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*Attorneys for Plaintiffs*

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

BRIANNA FLORES, individually, and on behalf of other members of the general public similarly situated; TANIA ESTREMER, individually, and on behalf of other members of the general public similarly situated; and DEXTER NORMAN HANSEN, individually and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiffs,

v.

BISCOMERICA CORP., a California Corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: CIVDS1930814

Honorable David S. Cohn  
Department S-26

**CLASS ACTION**

**DECLARATION OF EDWIN AIWAZIAN  
IN SUPPORT OF PLAINTIFFS' MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

[Plaintiffs' Motion for Preliminary Approval of Class Action Settlement; Declarations of Plaintiffs (Brianna Flores, Tania Estremera, and Dexter Norman Hansen); and [Proposed] Order filed concurrently herewith]

Date: April 29, 2022  
Time: 10:00 a.m.  
Department: S-26

Complaint Filed: October 15, 2019  
FAC Filed: July 28, 2021  
Trial Date: None Set

**DECLARATION OF EDWIN AIWAZIAN**

I, Edwin Aiwarzian, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers *for* Justice, PC, attorneys of record for Plaintiffs Brianna Flores, Tania Estremera, and Dexter Norman Hansen. The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

**EDUCATION**

2. In May of 2004, I graduated from *Pepperdine University School of Law* with a Juris Doctor degree. I have extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, I have previously served as a *pro bono* mediator for the Los Angeles Superior Court. In October of 2000, I obtained a Litigation Paralegal Certificate from the *UCLA Extension Program*. During the summer of 2000, I studied Legal Writing at *Harvard University*. In April of 1999, I obtained a Bachelor of Arts degree in Communication with a concentration in Natural Sciences from *Pepperdine University*.

**JUDICIAL EXTERNSHIPS**

3. From approximately September 2002 to approximately December 2002, I served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the *United States Court of Appeals for the Ninth Circuit*. From approximately June 2002 to approximately August 2002, I served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the *California Court of Appeal for the Second Appellate District*.

**LITIGATION AND CLASS ACTION EXPERIENCE**

4. In December of 2004, I obtained a license to practice law from the California State Bar. From approximately December 2004 to approximately August 2008, I was employed by the law firm of *Girardi & Keese*.

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1           5.     At *Girardi & Keese*, my practice focused on class actions and other complex cases  
2 involving toxic torts and products liability. In addition, I gained substantial experience on cases  
3 involving insurance bad faith, premises liability, and medical negligence. While employed by  
4 *Girardi & Keese*, I argued approximately 100 motions, took or defended approximately 150  
5 depositions, and prepared dozens of expert witnesses for deposition or trial.

6           6.     Since its inception, in or around October of 2008, *Lawyers for Justice, PC* has almost  
7 exclusively focused on the prosecution of consumer and employment class actions, involving  
8 wage-and-hour claims, race discrimination, unfair business practices or consumer fraud.  
9 Currently, we are the attorneys of record in over a dozen employment-related putative class actions  
10 in both state and federal courts in the State of California. Our firm has successfully litigated cases  
11 involving the executive, administrative, and other overtime exemptions to the State of California  
12 and federal overtime compensation requirements. During this relatively short time, in association  
13 with other law firms, we have recovered millions of dollars on behalf of thousands of individuals  
14 in California.

#### 15                                   **EXAMPLES OF CLASS ACTION RESULTS**

16           7.     What follows are just a few examples of the type of results we have achieved on  
17 behalf of our clients:

18                   a)     Our firm, in association with co-counsel, represented the plaintiffs in a wage-  
19 and-hour class and representative action against a major property management company involving  
20 allegations of misclassification of various “manager” positions. On September 20, 2010, the court  
21 granted final approval of the class and representative action settlement. The Los Angeles County  
22 Superior Court Case Number is BC400414.

23                   b)     Our firm, in association with co-counsel, represented the plaintiffs in a wage-  
24 and-hour class action against a national retailer involving allegations of misclassification of the  
25 “Assistant Store Manager” position. On October 28, 2010, the court granted final approval of the  
26 class action settlement. The Los Angeles County Superior Court Case Number is BC413498.

27                   c)     Our firm, in association with co-counsel, represented the plaintiffs in a wage-  
28 and-hour class and representative action against a national property management company

1 involving allegations of misclassification of the “Property Manager” position. On May 23, 2012,  
2 the court granted final approval of the class and representative action settlement. The Los Angeles  
3 County Superior Court Case Number is BC430918.

4 d) Our firm, in association with co-counsel, represented the plaintiffs in a wage-  
5 and-hour class action against a national retailer involving allegations of misclassification of the  
6 “Store Manager” position. On June 10, 2011, the court granted plaintiffs’ motion for class  
7 certification. On August 26, 2013, the court granted final approval of the class action settlement.  
8 The Los Angeles County Superior Court Case Number is BC424012.

9 e) Our firm, in association with co-counsel, represented the plaintiffs in a wage-  
10 and-hour class and representative action against a bank, involving allegations of misclassification  
11 of the “Assistant Branch Manager” position. On August 27, 2013, the court granted final approval  
12 of the class and representative action settlement. The Kern County Superior Court Case Number  
13 is S-1500-CV-273194-LHB.

14 f) Our firm, in association with co-counsel, represented the plaintiffs in a wage-  
15 and-hour class and representative action against a national wholesale distributor of plumbing and  
16 builder supplies, involving allegations of misclassification of multiple salaried “manager”  
17 positions. On May 22, 2014, the court granted final approval of the class and representative action  
18 settlement. The Sacramento County Superior Court Case Number is 34-2012-00136285.

19 g) Our firm, in association with co-counsel, represented the plaintiffs in a wage-  
20 and-hour class action involving allegations of misclassification of the “Operations Manager”  
21 position. On September 16, 2014, the court granted plaintiffs’ motion for class certification. The  
22 Los Angeles County Superior Court Case Number is BC478769.

23 h) Our firm, in association with co-counsel, represented the plaintiffs in a wage-  
24 and-hour class and representative action against a national retailer of household items, on behalf  
25 of hourly-paid or non-exempt employees. On May 27, 2015, the court granted final approval of  
26 the class and representative action settlement. The San Francisco County Superior Court Case  
27 Number is CGC-13-532344.

1 i) Our firm, in association with co-counsel, represented the plaintiffs in a wage-  
2 and-hour class action involving allegations of misclassification of the salaried residential  
3 “Property Manager” position. On September 17, 2015, the court granted plaintiffs’ motion for  
4 class certification. The Los Angeles County Superior Court Case Number is BC474784.

5 j) Our firm, in association with co-counsel, represented the plaintiffs in a wage-  
6 and-hour class and representative action against a national retailer of upscale hardware and home  
7 furnishings, on behalf of non-exempt employees. On April 28, 2016, the court granted final  
8 approval of the class and representative action settlement. The Los Angeles County Superior  
9 Court Case Number is JCCP4794.

10 k) Our firm, in association with co-counsel, represented the plaintiffs in a wage-  
11 and-hour class and representative action against a national retailer of apparel and fashion  
12 accessories, on behalf of non-exempt employees. On August 5, 2016, the court granted final  
13 approval of the class and representative action settlement. The Los Angeles County Superior  
14 Court Case Number is BC488069.

15 l) Our firm, in association with co-counsel, represented the plaintiffs in a wage-  
16 and-hour class action against a national retailer of apparel, accessories, and home products,  
17 involving allegations of misclassification of the “Department Manager” position. On August 12,  
18 2016, the court granted plaintiffs’ motion for class certification in part and certified a class. The  
19 Alameda County Superior Court Case Number is RG13680477.

20 m) Our firm represented the plaintiff in a representative action under the Private  
21 Attorneys General Act, against a real estate and property management company, on behalf of non-  
22 exempt employees. On November 4, 2016, the Court granted approval of the settlement. The  
23 Orange County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

24 n) Our firm, in association with co-counsel, represented the plaintiffs in a wage-  
25 and-hour class action against a full-service bank, on behalf of non-exempt employees. On  
26 November 18, 2016, the court granted final approval of the class action settlement. The San  
27 Francisco County Superior Court Case Number is CJC-13-004839.

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1 o) Our firm represented the plaintiffs in a wage-and-hour class and  
2 representative action against a foodservice distributor, on behalf of non-exempt employees. On  
3 January 26, 2017, the court granted final approval of the class and representative action settlement.  
4 The San Bernardino County Superior Court Case Number is CIVDS1507260.

5 p) Our firm, on behalf of the plaintiff and respondent in a PAGA representative  
6 action, successfully opposed in the trial court, and briefed and argued an appeal with respect to the  
7 employer's motion to compel arbitration, which resulted in a published opinion by the California  
8 Court of Appeal in favor of employees. *Roberto Betancourt v. Prudential Overall Supply*, 9  
9 Cal.App.5<sup>th</sup> 439 (Cal. App. 4<sup>th</sup> Dist., Mar. 7, 2017), review denied, cert. denied (U.S. Supreme  
10 Court Docket No. 17-254).

11 q) Our firm, in association with co-counsel, represented the plaintiffs in a wage-  
12 and-hour class and representative action against a consumer packaging company, on behalf of non-  
13 exempt employees. On March 10, 2017, the court granted final approval of the class and  
14 representative action settlement. The Los Angeles County Superior Court Case Number is  
15 BC590429.

16 r) Our firm, in association with co-counsel, represented the plaintiffs in a wage-  
17 and-hour class action and representative action against a manufacturer of food service industry  
18 supplies on behalf of non-exempt employees. On April 14, 2017, the court granted final approval  
19 of the class and representative action settlement. The Orange County Superior Court Case Number  
20 is 30-2015-00810013-CU-OE-CXC.

21 s) Our firm represented the plaintiff in a wage-and-hour class and  
22 representative action against a property management company, on behalf of non-exempt  
23 employees. On June 14, 2017, the court granted final approval of the class and representative  
24 action settlement. The Los Angeles County Superior Court Case Number is BC586234.

25 t) Our firm represented the plaintiffs in a wage-and-hour class action and  
26 representative action against a food company on behalf of non-exempt employees. On June 30,  
27 2017, the court granted final approval of the class and representative action settlement. The  
28 Sacramento County Superior Court Case Number is 34-2015-00175871.

1           u)     Our firm represented the plaintiffs in a wage-and-hour class action and  
2     representative action against a chocolate company on behalf of non-exempt employees. On July  
3     19, 2017, the court granted final approval of the class and representative action settlement. The  
4     Alameda County Superior Court Case Number is RG15764300.

5           v)     Our firm represented the plaintiffs in a wage-and-hour class action and  
6     representative action against a manufacturer of plastic containers on behalf of non-exempt  
7     employees. On October 31, 2017, the court granted final approval of the class and representative  
8     action settlement. The Los Angeles County Superior Court Case Number is BC577233.

9           w)     Our firm, in association with co-counsel, represented the plaintiffs in a  
10    wage-and-hour class action and representative action against a property management company on  
11    behalf of hourly-paid and non-exempt employees. On January 4, 2018, the court entered an order  
12    granting final approval of the class and representative action settlement. The Los Angeles County  
13    Superior Court Case Number is JCCP 4819.

14          x)     Our firm, in association with co-counsel, represented the plaintiffs in a wage-  
15    and-hour class action and representative action against a global provider of flexible office space  
16    solutions. On February 15, 2018, the court entered an order granting final approval of the class  
17    and representative action settlement. The Los Angeles County Superior Court Case Number is  
18    BC498401.

19          y)     Our firm, in association with co-counsel, represented the plaintiff in a wage-  
20    and-hour class action against a container manufacturer, on behalf of non-exempt employees. On  
21    October 15, 2018, the court granted the plaintiff's motion for class certification. The Tulare County  
22    Superior Court Case Number is VCU264528.

23          z)     Our firm represented the plaintiffs in a wage-and-hour class and  
24    representative action against a behavioral health service provider on behalf of non-exempt  
25    employees. On November 13, 2018, the court granted final approval of the class and  
26    representative action settlement. The Alameda County Superior Court Case Number is  
27    RG16811450.

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1           aa) Our firm, in association with co-counsel, represented the plaintiff in a  
2 representative action under the Private Attorneys General Act, against a global provider of  
3 products and services to the energy industry, on behalf of hourly-paid and non-exempt employees.  
4 On November 19, 2018, the Court granted approval of the settlement. The Kern County Superior  
5 Court Case Number is S-1500-CV-280215-SDC.

6           bb) Our firm represented the plaintiff in a wage-and-hour class action against a  
7 parking company on behalf of non-exempt employees. On September 3, 2019, the court granted  
8 the plaintiff's motion for class certification and certified a class. The Santa Clara County Superior  
9 Court Case Number is 16CV292208 and the Judicial Council Coordination Proceeding Number is  
10 JCCP 4886.

11           cc) Our firm, in association with other counsel, on behalf of the plaintiff and  
12 respondent in a PAGA representative action, successfully opposed in the trial court, and briefed  
13 and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a  
14 notable decision from the California Supreme Court clarifying the law and finding, in part, that  
15 employer arbitration agreements are unenforceable where they block a PAGA claim from  
16 proceeding, *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

17           dd) Our firm represented the plaintiffs in a wage-and-hour class and  
18 representative action against a bank on behalf of non-exempt employees. On September 27, 2019,  
19 the court granted the plaintiffs' motion for class certification in part and certified a class. The  
20 Alameda County Superior Court Case Number is RG15757606 and the Judicial Council  
21 Coordination Proceeding Number is JCCP 4921.

22           ee) Our firm represented the plaintiffs in a wage-and-hour class and  
23 representative action against a national retailer of apparel and fashion accessories, on behalf of  
24 non-exempt employees. On October 9, 2019, the court granted the plaintiffs' motion for class  
25 certification in part and certified a class. The Sacramento County Superior Court Case Number is  
26 34-2015-00175330-CU-OE-GDS.

27           ff) Our firm represented the plaintiff in a wage-and-hour class and  
28 representative action against a medical equipment supplier on behalf of non-exempt employees.

1 On February 13, 2020, the court granted the plaintiff's motion for class certification and certified  
2 a class. The San Bernardino County Superior Court Case Number is CIVDS1505744.

3 gg) Our firm, in association with other counsel, represented the plaintiff in a  
4 wage-and-hour class and PAGA representative action against a large national drug testing  
5 laboratory on behalf of non-exempt employees. On February 21, 2020, the court granted the  
6 plaintiff's motion for class certification and certified a class. The San Diego County Superior  
7 Court Case Number is 37-2018-00019611-CU-OE-CTL.

8 hh) Our firm represented the plaintiffs in a wage-and-hour class and  
9 representative action against a national retailer of sportswear, footwear, and camping equipment  
10 on behalf of non-exempt employees. On March 16, 2020, the court granted in part the plaintiff's  
11 motion for class certification and certified a class. The Riverside County Superior Court Case  
12 Number is RICJCCP4930.

13 ii) Our firm represents the plaintiff in a wage-and-hour class action against a  
14 nutritional products manufacturer on behalf of non-exempt production line employees. On  
15 December 13, 2021, the court granted the plaintiff's motion for class certification in part and  
16 certified a class. The Solano County Superior Court Case Number is FCS051001.

### 17 PRELIMINARY APPROVAL

18 8. Marked and attached hereto as "**EXHIBIT 1**" is the Joint Stipulation of Class Action  
19 and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement") entered into by  
20 and between Plaintiffs Brianna Flores, Tania Estremera, and Dexter Norman Hansen ("Plaintiffs"),  
21 individually and on behalf of all others similarly situated and other aggrieved employees, on the  
22 one hand, and Defendant Biscomerica Corp. ("Defendant"), on the other hand (collectively, the  
23 "Parties"). The Parties and their counsel have approved the proposed Notice of Class Action  
24 Settlement ("Class Notice"), which is attached to the Settlement Agreement as "Exhibit A" and  
25 respectfully request that the Court approve it as well.

