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

EPIGMENIO RIVAS HERRERA, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

O. W. LEE CO. INC., a California corporation;
and DOES 1 through 100,

Defendants.

Case No. CIVSB 2109747

*[Assigned for all purposes to the Hon. David
S. Cohn; Dept. S-26]*

**DECLARATION OF PAUL K. HAINES
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: December 23, 2022
Time: 9:00 a.m.
Dept.: S-26

Complaint Filed: April 8, 2021
Trial Date: None Set

1 I, PAUL K. HAINES, declare as follows:

2 1. I am a shareholder and principal of Haines Law Group, APC, and counsel for the
3 named Plaintiff Epigmenio Rivas Herrera (“Plaintiff”) and the proposed Settlement Class in the
4 above-captioned matter. I am a member in good standing of the bar of the State of California and
5 am admitted to practice in this Court. I have personal knowledge of the facts stated in this
6 declaration and could testify competently to them if called upon to do so.

7 2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated
8 cum laude. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy,
9 located in Encino, California. I also spent a semester in law school working as an extern for the
10 Honorable Edward Rafeedie, District Judge for the United States District Court for the Central
11 District of California.

12 3. Since graduating from law school, my practice has focused almost exclusively on
13 employment litigation. In September 2007, I began working as an associate attorney at the
14 international law firm of Littler Mendelson P.C., at its Los Angeles office, which according to its
15 website is the “largest U.S.-based law firm exclusively devoted to representing management in
16 every aspect of labor and employment law.” While at Littler Mendelson, I was primarily staffed
17 on wage and hour class actions venued in both state and federal courts, and I also worked on a
18 number of single and multi-plaintiff wage and hour matters as well.

19 4. During my employment at Littler Mendelson, I played a significant role in the
20 class actions that I was staffed on, as I was often the only associate staffed on such cases. In
21 particular, I received a wide-array of wage and hour class action experience performing the
22 following types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions
23 from state court to federal court; drafting and responding to written discovery; drafting and
24 opposing discovery related motions; arguing discovery related motions; drafting motions to
25 consolidate related matters; interviewing putative class members and obtaining declarations in
26 connection with class certification; drafting oppositions to motions for class certification; drafting
27 motions for decertification following class certification; conducting exposure analyses to assess
28 the strengths and weaknesses of asserted claims, the likelihood of prevailing at class certification

1 and potential damages resulting from such claims; drafting mediation briefs; serving as the
2 primary contact to in-house counsel; deposing named plaintiffs and putative class members;
3 deposing retained expert witnesses; and defending the depositions of corporate witnesses. In
4 short, I played an integral role in all aspects of litigation from the inception of a matter through
5 and beyond class certification. I also supervised the work of several junior attorneys who were
6 staffed on the same wage and hour class actions.

7 5. In June 2011, I voluntarily resigned from Littler Mendelson in order to accept an
8 associate attorney position with the international law firm of Morgan, Lewis & Bockius LLP, at
9 its Los Angeles office, where I began working in July 2011. During my employment at Morgan,
10 Lewis & Bockius LLP, I worked exclusively on the defense of wage and hour class and collective
11 actions. For the vast majority of these cases, I was the only associate staffed on the matter, and I
12 performed the same job duties as described in the immediately preceding paragraph. In addition
13 to working on wage and hour class actions, at Morgan, Lewis & Bockius I also worked on a
14 number of “hybrid” actions asserting nationwide wage and hour claims under the Fair Labor
15 Standards Act (“FLSA”), as well as California-specific claims under Rule 23 of the Rules of Civil
16 Procedure.

17 6. In July 2012, I transitioned into litigating wage and hour class actions from the
18 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
19 February 2016, as a Shareholder of the Haines Law Group, APC. Currently, over ninety percent
20 (90%) of my practice is dedicated exclusively to the prosecution of wage and hour class actions,
21 and I am currently responsible for prosecuting over fifty (50) wage and hour class actions filed in
22 both State and Federal courts throughout California. I have been appointed as Class Counsel in
23 over one hundred (100) wage and hour class action settlements in state and federal courts within
24 California. A few examples of the matters in which I have been appointed as Class Counsel, all
25 of which have been granted final approval, include the following: *Sanchez v. Res-Care, Inc.*, Case
26 No. BC526175, California Superior Court, County of Los Angeles, Hon. John Shepard Wiley,
27 Jr., presiding; *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United
28 States District Court, Central District of California, Hon. John F. Walter presiding; *Tesla Motors*

1 *Wage and Hour Litigation*, JCCP 4792, California Superior Court, Santa Clara County, Hon.
2 Peter H. Kirwan presiding; *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States
3 District Court, Northern District of California, Hon. Haywood S. Gilliam, Jr. presiding;
4 *Longstreth v. PAQ, Inc., dba Food 4 Less*, Case No. 15CV-0206, California Superior Court,
5 County of San Luis Obispo, Hon. Charles S. Crandall presiding; *Nunez v. CompuCom Systems,*
6 *Inc.*, Case No. BC618385, California Superior Court, County of Los Angeles, Hon. John Shepard
7 Wiley, Jr. presiding; *Mansilla v. Haeco Americas Line Services, LLC*, et al, Case No. BC615310,
8 Superior Court of California, County of Los Angeles, Hon. Elihu M. Berle presiding; *Leverage,*
9 *et al v. Traeger Pellet Grills, LLC, et al.*, Case No. 4:16-cv-00784-KAW, United States District
10 Court, Northern District of California, Hon. Kandis A. Westmore presiding.

11 7. I have also moved to certify and have received an order certifying a class action
12 and/or conditionally certifying a collective action, in the following cases:

- 13 • *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-
14 CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler,
15 presiding (certifying a class of employees who were misclassified as independent
16 contractors);
- 17 • *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United
18 States District Court, Central District of California, Honorable Judge Beverly Reid
19 O'Connell, presiding (conditionally certifying an unpaid FLSA overtime wage class);
- 20 • *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States
21 District Court, Central District of California, Honorable Judge John F. Walter, presiding
22 (certifying a rest period violation class and conditionally certifying an FLSA unpaid
23 overtime wage class);
- 24 • *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court,
25 Northern District of California, Honorable Judge Haywood S. Gilliam, Jr., presiding
26 (conditionally certifying an unpaid FLSA overtime wage class);
- 27 • *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States
28 District Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding

1 (conditionally certifying an unpaid FLSA overtime wage class);

- 2 • *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC,
3 California Superior Court, County of Orange, Honorable Judge William Claster, presiding
4 (certifying unpaid overtime wage class and waiting time penalty class);
- 5 • *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United
6 States District Court, Central District of California, Honorable Dolly M. Gee presiding
7 (certifying six classes of employees for rest period violations, wage statement violations,
8 meal period violations, and overtime and double-time violations);
- 9 • *Vazquez, et al v. Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United
10 States District Court, Southern District of California, Honorable William Q. Hayes
11 presiding (certifying six classes of employees for unpaid wages, meal period violations,
12 wage statement violations, and waiting time penalties);
- 13 • *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA,
14 United States District Court, Northern District of California, Honorable William H. Alsup
15 presiding (certifying three classes of employees for unlawful wage deduction violations,
16 wage statement violations, and waiting time violations);
- 17 • *Staublein v. Wells Fargo Bank, N.A.*, Case No. CIVDS1712267, San Bernardino County
18 Superior Court, Honorable David S. Cohn presiding (certifying wage statement class);
- 19 • *Perez v. Sunbelt Rentals, Inc.* Case No. 37-2018-00026405-CU-OE-CTL, California
20 Superior Court, County of San Diego, Honorable Eddie C. Sturgeon presiding (certifying
21 one class of employees for wage statement violations); and
- 22 • *Bowlin-Burdick, et al v. Life Care Centers of America, Inc.*, Case No. BC657139, Los
23 Angeles County Superior Court, Honorable Maren E. Nelson presiding (certifying four
24 classes for meal period violations, rest period violations, wage statement violations, and
25 waiting time penalties).

26 8. In 2015, 2016, and 2017, Thomson Reuters recognized me as a Top Young
27 Attorney in Southern California in the annual Rising Stars Edition of Super Lawyer. This is an
28 honor awarded to no more than two-and-a-half percent of attorneys under the age of forty in

1 Southern California each year. In 2018, 2019, 2020, and 2021, Thomson Reuters recognized me
2 as a “Super Lawyer” in the annual Super Lawyer magazine, an honor awarded to no more than
3 five percent of all attorneys in Southern California each year.

4 9. As counsel for Plaintiff and the proposed Settlement Class, I have been intimately
5 involved in every aspect of this case from its inception through the present, and I believe that the
6 proposed Settlement is a favorable result for the Settlement Class.

7 10. The proposed Stipulation of Settlement (“Settlement” or “Settlement Agreement”)
8 is attached hereto as **Exhibit 1**. The proposed Class Notice and Notice of Estimated Settlement
9 Award are attached to the Settlement as **Exhibits A** and **B**, respectively.

10 11. Defendant O.W. Lee Co., Inc. (“O.W. Lee”) designs and manufactures fine,
11 handcrafted casual furniture. Plaintiff and Settlement Class members worked for O.W. Lee in
12 California up until March 1, 2021, when O.W. Lee ceased operating in California.

13 12. On April 8, 2021, Plaintiff filed a Class Action Complaint against O.W. Lee in
14 San Bernardino County Superior Court alleging causes of actions for: (1) failure to pay all
15 overtime wages; (2) minimum wage violations; (3) meal period violations; (4) rest period
16 violations; (5) wage statement penalties; and (6) unfair competition in violation of California
17 Business & Professions Code § 17200, *et seq.* On June 18, 2021, Plaintiff filed a First Amended
18 Class and Representative Action Complaint to add a cause of action for civil penalties under the
19 Private Attorneys’ General Act of 2004 (“PAGA”), Labor Code Section 2698, *et seq.* Attached
20 hereto as **Exhibit 2** is a true and correct copy of Plaintiff’s April 12, 2021 letter to the Labor &
21 Workforce Development Agency (“LWDA”). As part of the Settlement and through this Motion,
22 Plaintiff respectfully requests that the Court approve the filing of a Second Amended Class and
23 Representative Action Complaint (“SAC”) to add additional factual allegations and a cause of
24 action for waiting time penalties. Attached hereto as **Exhibit 3** is a true and correct copy of
25 Plaintiff’s proposed SAC.

26 13. In connection with mediation, the Parties engaged in extensive informal discovery.
27 O.W. Lee produced timekeeping and payroll records for a 22% sampling of the putative class
28 (including actual-time-punches and rounded entries), a class list containing all putative class

members' hire and termination dates, data points including the average rate of pay for the Class Period, O.W. Lee's relevant wage and hour policies, and other information and documents. Plaintiff hired a labor economist with a Ph.D. in economics to assist in the analysis and extrapolation of the data produced by O.W. Lee to calculate damages for each of Plaintiff's claims. This information allowed the Parties to assess the merits and value of Plaintiff's claims, the chances for class certification, and O.W. Lee's potential defenses.

