage statements), and
21 (2) the derivative claims thereafter (covering 1,071 wage statements). For instance, for the direct
22 claims, we assigned a nominal 10% risk at class certification and estimated a merits risk of only
23 10%, thus setting an overall risk-adjusted value for the direct claims of \$41,634 [$\$51,400 \times 10\%$
24 cert risk $\times 10\%$ merits risk] for that subset because: we placed only a small risk on whether we
25 could prove a violation of § 226(a), we felt confident that this violation would be “knowing and
26 intentional” since Defendants purposely enacted this wage statement, and we believe that
27 “injury” would be shown because there was no way to determine the total hours worked by
28 reviewing the wage statement, creating a “deemed injury” under § 226(e). But there were

several different considerations and risks for the derivative claims that were not present for the direct claims. For instance, because these claims were entirely derivative of the claims above, they only had merit if the claims for unpaid wages or meal/rest breaks were successful. Moreover, Defendants argued that “derivative” violations cannot trigger liability under § 226 and, even if there was a “technical” violation, Plaintiffs would be unable to prove the required “knowing and intentional” and “injury” elements. Based on these facts and defenses, we placed a 30% risk at class certification (in line with the claims on which the derivative wage statement claim was based) and estimated another 50% risk on the merits, leading to a risk-adjusted value for the derivative claims of \$37,485 [$\$107,100 \times 30\% \text{ cert risk } 50\% \text{ merits risk}$]. This results in a total risk-adjusted value of \$79,119 for wage statement claims.

47. CMO ¶ G(9)(b): as for the PAGA penalty claims on these issues, Plaintiff calculated the maximum potential PAGA penalty at trial as \$160,000 for wage statement claims based on a 100% violation rate for the 1,600 biweekly wage statements issued during the period multiplied by \$100. However, like above, the risk-adjusted value must consider the difference between the direct and derivative claims. Plaintiff applies the same risk as above for the direct claims (10%) and assumes that the Court would discount PAGA penalties by 50% since Defendants would argue anything less as “unjust” where the Court would already be imposing statutory penalties payable to the Class for the same violations [$529 \text{ wage statements} \times \$100 \times 10\% \text{ merits risk} \times 50\% \text{ reduction} = \$23,805$]. As for the derivative claims, we applied the same 50% merits risk and, even though there is no requirement for “knowing and intentional” under PAGA, we assumed that the Court would apply a discretionary reduction of 75% based on Defendants’ likely argument (if liability was found) that they were already liable for damages to the Class and for PAGA penalties for the overarching violations that triggered the derivative wage statement violations [$1,071 \text{ wage statements} \times \$100 \times 50\% \text{ merits risk} \times 75\% \text{ reduction} = \$13,388$]. Thus, the total combined risk-adjusted PAGA penalties are \$37,193.

Waiting Time Penalty Claims

48. Plaintiff’s claim for failure to timely pay final wages (and for waiting time penalties under Labor Code § 203) was entirely derivative of the claims above (*e.g.*, because

1 Defendants failed to pay all wages and premiums owed, Defendants did not timely pay all final
2 wages owed because there are still amounts due and payable).

3 49. CMO ¶ G(3)(a)(ii): we calculated the maximum potential value of this claim as
4 \$180,000 based on 20 *former* employees who were paid \$30 per hour for an average of 10 hours
5 per day (20 employees x [\$30 per hour x 10 hours per day x 30-day penalty] = \$180,000).

6 50. CMO ¶ G(3)(a)(iii): we calculated the risk-adjusted value of the waiting time
7 penalty claim as \$88,200. The valuation had to account for the fact that this claim was derivative
8 of the unpaid wage and meal/rest break claims and, if those claims failed at certification or on the
9 merits, there would be no waiting time penalties owed, so the same risks for those claims applied
10 to this claim. Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at
11 certification and on the merits, Plaintiff would have to prove that the violations (if any existed)
12 were “willful” under the meaning of Labor Code § 203. And, here, Defendants argued there was
13 no “willful” violation since they had compliant written policies and any deviations therefrom
14 were inadvertent and unintentional. As a result of this analysis, Plaintiff’s counsel applied a 30%
15 risk at class certification and a 30% risk on the merits, setting a risk-adjusted value of \$88,200.

16 51. CMO ¶ G(9)(b): as for the PAGA penalty claims, Plaintiff calculated the
17 maximum potential PAGA penalty at trial as \$2,000 based on 20 violations multiplied by \$100.
18 But we had to incorporate the same risks as above (30% on the merits) and also assumed that,
19 given Defendants’ good faith attempts at compliance with California law, that the Court would
20 also apply a 50% discretionary reduction in PAGA penalties, setting the risk-adjusted PAGA
21 penalty value at \$700.

22 ***Failure to Timely Pay Wages Each Period***

23 52. This claim is pursued on a PAGA basis (the remedy for a violation is enforceable
24 either through PAGA or the Labor Commissioner); thus, the analysis here focuses on PAGA.

25 53. CMO ¶ G(9)(b): Plaintiff calculated the maximum potential PAGA penalty at trial
26 as \$160,000 for Labor Code § 204 claims based on a 100% violation rate for the 1,600 biweekly
27 wage statements issued during the period multiplied by \$100. This claim is based on the
28 allegation that Defendants did not pay all wages and wage premiums (for meal/rest violations)

timely each period, which violated Labor Code § 204. However, because these claims were entirely derivative of the claims above, they only had merit if the claims for unpaid wages or meal/rest breaks were successful. And, as such, we had applied a 30% risk on the merits to align with the merits risk of the claims above. Additionally, we assumed that the Court would apply a discretionary reduction of 90% based on Defendants' likely argument (if liability was found) that PAGA penalties for § 204 violations should be greatly reduced because these are "derivative" and they were already liable for damages to the Class and for PAGA penalties for the overarching violations [1,600 wage statements x \$100 x 30% merits risk x 90% reduction = \$11,200]. Thus, the risk-adjusted PAGA penalties under § 204 are \$11,200.

Collective Maximum and Risk-Adjusted Class Damages/Penalties and PAGA Penalties

CMO ¶¶ G(3)(a)(ii)(C), CMO G(3)(a)(iii)(C), and CMO ¶ G(9)(b)(iii and iv)

54. The table below provides the total sums (for all claims) of the maximum and risk-adjusted class damages and penalties and the total maximum and risk-adjusted PAGA penalties.

Claim	Class Values		PAGA Values	
	Maximum	Risk-Adjusted	Maximum	Risk-Adjusted
Unpaid Wages	\$243,000	\$142,155	\$52,900	\$31,740
Meal Periods	\$291,600	\$87,480	\$160,000	\$24,000
Rest Breaks	\$243,000	\$60,750	\$160,000	\$24,000
Unreimbursed Expenses	\$36,000	\$15,120	\$160,000	\$19,200
Wage Statement	\$158,500	\$79,119	\$160,000	\$37,193
Waiting Time Penalties	\$180,000	\$88,200	\$2,000	\$700
Labor Code § 204	n/a	n/a	\$160,000	\$11,200
Totals	\$1,152,100	\$472,824	\$694,900	\$136,833

CMO ¶ G(3)(a)(iv)

55. Based on an assumed Net Settlement Amount of \$100,322.69, and an estimated 50 Class Members, the average payment will be \$2,006.45. However, the actual amounts payable to the Class will be based on Share Point system under which; (1) each Week Worked by a Class Member from April 13, 2017, through April 30, 2021, is credited with 4 Share Points, and (2) each Week Worked by a Class Member from May 1, 2021, through May 2, 2023, is credited with 1 Share Point.

56. While we cannot generate an exact “range of recoveries” right now since the Class Data will not be provided to the Settlement Administrator until after Preliminary Approval, I can provide reasonable estimates of the high and low payments as follows.

57. Based on our analysis, we estimate that 1,200 out of the 3,600 workweeks in the Class Period were during the salary period. Given that those 1,200 workweeks get 4 Share Points per workweek, versus only 1 Share Point for the other remaining 2,400 workweeks, there are likely to be approximately 7,200 Share Points total ($[1200 \times 4] + 2400$) – leading to a Share Point Rate of \$13.93 ($\$100,322.69 / 7,200$ Share Points). Thus, on the low end, a Class Member that worked only 2 weeks during the later (non-salary) period (and was only entitled to 2 Share Points) will receive \$27.86. And, at the high end, a Class Member that worked from 2020 (when Defendants began business in California) through the end of the Class Period may have worked a total of 150 weeks, with 52 at the higher Share Point rate and 98 at the lower, thus totaling 306 Share Points ($[52 \times 4] + 98$) and leading to the estimated high payment of \$4,262.58.

58. Given that these are only preliminary estimates, we intend to have the Settlement Administrator update the average, high, and low payments in the Class Notice (if necessary) after Preliminary Approval and after calculating those figures from the Class Data.

CMO ¶ G(3)(a)(v)

59. From the data and analysis conducted prior to mediation, derived through both formal and informal discovery, I estimate the following recoveries by the Aggrieved Employees. First, given that we estimate 30 Aggrieved Employees, those individuals will receive an estimated average share of \$83.33 ($\$2,500 / 30$). Then, based on an estimated 1,600 biweekly wage statements during the PAGA Period, we estimated that there were 2,500 Workweeks in the PAGA Period (although these are biweekly wage statements, not every wage statement represented two weeks of work). Thus, the value of each PAGA Workweek is \$1.00 ($\$2,500 / 2,500$); if an Aggrieved Employee worked only 2 weeks in the PAGA Period, the low payment would be \$2.00 and, if an Aggrieved Employee worked the maximum weeks during the PAGA Period (153), then the maximum PAGA payment will be \$153.

/ / /

1 CMO ¶ G(3)(a)(vi)

2 60. My office conducted substantial formal and informal discovery to investigate the
3 size of the class and strength of the claims. Specifically, we propounded formal written
4 discovery, including two sets of special interrogatories, requests for production, requests for
5 admission, and form interrogatories. Additionally, in preparation for mediation, we demanded
6 and received informal discovery, including documents and information that allowed us calculate
7 the potential damages and evaluate potential risk, including policies and procedures pertaining to
8 the claims, statistics relating to the number of current and former employees, number of shifts,
9 pay periods worked and other things, and a sampling of payroll and timekeeping records for
10 Class Members. This information included over 570 pages of documents and approximately
11 4,900 rows of excel data relating to the Class shift and timekeeping data.

12 CMO ¶ G(3)(a)(vii)

13 61. I am not aware of any other class, representative, or collective action in this or
14 any other court that asserts claims similar to those asserted in this action or behalf of a class or
15 group of individuals, some or all of whom would also be members of this Class. I have also
16 made reasonable inquiry of other members of my firm (we have no associated firms in this
17 instance), and none of the other attorneys are aware of any such similar actions.

18 CMO ¶ G(3)(c)(i)

19 62. The Court, at CMO ¶ G(C)(i), states that it “believes that redistribution of the
20 value of uncashed settlement check(s) to those class members who have cashed their checks will
21 better serve the public interest and the interest of the class than distribution in the manner
22 otherwise prescribed by [CCP § 384(b)]” (*i.e.*, payments to a *cy pres*).