26 9. Based on information provided by Defendant, as of July 19 2021, the Class is  
27 estimated to consist of approximately seven hundred fifty (750) individuals.

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1           10. The effectiveness of Lawyers *for* Justice, PC (“Class Counsel”) in prosecuting this  
2 matter has translated into tangible monetary benefits for the Class Members in the following  
3 respects: (1) Class Members recover over a reasonably short period of time as opposed to waiting  
4 additional years for the same, or possibly worse, result; (2) a guaranteed result that compares  
5 favorably with other similar class action settlements of this type given the strengths and  
6 weaknesses of the cases; and (3) significant savings in Class Counsel’s fees and/or costs that would  
7 have only increased significantly had the cases progressed through certification, trial, and/or  
8 appeals.

9           11. Class Counsel has litigated the matter for over two years since Plaintiff Brianna  
10 Flores commenced the above-captioned lawsuit on October 15, 2019, and was actively preparing  
11 the matter for class certification and trial. The Parties have engaged in extensive settlement  
12 negotiations and participated in a formal, full-day mediation on September 4, 2020, conducted by  
13 the Honorable Peter D. Lichtman (Retired), a well-respected mediator experienced in mediating  
14 complex labor and employment matters. Prior to and during the mediation and settlement  
15 discussions, the Parties exchanged class information and engaged in an extensive discussion  
16 regarding their evaluations of the cases and various aspects of the cases, including but not limited  
17 to, the risks and delays of further litigation, the risks to the Parties of proceeding with class  
18 certification and/or representative adjudication, the law relating to off-the-clock theory, meal and  
19 rest periods, PAGA representative actions, and wage-and-hour law and enforcement, as well as  
20 the evidence produced and analyzed, and the possibility of appeals, among other things. During  
21 all settlement discussions, the Parties conducted their negotiations at arm’s length in an adversarial  
22 position. Arriving at a settlement that was acceptable to all Parties was not easy. Defendant and  
23 its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs  
24 and Class Counsel believed that they would be able to obtain class certification and prevail at trial.  
25 After conducting investigations, informal discovery, and exchange of information, extensive  
26 settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that  
27 the matter is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims,  
28 as well as the costs and risks to both sides that would attend further litigation. The Settlement is a

1 fair, reasonable, and adequate resolution of the Released Claims of Plaintiffs, Settlement Class  
2 Members, and PAGA Members, against the Released Parties.

3 12. The Parties used the pre-mediation time to investigate the veracity, strength, and  
4 scope of the claims, and Class Counsel was preparing the actions for class certification and trial.  
5 Prior to engaging in mediation, Plaintiffs conducted significant investigation and informal  
6 discovery regarding the facts of the cases, including and not limited to, the exchange, review, and  
7 analysis of thousands of pages of documents and data obtained from Defendant, Plaintiffs, and  
8 other sources. The volume of data and documents that Class Counsel reviewed and analyzed  
9 included and was not limited to: Plaintiffs' and other Class Members' employment records, a  
10 detailed sampling of Class Members' time and pay data, multiple iterations of Defendant's  
11 Employee Handbook, Defendant's operations and employment practices (including but not  
12 limited to Defendant's drug testing policy and problem resolution procedure), procedures  
13 (including but not limited to Defendant's Administrative Pay Corrections procedure, progressive  
14 discipline process, and security inspections), and policies (including but not limited to Defendant's  
15 rest period policy, overtime policy, and rules about employee conduct), among other information  
16 and documents. Class Counsel interviewed Plaintiffs and other Class Members to gather facts and  
17 to identify potential witnesses. Counsel for the Parties also met and conferred on numerous  
18 occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of  
19 documents and data prior to the mediation. Class Counsel also drafted pleadings and a mediation  
20 brief and prepared for and attended court proceedings, mediation, and settlement negotiations,  
21 among other tasks.

22 13. Counsel for the Parties have also invested time researching and investigating the  
23 applicable law, which is constantly evolving as it relates to certification, representative PAGA  
24 claims, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement,  
25 Plaintiffs' claims and damages, and Defendant's defenses thereto, as well as facts discovered.  
26 Based on our analysis, I submit that the result achieved in this litigation is fair, adequate, and  
27 reasonable.

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1           14. The Settlement provides for a Gross Settlement Amount of one million two hundred  
2 thousand dollars and no cents (\$1,200,000.00). The Net Settlement Amount is the Gross  
3 Settlement Amount less the following amounts subject to approval by the Court: Attorneys' Fees  
4 and Costs to Class Counsel, Enhancement Awards to Plaintiffs, Settlement Administration Fees  
5 to Settlement Administrator, and PAGA Payment (75% of which goes to the Labor and Workforce  
6 Development Agency, and the remaining 25% of which goes to the PAGA Members). Assuming  
7 that the amounts allocated under the Settlement toward these payments are awarded by the Court,  
8 the Net Settlement Amount that will be available for distribution to Settlement Class Members is  
9 currently estimated to be six hundred twelve thousand dollars and no cents (\$612,000.00).  
10 Assuming the allocation for the PAGA Payment is approved by the Court, the 25% portion of the  
11 PAGA Payment that will be available for distribution to PAGA Members is thirty-seven thousand  
12 five hundred dollars and no cents (\$37,500.00). The Gross Settlement Amount will be fully  
13 distributed in accordance with the terms of the Settlement and there is no reversion to Defendant.

14           15. The Parties have agreed to retain Phoenix Settlement Administrators ("Phoenix" or  
15 "Settlement Administrator") to handle the notice and settlement administration. The Parties  
16 respectfully request that the Court appoint Phoenix to handle these procedures and serve as the  
17 Settlement Administrator. Defendant will provide Phoenix with a list of Class Members that  
18 Defendant will compile from its records, which will include each Class Member's last known full  
19 name, last known address, last known telephone number, Social Security number and employee  
20 ID number, start and end dates of employment as a non-exempt and/or hourly-paid employee of  
21 Defendant in California during the Class Period, and Covered Workweeks ("Class Data"), and  
22 Phoenix will calculate each Class Member's estimated share of the Net Settlement Amount  
23 ("Individual Settlement Share") and each PAGA Member's share of the 25% portion of the PAGA  
24 Payment ("Individual PAGA Payment"). Phoenix will also receive requests for exclusion from  
25 the Settlement, objections to the Settlement, and disputes regarding Covered Workweeks; provide  
26 necessary reports and declarations; calculate, subtract, and transmit necessary taxes and  
27 withholdings; prepare and submit informational and other tax filings and documents; issue and  
28 transmit all payments provided for by the Settlement, including and not limited to, mailing

1 Individual Settlement Payment and Individual PAGA Payment checks to the Settlement Class  
2 Members and PAGA Members; and perform any other usual and customary duties for  
3 administering a class action settlement. Settlement Administration Fees are currently estimated  
4 not to exceed thirteen thousand dollars and no cents (\$13,000.00) and will be paid out of the Gross  
5 Settlement Amount, subject to approval of the Court.

6 16. Based on investigation and information discovered, Class Counsel believes that  
7 there is sufficient evidence to support the allegations made in the lawsuits, including the  
8 allegations that Defendant, with respect to Plaintiffs and the Class Members, *inter alia*, failed to  
9 properly pay overtime and minimum wages and associated premium pay, failed to provide  
10 compliant meal and rest periods and to pay associated premium pay, failed to timely pay wages  
11 during employment and upon termination of employment, failed to provide compliant wage  
12 statements, failed to maintain requisite payroll records, and failed to reimburse necessary business  
13 expenses, and thereby engaged in unfair business practices and conduct giving rise to civil  
14 penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code  
15 sections 2698, et seq.). Plaintiffs also asserted that Class Members were expected to perform  
16 similar job duties and were subject to the same or similar operations and employment policies,  
17 practices, and procedures. Additionally, Plaintiffs asserted that Defendant's recordkeeping  
18 practices with respect to Plaintiffs and the Class Members were substantially the same during the  
19 time period at issue. As a result, Plaintiffs claim that the Class Members, were uniformly not paid  
20 all of the compensation that was owed to them by Defendant since October 15, 2015. Thus, in  
21 Class Counsel's view, it is clear that the outcome of this litigation would be determined by  
22 Defendant's uniform operations and employment practices, policies, and procedures that Plaintiffs  
23 allege applied across its hourly-paid or non-exempt employees in California during the Class  
24 Period.

25 17. Class Counsel is aware of the defenses and position of Defendant, but believes that  
26 Plaintiffs could potentially obtain class certification despite many obstacles. Plaintiffs have also  
27 taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties  
28 and delays inherent in such litigation, including those involved in class certification and/or

1 representative adjudication. Plaintiffs further recognize the burdens of proof necessary to establish  
2 liability for the claims asserted in the lawsuits, Defendant's defenses, and the difficulties in  
3 establishing entitlement to monetary recovery. Plaintiffs have also considered the Parties'  
4 settlement discussions, as well as the evaluations of the mediator, who is experienced and well-  
5 regarded in complex labor and employment matters.

6 18. Defendant, on the other hand, denied and continues to deny any liability and  
7 wrongdoing of any kind associated with the claims alleged in the lawsuits, and further denies that  
8 the lawsuits are appropriate for class treatment or representative adjudication for any purpose other  
9 than this Settlement. Defendant believes that it would ultimately succeed in the matter. Both sides  
10 have also had the opportunity to interview witnesses and review documents and information  
11 relating to Plaintiffs' and Class Members' employment with Defendant, and Defendant's  
12 operations and employment policies, practices, and procedures. The Parties also reviewed and  
13 analyzed thousands of pages of documents and data, including but not limited to a detailed  
14 sampling of Class Members' time and pay information, to determine the potential value and  
15 strength of the claims. The available information enabled Class Counsel to estimate the potential  
16 claims of the Class and prepare damages/valuation models. Accordingly, the Parties have  
17 conducted adequate investigation and discovery to be sufficiently informed of the nature and  
18 extent of the Class Members' claims, and to enable both sides to fully evaluate the Settlement for  
19 its fairness, adequacy, and reasonableness. The Parties have agreed that the matter is well-suited  
20 for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and  
21 risks to both sides that would attend further litigation. The Settlement takes into account the  
22 strengths and weaknesses of each side's position and the uncertainty of how the cases might have  
23 concluded at certification, trial, and/or appeals.

24 19. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees  
25 in an amount of up to one-third (1/3) of the Gross Settlement Amount  
26 (i.e., \$400,000.00) and expenses and costs in an amount not to exceed twenty-five thousand dollars  
27 and no cents (\$25,000.00), which will be paid out of the Gross Settlement Amount, subject to  
28 approval by the Court. It should be noted that Class Counsel has borne all of the risks and costs

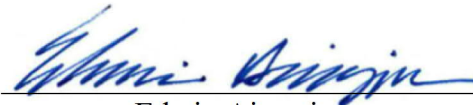
1 of litigation and will not receive any compensation until recovery is obtained.

2 20. The Settlement Agreement provides for payment of up to six thousand five hundred  
3 dollars and no cents (\$6,500.00) each to Plaintiffs as Enhancement Awards (for a combined total  
4 of \$19,500), to be paid out of the Gross Settlement Amount subject to approval by the Court.  
5 Plaintiffs spent considerable time and effort to produce relevant documents and past employment  
6 records and to provide the facts and evidence necessary to attempt to prove the allegations.  
7 Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain  
8 information that would benefit the Class and PAGA Members. Accordingly, it is appropriate and  
9 just for Plaintiffs to each receive an Enhancement Award, in addition to their Individual Settlement  
10 Payments and Individual PAGA Payments, for their services on behalf of the Class and PAGA  
11 Members.

12 21. Class Counsel submits that the Settlement is fair, reasonable, and adequate, and is  
13 in the best interest of the Class. Class Counsel further submits that the Settlement is within an  
14 acceptable range of recovery for this type of litigation given the strengths and weaknesses of the  
15 cases, the inherent costs and risks of further litigation, and the costs and risks associated with class  
16 certification, representative adjudication, trial, and/or appeals.

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

19 Executed on this 21<sup>st</sup> day of April 2022, at Glendale, California.

20   
21 Edwin Aiwanian

# **EXHIBIT 1**

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

BRIANNA FLORES, TANIA ESTREMER, individually, and on behalf of other members of the general public similarly situated; DEXTER NORMAN HANSEN, individually, and on behalf of the other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiffs,

vs.

BISCOMERICA CORP., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: CIVDS1930814

Honorable David S. Cohn  
Department S26

**JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

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NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, the Parties agree, subject to the approval by the Court, that the Actions and the Released Claims shall be settled and compromised as between Plaintiffs and the Class on the one hand, and Defendant on the other hand, subject to the terms and conditions set forth herein.

A. “Actions” refer to the actions entitled *Brianna Flores, et al. v. Biscomerica Corp., et al*, San Bernardino County Superior Court Case No. CIVDS1930814 (the “*Flores* Action”) and *Tania Estremera v. Biscomerica Corp., et al*, San Bernardino County Superior Court Case No. CIVDS2004539 (the “*Estremera* Action”).

C. “Class” or “Class Member(s)” refers to all current and former hourly-paid and/or non-exempt employees who worked for Defendant within the State of California at any time during the Class Period.

D. “Class Data” refers to the compilation of the following information for each Class Member: last known full name, last known address, last known telephone number, Social Security number and employee ID number, start and end dates of employment as a non-exempt and/or hourly-paid employee of Defendant in California during the Class Period, Covered Workweeks, and other such mutually agreed upon information by the Parties as may be necessary to independently review the Covered Workweeks attributed to each Class Member.

1 E. "Class Notice" refers to the Notice of Class Action Settlement that is to be  
2 mailed to the Class Members, substantially in the form attached hereto as "Exhibit A," as  
3 ordered by the Court, subject to edits that the Parties may jointly agree upon which are in  
4 conformity with the Court's orders and this Agreement.

5 F. "Class Period" for purposes of this Settlement is the time period from and  
6 including October 15, 2015 through date of the Preliminary Approval Order or six months  
7 after December 10, 2020 (i.e., June 10, 2021), whichever is earlier.

8 G. "Class Settlement" refers to the settlement and resolution of the Released  
9 Claims, except for those arising under the Private Attorneys General Act, California Labor  
10 Code section 2698, *et seq.*

11 H. "Court" refers to the San Bernardino County Superior Court.

12 I. "Covered Workweek(s)" refers to the number of weeks a Class Member worked  
13 for Defendant as a non-exempt or hourly-paid employee in California, which will be calculated  
14 by the Settlement Administrator, based on the Class Member's start and end dates of  
15 employment during the Class Period as a non-exempt or hourly-paid employee of Defendant  
16 in California. Each Class Member will be credited with at least one (1) Covered Workweek.

17 J. "Defendant" refers to Defendant BiscoAmerica Corp., a California corporation.

18 K. "Defendant's Counsel" refers to Richard D. Marca and Christopher S. Milligan  
19 of Varner & Brandt LLP, and Julie O'Dell and Jessica Ewert of Lewis Brisbois Bisgaard &  
20 Smith LLP.

21 L. "Effective Date" refers to the date upon which the terms of this Settlement  
22 Agreement shall become effective, which is the date on which all of the following events have  
23 occurred: (i) this Settlement Agreement has been executed by all Parties and their respective  
24 counsel; (ii) the Court has preliminarily approved the Settlement; (iii) the Class Notice has  
25 been mailed to the Class, providing them with an opportunity to dispute their Covered  
26 Workweeks as stated in their Class Notice, to opt out of the Class Settlement, or to object to  
27 the Class Settlement; (iv) the Court has entered the contemplated Final Approval Order and  
28 Judgment, certifying the Class and approving this Settlement; and (v) the later of the following

1 events: (1) if there is no objection to the Class Settlement, or if there is an objection but it is  
2 withdrawn, then, the date of the notice of entry of the Final Approval Order and Judgment; (2)  
3 if there is an objection to the Class Settlement that is not withdrawn, but no appeal is  
4 commenced thereafter, then, sixty-five (65) calendar days following notice of entry of the  
5 Final Approval Order and Judgment; or (3) if there is an objection to the Class Settlement,  
6 that is not withdrawn, and any appeal, writ, or other appellate proceeding opposing the Class  
7 Settlement has been filed within sixty-five (65) calendar days following notice of entry of the  
8 Final Approval Order and Judgment, then when any such appeal, writ, or other appellate  
9 proceeding opposing the validity of the Settlement has been resolved finally and conclusively  
10 with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties  
11 that the Settlement shall not become effective until the Final Approval Order and Judgment is  
12 completely final, and there is no further recourse by an appellant or objector who seeks to  
13 contest the Class Settlement.