14. On January 14, 2022, the Parties participated in a full-day mediation with Francis J. Ortman, Esq., a well-respected wage and hour class action mediator. At mediation, the Parties vigorously debated their legal positions, the likelihood of certification of Plaintiff's claims, the legal bases for the claims and defenses, as well as O.W. Lee's financial condition. At the mediation, the Parties agreed to a class-wide settlement, subject to Plaintiff's review of O.W. Lee's financial records, which was documented in a Memorandum of Understanding ("MOU"). Following O.W. Lee's representation of its financial position, O.W. Lee turned over its financial records to Plaintiff. Plaintiff retained a forensic accountant, Keith D. Messerschmidt, who has consulted or provided expert testimony in dozens of litigation and insurance matters. Mr. Messerschmidt opines that O.W. Lee could not reasonably afford to pay more than the GSA and that the requested payment schedule was necessary for O.W. Lee to remain in business and not dramatically impact its operations. Should the Court wish to review a declaration from Mr. Messerschmidt attesting to these facts and O.W. Lee's financial condition, this declaration could either be filed in *camera* or filed under seal, at the Court's request. After Plaintiff's review of O.W. Lee's financials, the Parties negotiated and finalized the Settlement Agreement now before this Court.

15. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount ("GSA"):	\$500,000.00
• Minus Court-approved attorney fees (one-third):	\$166,666.67
• Minus Court-approved verified costs (up to):	\$25,000.00
• Minus Court-approved Enhancement Award:	\$7,500.00
• Minus Amount Set Aside as PAGA penalties:	\$20,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$8,000.00</u>
Net Settlement Amount ("NSA"):	\$272,833.33

1 16. According to O.W. Lee, there are approximately 144 Settlement Class members,
2 and an estimated total of 27,950 Workweeks worked during the Class Period. Therefore, the
3 average Individual Settlement Award is estimated to be approximately \$1,894.68.

4 17. As described in the accompanying Motion for Preliminary Approval of Class
5 Action Settlement, Plaintiff alleges that O.W. Lee failed to provide legally-compliant meal
6 periods. Specifically, throughout the Class Period, Plaintiff alleges that first meal periods were at
7 times not provided until after the completion of five hours of work due to work demands. Plaintiff
8 further contends that meal periods were at times short (i.e., less than 30 minutes). Based on
9 Plaintiff's analysis and extrapolation of employee timekeeping records produced by O.W. Lee,
10 there were approximately 30,236 instances of non-compliant first meal periods reflected in the
11 data. Plaintiff's analysis also revealed that O.W. Lee paid approximately \$824 in meal period
12 premiums during the Class Period. In addition, based on the data provided by O.W. Lee,
13 Settlement Class members' average hourly rate of pay during the Class Period was approximately
14 \$16.44 per hour. Therefore, assuming each late, short, and/or missed meal period reflected in the
15 timekeeping records would result in a violation, Plaintiff calculated O.W. Lee's maximum
16 exposure on this claim at approximately \$496,256 ((30,236 first meal period violations * \$16.44
17 average premium) - \$824). However, O.W. Lee contends that it maintained compliant written
18 meal period policies throughout the Class Period and provided legally-compliant meal periods in
19 line with those policies. O.W. Lee also argues that under *Brinker*, it was only required to
20 "provide" the opportunity to take meal periods, not "ensure" meal periods are taken. O.W. Lee
21 also argues that any short, missed, or late first meal periods were the result of lawful employee
22 waiver or choice, thereby precluding liability. Lastly, O.W. Lee argues individualized inquiries
23 would be needed to determine why each meal period was taken late or short or missed by each
24 employee, and whether there was a valid waiver, making certification of the meal period claim
25 unlikely. In light of these defenses and arguments, Plaintiff discounted O.W. Lee's maximum
26 exposure by 60% for the risk of non-certification, and an additional 65% to account for O.W.
27 Lee's defenses on the merits, to arrive at an estimated total of approximately \$69,476.

28 18. Plaintiff also alleges that O.W. Lee failed to provide legally-compliant second

1 meal periods during shifts in excess of 10.0 hours. Based on Plaintiff's review of employee
2 timekeeping data, approximately 45,591 shifts during the Class Period reflected a potential
3 second meal period violation. Thus, Plaintiff calculated O.W. Lee's maximum exposure on this
4 claim at approximately \$749,516 (45,591 second meal period violations * \$16.44 average
5 premium). However, O.W. Lee argues that second meal periods may lawfully be waived on shifts
6 of more than 10.0 hours but less than 12.0 hours per Labor Code § 512, and that employees did
7 so. If the Court accepted O.W. Lee's waiver argument for shifts less than 12.0 hours in duration,
8 then there were only approximately 86 shifts at issue, as this is the estimated number of shifts
9 worked over 12.0 hours. This would significantly reduce O.W. Lee's maximum exposure as only
10 shifts in excess of 12.0 hours would be at issue, thereby reducing O.W. Lee's potential liability
11 for second meal period violations to \$1,414 (86 second meal period violations * \$16.44 average
12 premium). O.W. Lee also contends that class certification would not be proper as individualized
13 inquiries will be required to determine why each second meal period was missed, and whether
14 there was a valid waiver. In light of these arguments and defenses, Plaintiff discounted the
15 maximum amount that the class could potentially recover for second meal periods by 60% for a
16 risk of non-certification, and an additional 80% for a risk of losing on the merits, or having
17 exposure reduced due to O.W. Lee's waiver arguments, to arrive at an estimated exposure amount
18 of approximately \$59,962.

19 19. Plaintiff also alleges that O.W. Lee failed to authorize and permit off-duty rest
20 periods because O.W. Lee required him and other employees to remain on company premises
21 during rest periods. Plaintiff also alleges that O.W. Lee failed to authorize and permit third rest
22 periods on shifts in excess of 10.0 hours throughout the Class Period. Plaintiff's analysis of O.W.
23 Lee's timekeeping data revealed that there were approximately 133,885 shifts in excess of 3.5
24 hours with potential non-compliant rest periods. Therefore, Plaintiff calculated O.W. Lee's
25 maximum exposure on this claim at approximately \$2,201,069 (133,885 shifts * \$16.44 average
26 premium). However, O.W. Lee argues that it always maintained and enforced lawful rest period
27 policies and practices during the Class Period, and never required employees to remain on
28 premises during rest periods. In fact, O.W. Lee asserts that many employees would testify that

1 they did, in fact, leave the premises during rest periods. O.W. Lee further contends that, even if it
2 (or individual managers) had required employees to remain on premises, *Augustus* rejected
3 Plaintiff's "on premises" theory when it observed that "one would expect that employees will
4 ordinarily have to remain onsite or nearby. This constraint, which is of course common to all rest
5 periods, is not sufficient to establish employer control." Finally, O.W. Lee argues that Plaintiff's
6 rest period claim is not amenable to class treatment, since individual inquiries would be required
7 to determine which employees failed to take rest periods, how many rest periods they failed to
8 take, the reasons why each employee failed to take rest period(s) on a particular shift, and whether
9 each employee was in fact allowed to leave the premises during each rest period. These
10 manageability concerns are especially present with respect to rest period claims, O.W. Lee argues,
11 given that rest periods are not recorded. In light of these defenses, Plaintiff discounted the
12 maximum amount by 60% for risk of non-certification and an additional 75% for risk of being
13 unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated
14 realistic exposure of \$220,107.

15 20. Plaintiff argues that O.W. Lee maintained an unlawful policy/practice of rounding
16 timekeeping entries, resulting in an underpayment of wages to Settlement Class members. Based
17 on Plaintiff's review of employee timekeeping records, Plaintiff contends that O.W. Lee's
18 rounding practices resulted in approximately 20,147 net hours of unpaid wages. Based upon the
19 weighted average minimum wage during the Class Period of \$11.85, Plaintiff estimates that O.W.
20 Lee's maximum exposure for this claim is approximately \$477,483 (20,147 hrs. * \$11.85 min.
21 wage * 2 (liquidated damages per Labor Code § 1194.2). O.W. Lee argues that its rounding
22 policies/practices were lawful, since it was both neutral on its face and resulted, over time, in
23 employees being paid for all hours worked. O.W. Lee also contends that multiple Courts of
24 Appeal have found rounding mechanisms to be lawful under similar circumstances. O.W. Lee
25 further argues that Plaintiff would not be able to certify this claim given the individualized
26 inquiries as to whether employees were in fact underpaid, or overpaid, for each workday in
27 question. Based on these defenses, Plaintiff discounted the maximum exposure by 50% to account
28 for the risk of non-certification, and an additional 50% to account for O.W. Lee's defenses on the

merits, to arrive at an estimated exposure of approximately \$119,371.

21. As a result of these alleged wage and hour violations, Plaintiff asserts that O.W. Lee failed to comply with its wage statement obligations in violation of Labor Code § 226. Plaintiff's expert analysis reflected that there were approximately 5,450 unique pay periods worked by Settlement Class members within the one-year liability window under Labor Code § 226. In calculating O.W. Lee's exposure, Plaintiff assumed he could recover the "initial" \$50 penalty under Section 226(e) for each violation, for a total of \$272,500 (5,450 pay periods * \$50 "initial" penalty) in potential penalties. O.W. Lee contends that any alleged wage statement violations could not be shown to be "knowing and intentional," particularly given its good-faith defenses; that Plaintiff cannot show he or other employees "suffer[ed] injury" due to alleged wage statement violations, as required by Lab. Code § 226(e), and that the wage statements always accurately reflected amounts *paid* to employees. In light of these defenses, Plaintiff discounted the maximum exposure by 60% for risk of non-certification, and by an additional 65% for risks on the merits, for an estimated realistic exposure of \$38,150.

22. As a result of O.W. Lee's failure to pay all wages and all meal and rest period premiums, Plaintiff alleges that O.W. Lee is liable for waiting time penalties. Plaintiff estimated an average waiting time penalty of \$3,945 (\$16.44/hr * 8 hrs * 30 days), and calculated O.W. Lee's maximum waiting time penalty exposure at approximately \$568,080 (144 separated employees * \$3,945 average waiting time penalty). However, O.W. Lee asserts it has strong, good-faith defenses to Plaintiff's underlying claims, precluding imposition of waiting time penalties, which are only available for the "willful" failure to pay wages. Moreover, Plaintiff would need to overcome O.W. Lee's defenses, both as to class certification and as to the merits, to their underlying claims. Based on these defenses, Plaintiff discounted O.W. Lee's maximum exposure by 60% for risk of non-certification and by an additional 65% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated total of \$79,532.

23. As a result of the alleged wage and hour violations, Plaintiff contends O.W. Lee is liable for PAGA civil penalties. Plaintiff estimated a maximum total PAGA exposure of

1 \$545,000 for the relevant time period (5,450 violations * \$100 “initial” penalty). However, O.W.
2 Lee contends the PAGA claim fails because the underlying claims fail. O.W. Lee further
3 maintains that given its good-faith defenses, the Court would substantially reduce any PAGA
4 penalties awarded. Therefore, Plaintiff discounted the maximum figure by 70% for risk of losing
5 on the merits and/or not recovering a PAGA penalty in each and every pay period, and an
6 additional 75% to account for the possibility of this Court reducing penalties, to arrive at an
7 estimated exposure of \$40,875.