23 63. Here, the Parties are not sending the value of uncashed checks to a *cy pres*.
24 Instead, any uncashed checks will be sent to the California State Controller in the name of the
25 Class Member (or Aggrieved Employee). Thus, those funds are – and always will be – paid to
26 and available for collection by the Class Member (or Aggrieved Employee) at any point in the
27 future. This does not fall under the umbrella of CCP § 384(b), as that section only relates to
28 payment of residue to “nonprofit organizations or foundations to support projects that will

1 benefit the class or similarly situated persons, or that promote the law consistent with the
2 objectives and purposes of the underlying cause of action, to child advocacy programs, or to
3 nonprofit organizations providing civil legal services to the indigent.”

4 64. I do not believe there is a need for the Parties to “explain[] the factual basis for
5 the disagreement” with the Court’s proposed method of redistributing funds, because the Court’s
6 proposal is, by its plain language, only applicable in lieu of a *cy pres* (not where the uncashed
7 funds are still paid to the Class Member, essentially held in trust by the State Controller).

8 65. However, in an abundance of caution and to prevent a delay, I want to explain
9 why we do not want to redistribute uncashed checks to class members that did cash checks.

10 66. First, the process to carry out the Court’s proposed redistribution is not as simple
11 as it sounds. Under the CMO’s proposed method, after 180 days have passed, the uncashed
12 funds would be redistributed to Class Members that cashed their checks. That step, on a
13 standalone basis, is not concerning. However, that is nowhere near the end of the process.
14 Indeed, after the second checks are issued, there will be another batch of checks that go
15 uncashed, as there always are in these class actions. What, then, happens to the funds from the
16 uncashed second checks? Are those amounts redistributed again? And to whom? Should the
17 third round of checks only go to those who cashed the first and second checks? Regardless of
18 the answer to these questions, the problem will continue because some of the third checks will
19 likely go uncashed as well, meaning that this process can repeat over and over – each time with a
20 180-day check cashing period.

21 67. Second, the Court’s proposal to redistribute uncashed checks to class members is
22 also problematic because it will greatly increase the cost of settlement administration. After all,
23 the administrator will have to keep banking and taxing accounts open for a much longer period,
24 possibly for multiple years, and will have to issue multiple tax forms with each new payment.
25 But how much extra will the Administrator charge to be exact? And how many additional
26 checks will be mailed a second and third time? How will this be priced? And once the court has
27 approved a specific amount of money for the Settlement Administrator, who will pay for the
28 increased costs, and who will be responsible for ensuring that the increased costs are fair,

1 reasonable and adequate - because after all, this entire process is occurring after the Court has
2 entered judgment.

3 CMO ¶ G(3)(d)

4 68. In accordance with CMO ¶ G(3)(d), we requested bids from four different
5 settlement administrators, which resulted in the following bids: CPT Group (\$7,500), ILYM
6 (\$6,750), Rust Consulting (\$9,780), and Phoenix (\$6,000). Based on its low bid, the Parties
7 agreed to retain Phoenix based on its all-in (fixed) fee to administer the settlement for \$6,000.

8 CMO ¶ G(9)(b)

9 69. The paragraphs above provide the information requested in CMO ¶ G(9)(b)(i-iv);
10 this section addresses the remaining requests under CMO ¶ G(9)(b)(v-viii).

11 70. CMO ¶ G(9)(b)(v): I'd first like to point out that a finding of "knowing and
12 intentional" is not necessary under claims for PAGA penalties; that is a required element of wage
13 statement violations (on a class, not PAGA, basis) under Labor Code § 226(e). However, with
14 that said, we believe that there is a good likelihood that Defendants' salary violations would be
15 found "knowing and intentional" (for purposes of Labor Code § 203, for instance) because the
16 practice was in direct contravention of Labor Code § 515(d). Additionally, we believed that
17 Defendants' wage statement violations, premised on the failure to state any total hours worked,
18 would also be "knowing and intentional" because the practice clearly violated the plain language
19 of Labor Code § 226.

20 71. CMO ¶ G(9)(b)(vi): If this action proceeded to trial, Defendants would have
21 argued for a discretionary reduction in PAGA penalties because the assessment of significant
22 PAGA penalties would be "unjust, arbitrary and oppressive, or confiscatory" in light of "the facts
23 and circumstances of [this] case." *See* Labor Code § 2699(h). Under a potentially-similar
24 "mistake of law" fact pattern, the *Cotter* court approved a 97.5% reduction in PAGA penalties as
25 "appropriate" based on the "unjust, arbitrary and oppressive, or confiscatory" factors because (i)
26 the employer did not "deliberately evad[e] a clear obligation to provide legally required pay and
27 benefits to employees," (ii) the employer did not "negligently fail to learn about its obligations
28 under the wage and hour laws," and (iii) the employer's obligations were "genuinely unclear"

1 because “there is no straight answer to the question.” *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193
2 F.Supp.3d 1030, 1037. Under this same theory, Defendants would likely argue that significant
3 PAGA penalties would be unjust, arbitrary, oppressive, and confiscatory because they believed
4 their practices to be in compliance with all applicable requirements, and also believed that their
5 system correctly paid employees for all hours worked. As such, Defendant would likely argue
6 they did not “deliberately evade” any legal obligations and, in fact, the opposite is true.
7 Furthermore, Defendants would likely argue that they did not “fail to learn about its obligations”
8 because they believed their practices to be compliant, and also created and implemented its
9 policies and practices to ensure compliance. Additionally, Defendants would likely argue that it
10 would be “unjust” to impose significant penalties for the alleged violations because class
11 members did not suffer any injury in relation to certain claims (*e.g.*, wage statement violations).

12 72. CMO ¶ G(9)(b)(vii): The parties only reached settlement and the agreed-upon
13 PAGA penalties after extensive informal discovery and arms-length negotiation between the
14 parties and through an experienced mediator. Notably, Defendants raised many defenses which,
15 if accepted by the Court, could result in a significant reduction of penalties, or the elimination of
16 penalties altogether through dispositive motions. As such, an assessment of penalties greater
17 than those agreed-upon would be unjust at this stage because this settlement reflects an informed,
18 fundamentally fair, and reasonable settlement of the PAGA claims herein based on the unique
19 facts, defenses, and risks in this case.

20 73. CMO ¶ G(9)(b)(viii): the sections above show that the amount of the agreed-upon
21 penalties is fair.

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

23 74. The settlement was the product of extensive arm’s length negotiations, facilitated
24 by an experienced mediator. Though cordial and professional, the settlement negotiations were
25 adversarial and non-collusive in nature. The settlement reached is the product of substantial
26 effort by the parties and their counsel. Although we believed that there was a possibility of
27 certifying the claims, we recognized the potential risk, expense, and complexity posed by
28 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or

1 on the damages awarded, and/or on an appeal that can take several more years to litigate

2 75. The settlement will result in a fair payment to each class member based on the
3 number of Share Points credited to each individual (which, in turn, is based on Weeks Worked
4 during each relevant time period). Plaintiff and my firm have diligently investigated the claims
5 and defenses on behalf of the Class Members and worked to achieve a resolution of the claims to
6 maximize the recovery by avoiding further expenditure of attorneys' fees and costs. After
7 evaluating the significant risks attendant with further litigation described above and weighing
8 them against the benefits of a known compromise and settlement as set forth in the Settlement
9 Agreement, settlement on the terms agreed to is believed to be in the best interest of Plaintiff and
10 the Class, and is a fair and reasonable resolution of the claims alleged.

11 76. My firm brought to bear a great deal of experience in negotiating the settlement of
12 this case. As detailed herein, I, along with my senior associate Peter Carlson, engaged in the
13 necessary discovery and investigation, making it possible to exercise informed judgment
14 throughout the settlement process, including significant document review (*e.g.*, documents
15 pertaining to Defendants' policies and procedures, personnel documents, among others), and
16 conducted an extensive analysis of the detailed class-wide data provided by Defendants.

17 77. Based on my experience in other cases, including wage and hour matters, I
18 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
19 In this case, the recovery for each class member is reasonable, fair, and adequate, and this
20 settlement is in the best interests of the class. The settlement provides each class member with
21 compensation for the alleged violations when viewed in relation to the costs and risks inherent in
22 obtaining class certification and proceeding to trial.

23 78. My firm, as well as defense counsel, fully endorse the terms and conditions of the
24 settlement as set forth in the abovementioned Settlement Agreement.

25 79. Of course, the settlement amount represents a compromise figure, taking into
26 account the various risks surrounding class certification and the merits of Defendants' asserted
27 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
28 members, with no reversion to Defendants.

1 **PLAINTIFF’S REQUESTED ENHANCEMENT PAYMENT**

2 80. Plaintiff seeks an enhancement payment of \$5,000 for her service to the Class,
3 which I believe is fair and warranted. Ms. Phelan came forward and stepped in to continue the
4 litigation in place of deceased Geoffrey Kinzel in an effort to effectuate a policy and practice
5 change that benefitted all other Class Members, and to recover unpaid wages. She assumed
6 significant risk in stepping in and continuing this litigation.

7 81. Plaintiff provided invaluable assistance to my office and the Class in this case,
8 including providing factual background; reviewing the litigation documents; providing
9 information and documents about Defendants’ policies and practices; participating in phone calls
10 to discuss litigation and settlement strategy; making herself available throughout the litigation to
11 assist with analyzing the claims and defenses; helping Class Counsel prepare for the mediation;
12 making herself available for a full-day mediation, and reviewing the settlement documents.
13 Plaintiff agreed to participate in this case with no guarantee of personal benefit.

14 82. The Class Representative also assumed significant risk in bringing this
15 litigation—namely, had she lost, she would have been ordered to pay Defendants’ costs.
16 Moreover, Plaintiff elected to pursue the class action claims on behalf of other employees. As
17 part of the negotiations, the parties ultimately reached a settlement of the class claims but the
18 requested service award is also reasonable and appropriate given that Plaintiff agreed to put the
19 interests of the class ahead of her own interests and performed work on behalf of the class. And,
20 as part of the negotiations, Plaintiff put the interests of the class ahead of her interests and agreed
21 to a general release as part of the settlement (whereas the Class will only release the claims
22 alleged).

23 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
24 **REQUESTED FEES AND COSTS**

25 83. As set forth above, I have handled over 250 class and representative actions, have
26 been appointed as class counsel and have successfully resolved over half of those cases, and
27 many others remain pending and will successfully resolve in the future.
28

1 84. When this case was taken on a contingency fee basis, with my firm agreeing to
2 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
3 course of this litigation, my firm and my co-counsel paid all costs including filing fees, court
4 costs, research fees, and mediation costs. There was never a guarantee that we would recoup
5 those expenditures.

6 85. It is my experience that attorney fee awards of one-third of a common fund
7 settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third
8 of the Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The
9 fee is further warranted because it is within the range of reasonableness typically awarded in
10 class actions. The litigation costs are reasonably capped at \$20,000 and will be based on the
11 actual amount of costs incurred at the time of final approval.