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

17 N. “Judgment” refers to the judgment entered by the Court in conjunction with the  
18 Final Approval Order.

19 O. “Gross Settlement Amount” refers to the gross maximum amount which  
20 Defendant is obligated to pay under this Agreement, which is One Million Two Hundred  
21 Thousand Dollars and Zero Cents (\$1,200,000.00). This does not include the employer’s share  
22 of all payroll taxes in connection with the wages portion of the Individual Settlement Shares  
23 (“Employer Taxes”). The Gross Settlement Amount, however, is inclusive of all remaining  
24 funds, including but not limited to any wages, Attorneys’ Fees and Costs, Enhancement  
25 Awards, Settlement Administration Fees, PAGA Payment, and Net Settlement Amount.

26 P. “PAGA Members” refers to all current and former hourly-paid and/or non-  
27 exempt employees who worked for Defendant within the State of California at any time during  
28 the PAGA Period.

1 Q. "PAGA Payment" refers to penalties under the Private Attorneys General Act,  
2 California Labor Code section 2698, *et seq.* in the amount of \$150,000.00, of which seventy-  
3 five percent (75%) or \$112,500.00 will be distributed to the Labor and Workforce  
4 Development Agency ("LWDA Payment") and twenty-five percent (25%) or \$37,500.00 will  
5 be distributed to PAGA Members.

6 R. "PAGA Period" refers to the period from October 15, 2018 through date of the  
7 Preliminary Approval Order or six months after December 10, 2020 (i.e., June 10, 2021),  
8 whichever is earlier.

9 S. "PAGA Settlement" refers to the settlement and resolution of the Released  
10 Claims arising under the Private Attorneys General Act, California Labor Code Section 2698,  
11 *et seq.*

12 T. "Plaintiffs" refer to Brianna Flores, Tania Estremera, and Dexter Hanson.

13 U. "Net Settlement Amount" refers to the Gross Settlement Amount, less (1)  
14 Attorneys' Fees and Costs to Class Counsel as approved by the Court, (2) Enhancement  
15 Awards to Plaintiffs as approved by the Court, (3) Settlement Administration Fees as approved  
16 by the Court, and (4) PAGA Payment.

17 V. "Parties" collectively refer to Plaintiffs and Defendant, collectively, and "Party"  
18 means any of the Plaintiffs or Defendant.

19 W. "Preliminary Approval" refers to the date on which the Court grants preliminary  
20 approval of the Settlement.

21 X. "Preliminary Approval Order" refers to the order of the Court granting  
22 preliminary approval of the Settlement set forth herein.

23 Y. "Released Claims" refer to all claims and/or causes of action under state, federal,  
24 and local law that were pled in the Actions or that could have been pled based on the factual  
25 allegations in the Operative Complaint, arising at any time from October 15, 2015 through  
26 and including the date of the Preliminary Approval Order, including and not limited to the  
27 California Labor Code, Industrial Welfare Commission Wage Orders, and California Business  
28 & Professions Code section 17200, *et seq.*, including but not limited to: the failure to pay all

1 wages due (including, but not limited to, minimum wages, overtime wages, wages for off-the-  
2 clock work, allegations of rounding, and failure to properly calculate and pay all wages due),  
3 the failure to provide meal periods and pay associated premiums, the failure to provide rest  
4 periods and pay associated premiums, the failure to pay waiting-time penalties, the failure to  
5 timely pay wages during employment and at termination of employment, the failure to keep  
6 and maintain accurate payroll records, the failure to comply with Wage Theft Protection Act  
7 of 2011 and/or California Labor Code section 2810.5, the failure to provide accurate itemized  
8 wage statements, the failure to reimburse business expenses, unfair business practices, civil  
9 penalties under the Private Attorneys General Act, California Labor Code section 2698, *et*  
10 *seq.*, restitution and other equitable relief, conversion, liquidated damages, punitive damages,  
11 and penalties.

12 Z. “Released Parties” refers to Defendant, its past or present officers, managers,  
13 members, directors, shareholders, employees, agents, principals, heirs, representatives,  
14 accountants, auditors, consultants, and its respective successors and predecessors in interest,  
15 subsidiaries, affiliates, parents, and attorneys.

16 AA. “Response Deadline” refers to the date sixty (60) calendar days after the  
17 Settlement Administrator initially mails the Class Notice to Class Members and the last date  
18 on which Class Members may submit a request for exclusion from the Class Settlement,  
19 dispute regarding Covered Workweeks, and/or objection to the Class Settlement. With respect  
20 to Class Notices that are re-mailed as a result of the initial mailing being returned as  
21 undeliverable, the Response Deadline will be extended fifteen (15) calendar days (i.e., such  
22 Class Members shall have seventy-five (75) calendar days from the initial mailing to submit  
23 a Request for Exclusion, Covered Workweek Dispute [as defined in Section V(E)], or an  
24 Objection [as defined in Section V(G)] below) irrespective of when the first mailing was  
25 returned as undeliverable.

26 BB. “Settlement Administrator” refers to Phoenix Settlement Administrators, the  
27 third-party administrator that the Parties have mutually selected to handle the administration  
28 of the Settlement set forth in this Agreement. The Parties and their counsel each represent that

1 that they have no financial interest in the Settlement Administrator or other relationship with  
2 the Settlement Administrator that could create a conflict of interest. In the event Phoenix  
3 Settlement Administrators is subsequently unable to serve as Settlement Administrator,  
4 another Settlement Administrator shall be agreed to by the Parties.

5 CC. “Settlement Administration Fees” refers to the fees, costs, and expenses paid to  
6 the Settlement Administrator for undertaking the administration of the Settlement Agreement.

7 DD. “Settlement Class” or “Settlement Class Member(s)” refers to Class Members  
8 who have not submitted a timely and complete Request for Exclusion.

9 EE. “Individual Settlement Share” refers to a *pro rata* share of the Net Settlement  
10 Amount, calculated in accordance with the methodology provided herein, that a Class Member  
11 may be eligible to receive in accordance with the terms set forth herein.

12 FF. “Individual PAGA Payment” refers to the amount payable to each PAGA  
13 Member from the 25% portion of the PAGA Payment that is allocated to PAGA Members, as  
14 provided in Section VIII(B) below.

15 GG. “Individual Settlement Payment” refers to the net payment of each Settlement  
16 Class Member’s Individual Settlement Share, after reduction for the employee’s share of taxes  
17 and withholdings with respect to the portion of the Individual Settlement Share allocated as  
18 wages, as provided in Section VIII(E) below.

## 19 **II. RELEVANT PROCEDURAL HISTORY**

20 A. On October 15, 2019, Plaintiff Brianna Flores commenced a putative class action  
21 lawsuit against Defendant, in the Superior Court of California for the County of San Bernardino,  
22 Case No. CIVDS1930814 (i.e., the *Flores* Action) on behalf of all current and former hourly-  
23 paid or non-exempt individuals employed by Defendant within the State of California at any  
24 time during the period from October 15, 2019 to final judgment.

25 B. On February 11, 2020, Plaintiff Tania Estremera commenced a putative class  
26 action lawsuit against Defendant, in the Superior Court of California for the County of San  
27 Bernardino, Case No. CIVDS2004539, on behalf of all current and former hourly-paid or non-  
28

1 exempt individuals employed by Defendant within the State of California at any time during the  
2 period of February 11, 2016 to final judgment (i.e., the *Estremera* Action).

3 C. As part of this Settlement, the Parties agreed to consolidate the *Flores* and  
4 *Estremera* Actions for purposes of a global settlement (“Actions” or “Consolidated Action”).

5 D. The Actions were extensively litigated and on September 4, 2020, the Parties  
6 engaged in mediation with Hon. Peter Lichtman (Ret.). The Parties did not reach a global  
7 resolution on that date. But, with the aid of the mediator’s evaluation and proposals, the Parties  
8 continued informal settlement discussions, and reached the agreement reflected in this  
9 Settlement, subject to approval by the Court.

10 E. For purposes of and contingent on preliminary approval of the global settlement,  
11 the Parties stipulated for leave of Court to file a First Amended Consolidated Class Action  
12 Complaint for Damages & Enforcement Under the Private Attorneys General Act, California  
13 Labor Code § 2698, Et Seq. (“Operative Complaint” or “First Amended Complaint”) in the  
14 Consolidated Action with the *Flores* Action as the lead action, and for purposes of settlement  
15 only. The First Amended Complaint was filed on July 28, 2021 in the Consolidated Action. The  
16 Operative Complaint is attached substantially in the form as **Exhibit B** hereto.

17 **III. INADMISSIBILITY OF SETTLEMENT AGREEMENT/DENIAL OF**  
18 **LIABILITY**

19 A. This Settlement Agreement is the result of a good-faith compromise of disputed  
20 claims, and neither it nor any statement or conduct in furtherance of the Settlement shall be  
21 offered or construed to be an admission or concession of any kind by any Party. In particular,  
22 but without limiting the generality of the foregoing, nothing about this Settlement shall be  
23 offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or  
24 fault whatsoever by Defendant, who expressly denies any liability, wrongdoing, impropriety,  
25 responsibility, or fault whatsoever. In addition, and also without limiting the generality of the  
26 foregoing, nothing about this Settlement shall be offered or construed as an admission or  
27 evidence of the propriety or feasibility of certifying a class or any other action for adversarial,  
28 rather than settlement purposes. The Parties further agree that if, for any reason, the Settlement

1 is not approved, the certification will have no force or effect and will be immediately revoked.

2 B. Defendant further denies that, for any purpose other than settlement, the Actions  
3 are appropriate for class or representative treatment. With respect to Plaintiffs' claims,  
4 Defendant contends, among other things, that Plaintiffs and the Class Members have been paid  
5 all wages due, have been provided all required meal and rest periods, and paid associated  
6 premium payments if any, have been paid timely wages and associated waiting-time penalties,  
7 if any, have been provided with accurate itemized wage statements, and have been reimbursed  
8 for their business expenses or are not due any reimbursements. Defendant also contends,  
9 among other things, that it maintained accurate payroll records and has complied at all times  
10 with the California Labor Code and applicable Wage Orders of the Industrial Welfare  
11 Commission. Furthermore, with respect to all claims, Defendant contends that it has complied  
12 at all times with the California Business & Professions Code, the California Labor Code, the  
13 IWC Wage Orders, and all other applicable laws and/or regulations. Finally, Defendant  
14 contends it has hundreds of applicable arbitration agreements, and release agreements, which  
15 would arguably impact the class certification process.

16 C. Class Counsel have conducted a thorough investigation into the facts of the  
17 Actions, including an extensive review of relevant documents, and have diligently pursued an  
18 investigation of the claims against Defendant. Based on their own independent investigation  
19 and evaluation, Class Counsel are of the opinion that the Settlement with Defendant for the  
20 consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and  
21 adequate and is in the best interest of the Class in light of all known facts and circumstances,  
22 including the risk of significant delay, the risk that the Class will not be certified by the Court,  
23 defenses asserted by Defendant, and numerous potential appellate issues. Defendant and  
24 Defendant's Counsel also agree that the Settlement is fair and in the best interest of the Class.

#### 25 **IV. CLASS CERTIFICATION**

26 A. Solely for purposes of settling the Actions, the Parties and their respective  
27 counsel stipulate that the requisites for class certification with respect to the Class Members  
28 are met, and that the Class should be certified.

1           B.     The Parties stipulate that certification for settlement purposes under the lenient  
2 standard applied to settlements is in no way an admission that class certification is proper  
3 under the more stringent standard applied for litigation purposes, and that evidence of this  
4 limited stipulation for settlement purposes will not be deemed admissible in this or any other  
5 proceeding. More specifically, the Parties stipulate that, solely for settlement purposes:

6                 1.     The Class is ascertainable and so numerous as to make it impracticable  
7 to join all Class Members;

8                 2.     With respect to the Class, common questions of law and fact predominate  
9 over questions affecting any individual member in the Class, including, but not limited to:  
10 whether Defendant paid proper wages to the Class; whether Defendant paid proper overtime  
11 wages to the Class; whether Defendant provided compliant meal periods and associated  
12 premium pay to the Class; whether Defendant provided compliant rest periods and associated  
13 premium pay to the Class; whether Defendant paid the proper minimum wage to the Class;  
14 whether Defendant timely paid compensation and associated waiting-time penalties; whether  
15 Defendant provided accurate itemized wage statements to the Class; whether Defendant  
16 properly reimbursed the Class for their business expenses; whether Defendant maintained  
17 accurate payroll records with respect to the Class; whether Defendant engaged in unlawful or  
18 unfair business practices affecting the Class in violation of the California Business &  
19 Professions Code; and whether Plaintiffs and the Class are entitled to injunctive and/or  
20 declaratory relief;

21                 3.     Plaintiffs' claims are typical of the claims of the Class Members;

22                 4.     Plaintiffs and Class Counsel will fairly and adequately protect the  
23 interests of the Class; and,

24                 5.     A class action is superior to other available means for the fair and  
25 efficient adjudication of the controversy, as the prosecution of separate actions by individual  
26 members of the Class would create the risk of inconsistent or varying adjudications, which  
27 would establish incompatible standards of conduct.

28     ///

1     **V.     SETTLEMENT AMOUNT**

2             **A.     Gross Settlement Amount:**

3                     1.     In consideration for the resolution of the Actions and release of claims  
4     provided for by this Settlement, Defendant shall pay the amount of One Million Two Hundred  
5     Thousand Dollars and Zero Cents (\$1,200,000.00) (“Gross Settlement Amount”), subject to  
6     potential increase as provided in Section V(A)(2) below, on a non-reversionary basis, which  
7     includes: (1) Individual Settlement Shares to Settlement Class Members (from the Net  
8     Settlement Amount); (2) Individual PAGA Payments to PAGA Members (from the 25%  
9     portion of the PAGA Payment); (3) Attorneys’ Fees and Costs to Class Counsel; (4)  
10    Enhancement Awards to Plaintiffs; (5) Settlement Administration Fees to the Settlement  
11    Administrator; and (6) LWDA Payment to the Labor and Workforce Development Agency  
12    (“LWDA”). Under no circumstances will Defendant’s total obligation under this Settlement  
13    exceed the Gross Settlement Amount with the exception of Employer Taxes which Defendant  
14    will pay separately and in addition to the Gross Settlement Amount, and Section V(A)(2).

15                    2.     The Gross Settlement Amount specifically contemplates that the number  
16    of Covered Workweeks as of August 14, 2020 was approximately 56,780 (which was  
17    communicated to Plaintiff’s counsel before and at mediation), with the understanding that  
18    there is a reasonable hire rate between that date and the future date of preliminary approval,  
19    and the Parties intend to cover those workweeks as part of the global settlement. If the number  
20    of Covered Workweeks is determined by the Settlement Administrator to be more than 62,458  
21    (i.e., more than ten percent (10%) higher) as of August 14, 2020, the Gross Settlement Amount  
22    will be increased on a *pro rata* basis for each Covered Workweek above 62,458 Covered  
23    Workweeks. The Gross Settlement Amount will not be increased, however, if after August  
24    14, 2020, the number of Covered Workweeks through date of Preliminary Approval exceeds  
25    62,458. In other words, it is the representation as to the total number of Covered Workweeks  
26    as of August 14, 2020 only, that could serve to trigger the 10% escalation clause.