8 24. Using these estimated figures for each of the claims described above, Plaintiff
9 predicted that the potential recovery for the Settlement Class would be approximately \$627,473.
10 The proposed settlement of \$500,000 therefore represents approximately 79.7% of the reasonably
11 forecasted recovery for the Settlement Class. Particularly in light of O.W. Lee’s financial
12 condition, the Settlement amount is substantial, and preliminary approval is appropriate.

13 25. At final approval, my office will apply for an attorneys’ fees award of one-third of
14 the Gross Settlement Amount, which is currently estimated to be \$166,666.67, and up to
15 \$25,000.00 in verified costs reimbursement. Plaintiffs’ counsel submits that the requested fee is
16 fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
17 purely contingent fee basis. Plaintiff’s counsel has incurred substantial attorneys’ fees conducting
18 pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research, engaging in
19 informal discovery analyzing employee timekeeping and payroll records and other data and
20 documents with the help of a retained expert, preparing for and attending mediation, negotiating
21 and preparing the Settlement Agreement, preparing this Motion, and otherwise litigating the case.
22 Plaintiff’s counsel will also spend additional attorney time in attending the hearing on this Motion,
23 overseeing the Notice process and fielding questions from Settlement Class members, preparing
24 the Final Approval papers, and attending the Final Approval hearing.

25 26. Although the Parties engaged in significant informal discovery in advance of
26 mediation, the Parties still had substantial discovery to complete in formal litigation had the
27 matter not settled. This would have required expenditure of substantial time and resources by both
28 Parties that would have very likely spanned several years. Even if Plaintiff were to certify the

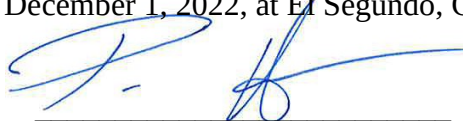
1 classes, the Parties would incur considerably more attorneys' fees and costs through a possible
2 decertification motion, trial, and possible appeal. This Settlement avoids those risks and the
3 accompanying expense.

4 27. Plaintiff will apply for an enhancement award at final approval in the amount of
5 \$7,500.00, and I believe this amount is fair and reasonable given Plaintiff's contributions to this
6 action and his service to the proposed Settlement Class. As will be fully briefed at final approval,
7 Plaintiff's requested enhancement award is in recognition of the time and effort he expended on
8 behalf of the Settlement Class, including providing factual information and documents to my
9 office, identifying potential witnesses, communicating with my office to discuss the claims and
10 theories at issue in the litigation, and otherwise actively participating in the prosecution of this
11 litigation.

12 28. I am not aware of any conflict between myself or any member of my firm, Haines
13 Law Group, APC, and any member of the Settlement Class. Nor am I aware of any conflict
14 between Plaintiff and any member of the Settlement Class.

15 29. Pursuant to the Settlement, O.W. Lee was to deposit the GSA with the Settlement
16 Administrator in three (3) installments: (1) the first installment of \$150,000.00 was initially due
17 to be deposited no later than September 1, 2022; (2) the second installment of \$150,000.00 no
18 later than December 1, 2022; (3) the third and final installment, of \$200,000.00 on or before the
19 earlier of: (1) March 1, 2023 or (ii) 21 days after the court grants final approval of the Settlement.
20 However, O.W. Lee failed to make the first installment payment of \$150,000.00 on September 1,
21 2022, and as of the date of this filing, has not made any installment payments pursuant to the
22 Settlement.

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct. Executed on December 1, 2022, at El Segundo, California.

25 
26 _____

27 Paul K. Haines
28

EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Epigmenio Rivas Herrera (“Plaintiff”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant O.W. Lee Co., Inc. (“Defendant” or “O.W. Lee”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Tuvia Korobkin, and Neil M. Larsen of Haines Law Group, APC (“Class Counsel”). Defendant is represented by Kalley R. Aman and Ronald J. Arias of Buchalter, APC.

On April 8, 2021, Plaintiff filed a class action lawsuit against Defendant in San Bernardino Superior Court, in the matter titled *Epigmenio Rivas Herrera v. O.W. Lee Co. Inc.*, Case No. CIVSB 2109747 (the “Action” or “Lawsuit”). Plaintiff’s Class Action Complaint alleges the following causes of action: (i) failure to pay overtime wages; (ii) minimum wage violations; (iii) meal period violations; (iv) rest period violations; (v) wage statement penalties; and (vi) unfair competition as a result of the aforementioned violations (Bus. & Prof. Code § 17200 *et seq.*). On June 18, 2021, Plaintiff filed a First Amended Class and Representative Action Complaint, adding a cause of action for civil penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code § 2698, *et seq.* As part of this Settlement, the Parties agree to stipulate to leave for Plaintiff to file a Second Amended Class and Representative Action Complaint (“Complaint”) to add additional factual allegations as well as a claim for waiting time penalties.

Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class (defined below). Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All of Defendant’s current and former non-exempt employees who performed work for Defendant in California at any time from October 12, 2016 to March 1, 2021 (“Class Period”), and who did not previously sign a severance agreement with Defendant.

Defendant represents there are approximately 144 Settlement Class members.

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **Release by Settlement Class Members and Plaintiff.** As of the date that (i) the Final Effective Date (as defined below) occurs and (ii) the settlement is fully funded, Plaintiff and every member of the Settlement Class (except those who opt out) will fully, forever, and irrevocably

release and discharge Defendant and any and all of Defendant's past and present shareholders, owners, affiliates, divisions, d/b/a's, parents, subsidiaries, predecessors, successors, assigns, employees, directors, attorneys, insurers, and accountants (collectively, the "Released Parties"), as follows:

- A. Settlement Class members (except those who opt-out) shall fully, forever, and irrevocably release and discharge all claims against the Released Parties under California law that were asserted in the operative Complaint, or which could have been asserted in the Action based on the facts and circumstances as alleged in the operative Complaint, including claims for: (i) failure to pay overtime wages; (ii) minimum wage violations; (iii) meal period violations; (iv) rest period violations; (v) wage statement violations; (vi) failure to timely pay final wages at termination; and (vii) any claims for or under Business & Professions Code § 17200 based on any of the above claims, arising from Settlement Class members' employment with Defendant during the Class Period (collectively, the "Class Released Claims"). In addition, all Settlement Class members who worked for Defendant in California at any time from October 12, 2019 through the end of the Class Period (the "PAGA Period"), regardless whether they opt out, will release all claims for civil penalties under the PAGA based on any of the claims (i)-(vi) mentioned above, arising from their employment with Defendant during the PAGA Period (the "PAGA Released Claims"). The period of the release of the Class Released Claims shall extend to the limits of the Class Period. The period of the release of the PAGA Released Claims shall extend to the limits of the PAGA Period.
- B. In light of Plaintiff's Class Representative Enhancement Award, Plaintiff has agreed to release, as an individual and in addition to the Class Released Claims and PAGA Released Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties ("Plaintiff's Released Claims"). The Parties understand and agree that Plaintiff's Released Claims do not include any claims for or related to workers' compensation, or claims for unemployment benefits, nor any other claims which cannot be released as a matter of law, and that Plaintiff is not, by way of this release, releasing any such claims. Plaintiff understands that this release includes unknown claims and that Plaintiff is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code with respect to Plaintiff's Released Claims. That section provides:

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

- 3. **Gross Settlement Amount.** As consideration, Defendant agrees to pay a non-reversionary gross settlement amount ("Gross Settlement Amount") of Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) in full and complete settlement of the Lawsuit, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators as the “Settlement Administrator” to administer this Settlement.
- B. The term “Final” and “Final Effective Date” means: (i) that the Settlement Agreement has received Final Approval by the Court and there were no timely objections or intervenor requests filed, or that any timely objections and/or intervenors have been withdrawn; or (ii) in the event that one or more timely objections or interventions has/have been filed and not withdrawn, then upon the passage of the applicable date for an objector or intervenor to seek appellate review of the Court’s order of Final Approval, without a timely appeal having been filed; or (iii) in the event that a timely appeal of the Court’s order of Final Approval has been filed, then the Settlement Agreement shall be final when the applicable appellate court has rendered a final decision or opinion affirming the Court’s Final Approval order without material modification, and the applicable date for seeking further appellate review has passed, or the date that any such appeal has been either dismissed or withdrawn by the appellant.
- C. Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator in three (3) installments: (1) the first installment of \$150,000.00 no later than September 1, 2022; (2) the second installment of \$150,000.00 no later than December 1, 2022; and (3) the third and final installment, of \$200,000.00 on or before the earlier of: (i) March 1, 2023 or (ii) 21 days after the Court grants final approval of the Settlement. Any funds deposited by Defendant prior to the Final Effective Date shall be held by the Settlement Administrator in escrow during the pendency of the settlement approval process. If the Final Effective Date does not occur, then any funds deposited by Defendant will be returned to Defendant. If the Final Effective Date does occur, no funds shall revert to Defendant.
- D. This is a non-reversionary settlement. The Gross Settlement Amount includes:
- (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator, which are anticipated to be no greater than Eight Thousand Dollars and Zero Cents (\$8,000.00);
 - (3) Up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for Plaintiff’s Class Representative Enhancement Award, in recognition of Plaintiff’s contributions to the Action and services to the Settlement Class, and his general release of claims; and
 - (4) Up to one-third of the Gross Settlement Amount (currently estimated to be \$166,666.67) in Class Counsel’s attorneys’ fees, plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00).
 - (5) Twenty Thousand Dollars and Zero Cents (\$20,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil

penalties. Per Labor Code § 2699(i), 75% of such penalties, or \$15,000.00, will be payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining 25%, or \$5,000.00, will be paid to certain Settlement Class members as the “PAGA Amount” as described below.

Defendant will not oppose the reasonableness of these requests. Any reduction by the Court of these requests will revert to the Settlement Class members who do not opt out.

- E. **Employer Payroll Taxes.** The Gross Settlement Amount does not include employer-side payroll taxes, which shall be paid by Defendant separate from, and in addition to, the Gross Settlement Amount.
- F. **Escalator Clause.** Defendant represents that there are approximately 144 Settlement Class members. The Parties agree that this is a material term of the Settlement. If the actual number of Settlement Class members is more than 10% greater than 144 (i.e., if there are 159 or more Settlement Class members), then the GSA shall increase proportionately with the increase in Settlement Class members over 144 (e.g., if the actual number of Settlement Class members is 12% greater than 144, the GSA will increase by 12%). If the Gross Settlement Amount increases as a result of this Escalator Clause, then each outstanding installment payment will increase on an equal basis. For example, if by operation of this Escalator Clause the Gross Settlement Amount increases by \$50,000, and there are two installment payments remaining to be paid, then each of the two outstanding installment payments will increase by \$25,000. If all three installment payments have been paid by the time it becomes known that the Escalator Clause has been triggered, then Defendant will pay the outstanding amount within 21 days of the Escalator Clause being triggered.