12 **SETTLEMENT ADMINISTRATOR**

13 86. The Parties request that the Court appoint Phoenix Class Action Administration
14 Solutions as the Settlement Administrator. In accordance with CMO ¶ G(3)(d), we requested
15 bids from four different settlement administrators, which resulted in the following bids: CPT
16 Group (\$7,500), ILYM (\$6,750), Rust Consulting (\$9,780), and Phoenix (\$6,000). Based on its
17 low bid, the Parties mutually agreed to retain Phoenix based on its all-in (fixed) fee to administer
18 the settlement for \$6,000. The concurrently filed Declaration of Michael Moore of Phoenix
19 covers the other information required in CMO ¶ G(3)(d)(ii).

20 **SUBMISSION TO THE LWDA**

21 87. Plaintiff has concurrently submitted the settlement and all moving papers to the
22 LWDA in accordance with Labor Code § 2699(1)(2). The proof of submission is attached hereto
23 as **Exhibit H**.

24 **EXHIBITS AND CONCLUSION**

25 88. A true and correct copy of the Settlement Agreement is attached as **Exhibit A**.

26 89. The proposed Class Notice is attached as **Exhibit B**.

27 90. The proposed Request for Exclusion Form is attached as **Exhibit C**.

28 91. The proposed Objection Form is attached as **Exhibit D**.

92. The proposed Dispute Form is attached as **Exhibit E**.

93. A true and correct copy of the notice letter we submitted on behalf of Mr. Kinzel to the LWDA is attached as **Exhibit F**.

94. A true and correct copy of the amended notice letter we submitted on behalf of Ms. Phelan (to step into the shoes of Mr. Kinzel) to the LWDA is attached as **Exhibit G**.

95. The LWDA's confirmation of receipt of this Motion and Declarations is attached hereto as **Exhibit H**.

96. Counsel has carefully reviewed both the terms and the terminology of the order and the accompanying forms (notice, objection form, exclusion form, dispute form) to confirm that the various documents are internally consistent, consistent with each other, and consistent with the settlement agreement.

97. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the settlement as being fair, reasonable, and in the best interests of the class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement payment to the Class Representative.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 16, 2023, at Riverside, California.

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

EXHIBIT “A”

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SANCHEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

GEOFFREY KINZEL, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

RLS-CMC, INC., a Delaware Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CVRI2101907
*[Assigned to Hon. Craig Riemer, Dept 1, for
all purposes]*

**CLASS AND PAGA SETTLEMENT
AGREEMENT AND RELEASE OF
CLAIMS**

1 This Class Action and PAGA Settlement Agreement and Release of Claims is entered
2 into by and between Plaintiff Geoffrey Kinzel, individually and on behalf of all others similarly
3 situated, and on behalf of the State of California, and Defendants RLS-CMC, Inc., Roger Lee
4 Sanchez, and Jasmine Bormann, and is approved by their respective counsel of record, subject to
5 the terms and conditions hereof and the Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the case entitled *Phelan v. RLS-CMC,*
8 *Inc., et al.*, Riverside County Superior Court, Case No. CVRI2101907.

9 2. "Aggrieved Employee(s)" means all current and former nonexempt employees
10 employed by Defendants in California at any time during the PAGA Period.

11 3. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
12 Action and PAGA Settlement Agreement and Release of Claims.

13 4. "Class" is defined all current and former nonexempt employees employed by
14 Defendants in California at any time during the Class Period.

15 5. "Class Member(s)" refers to individual members of the Class.

16 6. "Class Counsel" refers to Brian Mankin and Peter Carlson of Lauby, Mankin &
17 Lauby LLP.

18 7. "Class Data" means a complete list that Defendants will diligently and in good
19 faith compile from their records and provide to the Settlement Administrator on one spreadsheet
20 which shall include, for each Class Member: the individual's full name; last known address;
21 Social Security Number; total Weeks Worked during the PAGA Period and the Class Period; the
22 amount (if any) of Prior Payments paid to the Class Member, and; to determine the Share Points
23 for each Class Member, the total Weeks Worked from (a) April 13, 2017, through April 30,
24 2021, and (b) May 1, 2021, through May 2, 2023.

25 8. "Class Period" is deemed to be any time during the period of April 13, 2017,
26 through May 2, 2023.

27 9. "Class Representative" or "Plaintiff" means and refers to Plaintiff Amy Phelan.

28 10. "Complaint" refers to the operative second amended complaint, which pleads

1 class action and PAGA representative claims, and which was filed on May 22, 2023.

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

3 12. “Defendants” collectively means and refers to Defendants RLS-CMC, Inc., Roger
4 Lee Sanchez, and Jasmine Bormann.

5 13. “Defendants’ Counsel” or “Defense Counsel” means and refers to the Law
6 Offices of John W. Fagerholm, LTD.

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

15 15. “Escalator Clause:” Defendants represent that there are approximately 50 Class
16 Members, who collectively worked a total of approximately 3,600 Workweeks during the Class
17 Period. If the total count of Workweeks (as contained in the Class Data) exceeds 3,960 (10%
18 more than Defendants’ representation), then the Settlement Amount shall increase by \$69.44 for
19 each Workweek above 3,600.

20 16. “Final Approval” refers to the order of the Court granting final approval of this
21 Settlement Agreement and entering a judgment approving this Agreement on substantially the
22 terms provided herein or as may be modified by subsequent agreement of the Parties.

23 17. “Individual Class Payment” refers to each Participating Class Members share of
24 the Net Settlement Amount, as further discussed in Paragraph 54(c) below.

25 18. “Individual PAGA Payment” refers to each Aggrieved Employees share of the
26 PAGA Penalties, as further discussed in Paragraph 54(c) below.

27 19. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 54(b)
28 below.

1 20. “Notice” means the notice of proposed class settlement that will be sent to the
2 Class Members, and which will advise each Class Member of the settlement and his or her
3 estimated “Individual Settlement Amount” and will further advise of the setting of a Final
4 Approval Hearing.

5 21. “Notice Packet” means the Notice, Request for Exclusion Form, the Objection
6 Form, and the Dispute Form to be sent to all Class Members.

7 22. “Objecting Class Member” means a Class Member, other than Plaintiff, who
8 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 75(c)
9 below.

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

14 24. “PAGA Period” is deemed to be any time during the period of April 13, 2020,
15 through May 2, 2023.

16 25. “PAGA Released Claims” means any and all PAGA claims that Plaintiff alleged
17 against the Released Parties based on the facts stated in the relevant LWDA notice letters and
18 only to the extent that they are alleged in the operative Complaint, including all PAGA claims
19 seeking civil penalties premised upon: (1) failure to pay minimum wages, (2) failure to pay
20 overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure
21 to reimburse business expenses, (6) failure to timely pay wages each period, (7) failure to timely
22 pay wages upon separation of employment, and (8) failure to provide accurate itemized wage
23 statements, and (9) all other claims for civil penalties recoverable under the Private Attorneys
24 General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the LWDA
25 notice letters and operative Complaint. The time period governing the PAGA Released Claims
26 shall be any time during the PAGA Period.

27 26. “Participating Class Member” means any and all Class Members who are deemed
28 to participate and receive an Individual Settlement Payment and do not opt-out by submitting

1 timely valid Requests for Exclusion.

2 27. “Parties” or “Settling Parties” mean Plaintiff and Defendants, collectively.

3 28. “Preliminary Approval Date” means the date the Court approves the Settlement
4 Agreement and enters the Preliminary Approval Order.

5 29. “Preliminary Approval Order” means the judicial Order to be entered by the
6 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
7 and providing for the issuance of the Notice Packet to the Class, an opportunity to opt out of the
8 Settlement, an opportunity to submit timely objections to the Settlement, and setting a final
9 approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees
10 and costs. Provided that the motion is consistent with the terms herein, Defendants will not
11 object to Plaintiff’s motion for preliminary approval but will be provided with an opportunity to
12 review and comment upon the motion before it is filed.

13 30. “Prior Payments.” Prior to mediation, Defendants entered into individual
14 settlement agreements with certain Class Members relating to the claims alleged in this Action.
15 Defendants shall be entitled to a credit toward the Settlement Amount for a total of \$25,343.98 in
16 Prior Payments made to the Class Members. Thus, upon the Effective Date occurring,
17 Defendants shall owe the Settlement Amount, less the Prior Payments, plus the employer’s share
18 of payroll taxes due on the wage portion of the Individual Class Payments to Participating Class
19 Members.

20 31. “QSF” means the Qualified Settlement Fund set up by the Settlement
21 Administrator for the benefit of the Participating Class Members and Aggrieved Employees, and
22 from which the settlement payments shall be made.

23 32. “Released Class Claims” or “Class Claims” by the Participating Class Members
24 upon Final Approval of the Settlement will include all claims stated in the operative Complaint
25 and those based solely upon the facts in the Complaint, including: (1) failure to pay minimum
26 wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide
27 rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages each
28 period, (7) failure to timely pay final wages, (8) failure to provide accurate itemized wage

statements, and (9) unfair and unlawful competition.

33. “Released Parties” means Defendant RLS-CMC, Inc., its officers, directors, employees and agents, and Defendants Roger Lee Sanchez and Jasmine Bormann.

34. “Release Period” shall be the time period governing the Released Class Claims, which shall be the same as the Class Period.

35. “Release” shall mean the release and discharge of the Released Class Claims by Plaintiff and all Participating Class Members and their assignees.

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

37. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 75(a) below.

38. “Settlement Amount” is \$250,000, subject to the Escalator Clause, a credit for Prior Payments made, and exclusive of Defendant’s obligation to fund its share of payroll taxes, as further discussed in Paragraph 54(c) below.

39. “Share Points” will be used to calculate a Class Member’s Individual Class Payment, and each Class Member’s Share Points shall be calculated as follows: (1) each Week Worked by a Class Member from April 13, 2017, through April 30, 2021, shall be credited with 4 Share Points, and (2) each Week Worked by a Class Member from May 1, 2021, through May 2, 2023, shall be credited with 1 Share Point. The total combined share points in both classes will be referred to as a Class Member’s Share Points.

40. “Share Point Rate” shall mean the value of each individual Share Point, as calculating by dividing the Net Settlement Amount by the total of all Share Points credited to all Class Members.

41. “Service Payment” or “Service Award” means the amount approved by the Court to be paid to Class Representative Amy Phelan in addition to her Individual Settlement Payment as a Participating Class Member and individual PAGA payment as an Aggrieved Employee.

42. “Settlement Administrator” means and refers to Phoenix Class Action Administration Solutions, the third-party class action settlement administrator agreed to by the

Parties, that will provide the Notice Packet to the Class Members and distribute the settlement amounts as described in this Agreement.

43. “Settlement Administration Costs” means the costs payable from the Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property due diligence, reporting and remittance obligations, distributing the Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Settlement Amount, and shall not exceed the amount approved by the Court, regardless of any additional costs that the Settlement Administrator may request or feel is necessary to administer the Settlement.

44. “Work Weeks” or “Weeks Worked” in the context of a Class Members means any and all work weeks during the Class Period during which the Class Member worked at least one day for Defendants. Likewise, in the context of Aggrieved Employees, it means any and all weeks worked during the PAGA Period during which the Aggrieved Employee worked at least one day for Defendants.