27                    **B.     Net Settlement Amount:** The Net Settlement Amount shall be calculated by  
28    deducting from the Gross Settlement Amount the following sums, as approved by the Court:

(1) attorneys' fees in an amount not to exceed one-third (1/3) of the Gross Settlement Amount and reimbursement of litigation costs and expenses in an amount not to exceed \$25,000.00 (collectively, "Attorneys' Fees and Costs") to Class Counsel; (2) respective enhancement awards in an amount not to exceed \$6,500.00 each to Plaintiff Brianna Flores, Plaintiff Tania Estremera, and Plaintiff Norman Hansen ("Enhancement Awards"), which will be paid in addition to whatever payment they are otherwise entitled to as Settlement Class Members and PAGA Members (a total of \$19,500.00) ; (3) fees and expenses of the Settlement Administrator in an amount that is estimated not to exceed \$13,000.00 ("Settlement Administration Fees"); and (4) in the amount of \$150,000.00, of which seventy-five percent (75%) or \$112,500.00 will be distributed to the Labor and Workforce Development Agency ("LWDA Payment") and twenty-five percent (25%) or \$37,500.00 will be distributed to PAGA Members.

C. **Settlement Administration:** The Parties have mutually agreed to engage Phoenix Settlement Administrators to serve as the Settlement Administrator, subject to approval by the Court. The Settlement Administrator's fees, costs, and expenses for undertaking the administration of the Settlement (i.e., Settlement Administration Fees) are estimated not to exceed Thirteen Thousand Dollars (\$13,000.00). All Settlement Administration Fees will be paid from the Gross Settlement Amount.

D. **Notice to Class Members:**

1. Each Class Member will be provided with pre-printed information, in substantially the same form as the Class Notice attached hereto as **Exhibit A** based on Defendant's records. The Class Notice will state, among other things, the Class Member's Covered Workweeks and his or her estimated Individual Settlement Share and Individual PAGA Payment. The pre-printed information based on Defendant's records will be presumed to be correct. The Class Notice will be sent by the Settlement Administrator to the Class Members by first class mail in both English and Spanish.

2. Within thirty (30) calendar days from the date of the Preliminary Approval Order, Defendant will provide to the Settlement Administrator the Class Data. The

1 Class Data will be based on Defendant's payroll and other business records and will be  
2 provided in a format reasonably acceptable to the Settlement Administrator. Defendant agrees  
3 to consult with the Settlement Administrator prior to the production date of the Class Data, to  
4 ensure that the format will be reasonably acceptable to the Settlement Administrator.

5 3. The Settlement Administrator will run a check of the Class Members'  
6 addresses, as reflected in the Class Data provided by Defendant, against those on file with the  
7 U.S. Postal Service's National Change of Address List; this check will be performed only once  
8 per Class Member by the Settlement Administrator. Absent mutual written agreement of  
9 counsel for the Parties or Court order, the Settlement Administrator will keep the Class Data  
10 and any database prepared based thereon confidential and use them only for the purposes  
11 described herein.

12 4. Within fifteen (15) calendar days after the Class Data is provided to the  
13 Settlement Administrator, the Settlement Administrator will mail the Class Notice in English  
14 and Spanish to the Class Members by first class mail.

15 5. Class Notices returned to the Settlement Administrator as non-  
16 deliverable on or before the initial Response Deadline (based on the postmark date) shall be  
17 re-sent to the forwarding address, if any, on the returned envelope. A returned Class Notice  
18 will be forwarded only once per Class Member by the Settlement Administrator. If there is  
19 no forwarding address, the Settlement Administrator will perform a skip-trace search for a  
20 new address using the Class Member's Social Security number, and the returned Class Notice  
21 will be re-sent to any updated address that is located by way of skip-trace; this search and re-  
22 mailing will be performed only once per Class Member by the Settlement Administrator.

23 6. Upon completion of these steps by the Settlement Administrator,  
24 Defendant and the Settlement Administrator will be deemed to have satisfied their obligation  
25 to provide the Class Notice to the affected Class Member. The affected Class Member will  
26 nonetheless remain a member of the Class and will be bound by all the terms of the Settlement  
27 and the Court's Final Approval Order and Judgment based thereon.

28 ///

1                   7.     Class Counsel will provide to the Court, at least five (5) calendar days  
2 prior to the Final Approval Hearing, a declaration by the Settlement Administrator of due  
3 diligence and proof of mailing with regard to the mailing of the Class Notice to the Class  
4 Members.

5           E.     **Resolution of Disputes Regarding Covered Workweeks:** A Class Member  
6 may dispute the pre-printed information on the Class Notice as to his or her Covered  
7 Workweeks by submitting a written letter (“Covered Workweek Dispute”) to the Settlement  
8 Administrator. A timely and complete Covered Workweek Dispute must: (1) contain the Class  
9 Member’s full name, current mailing address, current telephone number, last four digits of his  
10 or her Social Security number or employee ID number, and signature; (2) contain the case  
11 name and number of the *Flores* Action; (3) contain a clear statement explaining the basis for  
12 his or her dispute of the number of Covered Workweeks credited to him or her; (4) attach any  
13 documentation that he or she has to support the dispute; and (5) be mailed to the Settlement  
14 Administrator no later than the Response Deadline (based on the postmark date). Unless a  
15 disputing Class Member submits documentary evidence in support of his or her dispute, the  
16 records of the Defendant will be determinative. If the Parties’ counsel cannot resolve the  
17 dispute informally, the matter will be referred to the Settlement Administrator. The Settlement  
18 Administrator will review Defendant’s records and any information or documents submitted  
19 by the Class Member and the Settlement Administrator will issue a non-appealable decision  
20 regarding the dispute. No Covered Workweek Disputes will be honored if they are  
21 postmarked after the Response Deadline, unless the Parties mutually agree to accept the  
22 untimely submission. Each Class Member is responsible to maintain a photocopy of all  
23 documents sent to the Settlement Administrator and a record of proof of mailing.

24           F.     **Right of Class Member to Request Exclusion from the Class Settlement:**  
25 Any Class Member may request to be excluded from the Class Settlement by mailing a written  
26 request (“Request for Exclusion”) to the Settlement Administrator. A timely and complete  
27 Request for Exclusion must: (1) contain the Class Member’s full name, current mailing  
28 address, current telephone number, last four digits of his or her Social Security number or

1 employee ID number, and signature; (2) contain the case name and number of the *Flores*  
2 Action; (3) contain a clear statement indicating that he or she seeks exclusion from the Class  
3 Settlement; and (4) be mailed to the Settlement Administrator no later than the Response  
4 Deadline (based on the postmark date). Any Class Member who timely submits a Request for  
5 Exclusion in compliance with these requirements shall not have any right under this  
6 Settlement, shall not have standing to object to the Class Settlement; shall not be a Settlement  
7 Class Member and shall not be entitled to receive any payment under the Class Settlement,  
8 and shall not have any right to object, appeal, or comment on the Class Settlement; however,  
9 if the Class Member worked during the PAGA Period, he or she shall remain a PAGA  
10 Member, receive an Individual PAGA Payment, and be bound by the PAGA Settlement.  
11 Class Counsel shall not represent any Class Member that excludes him or herself from the  
12 Class Settlement in connection with any claims related to the Released Claims against the  
13 Released Parties. Any Class Member who does not timely and properly exclude himself or  
14 herself from the Class Settlement shall be bound by such judgment as a Settlement Class  
15 Member.

16       **G. Right of Settlement Class Member to Object to the Class Settlement:** Any  
17 Class Member may object to the Class Settlement, as long as he or she has not submitted a  
18 Request for Exclusion. To object, the Class Member may either appear at the Final Approval  
19 Hearing and offer an oral objection or must submit a written objection (“Objection”) to the  
20 Settlement Administrator. A complete and timely Objection must: (1) contain the Settlement  
21 Class Member’s full name, current address, current telephone number, last four digits of his  
22 or her Social Security number or employee ID number, and signature; (2) contain the case  
23 name and number of the *Flores* Action; (3) contain a clear statement explaining the legal and  
24 factual basis of his or her objection(s) to the Class Settlement; (4) contain a statement  
25 indicating whether or not the Settlement Class Member is represented by counsel and  
26 identifying any such legal counsel and indicating whether the Settlement Class Member  
27 intends to appear at the Final Approval Hearing to present his or her objection(s); and (5) be  
28 mailed to the Settlement Administrator on or before the Response Deadline (based on the

1 postmark date). Settlement Class Members who fail to make an objection in either manner  
2 specified above, and as set forth in the Class Notice, will be deemed to have waived all  
3 objections and will be foreclosed from making any objection (whether by appeal or otherwise)  
4 to the Class Settlement, unless otherwise ordered by the Court. Class Counsel and Defendant's  
5 Counsel may, at least five (5) calendar days (or some other number of days as the Court shall  
6 specify) before the Final Approval Hearing, file a response to any Objection submitted to the  
7 Court.

## 8 **VI. SETTLEMENT ADMINISTRATOR'S DUTIES**

9 A. The Settlement Administrator will be responsible for administration of the  
10 Settlement including, *inter alia*, translating the Class Notice in Spanish, printing, distributing,  
11 and tracking Class Notices and other documents for this settlement, calculating and distributing  
12 payments due under the Settlement, issuing of 1099 and W-2 IRS Forms and all required tax  
13 reporting, filings, withholdings, and remittances, providing necessary reports and declarations,  
14 and other duties and responsibilities set forth herein to process this settlement, and as requested  
15 by the Parties. The Settlement Administrator will independently review the Covered  
16 Workweeks attributed to each Class Member by Defendant and will calculate the Individual  
17 Settlement Shares due to each Class Member and Individual PAGA Payments due to each  
18 PAGA Member in accordance with this Settlement. The Settlement Administrator shall report,  
19 in summary or narrative form, the substance of its findings to the Parties. The Parties will  
20 cooperate to provide to the Settlement Administrator relevant records in order to perform its  
21 duties.

22 B. In accordance with the terms of this Settlement, and within ten (10) calendar days  
23 of receipt of the Gross Settlement Amount from Defendant, the Settlement Administrator will  
24 issue Individual Settlement Payments by way of check to the Settlement Class Members and  
25 the Individual PAGA Payments by way of Individual PAGA Payment check to the PAGA  
26 Members, pay all payroll taxes and be responsible for all required federal, state and local payroll  
27 tax reports. The Settlement Administrator may, at its discretion, distribute the Individual  
28 Settlement Payment and Individual PAGA Payment by way of a single check that combines

both payments (if applicable). All disputes relating to the Settlement Administrator's performance of its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement until all payments and obligations contemplated by this Settlement have been fully carried out.

## **VII. FUNDING AND DISTRIBUTION OF SETTLEMENT**

A. Within thirty (30) calendar days of the Effective Date, Defendant shall fund the Gross Settlement Amount, into a settlement account to be established by the Settlement Administrator.

B. Within ten (10) calendar days after Defendant transmits the Gross Settlement Amount to the settlement account established by the Settlement Administrator, the Settlement Administrator shall distribute the Individual Settlement Payments to the Settlement Class Members, Individual PAGA Payments to the PAGA Members, Attorneys' Fees and Costs to Class Counsel, Enhancement Awards to Plaintiffs, the LWDA Payment to the LWDA, and Settlement Administration Fees to itself.

C. With respect to the Attorneys' Fees and Costs to Class Counsel, the Settlement Administrator may, at the request of Class Counsel, purchase annuities to utilize United States Treasuries and bonds or other attorney fee deferral vehicles, for the Attorneys' Fees and Costs. Any additional expenses for the use of an attorney fee deferral vehicle by the Settlement Administrator shall be paid separately by Class Counsel and shall not be included within the Settlement Administrator Fees. Defendant and Defendant's counsel shall not be liable for any expenses associated with the use of an attorney fee deferral vehicle by the Settlement Administrator, and Class Counsel agrees to indemnify Defendant and defense counsel for any such claim or allegation relating to the use of an attorney fee deferral vehicle. Each firm representing Plaintiffs and the Class shall provide the Settlement Administrator with their wiring instructions to which the Settlement Administrator shall transmit each firm's respective share of attorneys' fees and costs, pursuant to the terms of the Settlement Agreement and consistent with the Court's order awarding attorneys' fees in this matter.

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**VIII. INDIVIDUAL SETTLEMENT PAYMENTS TO SETTLEMENT CLASS**

**MEMBERS AND INDIVIDUAL PAGA PAYMENTS TO PAGA MEMBERS**

**A. Individual Settlement Share Calculations:** Each Class Member who does not submit a timely and complete Request for Exclusion (i.e., Settlement Class Member) will be entitled to a *pro rata* share of the Net Settlement Amount (i.e., Individual Settlement Share), based on his or her Covered Workweeks worked during the Class Period. The Settlement Administrator will determine the Individual Settlement Share of each Class Member, using the Class Data (as independently reviewed by the Settlement Administrator), according to the following methodology:

1. The number of Covered Workweeks worked by all Class Members during the Class Period will be totaled (“Total Class Covered Workweeks”);

2. Each Class Member’s Covered Workweeks worked during the Class Period will be divided by the Total Class Covered Workweeks to yield his or her “Individual Class Percentage Allocation”; and

3. The Settlement Administrator will multiply each Class Member’s Individual Class Percentage Allocation by the Net Settlement Amount to yield his or her Individual Settlement Share.

**B. Individual PAGA Payment Calculations:** Each PAGA Member will be entitled to a *pro rata* share of the 25% portion of the PAGA Payment attributed to PAGA Members, i.e., \$37,500.00, based on his or her Covered Workweeks worked during the PAGA Period. The Settlement Administrator will determine the Individual PAGA Payment of each PAGA Member, using the Class Data (as independently reviewed by the Settlement Administrator), according to the following methodology:

1. The number of Covered Workweeks worked by all PAGA Members during the PAGA Period will be totaled (“Total PAGA Covered Workweeks”);

2. Each PAGA Member’s Covered Workweeks worked during the PAGA Period will be divided by the Total PAGA Covered Workweeks to yield his or her “Individual PAGA Percentage Allocation”; and

1                   3.     The Settlement Administrator will multiply each PAGA Member's  
2 Individual PAGA Percentage Allocation by the 25% portion of the PAGA Payment to yield his  
3 or her Individual PAGA Payment.

4                   **C.     Tax Treatment:** The Parties have agreed that all Individual Settlement Shares  
5 will be allocated as follows: twenty percent (20%) as wages, and the remaining eighty percent  
6 (80%) as interest, penalties, and other non-wage damages. The Settlement Administrator will  
7 report the wages portion of each Individual Settlement Share on an IRS Form W-2 and the  
8 interest and penalties portions on an IRS Form 1099 (if applicable) and will provide to  
9 Defendant's Counsel copies of all tax reports filed with the Internal Revenue Service and the  
10 State of California regarding the payments of the Individual Settlement Share to the Settlement  
11 Class Members. Any payment for an Individual PAGA Payment will be allocated one hundred  
12 percent (100%) as penalties, will not be subject to taxes or withholdings, and will be reported  
13 on an IRS Form-1099, if necessary. Settlement Class Members are solely responsible to pay  
14 appropriate taxes due on any amount paid to them under the Settlement. To the extent required  
15 by law, IRS Forms 1099 and W-2 will be issued to each Settlement Class Member with respect  
16 to such payments by the Settlement Administrator.

17                   **D.     Employer Taxes:** Defendant shall be responsible for paying the Employer Taxes  
18 separate and apart from, and in addition to, the Gross Settlement Amount, and shall contribute  
19 additional funds as necessary to satisfy these obligations. Defendant shall not be responsible,  
20 however, for making additional contributions for tax payments or for any additional payments  
21 of or relating to the Gross Settlement Amount as noted above.