4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment (“Settlement Award”) from the Settlement. Settlement Awards will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, the Class Representative Enhancement Award, the Settlement Administrator’s fees and expenses for administration, and the amount set aside as PAGA civil penalties payable to the LWDA. The remaining amount shall be known as the “Net Settlement Amount.”
- B. **PAGA Amount:** From the Net Settlement Amount, \$5,000.00 has been allocated as the “PAGA Amount” as stated above. The PAGA Amount will be distributed to all Settlement Class members (whether or not they opt out) who performed work for O.W. Lee in California during the PAGA Period, based on each Settlement Class member’s proportionate number of pay periods worked for O.W. Lee in California during the PAGA Period.

- C. **Remainder of Net Settlement Amount:** The remainder of Net Settlement Amount will be distributed to all participating Settlement Class members based on each participating Settlement Class member's proportionate workweeks worked for Defendant in California ("Workweeks") during the Class Period. Each participating Settlement Class members' Settlement Award shall be calculated by multiplying the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all participating Settlement Class members during the Class Period.
- D. **Calculation of Settlement Awards.** Within ten (10) Court days of the Effective Date, the Settlement Administrator will calculate Settlement Award amounts, as well as the amount of the employer's share of payroll taxes due on the wage portion of the Settlement Awards, and provide the same to counsel for review and approval. Within fourteen (14) calendar days of the Settlement Administrator providing the calculations for the employer's share of payroll taxes, Defendant shall remit the necessary funds for the employer's share of payroll taxes to the Settlement Administrator or else raise any disputes as to the calculation of the employer's share of payroll taxes.
- E. **Payment of Settlement Awards.** Within ten (10) Court days after receiving approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant's counsel. The Settlement Administrator shall also pay the amounts approved by the Court for Class Counsel's attorneys' fees and costs, Plaintiff's Class Representative Enhancement Award, and PAGA payment to the LWDA at the same time it mails Settlement Awards to participating Settlement Class members.
- F. **Tax Treatment of Settlement Awards.** For tax purposes, each Settlement Award shall be allocated as follows: all payments from the PAGA Amount shall be treated as 100% penalties, and all payments from the remainder of the NSA shall be treated as one-third wages, one-third penalties, and one-third interest. The Settlement Administrator will be responsible for issuing to Settlement Class members an IRS Form W-2 (for amounts paid as wages) and an IRS Form 1099 (for amounts paid as penalties and interest). Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- G. Each Settlement Class member who receives a Settlement Award must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks are not cashed within 180 days after mailing shall be distributed to *cy pres* recipient Legal Aid Society of

San Bernardino in accordance with Section 384 of the California Code of Civil Procedure.

- H. Neither Plaintiff nor Defendant (nor their respective counsel) shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of up to one-third of the Gross Settlement Amount, which is currently estimated to be One Hundred Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$166,666.67). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award approved by the Court.

6. **Class Representative Enhancement Award.** Defendant will not object to a request for a Class Representative Enhancement Awards of up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff, for his time and risk in prosecuting this case and Plaintiff's service to the Settlement Class. This award will be in addition to Plaintiff's Settlement Award as a Settlement Class member, and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrators ("Phoenix") as Settlement Administrator. Defendant will not object to Plaintiff seeking approval to pay up to \$8,000.00 to Phoenix for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending the Notice Packets to the Settlement Class members, calculating Settlement Awards and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount only after Settlement Awards have been mailed to all participating Settlement Class members. The Settlement Administrator shall also give notice of final judgment by posting the final judgment to its website.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Paul K. Haines, Tuvia Korobkin, and Neil M. Larsen, of Haines Law Group, APC as Class Counsel;

- C. Appointing Plaintiff Epigmenio Rivas Herrera as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Estimated Settlement Award, attached hereto as **Exhibits A and B**, respectively); and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within ten (10) Court days after entry of an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, number of Workweeks worked, and number of pay periods worked during the PAGA Period ("Class Data") for each Settlement Class member.
- B. Within ten (10) Court days from receipt of the Class Data, the Settlement Administrator shall: (i) run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member, and receive approval from counsel of those calculations; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Any Settlement Class member who wishes to opt out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within forty-five (45) calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
 - i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must prepare and submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the

Settlement, except a Request for Exclusion not containing a Settlement Class member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement (except for a portion of the PAGA Amount, if applicable) and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon. Notwithstanding the foregoing, and pursuant to *Robinson v. Southern Counties Oil Co.*, 53 Cal.App.5th 476 (2020), no Settlement Class member may exclude him/herself from the PAGA portion of the Settlement. Any Settlement Class member who worked for Defendant in California during the PAGA Period will be paid a portion of the PAGA Amount and will release the PAGA Released Claims, as noted above.

- ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt out of the Settlement Class or solicit or encourage any Settlement Class member to appeal from the final judgment.

- D. Objections. Members of the Settlement Class who do not opt out may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Defendant's counsel and Class Counsel, who shall file all such objections with the Court) within the Response Deadline. Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless the objections are filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant's counsel and Class Counsel shall have ten (10) days to file a response to the objections. To be valid, any written objection must: (1) be in writing; (2) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (3) include all objections and the factual and legal bases for same; (4) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (5) be postmarked no later than the Response Deadline. Any objecting Settlement Class members may also appear at the final approval hearing, although they need not do so. Any attorney seeking to represent an objecting Settlement Class member at the Final Approval hearing must submit a Notice of Appearance to the Court and serve it on all counsel, no later than the Response Deadline.
- E. Notice of Estimated Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall contain a Notice of Estimated Settlement Award that discloses the amount of the Settlement Class member's estimated Settlement Award as well as the information that was used to calculate the Settlement Award.

Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Award shall be binding upon the Settlement Class member and the Parties.

- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. Settlement Class members to whom Notice Packets are re-sent after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to mail a Request for Exclusion, Objection, or dispute. Notice Packets that are re-sent shall inform the recipient of this adjusted deadline, if applicable. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet need not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant's Counsel to provide notice of the proposed settlement.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Enhancement Award, PAGA payment to the LWDA, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769. Said judgment shall be posted on the website of the Settlement Administrator.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or wrongdoing or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

12. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by counsel for all Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

13. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Plaintiff: Paul K. Haines of Haines Law Group, APC
2155 Campus Drive, Suite 1550, El Segundo, CA 90245
phaines@haineslawgroup.com

if to Defendant: Kalley R. Aman of Buchalter, APC
1000 Wilshire Boulevard, Suite 1500, Los Angeles, CA 90017
kaman@buchalter.com

14. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

15. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

16. **Nondisclosure and Nonpublication.** Until the Motion for Preliminary Approval is filed with the Court, Plaintiff and Class Counsel agree not to disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein, and except to Plaintiff's spouse or to his attorneys or tax preparers as necessary for those professionals to provide their professional services to Plaintiff.

17. **Enforcement and Continuing Jurisdiction of the Court.** To the extent consistent with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to

California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties and Settlement Class members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. The Court shall award reasonable attorneys' fees and costs to the prevailing party in any motion or action taken based on an alleged violation of any material term of this Settlement Agreement.

DATED: 6-27, 2022

O.W. Lee Co., Inc.

By: Teresa Rogers
Name: Teresa Rogers
Title: C.E.O., O.W. Lee Co., Inc.

DATED: _____, 2022

EPIGMENIO RIVAS HERRERA

By: _____
Plaintiff and Settlement Class Representative

California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties and Settlement Class members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. The Court shall award reasonable attorneys' fees and costs to the prevailing party in any motion or action taken based on an alleged violation of any material term of this Settlement Agreement.

DATED: _____, 2022

O.W. Lee Co., Inc.

By: _____
Name: _____
Title: _____

DATED: 6/28/2022, 2022

EPIGMENIO RIVAS HERRERA

By: *Epigmenio rivas*
Epigmenio rivas (Jun 28, 2022 16:55 PDT)
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: June 28, 2022

BUCHALTER, APC

By: Kalley Aman
Kalley Aman
Attorneys for Defendant

DATED: _____, 2022

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiff

APPROVED AS TO FORM:

DATED: _____, 2022

BUCHALTER, APC

By: _____
Kalley Aman
Attorneys for Defendant

DATED: June 29, 2022

HAINES LAW GROUP, APC

By:  _____
Paul K. Haines
Attorneys for Plaintiff

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

EPIGMENIO RIVAS HERRERA,

Plaintiff,

vs.

O.W. LEE CO. INC.

Defendants.

Case No. CIVSB 2109747

**NOTICE OF PENDENCY OF CLASS ACTION
AND PROPOSED SETTLEMENT**

To: All of O.W. Lee Co., Inc.'s ("Defendant" or "O.W. Lee") current and former non-exempt employees who performed work for O.W. Lee in California at any time from October 12, 2016 to March 1, 2021, and who did not previously sign a severance agreement with O.W. Lee.

**PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT.**

Why should you read this Notice?

The San Bernardino County Superior Court ("Court") has granted preliminary approval of a proposed class and representative action settlement (the "Settlement") in the matter titled *Epigmenio Rivas Herrera v. O.W. Lee Co. Inc.*, San Bernardino County Superior Court Case No. CIVSB 2109747 (the "Action"). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from the Settlement. O.W. Lee's records show that you were employed by O.W. Lee in California and performed work for O.W. Lee at some point between October 12, 2016 and March 1, 2021 (the "Class Period"), and that you did not previously sign a severance agreement with O.W. Lee. You are therefore part of the proposed "Settlement Class." The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Action, to inform you of the terms of the proposed Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment. If final judgment is entered in this case, it will be posted to the Settlement Administrator's website, www.phoenixclassaction.com.

What is this case about?

Plaintiff Edigmenio Rivas Herrera ("Plaintiff") has filed a lawsuit alleging that O.W. Lee violated California law by: (i) failing to pay overtime wages; (ii) failing to pay minimum wages; (iii) failing to provide meal periods; (iv) failing to authorize and permit rest periods; (v) failing to issue accurate and itemized wage statements; (vi) failing to timely pay final wages and, as a result of the above, (vii) engaging in unlawful business practices. As a further result of the above violations, Plaintiff alleges that O.W. Lee is liable for civil penalties pursuant to the Private Attorneys General Act ("PAGA").

Plaintiff is known as the "Class Representative." Plaintiff's attorneys, who also represent the interests of all Settlement Class members, are known as "Class Counsel."

O.W. Lee has denied and continues to deny that it has done anything wrong, and believes it has acted in compliance with all applicable laws and that Plaintiff's claims have no merit. O.W. Lee also denies that it owes any wages, restitution, penalties, or other damages. By agreeing to settle, O.W. Lee is not admitting liability on any of the factual allegations or claims asserted in the Action or that the Action can or should proceed as a class action in a non-settlement context.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with its business operations, O.W. Lee has concluded that it is in its best interests to settle the Action on the terms summarized in this Notice. After O.W. Lee provided relevant information to Class Counsel, the Settlement was reached after mediation and arm's-length negotiations between the parties.