B. General Terms

45. On April 13, 2021, Plaintiff Geoffrey Kinzel filed the instant class action, alleging that Defendant RLS-CMC, Inc. violated various sections of the Labor Code. On the same day, Plaintiff Geoffrey Kinzel gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendant of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Then, on August 19, 2021, Plaintiff Geoffrey Kinzel filed a First Amended Complaint adding causes of action under PAGA. Defendant RLS-CMC, Inc., filed its Answer to the First Amended Complaint on December 7, 2021.

46. On March 18, 2021, Plaintiff Geoffrey Kinzel added two new Defendants via Doe amendment: Roger Lee Sanchez and Jasmine Bormann (and these Defendants filed their Answer to the FAC on August 8, 2022).

1 47. Plaintiff Geoffrey Kinzel unfortunately passed away on October 27, 2022.
2 Thereafter, Plaintiff's counsel was retained by Amy Phelan, who is another former employee of
3 Defendants. Plaintiff's counsel met and conferred with defense counsel about substituting
4 Plaintiff Phelan into the case in place of deceased Plaintiff Geoffrey Kinzel. The Parties
5 eventually stipulated to this substitution on May 16, 2023, and Plaintiff Phelan filed the operative
6 second amended complaint on May 22, 2023.

7 48. Defendants deny Plaintiff's claims and allegations and contend that the Action is
8 not suitable for class certification.

9 49. The Class Representative believe she can proceed with the representative and
10 class claims, that the Action is meritorious, and that class certification is appropriate.

11 50. The Parties have conducted a thorough investigation into the facts of the Action.
12 This includes conducting an extensive exchange of informal discovery, including a sampling of
13 payroll and timekeeping records for Class Members. Class Counsel is both knowledgeable about
14 and has done extensive research with respect to the applicable law and potential defenses to the
15 claims of the Class. Class Counsel has diligently pursued an investigation of the Class
16 Members' claims against Defendants. Based on the foregoing data and on their own independent
17 investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendants
18 for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable,
19 and adequate and is in the best interest of the Class Members in light of all known facts and
20 circumstances, including the risk of significant delay and uncertainty associated with litigation,
21 various defenses asserted by Defendants, and numerous potential appellate issues.

22 51. On May 2, 2023, Plaintiff and Defendants participated in a full-day mediation
23 with Phillip Cha, Esq., a well-respected wage-and-hour mediator. At the conclusion of
24 mediation and extensive arms-length negotiations, the Parties reached a global settlement and
25 entered into a Memorandum of Understanding.

26 52. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
27 to be performed or judgment to be entered pursuant to the terms of the Settlement and
28 Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of

any statute or law or liability on the claims or allegations in the Action.

53. Stipulation for Class Certification. For settlement purposes only, Defendants will stipulate that the Class Members described herein who do not Request Exclusion from the Class may be conditionally certified as a Class. This stipulation to certification is in no way an admission that class action certification is proper and shall not be admissible in this action except for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification as part of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not be admissible in this Action in connection with, the issue of whether certification would be appropriate in a non-settlement context. Defendants expressly reserve their rights and declare that they would continue to oppose class certification and the substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly reserves her rights and declares that she will continue to pursue class certification and a trial should the Court fail to issue Final Approval.

C. Terms of Settlement

54. The financial terms of the Settlement are as follows:

(a) Settlement Amount: The Parties agree to settle this Action for the Settlement Amount, which is the maximum amount that will be paid by Defendants (except for the employer's share of payroll taxes), which includes a credit for Prior Payments made, and is inclusive of payments to the Participating Class Members, PAGA Penalties (to the Aggrieved Employees and LWDA, Attorneys' Fees and Costs Award, the Service Payment to the Class Representative, and Settlement Administration Costs. Defendants shall separately pay the employers' share of their payroll tax obligations, which shall be reported through the Settlement Administrator.

(b) Net Settlement Amount: The "Net Settlement Amount" is defined as the Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to the Class Representative as awarded by the Court, the Settlement Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service Award, or Settlement Administrator Costs, or either increases or decreases the amount allocated to the

1 PAGA Penalties, the difference shall be placed in the Net Settlement Amount and allocated to
2 the Participating Class Members.

3 (c) The Individual Class Payment for each Class Member will be calculated
4 by multiplying the Class Member's Share Points by the Share Point Rate. The Individual Class
5 Payment will then be reduced by any Prior Payment received by the Class Member (but in no
6 instance shall the offset from the Prior Payment cause an Individual Class Payment to drop
7 below \$50.00). If there are any timely submitted Requests for Exclusion, the Settlement
8 Administrator shall proportionately increase the Individual Class Payments for each Participating
9 Class Member so that the amount actually distributed to Participating Class Members equals
10 100% of the Net Settlement Amount.

11 (d) Allocation of Individual Class Payments: The Individual Class Payments
12 to Participating Class Members will be allocated as follows: one-third will be allocated as wages
13 subject to withholding of all applicable local, state and federal taxes; and two-thirds will be
14 allocated for interest and statutory penalties (pursuant to, e.g., California Labor Code sections
15 203, 210, 226) from which no taxes will be withheld. The Settlement Administrator will issue to
16 each Participating Class Member an Internal Revenue Service Form W-2 and comparable state
17 forms with respect to the wage allocation and a Form 1099 with respect to the penalties and
18 interest allocations.

19 (e) Service Payment to Class Representative: The amount, if any, awarded to
20 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
21 exceed \$5,000, in exchange for the service that Plaintiff performed on behalf of the Class.
22 Defendants agree not to oppose this request. The Service Payment to Plaintiff will be paid out of
23 the Settlement Amount. The Class Representatives will be issued an IRS Form 1099 in
24 connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all
25 applicable taxes on this payment. The Parties agree that any amount awarded as the Service
26 Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void
27 this Settlement Agreement. Should the Court approve a lesser amount for the Service Payment,
28 the difference shall be added to the Net Settlement Amount to be distributed to the Participating

1 Class Members.

2 (f) Attorneys' Fees and Costs Award: Defendants agree to not oppose a
3 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
4 Settlement Amount, plus reasonable litigation costs not to exceed \$20,000 ("Attorney's Fees and
5 Cost Award"). Defendants agree not to oppose any contention by Class Counsel that attorneys'
6 fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be
7 paid from the Settlement Amount, and, except for this award, Defendants shall have no further
8 obligation to pay any attorneys' fees, costs or expenses to Class Counsel. Should the Court
9 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
10 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court
11 order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
12 Settlement Agreement or otherwise void the Settlement. The Settlement Administrator shall
13 issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs
14 awarded by the Court.

15 (g) Settlement Administration Costs: The fees and other charges of the
16 Settlement Administrator will be paid from the Settlement Amount, not to exceed \$6,000, unless
17 (1) the Escalator Clause is triggered (whereby any reasonable increase in Settlement
18 Administration Costs shall be paid from the increased Settlement Amount, subject to Court
19 approval), or (2) as otherwise approved by all Parties and the Court.

20 (h) PAGA Penalties: The Parties agree that \$10,000 is allocated to PAGA
21 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
22 amount, \$7,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
23 Private Attorney General Act of 2004 ("PAGA") and \$2,500 (25%) will form the Individual
24 PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata
25 on a Work Week basis, which will be treated entirely as civil penalties and shall be reported as
26 required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the
27 Settlement.

28 (i) Tax Liability: Class Counsel and Defendants make no representations as

1 to the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiff and
2 the Class Members are not relying on any statement or representation by Class Counsel or
3 Defendants in this regard. Plaintiff, Participating Class Members, and Aggrieved Employees
4 understand and agree that they will be solely responsible for the payment of any taxes and
5 penalties assessed on their respective Individual Class Payments and Individual PAGA
6 Payments, described herein. Forms 1099 will be distributed in the manner required by the
7 Internal Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code,
8 the regulations promulgated thereunder, or other applicable tax law, is changed after the date of
9 this Agreement, the processes set forth in this Section may be modified in a manner to bring
10 Defendants into compliance with any such changes. Plaintiff, Participating Class Members, and
11 Aggrieved Employees understand and agree that they will be solely responsible for the payment
12 of any taxes and penalties assessed on their respective payments described herein.

13 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
14 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
15 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
16 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
17 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
18 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
19 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
20 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
21 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
22 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
23 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
24 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
25 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
26 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
27 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
28 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY

1 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
2 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
3 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
4 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
5 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
6 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
7 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
8 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

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

19 (l) Class Counsel and Plaintiff believe that the Settlement is fair and
20 reasonable and will so represent same to the Court.

21 **D. Release by the Participating Class Members**

22 55. Upon entry of the Final Approval Order and Defendants' funding of the
23 Settlement Amount, and except as to such rights or claims as may be created by this Agreement,
24 Plaintiff and the Participating Class Members will forever completely release and discharge the
25 Released Parties from the Released Class Claims for the Release Period.

26 56. Each Participating Class Member will be deemed to have made the foregoing
27 Release as if by manually signing it.

28 57. Class Representative, on behalf of herself and the Class, acknowledge and agree

1 that the claims for unpaid wages and untimely payment of wages in the Action are disputed, and
2 that the payments set forth herein constitute payment of all sums allegedly due to them. Class
3 Representative, on behalf of herself and the Class, acknowledge and agree that California Labor
4 Code Section 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides
5 in pertinent part as follows: “An employer shall not require the execution of any release of any
6 claim or right on account of wages due, or to become due, or made as an advance on wages to be
7 earned, unless payment of those wages has been made.”

8 **E. Release of PAGA Claims**

9 58. Upon entry of the Final Approval Order and Defendants’ funding of the
10 Settlement Amount, Plaintiff – in her individual capacity and on behalf of the State of California
11 and LWDA – shall completely release and discharge the Released Parties from the PAGA
12 Released Claims for the PAGA Period.

13 59. Regardless of submitting a valid Request for Exclusion, neither Plaintiff nor any
14 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
15 releasing the PAGA Released Claims.

16 60. It is the intent of the Parties that the Final Approval Order shall have full
17 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

18 **F. Release by Plaintiff and Class Representative**

19 61. Class Representative does hereby, for herself and her spouses, heirs, successors,
20 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
21 personal representatives, and assigns forever and completely release and discharge the Released
22 Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
23 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
24 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
25 damages, exemplary damages, interest, attorneys’ fees, and costs) of any nature whatsoever,
26 from the beginning of time through the execution of this Stipulation, whether known or
27 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
28 upon, or relating to Class Representative’s employment with Defendants or the remuneration for

1 or termination of such employment (the “Class Representative’s Claims”).