22                   **E.     Individual Settlement Payments:** Settlement Class Members will be paid their  
23 respective Individual Settlement Share, subject to reduction for the employee's share of payroll  
24 taxes and withholdings with respect to the wages portion of each of their Individual Settlement  
25 Share (the net payment is their "Individual Settlement Payment"). Individual Settlement  
26 Payments will be distributed by the Settlement Administrator, by way of check that is mailed to  
27 the Settlement Class Members at the last known address that the Settlement Administrator has  
28 on file. The Settlement Administrator will have the option to pay the Individual Settlement

1 Payment and Individual PAGA Payment by way of a single check, If applicable.

2       **F.** All payments made to Plaintiffs, Settlement Class Members, and PAGA Members  
3 under this Settlement, will be deemed to be paid to them solely in the year in which such  
4 payments actually are received by them. It is expressly understood and agreed that the receipt  
5 of payment under this Settlement will not entitle Plaintiffs or any Settlement Class Member or  
6 PAGA Member to additional compensation or benefits under any company bonus, contest, or  
7 other compensation or benefit plan or agreement in place during the period covered by the  
8 Settlement, nor will it entitle Plaintiffs or any Settlement Class Member or PAGA Member to  
9 any increased retirement, 401(k) benefits, matching benefits, or deferred compensation benefits.  
10 It is the intent that the payments provided for in this Settlement are the sole payments to be made  
11 by Defendant to Plaintiffs, Settlement Class Members, and PAGA Members, and that Plaintiffs,  
12 Settlement Class Members, and PAGA Members are not entitled to any new or additional  
13 compensation or benefits as a result of having received the payments under the Settlement  
14 (notwithstanding any contrary language or agreement in any benefit or compensation plan  
15 document that might have been in effect during the period covered by this Settlement).

16       **G.** All payees under this Settlement Agreement remain responsible for payment of  
17 their respective income taxes (if any).

18       **H. Settlement Checks:** The Settlement Administrator will be responsible for  
19 undertaking appropriate deductions, required tax reporting, and issuing the Individual  
20 Settlement Payments by way of check to the Settlement Class Members and the Individual  
21 PAGA Payments by way of Individual PAGA Payment check to the PAGA Members, in  
22 accordance with this Settlement Agreement. The Settlement Administrator may, at its  
23 discretion, distribute the Individual Settlement Payment and Individual PAGA Payment by way  
24 of a single check that combines both payments (if applicable). Individual Settlement Payment  
25 and Individual PAGA Payment checks will remain valid and negotiable for one hundred and  
26 eighty (180) calendar days from the date of their issuance, and if not cashed, deposited, or  
27 otherwise negotiated within the 180-day deadline, will be cancelled. The funds associated with  
28 such cancelled checks will be distributed in accordance with Code of Civil Procedure section

1 384 to the Children's Advocacy Institute ([www.caichildlaw.org](http://www.caichildlaw.org)), a non-profit organization  
2 which, among other things, seeks to improve the lives of children and youth, and is an authorized  
3 *cy pres* recipient by the same statute. The Parties and their counsel represent that they do not  
4 have any interest in the governance of the Children's Advocacy Institute. Settlement Class  
5 Members whose Individual Settlement Payment checks are cancelled and PAGA Members  
6 whose Individual PAGA Payment checks are cancelled shall, nevertheless, be bound by this  
7 Settlement Agreement.

8       **I.** Upon completion of its calculation of Individual Settlement Payments and  
9 Individual PAGA Payments, the Settlement Administrator shall provide Class Counsel and  
10 Defendant's Counsel with a report listing the amount of all payments to be made to each  
11 Settlement Class Member and PAGA Member. Proof of payment will be provided to Class  
12 Counsel and Defendant's Counsel (without disclosing or identifying information of the  
13 Settlement Class Members), and filed with the Court as ordered by the Court.

14 **IX. ATTORNEYS' FEES AND LITIGATION COSTS/EXPENSES**

15       In consideration for resolving this matter and in exchange for the release of all claims by  
16 the Class Members, and subject to approval by the Court, Defendant will not object to Class  
17 Counsel's application for attorneys' fees in an amount not to exceed one-third (1/3) of the Gross  
18 Settlement Amount and reasonable litigation costs and expenses actually incurred with respect  
19 to the cases in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00) (i.e.,  
20 Attorneys' Fees and Costs). The amounts set forth above will cover all work performed and all  
21 fees and costs incurred to date, and all work to be performed and all fees and costs to be incurred  
22 in connection with obtaining the approval by the Court of this Settlement and administration of  
23 the Settlement. Should Class Counsel request a lesser amount and/or the Court awards a lesser  
24 amount(s) for Attorneys' Fees and Costs, the difference between the lesser amount(s) and the  
25 maximum amount set forth above shall be part of the Net Settlement Amount, and shall not  
26 affect the total Gross Settlement Amount to be paid by Defendant. The Settlement  
27 Administrator will issue an IRS Form 1099 to Class Counsel for the payment of Attorneys' Fees  
28 and Costs.

1     **X.     ENHANCEMENT AWARDS FOR CLASS REPRESENTATIVES**

2             Subject to approval by the Court, Defendant will not object to Plaintiffs' application for  
3     a payment of up to Six Thousand Five Hundred Dollars (\$6,500.00) each for Plaintiffs Brianna  
4     Flores, Tania Estremera, and Norman Hansen for their services as the Class Representatives, for  
5     a total of Nineteen Thousand Five Hundred Dollars (\$19,500.00) ("Enhancement Awards"). It  
6     is understood that the Enhancement Awards are in addition to the Individual Settlement Shares  
7     and Individual PAGA Payments to which Plaintiffs are entitled to as Settlement Class Members  
8     and POAGA Members (if applicable). The Settlement Administrator will issue an IRS Form  
9     1099 to Plaintiffs for the Enhancement Awards. Plaintiffs will be individually responsible for  
10    correctly characterizing their compensation on their individual personal income tax returns for  
11    tax purposes and for paying any taxes on the amount received. Should the Court approve  
12    Enhancement Awards to Plaintiffs in amounts that are less than the amounts set forth above, the  
13    difference between the lesser amounts that are approved by the Court and the Enhancement  
14    Award amounts that are set forth above will be a part of the Net Settlement Amount.

15    **XI.    RELEASE OF CLAIMS**

16            A.     **Release of Claims by the Settlement Class Members:** Upon the Effective  
17    Date and full funding of the Gross Settlement Amount, and except as to such rights or claims  
18    as may be created by this Settlement, Plaintiffs and each Class Member who has not submitted  
19    a timely and complete Request for Exclusion (i.e. Settlement Class Member) will be deemed  
20    to have fully, finally, and forever released, settled, compromised, relinquished, and discharged  
21    the Released Parties from all Released Claims that do not arise under PAGA that he or she  
22    may have or had. In addition, all PAGA Members will be deemed to have fully, finally, and  
23    forever released, settled, compromised, relinquished, and discharged the Released Parties of  
24    all Released Claims that do arise under PAGA.

25            B.     **Release of Claims by the Plaintiffs:**

26                1.     The Plaintiffs agree that, in exchange for the consideration set forth in this  
27    Settlement Agreement, and upon the Effective Date and full funding of the Gross Settlement  
28    Amount, they shall and hereby do fully, finally, and forever compromise, release, resolve,

1 relinquish, discharge, and settle, on behalf of themselves and each of their heirs, representative,  
2 successors, assigns, and attorneys, any and all claims of any nature whatsoever, they have or  
3 may have against the Released Parties, based on their employment with Defendant, for any act  
4 occurring on or before the date of final approval of the Settlement. The Plaintiffs shall not  
5 institute any action or cause of action (in law, in equity, or administratively), suit, debt, lien, or  
6 claim, known or unknown, fixed or contingent, for the claims described in **Section XI**, in state  
7 or federal court, or with any state, federal, or local government agency, except the EEOC or  
8 DFEH, or with any administrative or advisory body (but if so, subject to the 1542 waiver below,  
9 and to the maximum extent permitted by law, Plaintiffs respectively and expressly agree that if  
10 such administrative claims are made, each respective Plaintiff shall not be entitled to recover  
11 any individual monetary relief or other individual remedies).

12           2. Plaintiffs may hereafter discover facts in addition to or different from those  
13 which they now know or believe to be true, but they nevertheless stipulate and agree that, upon  
14 the Effective Date and full funding of the **GROSS** Settlement Amount, they shall and hereby  
15 do fully, finally, and forever settle and release any and all of their individual claims whether  
16 known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not  
17 concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or  
18 equity and without regard to the subsequent discovery or existence of such different or additional  
19 facts. With respect to the release of their individual claims, as set forth in this section, the  
20 Plaintiffs specifically acknowledge that they are aware of and familiar with the provisions of  
21 California Civil Code section 1542, which provides as follows:

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

28 Plaintiffs, being aware of California Civil Code section 1542, hereby expressly waive and  
relinquish all rights and benefits that he or she may have under the section as well as any other  
statute or common law principle of a similar effect, with respect to the release of his or her  
individual claims against Defendant.

1 **XII. APPROVAL OF THE SETTLEMENT**

2 A. **Seeking Preliminary Approval of the Settlement:** This Settlement Agreement  
3 will be submitted to the Court in support of Plaintiffs' motion for preliminary approval of class  
4 action settlement for determination by the Court as to its fairness, adequacy, and  
5 reasonableness. In conjunction with the motion, Plaintiffs will submit a proposed order to the  
6 Court, in a form agreed upon by the Parties, providing for the following:

7 1. Scheduling of a hearing ("Final Approval Hearing") on the question of  
8 whether the Settlement should be finally approved as fair, reasonable, and adequate as to the  
9 members of the Class, and whether to award payment of Attorneys' Fees and Costs to Class  
10 Counsel, Enhancement Awards to Plaintiffs, and Settlement Administration Fees to the  
11 Settlement Administrator;

12 2. Conditional certification of the Class for settlement purposes only;

13 3. Preliminary appointment of Plaintiffs as representatives of the Class and  
14 Class Counsel as counsel for the Class;

15 4. Approval as to form and content the proposed Class Notice;

16 5. Directing the mailing of the Class Notice; and

17 6. Preliminary approval of the Settlement subject only to the objections of  
18 Settlement Class Members and final review by the Court.

19 B. **Seeking Final Approval of the Settlement:** Class Counsel will file a motion  
20 for final approval of the Settlement, and in conjunction with the motion, Class Counsel will  
21 submit a proposed Final Approval Order and Judgment based thereon, in a form that is to be  
22 agreed upon by the Parties, providing for the following:

23 1. Making final the conditional certification of the Class for settlement  
24 purposes only;

25 2. Approval of the Settlement, adjudging the terms thereof to be fair,  
26 reasonable and adequate, and directing consummation of its terms and provisions;

27 3. Approval of Class Counsel's application for an award of Attorneys' Fees  
28 and Costs;

- 1                   4.     Approval of the Enhancement Awards to Plaintiffs; and
- 2                   5.     Entry of judgment in the Consolidated Action with continuing jurisdiction
- 3 of the Court in conformity with California Rules of Court Rule 3.769.

4 **XIII. MISCELLANEOUS**

5           A.     **Entire Agreement:** This Settlement Agreement and its associated Exhibit set

6 forth the entire agreement of the Parties with respect to their subject matter and supersede any

7 and all other prior agreements and all negotiations leading up to the execution of this

8 Settlement Agreement, whether oral or written, regarding the subjects covered herein. The

9 Parties acknowledge that no representations, inducements, promises, or statements relating to

10 the subjects covered herein, oral or otherwise, have been made by any of the Parties or by

11 anyone acting on behalf of the Parties which are not embodied or incorporated by reference

12 herein, and further agree that no other agreement, covenant, representation, inducement,

13 promise, or statement relating to the subjects covered herein not set forth in writing in this

14 Settlement Agreement have been made.

15           B.     **No Additional Contribution by Defendant:** Defendant's monetary obligation

16 under this Agreement is limited to the Gross Settlement Amount, subject to Sections VIII(D)

17 and V(A)(2).

18           C.     **Interim Stay of Proceedings:** Pending completion of the settlement process,

19 the Parties agree to a stay of all proceedings in the cases (including with respect to California

20 Code of Civil Procedure section 583.310), except such as are necessary to implement the

21 Settlement itself, pending the Final Approval Hearing to be conducted by the Court.

22           D.     **Termination/Nullification of the Settlement:** This Settlement will be null and

23 void if any of the following occur: (a) the Court should for any reason fail to certify a class

24 for settlement purposes, or authorize and attribute PAGA penalties in accordance with above

25 for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally

26 approve of this Settlement in the form agreed to by the Parties, other than adjustments made

27 to the amount awarded for Attorneys' Fees and Costs to Class Counsel and/or Enhancement

28 Awards to Plaintiffs; (c) the Court should for any reason fail to enter the Final Approval Order

1 and Judgment; (d) the Final Approval Order and Judgment is reversed, modified, or declared  
2 or rendered void; or (e) the Settlement does not become final for any other reason.

3 1. If ten percent (10%) or more of the Class Members submit a timely and  
4 complete Request for Exclusion, then Defendant in its sole discretion may, but is not obligated  
5 to, terminate, nullify, and void this Settlement. The Settlement Administrator will provide  
6 Defendant's Counsel with the information necessary to effectuate this provision on a regular  
7 basis, but no less frequently than on a monthly basis. To terminate this Settlement under this  
8 section, Defendant's Counsel must give Class Counsel written notice no later than seven (7)  
9 business days after being provided with a final count of opt-outs by the Settlement  
10 Administrator. If Defendant exercises this option, Defendant will pay the Settlement  
11 Administrator's fees incurred as of that date.

12 2. In the event this Settlement is nullified or terminated as provided above:  
13 (i) this Settlement will be considered null and void, (ii) neither this Settlement nor any of the  
14 related negotiations or proceedings will have any force or effect and no party will be bound by  
15 any of its terms, and (iii) all Parties to this Settlement will stand in the same position, without  
16 prejudice, as if the Settlement had been neither entered into nor filed with the Court.

17 E. **Mutual Cooperation:** The Parties agree to fully cooperate with each other to  
18 accomplish the terms of this Settlement including, but not limited to, execution of such  
19 documents and taking such other action as reasonably may be necessary to implement the  
20 terms of this Settlement. The Parties to this Settlement shall use their best efforts, including  
21 all efforts contemplated by this Settlement and any other effort that may become necessary by  
22 order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein.  
23 As soon as practicable after execution of this Settlement, Class Counsel will, with the  
24 assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to  
25 secure the Court's preliminary and final approval of this Settlement.

26 F. **No Prior Assignments:** The Parties and their respective counsel represent,  
27 covenant, and warrant that they have not directly or indirectly assigned, transferred,  
28 encumbered, or purported to assign, transfer, or encumber to any person or entity any portion

1 of any liability, claim, demand, action, cause of action, or rights herein released and discharged  
2 except as set forth herein.

3 G. **Binding on Assigns:** This Settlement shall be binding upon the Parties hereto  
4 and their respective heirs, trustees, executors, administrators, successors, and assigns.

5 H. **No Admissions With Respect to Liability:** Nothing contained herein, nor the  
6 consummation of this Settlement, is to be construed or deemed an admission with respect to  
7 liability, culpability, negligence, or wrongdoing on the part of Defendant or Plaintiffs. The  
8 Parties have entered into this Settlement solely with the intention to avoid further disputes and  
9 litigation with the attendant inconvenience and expenses.

10 I. **State Law:** All terms of this Settlement Agreement and the exhibits hereto shall  
11 be governed by and interpreted according to the laws of the State of California.

12 J. **Continuing Jurisdiction:** Pursuant to California Rules of Court rule 3.769 and  
13 California Code of Civil Procedure Section 664.6, the Court shall retain jurisdiction with  
14 respect to the interpretation, implementation, and enforcement of the terms of this Settlement  
15 Agreement and all orders and judgments entered in connection therewith, and the Parties and  
16 their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting,  
17 implementing, and enforcing the settlement embodied in this Settlement Agreement and all  
18 orders and judgments entered in connection therewith.