The Class Representative and Class Counsel also support the Settlement. Among the reasons for support are the defenses to liability potentially available to O.W. Lee, the risk of denial of class certification, the inherent risks of trial on the merits, O.W. Lee's financial condition, and the delays and uncertainties associated with litigation.

If you are still employed by O.W. Lee, your decision about whether to participate in the Settlement will not affect your employment. California law and O.W. Lee's company policies strictly prohibit unlawful retaliation. O.W. Lee will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of the Settlement Class member's decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff / the Settlement Class: HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Tuvia Korobkin tkorobkin@haineslawgroup.com Neil M. Larsen nlarsen@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 www.haineslawgroup.com	Attorneys for O.W. Lee: BUCHALTER, APC Kalley R. Aman kaman@buchalter.com Ronald J. Arias rarias@buchalter.com 1000 Wilshire Boulevard, Suite 1500 Los Angeles, California 90017 Tel.: (213) 890-0700 Fax: (213) 896-0400 www.buchalter.com
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What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court granted preliminary approval of the Settlement. If the Court grants final approval of the Settlement, Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against O.W. Lee, as specifically described below.

O.W. Lee has agreed to pay \$500,000.00 (the "Gross Settlement Amount") to fully resolve all claims in the Action, including claims by Settlement Class members, attorneys' fees, costs, settlement administration costs, and the Class Representative's enhancement award.

The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$7,000.00 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys' Fees and Expenses. Class Counsel will ask for fees of up to one-third of Gross Settlement Amount, currently estimated to be \$166,666.67, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$25,000.00 for reimbursement of verified costs Class Counsel incurred in connection with the Action.

Class Representative Enhancement Award. Class Counsel will ask the Court to approve an enhancement award of \$7,500 to the Class Representative. This award is to compensate the Class Representative for his service and extra work provided on behalf of the Settlement Class members.

PAGA Civil Penalties. The Parties have agreed to allocate \$20,000.00 of the Gross Settlement Amount as alleged civil penalties for the settlement of Plaintiff's PAGA claim. Pursuant to the requirements of the PAGA, 75% of that amount, or \$15,000.00, will be paid to the California Labor & Workforce Development Agency ("LWDA"). The remaining \$5,000.00 has been designated as the "PAGA Amount" and will be paid to certain Settlement Class members as described below.

Calculation of Settlement Class Members' Settlement Awards. After deducting the Court-approved amounts for attorneys' fees and expenses, administration costs, Plaintiff's enhancement award, and the amount paid to the LWDA, the balance of the Gross Settlement Amount will form the Net Settlement Amount ("NSA"), from which Settlement Class members' payments, called "Settlement Awards," will be paid. The NSA is estimated to be approximately \$278,833.33, and will be distributed as follows:

PAGA Amount: As noted above, \$5,000 of the NSA has been allocated as the "PAGA Amount." The PAGA Amount will be paid to all Settlement Class members (regardless whether they opt out) who worked for O.W. Lee in California at any time from October 12, 2019 through March 1, 2021 (the "PAGA Period"). The PAGA Amount will be distributed to Settlement Class members based on the proportionate number of pay periods worked by each Settlement Class member during the PAGA Period.

Remainder of Net Settlement Amount: The remainder of the Net Settlement Amount (approximately \$273,833.33) will be distributed to all Settlement Class members who do not opt out of the Settlement, based on each Settlement Class member's proportionate number of workweeks worked for O.W. Lee in California during the Class Period ("Workweeks").

Allocation and Taxes. For tax purposes, each Settlement Award shall be treated as follows: all amounts from the PAGA Amount will be treated as 100% penalties, and all amounts from the NSA will be treated as one-third "wages," and two-thirds penalties and interest. The Settlement Administrator will issue IRS forms W-2 for all amounts designated as "wages," and will issue IRS forms 1099 for all amounts designated as penalties and interest. Settlement Class members are responsible for the proper income tax treatment of the Settlement Awards. The Settlement Administrator, O.W. Lee and its counsel, and Plaintiff and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court finally approves the Settlement and the Settlement becomes final, and upon the Settlement being fully funded, Plaintiff and every member of the Settlement Class (except those who opt out) will fully, forever, and irrevocably release and discharge O.W. Lee, and any and all of O.W. Lee's past and present shareholders, owners, affiliates, divisions, d/b/a's, parents, subsidiaries, predecessors, successors, assigns, employees, directors, attorneys, insurers, and accountants (collectively, the "Released Parties") from all claims against the Released Parties under California law that were asserted in the operative Complaint, or which could have been asserted in the operative Complaint based on the facts and circumstances as alleged in the operative Complaint, including claims for: (i) failure to pay overtime wages; (ii) failure to pay minimum wages; (iii) meal period violations; (iv) rest period violations; (v) wage statement violations; (vi) failure to timely pay final wages at termination; and (vii) all claims for or under Business & Professions Code § 17200 based on any of the above claims, during the Class Period (collectively, the "Released Claims"). In addition, all Settlement Class members who worked for O.W. Lee in California at any time during the PAGA Period will release all claims for civil penalties under the PAGA based on any of the claims (i)-(vi) mentioned above, arising from their employment with O.W. Lee during the PAGA Period. The period of the release of the Class Released Claims shall extend to the limits of the Class Period. The period of the release of the PAGA Released Claims shall extend to the limits of the PAGA Period.

Conditions of Settlement. By granting preliminary approval of the Settlement, the Court has determined that the Settlement falls within the range of possible approval as fair, reasonable, and adequate. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement.

How can I claim money from the Settlement?

Do Nothing. You do not need to do anything if you want to receive payment from and participate in the Settlement. If you do nothing, you will be entitled to your Settlement Award based on the number of Workweeks you worked for O.W. Lee in California during the Class Period, and the number of pay periods (if any) you worked for O.W. Lee in California during the PAGA Period. Your estimated individual Settlement Award is included in the enclosed Notice of Estimated Settlement Award. You also will be bound by the Settlement, including the release of claims stated herein.

Check Cashing Deadline and Uncashed Checks. You must cash or deposit your Settlement Award checks within 180 days from the date that the Settlement Administrator mails the check to you. If you do not cash or deposit your check within 180 days, your check will be voided and the funds from the check will be distributed to Legal Aid Society of San Bernardino County in accordance with Section 384 of the California Code of Civil Procedure.

What other options do I have?

Disputing Information in Notice of Estimated Settlement Award. Your estimated Settlement Award has been calculated and is included in the enclosed Notice of Estimated Settlement Award. As stated above, your estimated Settlement Award is based on the number of Workweeks you worked for O.W. Lee in California during the Class Period, as well as the number of pay periods (if any) you worked for O.W. Lee in California during the PAGA Period. The information contained in O.W. Lee's records regarding the number of Workweeks and pay periods you worked is listed on the accompanying Notice of Estimated Settlement Award. If you disagree with the information in your Notice of Estimated Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Settlement Award.

Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.** The parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator's decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the class portion of the Settlement, you may exclude yourself by sending to the Settlement Administrator a written "Request for Exclusion" letter or postcard, postmarked no later than <<RESPONSE DEADLINE>>, with your full name (as well as any former names you used while you were employed by O.W. Lee), your current address, telephone number, last 4 digits of your social security number, and your signature. The Request for Exclusion must also state that you wish to exclude yourself from the *Rivas Herrera v. O.W. Lee Co. Inc.* class action settlement.

Send the Request for Exclusion directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a valid and timely Request for Exclusion shall, upon receipt, no longer be a Settlement Class member, shall be barred from participating in the class portion of the Settlement, and shall receive no benefits from the Settlement (aside from any portion of the PAGA Amount to which they may be entitled). Any person who submits a valid and timely Request for Exclusion will also lack standing to object to the Settlement. Please note that you may not exclude yourself from the PAGA portion of the Settlement; if you worked for O.W. Lee in California during the PAGA Period, then you will receive a portion of the PAGA Amount and will release the PAGA Released Claims, even if you submit a Request for Exclusion.

Objecting to the Settlement. If you do not submit a Request for Exclusion, you have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you must mail a written Objection to the Settlement Administrator. Your written Objection must include your full name (as well as any former names used while employed by O.W. Lee), current address and phone number, last 4 digits of your social security number, the name and contact information of any attorney representing you, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection, including any supporting papers, briefs, written evidence, declarations, and/or other evidence. All objections

or other correspondence must state the name and number of the case, which is *Epigmenio Rivas Herrera v. O.W. Lee Co. Inc.*, San Bernardino County Superior Court Case No. CIVSB 2109747. Any Objections must be in writing and must be postmarked on or before <<RESPONSE DEADLINE>>.

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing to argue your objection. You have the right to appear either in person or through your own attorney at this hearing. If you wish to appear at the Final Approval Hearing and/or retain an attorney to represent you at the hearing, you must do so at your own expense. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case, which is *Epigmenio Rivas Herrera v. O.W. Lee Co. Inc.*, San Bernardino County Superior Court Case No. CIVSB 2109747.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object. In other words, by submitting an Objection, you are not excluding yourself from the Settlement.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department S-26 of the San Bernardino County Superior Court, located at 247 W. Third Street, San Bernardino, California 92415. At the Final Approval Hearing, the Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of expenses, the incentive award to the Class Representative, and the Settlement administration costs. The Final Approval Hearing may be postponed without further notice to the Settlement Class. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing at their own expense.**

If you plan on attending the hearing or otherwise visiting the Court, please consult the Court's "COVID-19: COURT OPERATIONS DURING THE COVID-19 PANDEMIC" webpage, <https://www.sb-court.org/general-information/covid-19-court-operations-during-covid-19-pandemic>, for information regarding court operations during COVID-19 as well as any face covering and social distancing requirements.

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the San Bernardino County Superior Court, located at 247 W. Third Street, San Bernardino, California 92415, during regular court hours. You may also contact the Settlement Administrator or Class Counsel using the contact information listed above for more information.

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

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

EXHIBIT B

NOTICE OF ESTIMATED SETTLEMENT AWARD

EPIGMENIO RIVAS HERRERA V. O.W. LEE CO. INC.
SAN BERNARDINO COUNTY SUPERIOR COURT CASE NO. CIV SB 2109747

Please complete, sign, and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute the information listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

Phone number (if you wish to be contacted by phone)

(III) Information Used to Calculate Your Estimated Settlement Award:

According to O.W. Lee Co. Inc.'s ("O.W. Lee") records:

- (a) you worked [REDACTED] Workweeks for O.W. Lee in California between October 12, 2016 and March 1, 2021.
- (b) you worked [REDACTED] Pay Periods for O.W. Lee in California between October 12, 2019 and March 1, 2021.

Based on the above, your Settlement Award is estimated at \$ [REDACTED].