2 62. Without limiting the generality of the foregoing, this general release by Plaintiff
3 includes all federal, state and local statutory claims, federal and state common law claims
4 (including but not limited to those for contract, tort and equity), including without limitation any
5 claims for breach of any implied or express contract or covenant; claims for promissory estoppel;
6 claims of entitlement to any pay; claims of wrongful denial of insurance and employee benefits
7 (except workers’ compensation benefits); claims for failure to hire, public policy violations,
8 defamation, invasion of privacy, fraud, misrepresentation, emotional distress, assault/battery, or
9 other common law or tort matters; claims of harassment, retaliation or discrimination based on
10 age, race, color, religion, sex, national origin, ancestry, physical or mental disability, protected
11 activity, medical condition, marital status, sexual preference, union activity, or veteran status;
12 claims under the Americans with Disabilities Act, Age Discrimination in Employment Act, Title
13 VII of the Civil Rights Act of 1964 (as amended), the Civil Rights Act of 1991; 42 USC sec.
14 1981, 42 USC sec. 1983, the Older Workers Benefit Protection Act, the Family and Medical
15 Leave Act; claims for unfair competition; claims based on legal restrictions on Defendants’ right
16 to terminate, not to hire or promote employees, or to change an employee’s compensation; and
17 claims based on any federal, state or other governmental statute, regulation or ordinance, all
18 statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs or
19 expenses, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation
20 costs, restitution, or equitable relief, or any other claims arising under the Fair Labor Standards
21 Act, the Employment Retirement Security Income Act of 1974, the California Constitution, the
22 California Fair Employment and Housing Act, the California Unfair Competition Act (California
23 Business and Professions Code section 17200 et seq.), the California Labor Code, or Industrial
24 Welfare Commission Wage Orders, or arising out of or based upon the following categories of
25 allegations regardless of the forum in which they may be brought, to the fullest extent such
26 claims are releasable by law: (i) all claims for unpaid overtime; (ii) all claims for unpaid wages;
27 (iii) all claims for meal break violations; (iv) all claims for rest period violations; (v) all claims
28 for paid sick leave violations; (vi) all claims for the failure to timely pay wages upon

1 termination; (vii) all claims for the failure to timely pay wages during employment; (viii) all
2 claims for wage statement violations; (ix) all claims for reporting time pay; and (x) all other
3 penalties recoverable for such claims under PAGA.

4 63. Plaintiff agrees that there is a risk that any injury that they may have suffered by
5 reason of the Released Parties' relationship with them might not now be known, and there is a
6 further risk that said injuries, whether known or unknown at the date of this Settlement
7 Agreement, might possibly become progressively worse, and that as a result thereof further
8 damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and
9 discharge the Released Parties, and understands that by the execution of this Settlement
10 Agreement no further claims for any such injuries that existed at the time of the execution of this
11 Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time
12 period from the beginning of time to the execution of this Settlement Agreement.

13 64. Plaintiff expressly waives and relinquishes all rights and benefits afforded by
14 Section 1542 of the Civil Code of the State of California and does so understanding and
15 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
16 of the State of California states:

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

22 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
23 full and complete release and discharge of all parties, Class Representative expressly
24 acknowledges that this Settlement Agreement is intended to include in its effect, without
25 limitation, all claims that Class Representative knew of, as well as all claims that he does not
26 know or suspect to exist in her favor against the Released Parties, or any of them, for the time
27 period from the beginning of time to the execution of this Settlement Agreement, and that this
28 Settlement Agreement contemplates the extinguishment of any such Class Representative's

claims. Notwithstanding the above, the general release by Class Representative shall not extend to claims for workers' compensation benefits, claims for unemployment benefits, or other claims that may not be released by law.

G. Interim Stay of Proceedings

65. Pending completion of all prerequisites necessary to effectuate this Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such as are necessary to effectuate the Settlement.

H. Notice Process

66. Appointment of Settlement Administrator. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice Packet, using standard devices to obtain forwarding addresses, independently reviewing and verifying documentation associated with any claims or opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Settlement Amounts, drafting and mailing the settlement checks to Participating Class Members and Aggrieved Employees, issuing all necessary tax forms, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders.

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

68. Class Data. Within fourteen (14) days after entry of the Preliminary Approval

Order, Defendants shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement Administrator will remain confidential and will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendants' express written consent, or by order of the Court. Although Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class Counsel from communicating with Class Members regarding the Action and Settlement.

69. Total Workweeks. At least 5 days prior to mailing the Notice Packet, the Settlement Administrator shall provide a spreadsheet to Class Counsel and Defense Counsel containing a preliminary calculation of all payments to be paid from the Settlement Amount, including the estimated Individual Class Payments to each Class Member and Individual PAGA Payments to each Aggrieved Employee (a person's name shall be redacted and a control number used in place of the name). In the event that the total Workweeks worked by all Class Members triggers the Escalator Clause, the Settlement Administrator shall notify the Parties of the increased Settlement Amount, and related increased payments from the Settlement Amount, including increased Attorneys' Fees and Costs and any increased Settlement Administration Costs, all of which shall be subject to Court approval.

70. Notice Packet. The Notice Packet, as approved by the Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail, in English, within ten (10) calendar days following the Settlement Administrator's receipt of the Class Data. For all Class Members, the Notice Packet will include the Notice, a Request for Exclusion Form, an Objection Form, and a Dispute Form. The Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of Class Members if any envelopes are returned.

71. Returned Notice Packets. The Settlement Administrator will take steps to ensure that the Notice Packet is received by all Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class

1 Member for whom an updated address is located within ten (10) calendar days following both
2 the Settlement Administrator learning of the failed mailing and its receipt of the updated address.
3 The Notice Packet shall be identical to the original Notice Packet, except that it shall notify the
4 Class Member that the exclusion (opt-out) request or objection must be returned by the later of
5 the Response Deadline or fifteen (15) days after the remailing of the Notice Packet.

6 72. Presumption Regarding Receipt of Notice Packet. It will be conclusively
7 presumed that if an envelope has not been returned to Settlement Administrator by the Response
8 Deadline that the Class Member received the Notice Packet.

9 73. Disputes Regarding Class Data. Class Members are deemed to participate in the
10 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the PAGA
11 Released Claims. The Notice will inform Class Members of his/her estimated Individual Class
12 Payment and Individual PAGA Payment, as well as the number of Share Points in each period
13 and the weeks he/she worked during the Class Period and the PAGA Period. Class Members
14 may dispute their Share Points or Weeks Worked by timely submitting evidence to the
15 Settlement Administrator. Defendants' records will be presumed determinative absent reliable
16 evidence to rebut Defendants' records, but the Settlement Administrator will evaluate the
17 evidence submitted by the Class Member and provide the evidence submitted to Class Counsel
18 and Defense Counsel who agree to meet and confer in good faith about the evidence to determine
19 the Class Member's actual number of Share Points, Work Weeks, and estimated Individual Class
20 and PAGA Payments. If Class Counsel and Defense Counsel are unable to agree, they agree to
21 submit the dispute to the Court to render a final decision. Class Members and Aggrieved
22 Employees will have until the Response Deadline to dispute Share Points or Weeks Worked,
23 object or opt out, unless extended by the Court.

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

27 75. Class Members' Rights. Each Class Member will be fully advised of the
28 Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion

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

4 (a) Requests for Exclusion from Class. Any Class Member, other than
5 Plaintiff, may request to be excluded from the Class by completing the Request for Exclusion
6 Form provided within the Notice Packet. The Request for Exclusion Form must be mailed to the
7 Settlement Administrator and postmarked on or before the Response Deadline in order to be
8 timely, unless the Parties otherwise agree in writing. Any such Request must be made in
9 accordance with the terms set forth in the Notice Packet. The Settlement Administrator shall
10 attach each Request for Exclusion to its declaration of due diligence and file with the Court prior
11 to the Final Approval Hearing. Any Class Member who timely requests exclusion in compliance
12 with these requirements: (i) will not have any rights under this Agreement, including the right to
13 object, appeal or comment on the Settlement; (ii) will not be entitled to receive any payments
14 under this Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any
15 Class Member who is an Aggrieved Employee who requests timely exclusion will still be subject
16 to the PAGA Released Claims to the fullest extent permitted by law and receive an Individual
17 PAGA Payment. All Parties and their counsel, including Defendants and their agents and
18 employees, shall not encourage or solicit opt-outs or objections, directly or indirectly, through
19 any means.

20 (b) Binding Effect on Participating Class Members. All Participating Class
21 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
22 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have
23 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
24 Settlement.

25 (c) Objections to Settlement. Any Class Member, other than Plaintiff, who
26 does not submit a valid and timely Request for Exclusion may object to the terms of this
27 Agreement by completing the Objection Form provided within the Notice Packet. Any Class
28 Member that intends to object must mail the Objection Form to the Settlement Administrator.

1 The Objection Form must be postmarked on or before the Response Deadline in order to be
2 timely, unless the Parties otherwise agree in writing. Additionally, any objection must be made
3 in accordance with the terms set forth in the Notice Packet. The Settlement Administrator shall
4 provide any objections to Class Counsel and Defense Counsel within three (3) days of receipt,
5 and the Settlement Administrator shall attach the same to its declaration of due diligence and file
6 with the Court prior to the Final Approval Hearing. Any Participating Class Member who files
7 an objection remains eligible to receive monetary compensation from the Settlement. Plaintiff
8 and Defendants shall not be responsible for any fees, costs, or expenses incurred by any Class
9 Member and/or his or her counsel related to any objections to the Settlement. Submitting an
10 objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is
11 preserved by becoming a party of record by timely and properly intervening or filing a motion to
12 vacate the judgment under Code of Civil Procedure § 663.

13 (d) Failure to Object. Any Class Member who does not timely and properly
14 become a party of record by intervening or filing a motion to vacate the judgment waives any
15 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
16 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
17 under California Code of Civil Procedure § 473, and extraordinary writs.

18 (e) Responses to Objections. Counsel for the Parties may file a response to
19 any objections submitted by Objecting Class Members at least five (5) court days before the date
20 of the Final Approval Hearing.

21 (f) Class Members will have until the Response Deadline to object or submit
22 a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
23 Administrator shall disclose jointly to Class Counsel and Defense Counsel what objections or
24 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
25 Counsel or Defense Counsel.

26 76. Funding of the Settlement Amount. Defendants shall deposit the Settlement
27 Amount, plus Defendants' share of payroll taxes, but minus the amount of Prior Payments made,
28 with the Settlement Administrator within thirty (30) days after the Effective Date.

1 77. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
2 Settlement Amount by Defendant, the Settlement Administrator shall mail the Individual Class
3 Payments to the Participating Class Members, the Individual PAGA Payments to the Aggrieved
4 Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service
5 Payment to the Class Representative, the payment to the LWDA for PAGA Penalties, mail to the
6 Aggrieved Employees their portion of the PAGA Penalties, and will pay itself the Settlement
7 Administration Costs.

8 78. Deadline for Cashing Settlement Checks. Participating Class Members and
9 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
10 Administrator to cash their settlement checks. The release will be binding upon all Participating
11 Class Members who do not cash their checks within the 180-day period. In the event that any
12 settlement check is returned to the Settlement Administrator within 180 days of mailing, the
13 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
14 check, perform a skip trace to locate the individual, and notify Defense Counsel and Class
15 Counsel of the results. If a new address is located by these means, the Administrator will have
16 ten (10) business days to re-issue the check. Neither Defendants, Defense Counsel, Class
17 Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen
18 settlement checks, forged signatures on settlement checks, or unauthorized negotiation of
19 settlement checks. Without limiting the foregoing, in the event a Participating Class Member
20 and/or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a
21 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
22 payment on such check. If the check in question has not been negotiated prior to the stop
23 payment order, the Settlement Administrator will issue a replacement check.