19 K. **Notice to Counsel:** Unless otherwise specifically provided herein, all notices,  
20 demands, or other communications given hereunder shall be in writing and shall be both  
21 emailed and mailed by United States registered or certified mail, return receipt requested,  
22 addressed as follows:

23 **Class Counsel:**

24 Edwin Aiwanian, Esq.  
25 Lawyers for Justice, PC  
26 410 West Arden Avenue, Suite 203  
27 Glendale, California 91203

**Counsel for Defendant:**

Richard D. Marca, Esq.  
Christopher S. Milligan, Esq.  
Varner & Brandt LLP  
3750 University Ave., Ste. 610  
Riverside, California 92501

[see additional counsel on next page]

Julie O'Dell, Esq.  
Jessica M. Ewert, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
650 Town Center Drive, Suite 1400  
Costa Mesa, California 92626  
Tel: (714) 668-5549 / Fax: (714) 850-1030

L. **Construction:** The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arm's-length negotiations between the Parties, and this Settlement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his, her, or its counsel participated in the drafting of this Settlement.

M. **Captions and Interpretations:** Section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

N. **Modification:** This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto or their counsel of record. After preliminary approval of the Settlement has been granted, this Settlement may not be modified except by a writing signed by the Parties hereto or their counsel of record, and approved by the Court.

O. **Integration:** This Settlement contains the entire agreement between the Parties relating to any and all matters addressed in the Settlement Agreement, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

P. **Signatures and Authority:**

1. It is agreed that because the members of the Class are so numerous, it is impossible or impractical to have each member of the Class execute this Settlement Agreement. The Class Notice will advise all Class Members of the binding nature of the release of claims under the Settlement.

///

1                   2.     This Settlement Agreement may be executed in counterparts and by  
2     electronic or facsimile signatures, and when each party has signed and delivered at least one  
3     such counterpart, each counterpart will be deemed an original, and, when taken together with  
4     other signed counterparts, will constitute one Settlement, which will be binding upon and  
5     effective as to all Parties.

6                   3.     The signatories hereto hereby represent that they are fully authorized to  
7     enter into this Settlement and bind the Parties hereto to the terms and conditions thereof.

8                   **Q.   No Mass Communications:** Parties will not publicize or disclose or cause or  
9     knowingly permit or authorize the publicizing or disclosure of the negotiations of the  
10    Settlement except as required to be disclosed by law or to be disclosed to the Court in order  
11    to obtain preliminary and final approval of the Settlement. The Parties and attorneys will keep  
12    the Settlement confidential until the filing of the motion for preliminary approval of the  
13    Settlement, except as otherwise required by law. Thereafter, except as provided below, the  
14    Parties agree to not make, or cause to make, any comments to the public or the media or engage  
15    in any mass communications or other publicity, including, but not limit to, social media,  
16    regarding the Settlement, except in court filings, as necessary to effectuate notice of the  
17    Settlement to the Class Members, and as required by law. Plaintiffs, including their counsel,  
18    agree not to distribute or advertise any materials which relate to the Settlement of this case,  
19    including but not limited to any postings on any websites maintained or used by Class Counsel,  
20    nor publications or reporting service regarding settlements and verdicts, and under no  
21    circumstances shall Class Counsel identify Defendant's name, business or trade, case name,  
22    case number or settlement amount, in such advertising material. Notwithstanding the  
23    foregoing, nothing in this Settlement Agreement shall restrict Class Counsel from disclosing  
24    and including all publicly available information regarding this case and the settlement in any  
25    documents filed with any court and/or judicial submissions (e.g., CV's, declarations regarding  
26    adequacy or experience, etc.). If the media asks about this case in any way or requests a  
27    comment on the Settlement, the Parties agree to respond only with "The matter has been  
28    resolved." Nothing herein will restrict Class Counsel from including publicly available

information regarding this settlement in future judicial submissions regarding Class Counsel's qualifications and experience. Furthermore, Plaintiff and Class Counsel will undertake any and all disclosures required to be made to the LWDA in conformity with PAGA.

R. **Posting of the Final Approval Order and Judgment:** The Parties shall provide the Settlement Administrator with a copy of the Final Approval Order and Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final Approval Order and Judgment on its website within three (3) business days of receipt. No individualized notice to the Class will be required.

**IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action and PAGA Settlement:**

**IT IS SO STIPULATED.**

**PLAINTIFFS:**

Dated: 04/05/22, 2022

Electronically Signed: 2022-04-05 20:30:34 UTC - 172.58.29.65  
Nintex AssureSign® 20fb6980-b6bc-48cb-a464-ae6e0151ab72

Brianna Flores, Plaintiff

Dated: \_\_\_\_\_, 2022

Tania Estremera, Plaintiff

Dated: \_\_\_\_\_, 2022

Norman Hansen, Plaintiff

Dated: \_\_\_\_\_, 2022

**BISCOMERICA CORP.**

Authorized Representative of  
Biscomerica Corp., Defendant

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[SIGNATURES ON FOLLOWING PAGE]

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**IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action and PAGA Settlement:**

**IT IS SO STIPULATED.**

**PLAINTIFFS:**

Dated: \_\_\_\_\_, 2022  
\_\_\_\_\_  
Brianna Flores, Plaintiff

Dated: 04/06/2022, 2022  
\_\_\_\_\_  
Tania Estremera, Plaintiff

Electronically Signed  
2022-04-06 23:46:37 UTC - 76.218.56.248  
30b2d052-21b5-4224-b523-aa6e0152480d

Dated: \_\_\_\_\_, 2022  
\_\_\_\_\_  
Norman Hansen, Plaintiff

Dated: \_\_\_\_\_, 2022  
**BISCOMERICA CORP.**  
\_\_\_\_\_  
Authorized Representative of  
Biscomerica Corp., Defendant  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURES ON FOLLOWING PAGE]

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**IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action and PAGA Settlement:**

**IT IS SO STIPULATED.**

**PLAINTIFFS:**

Dated: \_\_\_\_\_, 2022  
\_\_\_\_\_  
Brianna Flores, Plaintiff

Dated: \_\_\_\_\_, 2022  
\_\_\_\_\_  
Tania Estremera, Plaintiff

Dated: 04/12/2022, 2022  
\_\_\_\_\_  
Norman Hansen, Plaintiff

Electronically Signed  
2022-04-12 14:07:39 UTC - 174.81.39.169  
Dexter Norman Hansen  
Nintex AssureSign® 692a2b46-b091-4558-8695-ae7401368e1c

Dated: \_\_\_\_\_, 2022  
**BISCOMERICA CORP.**  
\_\_\_\_\_  
Authorized Representative of  
Biscomerica Corp., Defendant  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURES ON FOLLOWING PAGE]

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2 qualifications and experience. Furthermore, Plaintiff and Class Counsel will undertake any  
3 and all disclosures required to be made to the LWDA in conformity with PAGA.

4 R. **Posting of the Final Approval Order and Judgment:** The Parties shall  
5 provide the Settlement Administrator with a copy of the Final Approval Order and Judgment  
6 once it is entered by the Court, and the Settlement Administrator shall post the Final Approval  
7 Order and Judgment on its website within three (3) business days of receipt. No individualized  
8 notice to the Class will be required.

9 **IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed**  
10 **this Joint Stipulation of Class Action and PAGA Settlement:**

11 **IT IS SO STIPULATED.**

12  
13 **PLAINTIFFS:**

14  
15 Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Brianna Flores, Plaintiff

16  
17 Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Tania Estremera, Plaintiff

18  
19 Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Norman Hansen, Plaintiff

20  
21 Dated: 4/12, 2022

**BISCOMERICA CORP.**

22  
23   
\_\_\_\_\_  
Authorized Representative of  
Biscomerica Corp., Defendant

24  
25 Name: Nadi Sultan

26  
27 Title: C.E.O.

28  
[SIGNATURES ON FOLLOWING PAGE]

1 **APPROVED AS TO FORM (COUNSEL FOR PLAINTIFFS EXPRESSLY AGREES**  
2 **TO AND CONSENTS TO THE NON-PUBLICITY REQUIREMENTS OF SECTION**  
3 **XIII(Q) ABOVE):**

4 Dated: 04/06/2022, 2022

Respectfully Submitted,

5 **LAWYERS for JUSTICE, PC**

6  
7 By:

  
Edwin Aiwarzian  
Attorneys for Plaintiffs

8  
9  
10  
11 Dated: \_\_\_\_\_, 2022

Respectfully Submitted,

12 **VARNER & BRANDT LLP**

13  
14 By:

Richard D. Marca  
Christopher S. Milligan  
Attorneys for Defendant

15  
16 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

17  
18 By:

Julie O'Dell  
Jessica Ewert  
Attorneys for Defendant

1 **APPROVED AS TO FORM (COUNSEL FOR PLAINTIFFS EXPRESSLY AGREES**  
2 **TO AND CONSENTS TO THE NON-PUBLICITY REQUIREMENTS OF SECTION**  
3 **XIII(Q) ABOVE):**

4 Dated: 04/06/2022, 2022

Respectfully Submitted,

**LAWYERS for JUSTICE, PC**

6  
7 By:

  
Edwin Aiwarzian  
*Attorneys for Plaintiffs*

8  
9  
10  
11 Dated: \_\_\_\_\_, 2022

Respectfully Submitted,

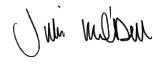
**VARNER & BRANDT LLP**

12  
13  
14 By:

\_\_\_\_\_  
Richard D. Marca  
Christopher S. Milligan  
*Attorneys for Defendant*

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

15  
16  
17  
18 By:

  
\_\_\_\_\_  
Julie O'Dell  
Jessica Ewert  
*Attorneys for Defendant*

1 APPROVED AS TO FORM (COUNSEL FOR PLAINTIFFS EXPRESSLY AGREES  
2 TO AND CONSENTS TO THE NON-PUBLICITY REQUIREMENTS OF SECTION  
3 XIII(Q) ABOVE):

4 Dated: \_\_\_\_\_, 2022

Respectfully Submitted,

5 **LAWYERS *for* JUSTICE, PC**

6  
7 By: \_\_\_\_\_

Edwin Aiwarzian

8 *Attorneys for Plaintiffs*

9  
10  
11 Dated: 4-13-22, 2022

Respectfully Submitted,

12 **~~VARNER~~ & BRANDT LLP**

13  
14 By: \_\_\_\_\_

Richard D. Marca

15 Christopher S. Milligan

16 *Attorneys for Defendant*

17 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

18 By: \_\_\_\_\_

Julie O'Dell

19 Jessica Ewert

20 *Attorneys for Defendant*

## **Exhibit A**

## **NOTICE OF CLASS ACTION SETTLEMENT**

***Brianna Flores, et al. v. Biscomerica Corp., et al.***  
**San Bernardino County Superior Court, Case No. CIVDS1930814**  
and  
***Tania Estremera v. Biscomerica Corp., et al.***  
**San Bernardino County Superior Court, Case No. CIVDS2004539**

### **PLEASE READ THIS NOTICE CAREFULLY.**

**You have received this Notice because Defendant's records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced matters.**

**You do not need to take any action to receive a settlement payment and, unless you request to be excluded from the settlement, your legal rights may be affected.**

**This Notice is designed to advise you of your rights and options with respect to the settlement.**

By order of the Superior Court of California for the County of San Bernardino (the "Court" or "San Bernardino County Superior Court"), you are notified that: preliminary approval of a class action settlement reached between plaintiffs Brianna Flores, Tania Estremera, and Dexter Hanson ("Plaintiffs") and Defendant Biscomerica Corp. ("Defendant"), was granted on [preliminary approval date], in the now-consolidated cases entitled *Brianna Flores, et al. v. Biscomerica Corp., et al.*, San Bernardino County Superior Court, Case No. CIVDS1930814 (the "*Flores* Action") and *Tania Estremera v. Biscomerica Corp., et al.*, San Bernardino County Superior Court, Case No. CIVDS2004539 (the "*Estremera* Action") (together, the "Actions" or "Consolidated Action"), which may affect your legal rights.

### **I. IMPORTANT DEFINITIONS**

"**Class Settlement**" means the settlement and resolution of the Released Claims (as defined below in Section III.D), except for those arising under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* ("PAGA").

"**Class**" means all current and former hourly-paid and/or non-exempt employees who worked for Defendant within the State of California at any time during the Class Period.

"**Class Member**" means a member of the Class.

"**Class Period**" means the period from October 15, 2015 through June 10, 2021.

"**PAGA Settlement**" means the settlement and resolution of the Released Claims arising under PAGA.

"**PAGA Member**" means all current and former hourly-paid and/or non-exempt employees who worked for Defendant within the State of California at any time during the PAGA Period.

"**PAGA Period**" means the period from October 15, 2018 through June 10, 2021.

### **II. BACKGROUND OF THE ACTION**

On October 15, 2019, Plaintiff Brianna Flores commenced the *Flores* Action against Defendant, in the Superior Court of California for the County of San Bernardino, Case No. CIVDS1930814. On February 11, 2020, Plaintiff Tania Estremera commenced the *Estremera* Action against Defendant in the San Bernardino County Superior Court, Case No. CIVDS2004539.

On July 28, 2021, Plaintiffs filed the First Amended Consolidated Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Operative Complaint" or "First Amended Complaint") to consolidate the *Flores* Action and *Estremera* Action for purposes of settlement, with the *Flores* Action as the lead action.

Collectively, Plaintiffs alleged that Defendant violated the California Labor Code and California Business and Professions Code with respect to themselves and the Class Members by, *inter alia*, failing to properly pay for all hours worked, including minimum and overtime wages, failing to provide legally-compliant meal and rest periods or premium pay in lieu thereof, failing to properly reimburse business expenses, failing to provide accurate wage statements, failing to maintain accurate payroll records, and failing to timely pay wages upon separation and during employment and associated waiting time penalties thereby engaging in unfair business practices and owing penalties under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”). Collectively, Plaintiffs seek, among other things, recovery of unpaid wages and meal and rest period premiums, restitution, declaratory relief, penalties, interest, and attorneys’ fees and costs.

Defendant denies all of the allegations in the Consolidated Action or that it violated any law, and contends that at all times it has fully complied with all applicable federal, state, and local laws.

The Parties participated in a full-day mediation session with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into the Joint Stipulation of Class Action and Settlement (“Settlement” or “Settlement Agreement”), which was preliminarily approved by the Court on [Preliminary Approval Date]. The Court has appointed Phoenix Settlement Administrators as the administrator of the Settlement (“Settlement Administrator”), Plaintiffs as representatives of the Class (“Class Representatives”), and the following Plaintiff’s counsel as counsel for the Class (“Class Counsel”):

Edwin Aiwarzian  
Arby Aiwarzian  
Joanna Ghosh  
**Lawyers for Justice, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203  
Telephone: (818) 265-1020 / Fax: (818) 265-1021

The Settlement represents a compromise and Settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that the claims in the Consolidated Action have merit or that Defendant has any liability to Plaintiffs or to Class Members. Plaintiffs and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable and adequate, and that the Settlement is in the best interests of the Class Members.