(IV) If you disagree with the information included in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this Form:

If you dispute the above information from O.W. Lee's records, O.W. Lee's records will control unless you are able to provide documentation that establishes that O.W. Lee's records are mistaken. If there is a dispute about whether O.W. Lee's information or yours is accurate, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Class Action Settlement" that accompanies this Form. The Settlement Administrator's determination will be final.

Date: _____

Signature: _____

ANY DISPUTES (INCLUDING SUPPORTING DOCUMENTS) MUST BE POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>>.

EXHIBIT 2

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

April 12, 2021

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Epigmenio Rivas Herrera v. O. W. Lee Co. Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Epigmenio Rivas Herrera (“Mr. Rivas”) in claims arising from his employment with O. W. Lee Co. Inc.; and Does 1 through 100 (collectively, “OWLC”). Mr. Rivas is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to OWLC’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Section 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” include all of OWLC’s non-exempt employees who worked for OWLC in California during the one year plus 172 days immediately preceding the date of this letter through the present.

Mr. Rivas has been employed by OWLC as a non-exempt employee in the position of “Machine Operator” since approximately April 2005. Mr. Rivas has been out on a medical leave since approximately January 2021.

Upon information and belief, during the beginning of Mr. Rivas’s employment with OWLC, OWLC’s timekeeping policies/practices were unlawful because OWLC failed to record Mr. Rivas’s and other non-exempt employees’ meal periods in their time records, in violation of Wage Order 1, Section 7(A)(3). Instead, OWLC automatically deducted 30 minutes from non-exempt employee time records for purported meal periods, even if the employee did not actually take a meal period or did not take a full 30 minutes for their meal period. OWLC has utilized a bell schedule for meal periods, in which OWLC’s practice is to ring a bell signaling the start of Mr. Rivas and other non-exempt employees’ meal period and to ring a second bell exactly 30 minutes later signaling the end of their meal period. Mr. Rivas and other non-exempt employees were required to be back at their workstations before the second bell rang. As a result of these policies/practices, Mr. Rivas and other non-exempt employees were forced to take “short” meal periods because they were required to use part of the 30-minute meal period to return to their workstations before the second bell rang. Mr. Rivas and non-exempt employees have also experienced “late” meal periods, as they were not provided with an opportunity to take their meal period before the fifth hour of work due to work demands,

including, but not limited to, providing client tours of the facility. As a result of OWLC's policy/practice of automatically deducting for meal periods, Mr. Rivas and other non-exempt employees were often not provided with legally compliant meal periods, nor were they paid for all hours worked, including minimum wages and overtime wages.

Upon information and belief, at some point in approximately 2019, OWLC began requiring employees to clock out and back in for their meal periods. Mr. Rivas's timekeeping records evidence that even after OWLC began requiring its non-exempt employees to clock out for meal periods, Mr. Rivas was often provided with meal periods that did not commence until after the conclusion of the fifth hour of work, and/or which were less than 30 minutes in duration.

Additionally, Mr. Rivas and other non-exempt employees have not been provided with a second 30-minute meal period when they work shifts of over 10.0 hours.

OWLC has also failed to compensate Mr. Rivas and non-exempt employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, for at least a portion of the relevant time period, OWLC have maintained no mechanism for the payment of meal period premium payments as required by Labor Code § 226.7, in the event that legally-compliant meal periods are not provided.

Mr. Rivas and other non-exempt employees have also not been authorized and permitted to take all required rest periods due to OWLC's unlawful rest period policies/practices, which fail to authorize and permit a net 10-minute duty-free rest period for every four hours worked, or major fraction thereof. Specifically, Mr. Rivas and other non-exempt employees were only authorized and permitted up to 2 rest periods per shift, and were not authorized and permitted a third rest period on shifts over 10.0 hours. On those occasions when Mr. Rivas was not authorized and permitted to take all legally-compliant rest periods to which he was entitled, OWLC failed to compensate Mr. Rivas with the required rest period premium(s) for each workday there was a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, for at least a portion of the relevant time period, OWLC has maintained no mechanism for the payment of rest period premium payments as required by Labor Code § 226.7, in the event that legally-compliant rest period are not authorized and permitted.

As a result of OWLC's failure to compensate Mr. Rivas and other non-exempt employees for all minimum wages, overtime wages, and meal and rest period premium wages earned, OWLC maintained inaccurate payroll records and issued inaccurate wage statements. In addition, as a result of OWLC's failure to pay all minimum wages, overtime wages, and meal and rest period premium wages, OWLC has failed to pay all final wages due to former employees at the separation of their employment.

///

Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations of more than 180 days were suspended from April 6, 2020 through October 1, 2020. Accordingly, the relevant time period for Mr. Rivas's PAGA claim herein has been calculated based on an additional 172 days of tolling under Emergency Rule 9.

As described above, OWLC committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 1 ("Wage Order 1"):

Overtime Wage Violations

OWLC was required to pay Mr. Rivas and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; Wage Order 1, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." As alleged above, OWLC failed to pay Mr. Rivas and other non-exempt employees for all overtime hours worked due to OWLC's policy/practice of automatically deducting for meal periods. As a result of these policies/practices, Mr. Rivas and other aggrieved employees were not compensated for all overtime and double-time wages.

Minimum Wage Violations

OWLC was required to pay Mr. Rivas and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1182.12, 1194, 1194.2, 1197; Wage Order 1, § 4. As alleged above, Mr. Rivas and other aggrieved employees were not paid for all hours worked at at least the applicable minimum wage, due to OWLC's policy/practice of automatically deducting for meal periods even where meal periods were not taken or where the employee did not take a full 30-minute meal period. As a result of these policies/practices, Mr. Rivas and other aggrieved employees were not compensated all minimum wages due.

Meal Period Violations

As alleged above, OWLC has failed in OWLC's affirmative obligation to provide all OWLC's non-exempt employees in California, including Mr. Rivas and other aggrieved employees, with all legally compliant meal periods in accordance with the mandates of the Labor Code § 512 and Wage Order 1, § 11. Despite OWLC's violations, OWLC did not pay an additional hour of pay to Mr. Rivas and other aggrieved employees at their respective regular rates of compensation, in accordance with Labor Code § 226.7 and Wage Order 1, § 11.

Rest Period Violations

As alleged above, OWLC also failed to authorize and permit Mr. Rivas and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As a result, Mr. Rivas and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”) As alleged above, OWLC has failed to pay Mr. Rivas and other aggrieved employees this required compensation for non-compliant or missed rest periods.

Wage Statement Violations

OWLC was required to furnish Mr. Rivas and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 1, § 7. As a result of OWLC’s failure to pay all overtime, minimum, and double-time wages, and failure to pay all required meal and rest period premium wages, OWLC maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Rivas and other aggrieved employees, in violation of Labor Code § 226. OWLC’s failure to comply with its wage statement obligations was knowing and intentional, and Mr. Rivas and other aggrieved employees have suffered injury as a result.

Failure to Pay All Final Wages at Termination

Labor Code §§ 201 and 202 require that employees be paid all of their final wages at the time of their separation of employment. As alleged herein, OWLC failed to timely pay aggrieved former employees all of their final wages at the time of separation. Pursuant to Labor Code § 203, OWLC’s failure to pay all final wages due to aggrieved former employees was willful and, consequently, entitles former employees to waiting time penalties equal to one day of wages for each day OWLC failed to pay their final wages after separation, up to a maximum of thirty days.

As an “aggrieved employee,” Mr. Rivas will initiate a civil action on behalf of himself and other aggrieved employees to recover civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Rivas’s own investigation, and on information and belief, OWLC has committed, and continues to commit, the following Labor Code violations:

- a. OWLC violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Rivas and other aggrieved employees all overtime compensation earned;

- b. OWLC violated Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Rivas and other aggrieved employees the statutory minimum wage for all hours worked;
- c. OWLC violated Labor Code §§ 226.7, 512, and 558 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Rivas and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. OWLC violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit Mr. Rivas and other aggrieved employees all required rest periods and failing to pay rest period premiums to Mr. Rivas and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- e. OWLC violated Labor Code § 226 by failing to furnish Mr. Rivas and other aggrieved employees with accurate and compliant itemized wage statements;
- f. OWLC violated Labor Code §§ 201-203 by failing to pay all final wages due to aggrieved former employees at their separation of employment;
- g. OWLC violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Rivas and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3, please notify us and OWLC if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Paul K. Haines

cc: O. W. Lee Co. Inc. (via certified mail)

Haines Law Group
STE 180
2155 Campus Drive
El Segundo CA 90245

USPS CERTIFIED MAIL



9214 8901 9403 8337 1421 61

O W LEE CO INC
C/O: TERESA ROGERS
1822 E FRANCIS ST
ONTARIO CA 91761-7759

Fold Here

Fold Here

PROOF OF ACCEPTANCE (ELECTRONIC)

PRODUCED DATE: 04/13/2021

HAINES LAW GROUP:

The following is information for Certified Mail™/RRE item number:

9214 8901 9403 8337 1421 61

Our records indicate that this item was accepted by the USPS at:

SHIPMENT RECEIVED ACCEPTANCE PENDING EL SEGUNDO,CA 90245 04/12/2021

ORIGINAL INTENDED RECIPIENT:

O W LEE CO INC

C/O: TERESA ROGERS

1822 E FRANCIS ST

ONTARIO CA 91761-7759



Shipment Confirmation Acceptance Notice

A. Mailer Action

Note to Mailer: The labels and volume associated to this form online, **must** match the labeled packages being presented to the USPS® employee with this form.

Shipment Date: 04/12/2021

Shipped From:

Name: LIDMAN LAW

Address: 2155 CAMPUS DR

City: EL SEGUNDO

State: CA ZIP+4® 90245

Type of Mail	Volume
Priority Mail Express®*	
Priority Mail®	0
First-Class Package Service®	
Returns	
International*	
Other	1
Total	1

*Start time for products with service guarantees will begin when mail arrives at the local Post Office™ and items receive individual processing and acceptance scans.

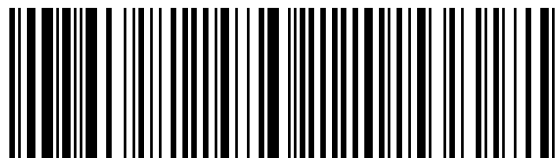
B. USPS Action

Note to RSS Clerk:

1. Home screen > Mailing/Shipping > More
2. Select Shipment Confirm
3. Scan or enter the barcode/label number from PS Form 5630
4. Confirm the volume count message by selecting Yes or No
5. Select Pay and End Visit to complete transaction

USPS EMPLOYEE: Please scan upon pickup or receipt of mail.
Leave form with customer or in customer's mail receptacle.