24 a. If any Participating Class Member's check is not cashed within the time
25 periods noted above, the check will be void and a stop-payment will be issued, and the
26 Settlement Administrator shall issue the unclaimed funds to the California State Controller's
27 Office in the name of the Class Member.

28 b. If any Aggrieved Employee's check is not cashed within the time periods

1 noted above, the check will be void and a stop-payment will be issued, and the Settlement
2 Administrator shall issue the unclaimed funds to the California State Controller's Office in the
3 name of the Aggrieved Employee.

4 **I. Duties of the Parties Prior to the Court's Approval**

5 79. Promptly after execution of this Agreement, Plaintiff will move the Court for
6 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
7 accomplishing the following:

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

11 (b) Approving as to form and content the proposed Notice Packet;

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

14 (d) Preliminarily approving this Settlement;

15 (e) Preliminarily certifying the class for purposes of this Settlement; and

16 (f) Advising the LWDA of the proposed Settlement.

17 **J. Duties of the Parties Following Court's Final Approval**

18 80. In connection with the Final Approval Hearing provided for in this Agreement,
19 Class Counsel shall submit a proposed Final Approval Order:

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

22 (b) Approving Class Counsel's application for an award of attorneys' fees and
23 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
24 and the payment to the Settlement Administrator for costs of administering the settlement; and

25 (c) Entering judgment approving settlement.

26 **K. Voiding the Agreement**

27 81. If the Court fails or refuses to issue the Final Approval Order or fails to approve
28 any material condition of this Agreement which effects a fundamental change of the Settlement,

the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

82. If the Settlement is voided or fails for any reason, Plaintiff and Defendants will have no further obligations under the Settlement, including any obligation by Defendants to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

83. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendants and Plaintiff, unless otherwise specified in this Agreement.

L. Other Terms

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

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

86. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and cooperation of Defendants and Defense Counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement, and the final entry of judgment.

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

1 88. No Admission. Defendants deny any and all liability to Plaintiff and/or any Class
2 Member and/or Aggrieved Employee in this Action, as to any and all causes of action that were
3 asserted or that might have been asserted in this Action. Nonetheless, Defendants wish to settle
4 and compromise the matters at issue in the Complaint to avoid further substantial expense and
5 the inconvenience and distraction of protracted and burdensome litigation. Defendants have
6 taken into account the uncertainty and risks inherent in litigation, and without conceding any
7 infirmity in the defenses that they have asserted or could assert against Plaintiff, have determined
8 that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the
9 terms and conditions set forth in this Agreement.

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

22 90. No Publicity. The Parties will not publicize the Settlement or disclose it to third
23 parties prior to the Court granting Preliminary Approval, except as required or necessary to
24 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and
25 Class Representatives agree that they will not discuss the Settlement with the media, any
26 settlement and verdict reporting service, any social media postings or other Internet postings.
27 Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or
28 other case materials in the Action related to seeking and obtaining Court approval of this

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

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

11 *To the Class:*

12 Brian J. Mankin
13 *brian@lmlfirm.com*
14 Lauby, Mankin & Lauby LLP
15 5198 Arlington Ave, PMB 513
16 Riverside, CA 92504
17 Tel: (951) 320-1444 | Fax: (951) 320-1445

18 *To Defendant:*

19 John W. Fagerholm, Esq.
20 *jfagerholm@jwflawltd.com*
21 M. Danton Richardson, Esq.
22 *drichardson@jwflawltd.com*
23 Law Offices of John W. Fagerholm, LTD
24 725 S. Figueroa Street, Suite 3065
25 Los Angeles, California 90017
26 Tel: (323) 289-2260 | Fax: (323) 642-5441

27 92. Construction. The Parties hereto agree that the terms and conditions of this
28 Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and
that this Agreement shall not be construed in favor of or against any Party by reason of the extent
to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff
and Defendants expressly waive the common-law and statutory rule of construction that
ambiguities should be construed against the drafter of an agreement and further agree, covenant,

1 and represent that the language in all parts of this Agreement shall be in all cases construed as a
2 whole, according to its fair meaning.

3 93. Captions and Interpretations. Paragraph titles or captions contained herein are
4 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
5 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
6 contractual and not merely a recital.

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

11 95. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
12 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
13 provide written notice to the other Party and allow an opportunity to cure the alleged
14 deficiencies, and Plaintiff and Defendants may agree to seek the help of the Mediator to resolve
15 any dispute they are unable to resolve informally. During this period, the Parties shall bear their
16 own attorneys' fees and costs. This provision shall not apply to any legal action or other
17 proceeding instituted by any person or entity other than Plaintiff or Defendant.

18 96. Choice of Law. This Settlement Agreement shall be governed by and construed,
19 enforced and administered in accordance with the laws of the State of California, without regard
20 to its conflicts-of-law rules.

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

26 98. Binding On Assigns. This Agreement shall be binding upon and inure to the
27 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
28 successors and assigns.

1 99. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
2 because the members of the Class are numerous, it is impossible or impractical to have each
3 Class Member execute this Agreement. The Notice Packet will advise all Class Members of the
4 binding nature of the release provided herein and such shall have the same force and effect as if
5 this Agreement were executed by each Class Member.

6 100. Counterparts. This Agreement may be executed in counterparts, and when each
7 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
8 original, and, when taken together with other signed counterparts, shall constitute one fully
9 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
10 signatures shall have the same force and effect as an original.

11 Dated: August 9, 2023

PLAINTIFF AND CLASS REPRESENTATIVE,

12 
13 amy phelan (Aug 9, 2023 21:09 PDT)

14 Amy Phelan

15 Dated: August 30, 2023

DEFENDANT RLS-CMC, INC.

17 
18 Roger Sanchez (Aug 30, 2023 10:19 PDT)

19 By: Roger Lee Sanchez

20 Title: President

21 Dated: August 30, 2023

DEFENDANT ROGER LEE SANCHEZ

23 
24 Roger Sanchez (Aug 30, 2023 10:19 PDT)

Roger Lee Sanchez

25 Dated: August 11, 2023

DEFENDANT JASMINE BORMANN

27 Jasmine Bormann

28 Jasmine Bormann

1
2 **APPROVED AS TO FORM:**

3 Dated: August 10, 2023

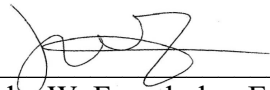
CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP



6 Brian J. Mankin
7 Attorneys for Plaintiff

8 Dated: August 11, 2023

DEFENSE COUNSEL:
LAW OFFICES OF JOHN W. FAGERHOLM, LTD



11 John W. Fagerholm, Esq.
12 Attorneys for Defendant

EXHIBIT “B”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Amy Phelan v. RLS-CMC

(Riverside Superior Court, Case No. CVRI2101907)

***The Riverside Superior Court authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against RLS-CMC and its alleged owners Roger Lee Sanchez and Jasmine Bormann (RLS-CMC, Roger Lee Sanchez, and Jasmine Bormann shall collectively be referred to as “Defendants”) for alleged violations of the California Labor Code.

The Action was initially filed by Geoffrey Kinzel, but Amy Phelan later substituted into the case as the “Plaintiff” or “Class Representative.” The Action seeks payment of (1) unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of a class of nonexempt (hourly paid) employees employed by Defendants in California (“Class Members”) during the Class Period (April 13, 2017, through May 2, 2023); and (2) penalties under the California Private Attorneys General Act (“PAGA”) for all nonexempt (hourly paid) employees employed by Defendants in California during the PAGA Period (April 13, 2020 to May 2, 2023) (“Aggrieved Employees”). (Plaintiff and Defendants shall be collectively referred to as the “Parties.”)

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments to Aggrieved Employees and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendants’ records, and the Parties’ current assumptions, your Individual Class and PAGA Payments are shown in the charts below, along with the applicable data points from which these estimates are derived.

[**CLASS MEMBER NAME**] [**ID/CONTROL NUMBER**]

<i>Calculations and Data Points for Estimated Individual Class Payment</i>				
Weeks Worked from 4/13/2017 to 4/30/2021 <i>4 Share Points per Week</i>	Weeks Worked from 5/1/2021 to 5/2/2023 <i>1 Share Point Per Week</i>	Total Share Points	Prior Payment Received (if any)	<i>Estimated Individual Class Payment</i>
INSERT	INSERT	INSERT	INSERT	INSERT

<i>Calculations and Data Points for Estimated Individual PAGA Payment</i>	
Weeks Worked during PAGA Period (4/13/2020 to 5/3/2023)	<i>Estimated Individual PAGA Payment</i>
INSERT	INSERT

Please note that the actual amount you receive may be different from the above and will depend on several factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.) Also, while the range of recovery will differ for Class Members, it is estimated that the average payment will be **\$2,006.45**, the high payment will be **\$4,262.58**, and the low payment will be **\$27.86**. If you believe that you worked more weeks during the periods discussed above, or if you believe you did not receive a Prior Payment (or the amount is inaccurate), you can submit a challenge by **DATE**, 2023 (“**Response Deadline**”). See **Section 4** of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s

attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion Form by [REDACTED], 2023 (see Section 6 for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims. See Section 6 of this Notice.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an Objection Form stating why you object to the settlement by [REDACTED], 2023 (see Section 7 for more details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit the enclosed Dispute Form with any supporting evidence to the Phoenix Class Action Administration Solutions (the “Settlement Administrator”), a third party that is responsible for sending this Notice) (see Section 4 for more details on how to submit a Dispute Form). Defendants’ records will be presumed correct, but you may provide evidence to the Settlement Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT’S NOT REQUIRED	
DATE: [REDACTED], 2023 TIME: 8:30 A.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of RLS-CMC. The Action accuses Defendants of violating California labor laws by failing to pay minimum and overtime wages, failure to provide meal and rest breaks and pay meal and rest period premiums, failure to reimburse business expenses, failure to timely pay wages each period and upon separation of employment, and failure to provide accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (“PAGA”).

Defendants strongly deny violating any laws or failing to pay any wages and contends it complied with all applicable laws.

Both Parties are represented by attorneys in the Action. See Section 9 below for their contact information.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendants Will Pay \$250,000 as the “Settlement Amount.” Defendants have agreed to pay a total Settlement Amount of \$250,000, and Defendants shall be entitled to a credit of \$25,343.98 toward the Settlement Amount for Prior Payments already made to 17 Class Members. Defendants have agreed to deposit the Settlement Amount into an account controlled by Settlement Administrator. The Settlement Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s Costs, and PAGA Penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will fund the Settlement Amount (less the Prior Payments) not more than 15 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

A. Up to one-third of the Settlement Amount (\$83,333.33) to Class Counsel for attorneys' fees and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

B. Up to \$5,000 to the Class Representative as a Service Payment for litigating the Action, working with Class Counsel and representing the Class. The Class Representative's Service Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.

C. \$6,000 to the Settlement Administrator for services administering the Settlement.

D. Up to \$10,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their share of Weeks Worked during the PAGA Period.

E. Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. **Net Settlement Distributed to Class Members.** After making the above deductions in amounts approved by

the Court, the Administrator will distribute the rest of the remainder (the “Net Settlement Amount”) by making Individual Class Payments to Participating Class Members based on their total Share Points, as discussed above.