### **III. SUMMARY OF THE PROPOSED SETTLEMENT**

#### **A. Settlement Formula**

The Gross Settlement Amount is One Million Two Hundred Thousand Dollars and Zero Cents (\$1,200,000.00) (the “Gross Settlement Amount”). The portion of the Gross Settlement Amount that is available for payment to Class Members who do not opt out of this Class Settlement (“Settlement Class Members”) is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Gross Settlement Amount less the following payments which are subject to approval by the Court: (1) attorneys’ fees in an amount of up to one-third (1/3) of the Gross Settlement Amount and reimbursement of litigation costs and expenses in an amount of up to Twenty-Five Thousand Dollars (\$25,000) to Class Counsel (collectively, “Attorneys’ Fees and Costs”); (2) Enhancement Awards in an amount not to exceed Six Thousand Five Hundred Dollars (\$6,500) each to Plaintiffs Flores, Estremera, and Norman (Grossing \$19,500) for their services (“Enhancement Awards”); (3) settlement administration costs in an amount not to exceed Thirteen Thousand Dollars (\$13,000.00) to the Settlement Administrator (“Settlement Administration Fees”); and (4) the allocation of One Hundred Fifty Thousand Dollars (\$150,000) to settle all claims under PAGA (“PAGA Payment”), of which 75%, or \$112,500, will be paid to the Labor and Workforce Development Agency (“LWDA”) and the remaining 25%, or \$37,500, will be paid to PAGA Members on *pro rata* basis.

Class Members are eligible to receive a *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) based on the number of workweeks during which they worked for Defendant in the State of California (“Covered Workweeks”) during the period from October 15, 2015 through June 10, 2021] (i.e., Class Period). Specifically, the Net Settlement Amount will be divided by the total of all Covered Workweeks of Settlement Class Members during the Class Period in order to establish the value of each Covered Workweek. The Individual Settlement Share of each Settlement

Class Member will be calculated by multiplying the value of a Covered Workweek by the number of Covered Workweeks worked by the Settlement Class Member during the Class Period.

PAGA Members will receive a *pro rata* share of 25% of the PAGA Payment (“Individual PAGA Payment”) based on their number of Covered Workweeks during the period from October 15, 2018 through June 10, 2021 (i.e., PAGA Period). Specifically, 25% of the PAGA Payment will be divided by the total of all Covered Workweeks worked by PAGA Members during the PAGA Period in order to establish the value of each Covered Workweek worked. The Individual PAGA Payment of each PAGA Member will be calculated by multiplying the value of a Covered Workweek by the number of Covered Workweeks worked by the PAGA Member during the PAGA Period.

Each Individual Settlement Share will be allocated as twenty percent (20%) as wages (which will be reported on an IRS Form W2), and eighty percent (80%) as interest, penalties, and other non-wage damages (which will be reported on an IRS Form 1099, if applicable). Individual PAGA Payments will be allocated as one hundred percent (100%) penalties (which will be reported on IRS Form 1099). Each Individual Settlement Share will be subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of the Individual Settlement Share. The net payment of each Settlement Class Member’s Individual Settlement Share (after reduction for the employee’s share of taxes on the wage portion) and Individual PAGA Payment (if applicable) is referred to as their “Individual Settlement Payment.”

If the Court grants final approval of the Settlement, Individual Settlement Payments and Individual PAGA Payments (if applicable) will be mailed to Settlement Class Members in a single check at the address that is on file with the Settlement Administrator. **If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

**B. Your Covered Workweeks Based on Defendant’s Records**

According to Defendant’s records:

**From October 15, 2015 through June 10, 2021, you worked for Defendant as a non-exempt employee in California for [REDACTED] Covered Workweeks.**

**From October 15, 2018 through June 10, 2021, you worked for Defendant as a non-exempt employee in California for [REDACTED] Covered Workweeks.**

If you wish to dispute the number of Covered Workweeks credited to you, you must submit a timely and complete written letter (“Covered Workweek Dispute”) to the Settlement Administrator. The Covered Workweek Dispute must: (1) contain your full name, current mailing address, current telephone number, last four digits of your Social Security number or employee ID number, and signature; (2) contain the case name and number of the *Flores* Action (*Brianna Flores, et al. v. Biscomerica Corp., et al.*, Case No. CIVDS1930814); (3) contain a clear statement explaining the basis for your dispute of the number of Covered Workweeks credited to you; (4) attach any documentation that you have to support the dispute; and (5) be mailed to the Settlement Administrator at the address listed in Section IV.B below, postmarked **on or before [Response Deadline]** (based on the postmark date).

**C. Your Estimated Individual Settlement Share and Individual PAGA Payment**

As explained above, your estimated Individual Settlement Share and Individual PAGA Payment are based on the number of Covered Workweeks credited to you.

**Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$[REDACTED] and your Individual PAGA Payment is estimated to be \$[REDACTED]. The Individual Settlement Share is subject to reduction for the employee’s share of taxes and withholding with respect to the wage portion of the Individual Settlement Share.**

Individual Settlement Payments (i.e., the net payment of the Individual Settlement Share after reduction for the employee’s share of taxes on the wage portion) and Individual PAGA Payments, will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

///

The Settlement approval process may take multiple months. Your Individual Settlement Share reflected in this Notice is only an estimate. Your actual Individual Settlement Share may be higher or lower.

**D. Released Claims**

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiffs and all Class Members who do not submit a complete and timely Request for Exclusion (i.e., Settlement Class Members) will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties from all Released Claims that do not arise under PAGA that he or she may have or had. In addition, all PAGA Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims that do arise under PAGA.

“Released Claims” means all claims and/or causes of action under state, federal, and local law that were pled in the Actions or that could have been pled based on the factual allegations in the Operative Complaint, arising at any time from October 15, 2015 through and including the date of the Preliminary Approval Order, including and not limited to the California Labor Code, Industrial Welfare Commission Wage Orders, and California Business & Professions Code section 17200, *et seq.*, including but not limited to: the failure to pay all wages due (including, but not limited to, minimum wages, overtime wages, wages for off-the-clock work, allegations of rounding, and failure to properly calculate and pay all wages due), the failure to provide meal periods and pay associated premiums, the failure to provide rest periods and pay associated premiums, the failure to pay waiting-time penalties, the failure to timely pay wages during employment and at termination of employment, the failure to keep and maintain accurate payroll records, the failure to comply with Wage Theft Protection Act of 2011 and/or California Labor Code section 2810.5, the failure to provide accurate itemized wage statements, the failure to reimburse business expenses, unfair business practices, civil penalties under the Private Attorneys General Act, California Labor Code section 2698, *et seq.*, restitution and other equitable relief, conversion, liquidated damages, punitive damages, and penalties.

“Released Parties” means Defendant, its past or present officers, managers, members, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys.

**E. Attorneys’ Fees and Costs to Class Counsel**

Class Counsel will seek attorneys’ fees in an amount of up to one-third (1/3) of the Gross Settlement Amount and reimbursement of litigation costs and expenses in an amount of up to Twenty-Five Thousand Dollars (\$25,000), to be paid from the Gross Settlement Amount, subject to approval by the Court. Class Counsel have been prosecuting the Actions on behalf of Plaintiffs and Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.

**F. Enhancement Awards to Plaintiffs**

Plaintiffs will seek the amount of Six Thousand Five Hundred Dollars (\$6,500) as Enhancement Awards each to Plaintiffs Brianna Flores, Tania Estremera, and Dexter Hanson, in recognition of their services in connection with the Actions. The Enhancement Awards will be paid from the Gross Settlement Amount subject to approval by the Court, and if awarded, it will be paid to Plaintiffs in addition to their Individual Settlement Payments and Individual PAGA Payments that they are entitled to under the Settlement.

**G. Settlement Administration Fees to the Settlement Administrator**

Payment to the Settlement Administrator is estimated not to exceed Thirteen Thousand Dollars (\$13,000) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, receiving and reviewing Requests for Exclusion, Objections, and/or Covered Workweeks Disputes, if any, submitted by Class Members, calculating Individual Settlement Shares, Individual Settlement Payments, and Individual PAGA Payments, and distributing payments and tax forms under the Settlement, and will be paid from the Gross Settlement Amount subject to approval by the Court.

#### **IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?**

##### **A. Participate in the Class Settlement**

**If you want to receive money from the Class Settlement, you do not have to do anything.** You will automatically be issued your Individual Settlement Payment unless you decide to exclude yourself from the Class Settlement. Unless you elect to exclude yourself from the Settlement, you will be bound by the terms of the Settlement and any judgment that may be entered by the Court based thereon, and you will be deemed to have released the Released Parties for the Released Claims that do not arise under PAGA and the Released Claims arising under PAGA, as described in Section III.D above. As a Class Member, you will not be separately responsible for the payment of attorney's fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and expenses.

##### **B. Request Exclusion from the Class Settlement**

If you do not wish to participate in the Class Settlement, you may seek exclusion from (or "opt out" of) the Class Settlement by submitting a timely and complete written letter ("Request for Exclusion") to the Settlement Administrator at the following address:

[Settlement Administrator]  
[Address]

The Request for Exclusion must: (1) contain your full name, current mailing address, current telephone number, last four digits of your Social Security number or employee ID number, and signature; (2) contain the case name and number of the *Flores* Action (*Brianna Flores, et al. v. Biscoimerica Corp., et al.*, Case No. CIVDS1930814); (3) contain a clear statement indicating that you seek exclusion from the Class Settlement; and (4) be mailed to the Settlement Administrator **no later than [Response Deadline]** (based on the postmark date).

If the Court grants final approval of the Settlement, any Class Member who submits a timely and complete Request for Exclusion will not be entitled to receive an Individual Settlement Payment from the Settlement, will not be bound by the Class Settlement and Released Claims that do not arise under PAGA as described in Section III.D above, and will not have any right to object to, appeal, or comment on the Class Settlement. Regardless of whether a Class Member submits a timely and complete Request for Exclusion, if he or she is a PAGA Member, he or she will be bound by the Released Claims that do arise under PAGA and will be paid an Individual PAGA Payment.

##### **C. Object to the Class Settlement**

You can object to the terms of the Class Settlement as long as you have not submitted a Request for Exclusion.

To object to the Class Settlement, you may either appear at the Final Approval Hearing and offer an oral objection or submit a timely and complete written objection ("Objection") to the Settlement Administrator. The Objection must: (1) contain your full name, current address, current telephone number, last four digits of your Social Security number or employee ID number, and signature; (2) contain the case name and number of the *Flores* Action (*Brianna Flores, et al. v. Biscoimerica Corp., et al.*, Case No. CIVDS1930814); (3) contain a clear statement explaining the legal and factual basis of your objection(s) to the Class Settlement; (4) contain a statement indicating whether or not you are represented by counsel and identifying any such legal counsel and indicating whether you intend to appear at the Final Approval Hearing to present your objection(s); and (5) be mailed to the Settlement Administrator at the address listed in Section IV.B above, **no later than [Response Deadline]** (based on the postmark date).

#### **V. FINAL APPROVAL HEARING**

The Court will hold a Final Approval Hearing in Department S26 of the San Bernardino County Superior Court, located at San Bernardino Justice Center, 247 West Third Street, San Bernardino, California 92415, on [date], at [time], to determine whether the Settlement should be finally approved as fair, reasonable, and adequate and whether the attorneys' fees and costs to Class Counsel, Enhancement Awards to Plaintiffs, and Settlement Administration Fees to the Settlement Administrator should be awarded.

The hearing may be continued without further notice to the Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear remotely if you wish to.

## **VI. ADDITIONAL INFORMATION**

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers which are on file with the Court.

You may view the Settlement Agreement and other court records in the Action for a fee by visiting the civil clerk's office, located at 247 West Third Street, San Bernardino, California 92415, during business hours, or by online by visiting the following website: <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>, clicking "Accept (Civil)," clicking "Civil, Fam law, Sm Cl, Probate," clicking "Case Number Search," selecting "CIV" as the Case Type and typing in the Court Case Number "DS1930814" for the *Flores* Action and the Court Case Number "DS2004539" for the *Estremera* Action.

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.**

**IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: [INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.**

## **Exhibit B**

Edwin Aiwarzian (SBN 232943)  
Arby Aiwarzian (SBN 269827)  
Joanna Ghosh (SBN 272479)  
**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203  
Tel: (818) 265-1020 / Fax: (818) 265-1021

*Attorneys for Plaintiffs*

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

JUL 28 2021

BY   
DEBRA PEDROSA, DEPUTY

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

BRIANNA FLORES, TANIA  
ESTREMER, individually, and on behalf  
of other members of the general public  
similarly situated; DEXTER NORMAN  
HANSEN, individually, and on behalf of  
other aggrieved employees pursuant to the  
California Private Attorneys General Act;

Plaintiffs,

vs.

BISCOMERICA CORP., a California  
corporation; and DOES 1 through 100,  
inclusive,

Defendants.

Case No.: CIVDS1930814

**FIRST AMENDED CONSOLIDATED  
CLASS ACTION COMPLAINT FOR  
DAMAGES & ENFORCEMENT UNDER  
THE PRIVATE ATTORNEYS GENERAL  
ACT, CALIFORNIA LABOR CODE §  
2698, ET SEQ.**



- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (10) Violation of California Business & Professions Code §§ 17200, et seq.;

(11) Violation of California Labor Code §  
2698, et seq. (California Labor Code  
Private Attorneys General Act of 2004)

**DEMAND FOR JURY TRIAL**

COMES NOW, Plaintiffs BRIANNA FLORES (“Plaintiff FLORES”) and Plaintiff TANIA ESTREMER (“Plaintiff ESTREMER”), individually, and on behalf of other members of the general public similarly situated, and Plaintiff DEXTER NORMAN HANSEN (“Plaintiff HANSEN”) (collectively, “Plaintiffs”), individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, and allege as follows:

**JURISDICTION AND VENUE**

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

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

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of San Bernardino. The majority of acts and omissions alleged herein relating to Plaintiffs and the other class members took place in the State of California, including the County of San Bernardino. At all relevant times, Defendant maintained its headquarters/“nerve center” within the State of California, County of San Bernardino.

**PARTIES**

5. Plaintiff BRIANNA FLORES is an individual residing in the State of California, County of San Bernardino.

6. Plaintiff TANIA ESTREMER is an individual residing in the State of California, County of San Bernardino.

7. Plaintiff DEXTER NORMAN HANSEN is an individual residing in the State of California, County of Riverside.

8. Defendant BISCOMERICA CORP., at all times herein mentioned, was and is, upon information and belief, a California corporation and, at all times herein mentioned, an employer whose employees are engaged throughout the State of California, including the County of San Bernardino.

9. At all relevant times, Defendant BISCOMERICA CORP. was the “employer” of Plaintiffs within the meaning of all applicable California laws and statutes.

10. At all times herein relevant, Defendants BISCOMERICA CORP., and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant designated as a DOE herein.

11. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs who sue said defendants by such fictitious names. Plaintiffs are informed and believe, and based on that information and belief allege, that each of the defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint. Plaintiffs will seek leave of court to amend this Complaint to show the true names and

capacities when the same have been ascertained.

12. Defendant BISCOMERICA CORP. and DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

13. Plaintiffs further allege that Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiffs and the other class members so as to make each of said Defendants employers liable under the statutory provisions set forth herein.

### **CLASS ACTION ALLEGATIONS**

14. Plaintiffs FLORES and ESTREMER bring this action on their own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under California Code of Civil Procedure section 382.

15. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from October 15, 2015 to final judgment and who reside in California.

16. Plaintiffs reserve the right to establish subclasses as appropriate.

17. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiffs FLORES and ESTREMER at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants’ employment records.

b. Typicality: Plaintiffs FLORES’s and ESTREMER’s claims are typical of all other class members’ as demonstrated herein. Plaintiffs FLORES and ESTREMER will fairly and adequately protect the interests of the other class members with whom she has a well-defined community of interest.

- 1 c. Adequacy: Plaintiffs FLORES and ESTREMER A will fairly and  
2 adequately protect the interests of each class member, with whom she  
3 has a well-defined community of interest and typicality of claims, as  
4 demonstrated herein. Plaintiffs FLORES and ESTREMER A have no  
5 interest that is antagonistic to the other class members. Plaintiffs'  
6 attorneys, the proposed class counsel, are versed in the rules governing  
7 class action discovery, certification, and settlement. Plaintiffs FLORES  
8 and ESTREMER A have incurred, and during the pendency of this action  
9 will continue to incur, costs and attorneys' fees, that have been, are, and  
10 will be necessarily expended for the prosecution of this action for the  
11 substantial benefit of each class member.
- 12 d. Superiority: A class action is superior to other available methods for the  
13 fair and efficient adjudication of this litigation because individual joinder  
14 of all class members is impractical.
- 15 e. Public Policy Considerations: Certification of this lawsuit as a class  
16 action will advance public policy objectives. Employers of this great  
17 state violate employment and labor laws every day. Current employees  
18 are often afraid to assert their rights out of fear of direct or indirect  
19 retaliation. However, class actions provide the class members who are  
20 not named in the complaint anonymity that allows for the vindication of  
21 their rights.