USPS SCAN AT ACCEPTANCE



9275 0901 1935 6200 0028 2067 73



Check type of mail or service

☐ Adult Signature Required	☐ Priority Mail Express
☐ Adult Signature Restricted Delivery	☐ Registered Mail
☒ Certified Mail	☐ Return Receipt for Merchandise
☐ Certified Mail Restricted Delivery	☐ Signature Confirmation
☐ Collect on Delivery (COD)	☐ Signature Confirmation Restricted Delivery
☐ Insured Mail	
☐ Priority Mail	

Affix Stamp Here
(if issued as an international
certificate of mailing or for
additional copies of this receipt).
Postmark with Date of Receipt.

[illegible]

Mailer: Haines Law Group

Date Produced: 04/26/2021

ConnectSuite Inc.:

The following is the delivery information for Certified Mail™/RRE item number 9214 8901 9403 8337 1421 61. Our records indicate that this item was delivered on 04/19/2021 at 11:38 a.m. in COMFORT, TX 78013. The scanned image of the recipient information is provided below.

Signature of Recipient :

Donna McCal
Donna McCal

Address of Recipient :

P.O. Box 39

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

This USPS proof of delivery is linked to the customers mail piece information on file as shown below:

O W LEE CO INC
C/O: TERESA ROGERS
1822 E FRANCIS ST
ONTARIO CA 91761-7759

Customer Reference Number: C2630009.15144028

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Jackie Hernandez](#)
Subject: Thank you for submission of your PAGA Case.
Date: Monday, April 12, 2021 12:52:43 PM

4/12/2021

LWDA Case No. LWDA-CM-829037-21
Law Firm : Haines Law Group, APC
Plaintiff Name : Epigmenio Rivas Herrera
Employer: O.W. Lee Co. Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT 3

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@haineslawgroup.com
Jaime Castaneda (SBN 344833)
jcastaneda@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

EPIGMENIO RIVAS HERRERA, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

O. W. LEE CO. INC., a California corporation;
and DOES 1 through 100,

Defendants.

CASE NO. CIVSB 2109747

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 1194, 1198);**
- (2) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (5) **WAGE STATEMENT PENALTIES
(LABOR CODE § 226 *et seq.*);**
- (6) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*);**
- (7) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203); and**
- (8) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §
2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Epigmenio Rivas Herrera (“Plaintiff”), on behalf of himself and all others
2 similarly situated, hereby brings this Second Amended Class and Representative Action
3 Complaint (“Complaint”) against Defendants O. W. Lee Co. Inc., a California corporation, and
4 DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as
5 follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages and penalties under California Business & Professions
9 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 1182.12, 1194, 1194.2,
10 1197, 1198, 2698 *et. seq.*, and Industrial Welfare Commission Wage Order 1 (“Wage Order 1”),
11 in addition to seeking injunctive relief, declaratory relief, and restitution. This Complaint is
12 brought pursuant to Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’
13 violations of the Labor Code because the amount in controversy exceeds this Court’s
14 jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§
17 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
18 San Bernardino County. Defendants own, maintain offices, transact business, have an agent or
19 agents within the San Bernardino County, and/or otherwise are found within San Bernardino
20 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is and was at all times relevant herein, an individual over the age of
23 eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident.
24 During the four years immediately preceding the filing of this action and within the statute of
25 limitations periods applicable to each cause of action pled herein, Plaintiff was and is currently
26 employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants’
27 policies and/or practices complained of herein, lost money and/or property, and has been deprived
28 of the rights guaranteed by Business & Professions Code § 17200, *et. seq.*, Labor Code §§ 201-

204, 226, 226.7, 510, 512, 516, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et. seq.*, and Wage Order 1.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this action and continuing to the present, Defendants did (and continue to do) business in California by designing and manufacturing outdoor furniture and employed Plaintiff and other similarly-situated non-exempt employees within San Bernardino County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to further amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 17) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

7. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
2 members of the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Plaintiff has been employed by Defendants as a non-exempt employee in the
5 position of “Machine Operator” since approximately April 2005. Plaintiff has been out on a
6 medical leave since approximately January 2021.

7 10. Upon information and belief, during the beginning of Plaintiff’s employment with
8 Defendants, Defendants’ timekeeping policies/practices were unlawful because Defendants failed
9 to record Plaintiff’s and other non-exempt employees’ meal periods in their time records, in
10 violation of Wage Order 1, Section 7(A)(3). Instead, Defendants automatically deducted 30
11 minutes from non-exempt employee time records for purported meal periods, even if the
12 employee did not actually take a meal period or did not take a full 30 minutes for their meal
13 period. Defendants have utilized a bell schedule for meal periods, in which Defendants’ practice
14 is to ring a bell signaling the start of Plaintiff and other non-exempt employees’ meal period and
15 to a ring a second bell exactly 30 minutes later signaling the end of their meal period Plaintiff and
16 other non-exempt employees were required to be back at their workstations before the second bell
17 rang. As a result of these policies/practices, Plaintiff and other non-exempt employees were
18 forced to take “short” meal periods because they were required to use part of the 30-minute meal
19 period to return to their work stations before the second bell rang. Plaintiff and non-exempt
20 employees have also experienced “late” meal periods, as they were not provided with an
21 opportunity to take their meal period before the fifth hour of work due to work demands,
22 including, but not limited to, providing client tours of the facility. As a result of Defendants’
23 policy/practice of automatically deducting for meal periods, Plaintiff and other non-exempt
24 employees were often not provided with legally compliant meal periods, nor were they paid for
25 all hours worked, including minimum wages and overtime wages.

26 11. Upon information and belief, during Plaintiff’s employment with Defendants,
27 Defendants utilized a timekeeping system which resulted in Plaintiff and other non-exempt
28 employees not being compensated for all hours actually worked, whether by rounding, time-

1 shaving, or otherwise. Specifically, Defendant required non-exempt employees to clock in and
2 out for all shifts and always recorded time worked to the minute. However, Defendant did not pay
3 employees to the minute, and instead rounded non-exempt employees' time entries to their
4 detriment. Defendants' rounding policies/practices were not even-handed over time, and has
5 resulted in Plaintiff and other non-exempt employees being deprived of all earned wages,
6 including minimum wages for all hours worked, and overtime wages on those occasions when
7 they worked over eight hours in a workday and/or forty hours in a workweek.

8 12. Upon information and belief, at some point in approximately 2019, Defendants
9 began requiring employees to clock out and back in for their meal periods. Plaintiff's timekeeping
10 records evidence that even after Defendants began requiring its non-exempt employees to clock
11 out for meal periods, Plaintiff was often provided with meal periods that did not commence until
12 after the conclusion of the fifth hour of work, and/or which were less than 30 minutes in duration.

13 13. Additionally, Plaintiff and other non-exempt employees have not been provided
14 with a second 30-minute meal period when they work shifts of over 10.0 hours.

15 14. Defendants have also failed to compensate Plaintiff and non-exempt employees
16 with the required meal period premium for each workday in which they experienced a meal period
17 violation as mandated by Labor Code § 226.7. Upon information and belief, for at least a portion
18 of the relevant time period, Defendants have maintained no mechanism for the payment of meal
19 period premium payments as required by Labor Code § 226.7, in the event that legally-compliant
20 meal periods are not provided.

21 15. Plaintiff and other non-exempt employees have also not been authorized and
22 permitted to take all required rest periods due to Defendants' unlawful rest period
23 policies/practices, which fail to authorize and permit a net 10-minute duty-free rest period for
24 every four hours worked, or major fraction thereof. Specifically, Plaintiff and other non-exempt
25 employees were only authorized and permitted up to 2 rest periods per shift, and were not
26 authorized and permitted a third rest period on shifts over 10.0 hours. On those occasions when
27 Plaintiff was not authorized and permitted to take all legally-compliant rest periods to which he
28 was entitled, Defendants have failed to compensate Plaintiff with the required rest period

premium(s) for each workday there was a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, for at least a portion of the relevant time period, Defendants have maintained no mechanism for the payment of rest period premium payments as required by Labor Code § 226.7, in the event that legally-compliant rest period are not authorized and permitted.

16. As a result of Defendants' failure to compensate Plaintiff and other non-exempt employees for all minimum wages, overtime wages, and meal and rest period premium wages earned, Defendants maintained inaccurate payroll records and issued inaccurate wage statements.

17. As a further result of Defendants' failure to compensate Plaintiff and other non-exempt employees for all minimum wages, overtime wages, and all meal and rest period premium wages, Defendants failed to pay Plaintiff and other non-exempt employees all wages owed at the time of their separation of employment with Defendants.

18. Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations of more than 180 days were suspended for 178 days, from April 6, 2020 through October 1, 2020. Accordingly, the relevant time period for each cause of action pled herein has been calculated based on an additional 178 days of tolling under Emergency Rule 9.

CLASS ACTION ALLEGATIONS

19. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

a. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than 8.0 hours in a workday and/or 40.0 hours in a workweek and had a meal period auto-deducted from their time records for a purported meal period, during the four years plus 178 days immediately preceding the filing of this action through the present.

b. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California and had a meal period auto-deducted from their time records for a purported meal period, and/or were subject to Defendants' timekeeping policies/practices, during the four years plus 178 days immediately

preceding the filing of this action through the present;

c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours, during the four years plus 178 days immediately preceding the filing of this action through the present.

d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift of more than 10.0 hours, during the four years plus 178 days immediately preceding the filing of this action through the present.

e. The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class who have received a wage statement from Defendants during the one year plus 178 days immediately preceding the filing of this action through the present;

f. The Waiting Time Class consists of all former employed members of the Overtime Class, Minimum Wage Class, and Meal Period and/or Rest Period Class, who separated from their employment from Defendants in the three years immediately preceding the filing of this Complaint through the present.

20. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be impracticable. The membership of the Classes are unknown to Plaintiff at this time; however, it is estimated that the Class members number greater than 100 individuals. The identity of such membership is readily ascertainable via Defendants' records.

21. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

i. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to §§ 510 and 1194, by requiring overtime and not paying the appropriate rates of pay for said work according to California law;

- ii. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 1182.12, 1194, 1194.2 and 1197 by failing to pay all members of the Minimum Wage Class at least the minimum wage for all hours worked;
- iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iv. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code § 226.7; and
- v. Whether Defendants provided meal and rest period premium payments for non-compliant meal and rest periods.
- vi. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code section 226; and
- vii. Whether Defendants paid all compensation due upon separation to members of the Waiting Time Class pursuant to Labor Code sections 201-203.

22. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, including, but not limited to, Defendants' uniform policies and/or practices regarding calculating and paying overtime and/or double-time compensation, and providing meal periods and rest periods. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

23. **Typicality:** Plaintiff's claims are typical of the Classes' claims because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled herein. As alleged herein, Plaintiff, like the Class members, was deprived of all earned minimum and overtime wages, was not provided all required meal and rest periods, and did not receive meal and rest period premium wages for missed or non-compliant meal and rest periods.

24. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps

1 to represent fairly and adequately the interests of the members of the Classes. Moreover,
2 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
3 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-
4 hour class actions in state and federal courts in the past and are committed to vigorously
5 prosecuting this action on behalf of the members of the Classes.