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of one-third of each Individual Class Payment to taxable wages (“Wage Portion”) and two-thirds to penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay employer payroll taxes they owe on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller's Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

7. The Proposed Settlement Will be Void If the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants.

8. Settlement Administrator. The Court has appointed a neutral company, Phoenix Class Action Administration Solutions (the “Settlement Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Settlement Administrator will also decide any Disputes over weeks worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Settlement Administrator’s contact information is contained in Section 9 of this Notice.

9. Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective representatives, agents, heirs, and assigns, release the Released Parties (which includes Defendants, and their officers, directors, employees and agents) from include all claims stated in the operative Complaint and those based solely upon the facts in the Complaint, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages each period, (7) failure to timely pay final wages, (8) failure to provide accurate itemized wage statements, and (9) unfair and unlawful competition (the “Released Class Claims”). The operative release period for the Released Class Claims is the Class Period. Participating Class Members do not release any other claims, including claims for vested

benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

10. Release of Released PAGA Claims. After the Court's judgment is final, and Defendants have paid the Settlement Amount (and separately paid the employer-side payroll taxes), Plaintiff on behalf of herself, the State of California and the LWDA shall release the Released Parties from all PAGA claims that Plaintiff alleged against the Released Parties (which includes Defendants, and their officers, directors, employees and agents) based on the facts stated in the relevant LWDA notice letters and only to the extent that they are alleged in the operative Complaint, including all PAGA claims seeking civil penalties premised upon: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages each period, (7) failure to timely pay wages upon separation of employment, and (8) failure to provide accurate itemized wage statements, and (9) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code Section 2698 based on the facts or claims alleged in the LWDA notice letters and operative Complaint ("PAGA Released Claims.") The time period governing the PAGA Released Claims shall be any time during the PAGA Period.

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Individual Class Payments. The Settlement Administrator will calculate Individual Class Payments based on each person's total Share Points. Each Class Member's Share Points shall be calculated as follows: (1) each Week Worked by a Class Member from April 13, 2017, through April 30, 2021, shall be credited with 4 Share Points, and (2) each Week Worked by a Class Member from May 1, 2021, through May 2, 2023, shall be credited with 1 Share Point. The total combined share points in both classes will be referred to as a Class Member's Share Points. The Settlement Administrator will then calculate the Class Member's Individual Class Payment by multiplying the Class Member's Share Points by the "Share Point Rate" which is the value of each individual Share Point, as calculated by dividing the Net Settlement Amount by the total of all Share Points credited to all Class Members. The Individual Class Payment will then be reduced by any Prior Payment received by the Class Member (but in no instance shall the offset from the Prior Payment cause an Individual Class Payment to drop below \$50.00).

2. Individual PAGA Payments. The Settlement Administrator will calculate Individual PAGA Payments by (a) dividing \$2,500 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.

3. Disputing Weeks Worked and/or Share Points. The number of weeks you worked during the Class Period and PAGA Period (and the corresponding Share Points), as recorded in Defendants' records, are stated in the tables on page 2 of this Notice. You have until **DATE** ("Response Deadline") to dispute the number of Workweeks credited to you by mailing the enclosed Dispute Form to the Settlement Administrator on or before **[INSERT DATE 45 Days After Mailing]**. Section 9 of this Notice has the Administrator's contact information.

You need to support your dispute by sending copies of pay stubs or other records. The Settlement Administrator will accept Defendants' calculation of weeks worked based on Defendants' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Settlement Administrator will resolve challenges based on your submission and on input from Class Counsel and Defendants' Counsel. The Settlement Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Settlement Administrator will send, by U.S. mail, a single check to every Participating Class Member (which includes every Class Member who doesn't opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved

Employee, then the Settlement Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Settlement Administrator as soon as possible. Section 9 of this Notice has the Settlement Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not later than the Response Deadline. To opt-out, you must complete, sign, and mail the accompanying Request for Exclusion Form to the Settlement Administrator, postmarked on or before the Response Deadline (as a reminder, **the “Response Deadline” is DATE, 2023**). Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Claims remain eligible to receive an Individual PAGA Payment.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, on the enclosed Objection Form and include any and all evidence and supporting papers. The Objection Form and any accompanying evidence and papers must be sent to the Settlement Administrator at the address listed in Section 9 on the Objection Form, **postmarked** on or before the Response Deadline. If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

8. WHEN IS THE FINAL APPROVAL HEARING?

On **DATE**, 2023, the Court will hold a public hearing in Department 1 of the Superior Court for the State of California, County of Riverside, 4050 Main St, Riverside, CA 92501, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel's applications for attorneys' fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiff's request for the service award. This hearing may be continued or rescheduled by the Court. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the enclosed Request for Exclusion Form, Dispute Form, or Objection Form, or the Settlement itself, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you should contact the Administrator for more information or to request that a copy of this Notice and request for Exclusion, Objection, and Dispute Forms be sent to you in the mail. If you wish to communicate directly with Class or Defense Counsel, you may contact them at the information below. You may also seek advice and guidance from your own private attorney at your own expense if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on DATE, 2023 and available to be inspected at any time during regular business hours at the Clerk's Office, Superior Court for the State of California, County of Riverside, 4050 Main St, Riverside, CA 92501. You may also review the pleadings, records, and other papers on file in this lawsuit at the Clerk's Office or online at <https://epublic-access.riverside.courts.ca.gov/public-portal/>. To access the case file, click on "Case Number Search," then create a free online account, then type in the case number (CVRI2101907) where requested, and click "Search." You may also email Class Counsel and request a copy of the Settlement Agreement.

DO NOT TELEPHONE THE COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT

The contact information for Class Counsel and the Settlement Administrator are below:

Class Counsel	Settlement Administrator
Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Peter Carlson, Esq. <i>peter@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444	Name Mailing Address Telephone Number

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Settlement Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Settlement Administrator if you move or otherwise change your mailing address.

EXHIBIT “C”

REQUEST FOR EXCLUSION FORM

Amy Phelan v. RLS-CMC

(Riverside Superior Court, Case No. CVRI2101907)

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU WANT TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT CHECK? (check the box that applies)

☐

YES: STOP HERE -- DO NOT RETURN THIS FORM. NO FURTHER ACTION IS NEEDED TO PARTICIPATE IN THE SETTLEMENT.

☐

NO: SIGN, DATE AND RETURN THIS FORM TO EXCLUDE YOURSELF FROM THE SETTLEMENT.

By signing below, I am excluding myself from the Settlement:

I do NOT want to participate in the settlement in *Phelan v. RLS-CMC* (Riverside Superior Court Case No. CVRI2101907). I understand by excluding myself from the settlement that I will not receive any money from the settlement other than an Individual PAGA Payment if I qualify as an Aggrieved Employee (see first page of the Court Approved Notice of Class Action Settlement).

Signed on _____, 2023

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DEADLINE]:

Settlement Administrator:

Name

Mailing Address

Telephone Number

EXHIBIT “D”

OBJECTION FORM

Amy Phelan v. RLS-CMC

(Riverside Superior Court, Case No. CVRI2101907)

Please verify and/or complete any missing identifying information:

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU OBJECT TO THE SETTLEMENT? (check the box that applies)

☐

NO: STOP HERE -- DO NOT RETURN THIS FORM

☐

YES: COMPLETE THE REVERSE SIDE AND RETURN THIS FORM

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection. Any objection should describe the nature of and basis for the objection, and any other information that you would like the Court to consider.

I OBJECT to the Settlement in the case of *Phelan v. RLS-CMC* on the following grounds (if additional space is necessary, please include additional sheets of paper):

Signed on _____, 2023

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT OBJECTION DEADLINE]:

Settlement Administrator:

Name
Mailing Address
Telephone Number

EXHIBIT “E”

DISPUTE FORM

Amy Phelan v. RLS-CMC

(Riverside Superior Court, Case No. CVRI2101907)

Please verify and/or complete any missing identifying information:

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

The following charts are based on the records of Defendant RLS-CMC and reflect: (1) the number of weeks worked at RLS-CMC as a nonexempt (hourly paid) employee in California during the applicable periods, and (2) the amount of "Prior Payment" you received (if any) as part of an individual settlement of the claims in this Action.

<i>Data Points for Calculations of Individual Class Payment</i>	
Weeks Worked from 4/13/2017 to 4/30/2021	INSERT
Weeks Worked from 5/1/2021 to 5/2/2023	INSERT
Prior Payment Received (if any)	INSERT

<i>Data Points for Calculations of Individual PAGA Payment</i>	
Weeks Worked from 4/13/2020 to 5/3/2023	INSERT

DO YOU DISAGREE WITH THE INFORMATION ABOVE AND WANT THE PARTIES AND ADMINISTRATOR TO INVESTIGATE FURTHER?

☐

NO: STOP HERE -- DO NOT RETURN THIS FORM.

☐

YES: COMPLETE THE REVERSE SIDE AND RETURN THIS FORM.

Please state why you believe that you should be credited with more Weeks Worked than shown in the chart and attach copies (not originals) of supporting documentation. Moreover, if you believe that you should be credited with a different amount of “Prior Payment”, please describe the reason and attach any supporting documentation. The Parties and Settlement Administrator will consider your challenge and make a determination as to these issues.

Signed on _____, 2023

[NAME] _____

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DEADLINE]:

Settlement Administrator:

Name
Mailing Address
Telephone Number

EXHIBIT “F”



April 13, 2021

Sent Via Online Filing to the LWDA

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

Sent Via U.S. Mail and Certified Mail

RLS-CMC, Inc.
30959 N. 120th Avenue
Peoria, AZ 85383

Roger Lee Sanchez
30959 N. 120th Avenue
Peoria, AZ 95383

Jasmine Marie Sanchez
15374 W. Eugene Terrace
Surprise, AZ 85379

Re: PAGA Civil Penalty Claim
Geoffrey Kinzel v. RLS-CMC, Inc.

To the Labor and Workforce Development Agency, RLS-CMC, Inc., Mr. Roger Lee Sanchez, and Ms. Jasmine Marie Sanchez:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Geoffrey Kinzel (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), RLS-CMC, Inc., and/or any affiliated entities, Mr. Roger Lee Sanchez, and Ms. Jasmine Marie Sanchez (the “Company”), for violations of Labor Code §§ 98.6, 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1102.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately January through April 2021. Claimant alleges that, at all relevant times, he and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Among other violations, the Company classified Claimant and the Aggrieved Employees as “salaried” and did not pay proper minimum and overtime wages for all hours worked. However, Claimant and the Aggrieved Employees were non-exempt employees entitled to compensation for all hours worked.

Also, at all relevant times, the Aggrieved Employees earned additional compensation in the form of nondiscretionary bonuses. However, on the occasions when the Aggrieved Employees worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional earned compensation during the pay period, the Company failed to properly include these amounts in the calculations for the regular rate of pay. Therefore, the Company failed to pay proper overtime for the hours worked in excess of 8 and/or 12 per day and/or 40 per week. Claimant raised bona fide complaints to the Company regarding these issues, yet the Company chose to terminate him for raising complaints about unlawful wage practices, a retaliatory and illegal act under Labor Code §§ 98.6 and 1102.5.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, Claimant was subjected to meal period violations when he was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a meal period after the 5th hour of work, and (4) not provided mandated second or third meal periods on shifts in excess of 10 hours or 15 hours, respectively.