6 25. **Superiority:** The California Labor Code is broadly remedial in nature and serves
7 an important public interest in establishing minimum working conditions and standards. These
8 laws and standards protect the average working employee from exploitation by employers who
9 may seek to take advantage of superior economic and bargaining power in setting onerous terms
10 and conditions of employment. The nature of this action and the format of laws available to
11 Plaintiff and the Class members make the class action format a particularly appropriate and
12 efficient procedure to redress the violations alleged herein. If each employee were required to file
13 an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
14 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
15 their vastly superior financial and legal resources. Moreover, requiring each Class member to
16 pursue an individual remedy would discourage the assertion of lawful claims by employees who
17 would be disinclined to file an action against their former and/or current employer for real and
18 justifiable fear of retaliation and permanent damages to their careers at subsequent employment.
19 Further, the prosecution of separate actions by the individual class members, even if possible,
20 would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to
21 the individual class members against Defendants herein; and which would establish potentially
22 incompatible standards of conduct for Defendants; and/or legal determinations with respect to
23 individual class members which would, as a practical matter, be dispositive of the interest of the
24 other class members not parties to adjudications or which would substantially impair or impede
25 the ability of the class members to protect their interests. Further, the claims of the individual
26 members of the Class are not sufficiently large to warrant vigorous individual prosecution
27 considering all of the concomitant costs and expenses attending thereto. As such, the Classes
28 identified in Paragraph 19 are maintainable as a Class under Cal. Code Civ. Proc. § 382.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **(AGAINST ALL DEFENDANTS)**

4 26. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 27. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and
6 1198, which provide that non-exempt employees are entitled to all overtime wages and
7 compensation for all overtime hours worked and provide a private right of action for the failure
8 to pay all overtime compensation for overtime work performed.

9 28. At all times relevant herein, Defendants were required to properly compensate
10 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
11 hours worked pursuant to California Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3
12 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular
13 rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours of work in a
14 workweek. Wage Order 1, § 3 also requires an employer to pay an employee double the
15 employee’s regular rate of work in excess of 12 hours each workday and/or in excess of 8 hours
16 on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and
17 members of the Overtime Class to work overtime and/or double-time hours, but did not
18 compensate Plaintiff or members of the Overtime Pay Class at one and one-half times (or two
19 times, in the case of double-time) their regular rates of pay for such hours. The foregoing policies
20 and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class
21 Members in a civil action for the unpaid amount of overtime premiums owing, including interest
22 thereon, statutory penalties, attorneys’ fees, and costs of suit according to California Labor Code
23 §§ 204, 210, 216, 218.6, 510, 1194, and 1198; and Code of Civil Procedure § 1021.5.

24 **SECOND CAUSE OF ACTION**

25 **MINIMUM WAGE VIOLATIONS**

26 **(AGAINST ALL DEFENDANTS)**

27 29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 30. Wage Order 1, § 4 and Labor Code §§ 1197 and 1182.12 establish employees’

right to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest thereon. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and Minimum Wage Class members for all hours worked, including, but not limited to, all hours they were subject to Defendants' control and/or were suffered or permitted to work under the Labor Code and Wage Order 1.

31. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes, but is not limited to Defendants requiring Plaintiff and members of the Minimum Wage Class to perform off-the-clock work. Accordingly, Plaintiff and Minimum Wage Class members were not paid at least the legal minimum wage for all hours actually worked.

32. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the Industrial Welfare Commission prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

33. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 1.

34. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 1194 *et seq.*, and 1198;

and Code of Civil Procedure § 1021.5.

35. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and members of the Minimum Wage Class seek penalties pursuant to the Wage Order 1, § 20(A) and California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2; and attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

37. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 1, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 226.7 and 512.

38. As a result, Defendants are responsible for paying premium compensation for meal period violations pursuant to Labor Code §§ 226.7 and 512, and Wage Order 1, including interest thereon, statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 512, 558, and 1198 and Wage Order 1, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

40. Wage Order 1, § 12 and California Labor Code §§ 226.7 and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. Despite Defendants' failure to authorize and permit

1 Plaintiff and members of the Rest Period Class to take all legally compliant rest periods as alleged
2 herein, Defendants did not pay these individuals an additional hour of pay at their respective
3 regular rate for the rest periods that they failed to authorize and permit them to take, as required
4 by Labor Code § 226.7 and Wage Order 1, § 12.

5 41. Defendants' policies and practices described herein are unlawful and create an
6 entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the
7 unpaid amount of rest period premiums owing, including interests thereon, statutory penalties,
8 civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 226.7,
9 Wage Order 1, including interest thereon, statutory penalties, civil penalties, and costs of suit
10 according to California Labor Code §§ 226.7, 516, 558, and 1198 and Wage Order 1, and Civil
11 Code §§ 3287(b) and 3289.

12 **FIFTH CAUSE OF ACTION**

13 **WAGE STATEMENT VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

15 42. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
18 and Wage Statement Class members with complete and accurate wage statements that included,
19 among other requirements, all hours worked, total gross wages earned, all rates of pay and
20 corresponding number of hours worked (including for overtime pay), total net wages earned, and
21 the correct name of the legal entity that is the employer in violation of Labor Code § 226 et seq.

22 44. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
23 with complete and accurate itemized wage statements resulted in actual injury, as said failures led
24 to, among other things, the non-payment of all overtime and minimum wages owed, and deprived
25 them of the information necessary to identify the discrepancies in Defendants' reported data.

26 45. Defendants' failures create an entitlement to recovery by Plaintiff and members of
27 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
28 Code § 226 et seq., including statutory penalties, civil penalties, reasonable attorneys' fees, and

costs of suit according to California Labor Code § 226, *et seq.*

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

46. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

47. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200, *et seq.*, by: (a) failing to pay Plaintiff and members of the Overtime Class all overtime and/or double-time wages; (b) failing to pay Plaintiff and members of the Minimum Wage Class all minimum wages; (c) failing to provide Plaintiff and members of the Meal Period Class with all meal periods to which they are entitled, and failing to pay them meal period premium payments; and (d) failing to authorize and permit Plaintiff and Rest Period Class members to take all rest periods to which they are entitled, and failing to pay them rest period premium payments.

48. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

49. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to California Business and Professions Code §§ 17203 and 17208.

50. The acts complained of herein occurred within the last four years immediately preceding the filing of this action.

51. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the

1 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
2 which he is entitled to recover under Code of Civil Procedure § 1021.5.

3 **SEVENTH CAUSE OF ACTION**

4 **WAITING TIME PENALTIES**

5 **(AGAINST ALL DEFENDANTS)**

6 52. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 53. This cause of action is brought pursuant to Labor Code sections 201-203, which
8 require an employer to pay all wages earned immediately at the time of separation of employment
9 in the event the employer discharges the employee, or if the employee provides at least 72 hours
10 of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice
11 of his/her intent to quit, said employee's wages become due and payable not later than 72 hours
12 upon said employee's last date of employment.

13 54. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
15 at the time of their separation including, among other things, underpaid minimum and overtime
16 wages owed, and meal and rest period premium wages. Further, Plaintiff is informed and believes,
17 and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue
18 to fail to pay members of the Waiting Time Class all earned wages at the end of employment in
19 a timely manner pursuant to the requirements of Labor Code sections 201-203. Defendants'
20 failure to pay all final wages was willful within the meaning of Labor Code section 203.

21 55. Defendants' willful failure to timely pay Plaintiff and members of the Waiting
22 Time Class all earned wages upon separation from employment results in a continued payment
23 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
24 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code section
25 203, plus reasonable attorneys' fees and costs of suit.

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27 ///

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1 **EIGHTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEY GENERAL ACT**

3 **(AGAINST ALL DEFENDANTS)**

4 56. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 57. Defendants have committed several Labor Code violations against Plaintiff,
6 members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee”
7 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
8 employees, brings this representative action against Defendants to recover the civil penalties due
9 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
10 according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited
11 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for
12 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
13 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for
14 each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per
15 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
16 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
17 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
18 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each
19 subsequent violation per employee per pay period for those violations of the Labor Code for
20 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 21 a. Failing to pay Plaintiff and other aggrieved employees all overtime compensation
22 earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 23 b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum
24 wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2,
25 and 1197;
- 26 c. Failing to provide Plaintiff and other aggrieved employees all legally required
27 meal periods and failing to pay meal period premiums at the employees’
28 respective regular rates of compensation in violation of Labor Code §§ 226.7,

512, and 558;

- d. Failing to authorize and permit Plaintiff and other aggrieved employees their statutorily mandated rest periods and failing to pay rest period premiums in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- f. Failing to pay Plaintiff and similarly aggrieved employees all final wages owed at the termination of their employment in violation of Labor Code §§ 201-203;
- g. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice each calendar month in violation of Labor Code § 204;
- h. Failing to maintain accurate records on behalf of Plaintiff and aggrieved employees in violation of Labor Code § 1174, and 1198; and
- i. Failing to compensate Plaintiff and similarly aggrieved employees with all earnings at their separation of employment in violation of Labor Code §§ 201-203;

58. On or about April 12, 2021 Plaintiff notified Defendants via certified mail and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 57 (a)-(i). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

59. Based on the foregoing, Plaintiff seeks to represent himself, the State of California, and all aggrieved employees, as defined by Labor Code § 2699(c), which includes all current and former non-exempt employees who worked for Defendants in California at any time from one year and 178 days prior to the submission of Plaintiff’s PAGA notice to the present.

60. Plaintiff was compelled to retain the services of counsel to file this court action to

1 protect his interest and the interests of other aggrieved employees, and to assess and collect the
2 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
3 he is entitled to recover under California Labor Code § 2699.

4 **PRAYER**

5 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
6 this suit is brought against Defendants, as follows:

- 7 1. For an order certifying the proposed Classes;
- 8 2. For an order appointing Plaintiff as representative of the Classes;
- 9 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 10 4. Upon the First Cause of Action, for compensatory, consequential, general and
11 special damages according to proof pursuant to Labor Code §§ 204, 510, 1194, and 1198;
- 12 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
13 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and
14 1197;
- 15 6. Upon the Third Cause of Action, for compensatory, consequential, general and
16 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 17 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
18 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 19 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code
20 §226 *et seq.*;
- 21 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the
22 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
23 practices declared by this Court to violate Business & Professions Code § 17200, *et seq.*;
- 24 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant
25 to Labor Code §§ 201-203;
- 26 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
27 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
28 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for

each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the violations of Labor Code sections identified in Paragraph 57 (a)-(i) above.

12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code §§ 218.6 and 1194 and Civil Code §§ 3287 and 3289;

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226, 1194, and 2699(g) and Code of Civil Procedure § 1021.5; and

14. For such other and further relief, the Court may deem just and proper.

Respectfully submitted,

Dated: December 1, 2022

HAINES LAW GROUP, APC

By: 

Paul K. Haines
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Respectfully submitted,

Dated: December 1, 2022

HAINES LAW GROUP, APC

By: 

Paul K. Haines
Attorneys for Plaintiff