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

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Finally, during his employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a). Specifically, Claimant alleges that the Company failed to provide wage statements that listed all applicable rates of pay and total hours worked, among other violations - in direct violation of Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of RLS-CMC, Inc., Mr. Sanchez, and Ms. Sanchez and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that RLS-CMC, Inc., Mr. Sanchez, and Ms. Sanchez acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, RLS-CMC, Inc., Mr. Sanchez, and Ms. Sanchez are an integrated enterprise and should be treated as a single employer because RLS-CMC, Inc., Mr. Sanchez, and Ms. Sanchez share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief RLS-CMC, Inc., Mr. Sanchez, and Ms. Sanchez share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that Mr. Roger Lee Sanchez and Ms. Jasmine Marie Sanchez are now and at all relevant times were the owners of RLS-CMC, Inc., and were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, were individuals employed by the Company as managerial



and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times Mr. Roger Lee Sanchez, and Ms. Jasmine Marie Sanchez had the authority, in the interest of RLS-CMC, Inc. to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that RLS-CMC, Inc., Mr. Sanchez, and Ms. Sanchez are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, RLS-CMC, Inc., Mr. Sanchez, and Ms. Sanchez were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that RLS-CMC, Inc., Mr. Sanchez, and Ms. Sanchez were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, RLS-CMC, Inc. has been inadequately capitalized to conduct business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which Mr. Roger Lee Sanchez, and Ms. Jasmine Marie Sanchez have conducted their personal affairs. Adherence to the fiction of the separate existence of RLS-CMC, Inc. would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to RLS-CMC, Inc. should be imposed jointly and severally against Mr. Roger Lee Sanchez, and Ms. Jasmine Marie Sanchez.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, Mr. Roger Lee Sanchez, and Ms. Jasmine Marie Sanchez are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same)

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

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

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

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked. This resulted in earned, but unpaid, overtime wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees worked in excess of 8 and/or 12 hours per day, and/or forty hours per week without receiving proper payment of the requisite overtime and/or doubletime wages for all hours worked pursuant to Labor Code §§ 204 and 510 and/or the applicable IWC Wage Order.



Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

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

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

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

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

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

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

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

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

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. For example, the Company required Claimant and the Aggrieved Employees to acquire and maintain a smart phone and related monthly data plan to communicate with the Company via phone and text message. Additionally, Claimant and the Aggrieved Employees were required to provide various tools and equipment to perform duties for the Company, such as power tools, all without compensation. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802.

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**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

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

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

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

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

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

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

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



At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including the failure to state total hours worked during the period and the failure to state all applicable hourly rates of pay and number of hours worked at each date. Additionally, the Company's wage statements failed to accurately state gross wages earned, all deductions, net wages earned, and the name and address of the legal entity that is the employer. Accordingly, Claimants are entitled to damages under Labor Code § 226(e), including reasonable attorneys' fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR FAILURE TO MAINTAIN EMPLOYMENT RECORDS

(Labor Code §§ 1174, 1174.5, 1198, and § 7 of the IWC Wage Orders)

Labor Code § 1174(d), and § 7 of the IWC Wage Orders require employers to maintain accurate employment records, including accurate payroll records showing the total number of regular and overtime hours worked each day by employees, including meal periods, and the gross wages earned by the employee, including all applicable pay rates and the corresponding number of hours worked at each pay rate, among other requirements.

Here, the Company failed to maintain accurate employment records as mandated by California law. Therefore, in addition to recovering the amount of attorneys' fees and cost incurred herein, Claimant is entitled to the assessment of civil penalties in accordance with Labor Code §§ 1174(d), 1174.5, 1199, and 2699.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

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

ATTORNEYS' FEES, INTEREST, AND PENALTIES

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

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

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

CONCLUSION

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

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

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Peter J. Carlson", with a long horizontal flourish extending to the right.

By: Peter J. Carlson, Esq.

E-mail: peter@lmlfirm.com

www.LMLfirm.com



EXHIBIT “G”



LAUBY, MANKIN & LAUBY LLP

March 10, 2023

Sent Via Online Filing to the LWDA

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

Sent Via U.S. Mail and Certified Mail

RLS-CMC, Inc.
15374 W. Eugene Terrace
Surprise, AZ 85379

Roger Lee Sanchez
15374 W. Eugene Terrace
Surprise, AZ 85379

Jasmine Marie Sanchez
15374 W. Eugene Terrace
Surprise, AZ 85379

Re: PAGA Civil Penalty Claim
Geoffrey Kinzel and Amy Phelan v. RLS-CMC, Inc.
Amended Notice Substituting Amy Phelan for Deceased Geoffrey Kinzel
LWDA Case No. LWDA-CM-829200-21

To the Labor and Workforce Development Agency, RLS-CMC, Inc., Mr. Roger Lee Sanchez, and Ms. Jasmine Marie Sanchez:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as amended notification through which aggrieved employee Amy Phelan (“Claimant”), on behalf of the State of California and all Aggrieved Employees, seeks to substitute for deceased Geoffrey Kinzel for claims against her former employer(s), RLS-CMC, Inc., and/or any affiliated entities, Mr. Roger Lee Sanchez, and Ms. Jasmine Marie Sanchez (the “Company”), for violations of Labor Code §§ 98.6, 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1102.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately June 2020 through October 2021. Claimant’s claims are entitled to relate back to those in Mr. Kinzel’s initial LWDA notice and complaint. *See Hutcheson v. Superior Court* (2022) 74 Cal.App.5th 932, 945 (“the relation back doctrine applies” and a substitute PAGA representative is entitled to carry on a lawsuit where “the claims in the amended PAGA complaint here rest on the same general set of facts, involve the same injury, and refer to the same instrumentality as the claims in the original complaint”).

Mailing Address

5198 Arlington Avenue, PMB 513, Riverside, CA 92504



Toll Free
888.959.8508

Physical Address

11801 Pierce Street, Suite 200, Riverside, CA 92505

Claimant alleges that, at all relevant times, she and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Among other violations, the Company classified Claimant and the Aggrieved Employees as “salaried” and did not pay proper minimum and overtime wages for all hours worked. However, Claimant and the Aggrieved Employees were non-exempt employees entitled to compensation for all hours worked. Also, at all relevant times, the Aggrieved Employees earned additional compensation in the form of nondiscretionary bonuses. However, on the occasions when the Aggrieved Employees worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional earned compensation during the pay period, the Company failed to properly include these amounts in the calculations for the regular rate of pay. Therefore, the Company failed to pay proper overtime for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company’s policies and practices, Claimant was subjected to meal period violations when she was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a meal period after the 5th hour of work, and (4) not provided mandated second or third meal periods on shifts in excess of 10 hours or 15 hours, respectively.

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

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Finally, during his employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a). Specifically, Claimant alleges that the Company failed to provide wage statements that listed all applicable rates of pay and total hours worked, among other violations - in direct violation of Labor Code § 226(a).

Claimant alleges that she worked under the joint direction and control of RLS-CMC, Inc., Mr. Sanchez, and Ms. Sanchez and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that RLS-CMC, Inc., Mr. Sanchez, and Ms. Sanchez acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, RLS-CMC, Inc., Mr. Sanchez, and Ms. Sanchez are an integrated enterprise and should be treated as a single employer because RLS-CMC, Inc., Mr. Sanchez, and Ms. Sanchez share an interrelation of operations,

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with common human resources and personnel policies and shared common offices and facilities. Upon information and belief RLS-CMC, Inc., Mr. Sanchez, and Ms. Sanchez share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that Mr. Roger Lee Sanchez and Ms. Jasmine Marie Sanchez are now and at all relevant times were the owners of RLS-CMC, Inc., and were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times Mr. Roger Lee Sanchez, and Ms. Jasmine Marie Sanchez had the authority, in the interest of RLS-CMC, Inc. to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that RLS-CMC, Inc., Mr. Sanchez, and Ms. Sanchez are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, RLS-CMC, Inc., Mr. Sanchez, and Ms. Sanchez were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that RLS-CMC, Inc., Mr. Sanchez, and Ms. Sanchez were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, RLS-CMC, Inc. has been inadequately capitalized to conduct business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which Mr. Roger Lee Sanchez, and Ms. Jasmine Marie Sanchez have conducted their personal affairs. Adherence to the fiction of the separate existence of RLS-CMC, Inc. would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to RLS-CMC, Inc. should be imposed jointly and severally against Mr. Roger Lee Sanchez, and Ms. Jasmine Marie Sanchez.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, Mr. Roger Lee Sanchez, and Ms. Jasmine Marie Sanchez are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 40851 (same)

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

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

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

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked. This resulted in earned, but unpaid, overtime wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees worked in excess of 8 and/or 12 hours per day, and/or forty hours per week without receiving proper payment of the requisite overtime and/or doubletime wages for all hours worked pursuant to Labor Code §§ 204 and 510 and/or the applicable IWC Wage Order.

Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

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

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

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

Section 12 of applicable IWC Wage Order states in pertinent part: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

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

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

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

Labor Code § 2802(a) states "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

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IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. For example, the Company required Claimant and the Aggrieved Employees to acquire and maintain a smart phone and related monthly data plan to communicate with the Company via phone and text message. Additionally, Claimant and the Aggrieved Employees were required to provide various tools and equipment to perform duties for the Company, such as power tools, all without compensation. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

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

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

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

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

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

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**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

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

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including the failure to state total hours worked during the period and the failure to state all applicable hourly rates of pay and number of hours worked at each date. Additionally, the Company's wage statements failed to accurately state gross wages earned, all deductions, net wages earned, and the name and address of the legal entity that is the employer. Accordingly, Claimants are entitled to damages under Labor Code § 226(e), including reasonable attorneys' fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR FAILURE TO MAINTAIN EMPLOYMENT RECORDS

(Labor Code §§ 1174, 1174.5, 1198, and § 7 of the IWC Wage Orders)

Labor Code § 1174(d), and § 7 of the IWC Wage Orders require employers to maintain accurate employment records, including accurate payroll records showing the total number of regular and overtime hours worked each day by employees, including meal periods, and the gross wages earned by the employee, including all applicable pay rates and the corresponding number of hours worked at each pay rate, among other requirements.

Here, the Company failed to maintain accurate employment records as mandated by California law. Therefore, in addition to recovering the amount of attorneys' fees and cost incurred herein, Claimant is entitled to the assessment of civil penalties in accordance with Labor Code §§ 1174(d), 1174.5, 1199, and 2699.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

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

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ATTORNEYS' FEES, INTEREST, AND PENALTIES

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

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

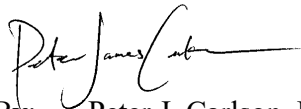
Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

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

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

Very Truly Yours,



By: Peter J. Carlson, Esq.

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EXHIBIT “H”