22 18. There are common questions of law and fact as to the class members that  
23 predominate over questions affecting only individual members. The following common  
24 questions of law or fact, among others, exist as to the members of the class:

- 25 a. Whether Defendants' failure to pay wages, without abatement or  
26 reduction, in accordance with the California Labor Code, was willful;
- 27 b. Whether Defendants' had a corporate policy and practice of failing to  
28 pay their hourly-paid or non-exempt employees within the State of

1 California for all hours worked and missed (short, late, interrupted,  
2 and/or missed altogether) meal periods and rest breaks in violation of  
3 California law;

4 c. Whether Defendants required Plaintiffs FLORES and ESTREMER and  
5 the other class members to work over eight (8) hours per day and/or over  
6 forty (40) hours per week and failed to pay the legally required overtime  
7 compensation to Plaintiffs FLORES and ESTREMER and the other  
8 class members;

9 d. Whether Defendants deprived Plaintiffs FLORES and ESTREMER and  
10 the other class members of meal and/or rest periods or required Plaintiffs  
11 FLORES and ESTREMER and the other class members to work during  
12 meal and/or rest periods without compensation;

13 e. Whether Defendants failed to pay minimum wages to Plaintiffs FLORES  
14 and ESTREMER and the other class members for all hours worked;

15 f. Whether Defendants failed to pay all wages due to Plaintiffs FLORES  
16 and ESTREMER and the other class members within the required time  
17 upon their discharge or resignation;

18 g. Whether Defendants failed to timely pay all wages due to Plaintiffs  
19 FLORES and ESTREMER and the other class members during their  
20 employment;

21 h. Whether Defendants complied with wage reporting as required by the  
22 California Labor Code; including, *inter alia*, section 226;

23 i. Whether Defendants kept complete and accurate payroll records as  
24 required by the California Labor Code, including, *inter alia*, section  
25 1174(d);

26 j. Whether Defendants failed to reimburse Plaintiffs FLORES and  
27 ESTREMER and the other class members for necessary business-  
28 related expenses and costs;

- k. Whether Defendants' conduct was willful or reckless;
- l. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, et seq.;
- m. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- n. Whether Plaintiffs FLORES and ESTREMER and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

### **PAGA ALLEGATIONS**

19. At all times herein set forth, PAGA was applicable to Plaintiff HANSEN's employment by Defendants.

20. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

21. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

22. Plaintiff HANSEN was employed by Defendants and the alleged violation was committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff HANSEN and the other employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

23. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff HANSEN, may pursue a civil action arising under PAGA after the following requirements have been met:

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1 a. The aggrieved employee shall give written notice by online submission  
2 (hereinafter “Employee’s Notice”) to the Labor & Workforce  
3 Development Agency (hereinafter “LWDA”) and by U.S. Certified Mail  
4 to the employer of the specific provisions of the California Labor Code  
5 alleged to have been violated, including the facts and theories to support  
6 the alleged violations.

7 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the  
8 employer and the aggrieved employee by certified mail that it does not  
9 intend to investigate the alleged violation within sixty (60) calendar days  
10 of the postmark date of the Employee’s Notice. Upon receipt of the  
11 LWDA Notice, or if the LWDA Notice is not provided within sixty-five  
12 (65) calendar days of the postmark date of the Employee’s Notice, the  
13 aggrieved employee may commence a civil action pursuant to California  
14 Labor Code section 2699 to recover civil penalties in addition to any  
15 other penalties to which the employee may be entitled.

16 24. On May 11, 2021, Plaintiff HANSEN provided written notice by online  
17 submission to the LWDA and by U.S. Certified Mail to Defendants of the specific provisions  
18 of the California Labor Code alleged to have been violated, including the facts and theories to  
19 support the alleged violations. Plaintiff HANSEN has not received an LWDA Notice within  
20 sixty-five (65) calendar days of the date of Plaintiff HANSEN’s notice.

21 25. Therefore, Plaintiff HANSEN has satisfied the administrative prerequisites  
22 under California Labor Code section 2699.3(a) to recover civil penalties against Defendants,  
23 for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),  
24 551, 552, 558, 1174(d), 1182.12, 1192, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802.

### 25 **GENERAL ALLEGATIONS**

26 26. At all relevant times set forth herein, Defendants employed Plaintiffs and other  
27 persons as hourly-paid or non-exempt employees within the State of California, including the  
28 County of San Bernardino.

27. Defendants, jointly and severally, employed Plaintiff FLORES as an hourly-paid, non-exempt employee, from approximately July 2017 to approximately November 2017, in the State of California, County of San Bernardino.

28. Defendants, jointly and severally, employed Plaintiff ESTREMER as an hourly-paid, non-exempt employee, from approximately July 2017 to approximately November 2017, in the State of California, County of San Bernardino.

29. Defendants, jointly and severally, has employed Plaintiff HANSEN as an hourly-paid, non-exempt employee, from approximately October 29, 1996 to the present, in the State of California, County of San Bernardino.

30. Defendants hired Plaintiffs and the other class members, classified them as hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and missed meal periods and/or rest breaks.

31. Defendants had the authority to hire and terminate Plaintiffs and the other class members, to set work rules and conditions governing Plaintiffs' and the other class members' employment, and to supervise their daily employment activities.

32. Defendants exercised sufficient authority over the terms and conditions of Plaintiffs' and the other class members' employment for them to be joint employers of Plaintiffs and the other class members.

33. Defendants directly hired and paid wages and benefits to Plaintiffs and the other class members.

34. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

35. Plaintiffs and the other class members worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

36. Plaintiffs are informed and believe, and based thereon allege, that Defendants engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt employees within the State of California. This pattern and practice involved, *inter alia*, failing to pay them for all regular and/or overtime wages earned and for missed meal periods and rest

breaks in violation of California law.

37. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and the other class members were entitled to receive certain wages for overtime compensation and that they were not receiving accurate overtime compensation for all overtime hours worked.

38. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed to provide Plaintiffs and the other class members all required rest and meal periods during the relevant time period as required under the Industrial Welfare Commission Wage Orders and thus they are entitled to any and all applicable penalties.

39. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and the other class members were entitled to receive all meal periods or payment of one additional hour of pay at Plaintiffs' and the other class member's regular rate of pay when a meal period was missed, and they did not receive all meal periods or payment of one additional hour of pay at Plaintiffs' and the other class member's regular rate of pay when a meal period was missed.

40. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and the other class members were entitled to receive all rest periods or payment of one additional hour of pay at Plaintiffs' and the other class member's regular rate of pay when a rest period was missed, and they did not receive all rest periods or payment of one additional hour of pay at Plaintiffs' and the other class members' regular rate of pay when a rest period was missed.

41. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and the other class members were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for all hours worked.

42. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and the other class members were entitled to receive all wages owed to them upon discharge or resignation, including overtime and minimum wages

1 and meal and rest period premiums, and they did not, in fact, receive all such wages owed to  
2 them at the time of their discharge or resignation.

3 43. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
4 knew or should have known that Plaintiffs and the other class members were entitled to receive  
5 all wages owed to them during their employment. Plaintiffs and the other class members did  
6 not receive payment of all wages, including overtime and minimum wages and meal and rest  
7 period premiums, within any time permissible under California Labor Code section 204.

8 44. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
9 knew or should have known that Plaintiffs and the other class members were entitled to receive  
10 complete and accurate wage statements in accordance with California law, but, in fact, they did  
11 not receive complete and accurate wage statements from Defendants. The deficiencies  
12 included, *inter alia*, the failure to include the total number of hours worked by Plaintiffs and  
13 the other class members.

14 45. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
15 knew or should have known that Defendants had to keep complete and accurate payroll records  
16 for Plaintiffs and the other class members in accordance with California law, but, in fact, did  
17 not keep complete and accurate payroll records.

18 46. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
19 knew or should have known that Plaintiffs and the other class members were entitled to  
20 reimbursement for necessary business-related expenses.

21 47. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
22 knew or should have known that they had a duty to compensate Plaintiffs and the other class  
23 members pursuant to California law, and that Defendants had the financial ability to pay such  
24 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely  
25 represented to Plaintiffs and the other class members that they were properly denied wages, all  
26 in order to increase Defendants' profits.

27 48. During the relevant time period, Defendants failed to pay overtime wages to  
28 Plaintiffs and the other class members for all overtime hours worked. Plaintiffs and the other

1 class members were required to work more than eight (8) hours per day and/or forty (40) hours  
2 per week without overtime compensation for all overtime hours worked.

3 49. During the relevant time period, Defendants failed to provide all requisite  
4 uninterrupted meal and rest periods to Plaintiffs and the other class members.

5 50. During the relevant time period, Defendants failed to pay Plaintiffs and the other  
6 class members at least minimum wages for all hours worked.

7 51. During the relevant time period, Defendants failed to pay Plaintiffs and the other  
8 class members all wages owed to them upon discharge or resignation.

9 52. During the relevant time period, Defendants failed to pay Plaintiffs and the other  
10 class members all wages within any time permissible under California law, including, *inter*  
11 *alia*, California Labor Code section 204.

12 53. During the relevant time period, Defendants failed to provide complete or  
13 accurate wage statements to Plaintiffs and the other class members.

14 54. During the relevant time period, Defendants failed to keep complete or accurate  
15 payroll records for Plaintiffs and the other class members.

16 55. During the relevant time period, Defendants failed to reimburse Plaintiffs and  
17 the other class members for all necessary business-related expenses and costs.

18 56. During the relevant time period, Defendants failed to properly compensate  
19 Plaintiffs and the other class members pursuant to California law in order to increase  
20 Defendants' profits.

21 57. California Labor Code section 218 states that nothing in Article 1 of the Labor  
22 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty  
23 due to him [or her] under this article."

24 **FIRST CAUSE OF ACTION**

25 **(Violation of California Labor Code §§ 510 and 1198)**

26 **(Against BISCOMERICA CORP. and DOES 1 through 100)**

27 58. Plaintiffs FLORES and ESTREMERIA incorporate by reference the allegations  
28 contained in Paragraphs 1 through 57, and each and every part thereof with the same force and

effect as though fully set forth herein.

59. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

60. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs FLORES and ESTREMER and the other class members employed by Defendants, and working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

61. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiffs FLORES and ESTREMER and the other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

62. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

63. During the relevant time period, Plaintiffs FLORES and ESTREMER and the other class members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

64. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiffs FLORES and ESTREMER and the other class members.

///

65. Defendants' failure to pay Plaintiffs FLORES and ESTREMER and the other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

66. Pursuant to California Labor Code section 1194, Plaintiffs FLORES and ESTREMER and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

## **SECOND CAUSE OF ACTION**

**(Violation of California Labor Code §§ 226.7 and 512(a))**

**(Against BISCOERICA CORP. and DOES 1 through 100)**

67. Plaintiffs FLORES and ESTREMER incorporate by reference the allegations contained in paragraphs 1 through 66, and each and every part thereof with the same force and effect as though fully set forth herein.

68. At all relevant times, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiffs FLORES's and ESTREMER's and the other class members' employment by Defendants.

69. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

70. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

71. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause or permit an employee to work for a work period of more than ten (10) hours per day without providing the

1 employee with a second uninterrupted meal period of not less than thirty (30) minutes, except  
2 that if the total hours worked is no more than twelve (12) hours, the second meal period may  
3 be waived by mutual consent of the employer and the employee only if the first meal period  
4 was not waived.

5 72. During the relevant time period, Plaintiffs FLORES and ESTREMER and the  
6 other class members who were scheduled to work for a period of time no longer than six (6)  
7 hours, and who did not waive their legally-mandated meal periods by mutual consent, were  
8 required to work for periods longer than five (5) hours without an uninterrupted meal period of  
9 not less than thirty (30) minutes and/or rest period.

10 73. During the relevant time period, Plaintiffs FLORES and ESTREMER and the  
11 other class members who were scheduled to work for a period of time in excess of six (6) hours  
12 were required to work for periods longer than five (5) hours without an uninterrupted meal  
13 period of not less than thirty (30) minutes and/or rest period.

14 74. During the relevant time period, Defendants intentionally and willfully required  
15 Plaintiffs FLORES and ESTREMER and the other class members to work during meal  
16 periods and failed to compensate Plaintiffs FLORES and ESTREMER and the other class  
17 members the full meal period premium for work performed during meal periods.

18 75. During the relevant time period, Defendants failed to pay Plaintiffs FLORES  
19 and ESTREMER and the other class members the full meal period premium due pursuant to  
20 California Labor Code section 226.7.

21 76. Defendants' conduct violates applicable IWC Wage Order and California Labor  
22 Code sections 226.7 and 512(a).

23 77. Pursuant to applicable IWC Wage Order and California Labor Code section  
24 226.7(b), Plaintiffs FLORES and ESTREMER and the other class members are entitled to  
25 recover from Defendants one additional hour of pay at the employee's regular rate of  
26 compensation for each work day that the meal or rest period is not provided.

27 ///

28 ///

**THIRD CAUSE OF ACTION**

**(Violation of California Labor Code § 226.7)**

**(Against BISCOMERICA CORP. and DOES 1 through 100)**

78. Plaintiffs FLORES and ESTREMERERA incorporate by reference the allegations contained in paragraphs 1 through 77, and each and every part thereof with the same force and effect as though fully set forth herein.

79. At all times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiffs FLORES's and ESTREMERERA's and the other class members' employment by Defendants.

80. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

81. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

82. During the relevant time period, Defendants required Plaintiffs FLORES and ESTREMERERA and other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

83. During the relevant time period, Defendants willfully required Plaintiffs FLORES and ESTREMERERA and the other class members to work during rest periods and failed to pay Plaintiffs FLORES and ESTREMERERA and the other class members the full rest period premium for work performed during rest periods.

84. During the relevant time period, Defendants failed to pay Plaintiffs FLORES and ESTREMERERA and the other class members the full rest period premium due pursuant to California Labor Code section 226.7

85. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

86. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(c), Plaintiffs FLORES and ESTREMER and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

**FOURTH CAUSE OF ACTION**

**(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

**(Against BISCOMERICA CORP. and DOES 1 through 100)**

87. Plaintiffs FLORES and ESTREMER incorporate by reference the allegations contained in paragraphs 1 through 86, and each and every part thereof with the same force and effect as though fully set forth herein.

88. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

89. During the relevant time period, Defendants failed to pay minimum wage to Plaintiffs FLORES and ESTREMER and the other class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1.

90. Defendants' failure to pay Plaintiffs FLORES and ESTREMER and the other class members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiffs FLORES and ESTREMER and the other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

91. Pursuant to California Labor Code section 1197.1, Plaintiffs FLORES and ESTREMER and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

92. Pursuant to California Labor Code section 1194.2, Plaintiffs FLORES and ESTREMERERA and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

**FIFTH CAUSE OF ACTION**

**(Violation of California Labor Code §§ 201 and 202)**

**(Against BISCOERICA CORP. and DOES 1 through 100)**

93. Plaintiffs FLORES and ESTREMERERA incorporate by reference the allegations contained in paragraphs 1 through 92, and each and every part thereof with the same force and effect as though fully set forth herein.

94. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

95. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiffs FLORES and ESTREMERERA and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

96. Defendants' failure to pay Plaintiffs FLORES and ESTREMERERA and the other class members who are no longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

97. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

1 98. Plaintiffs FLORES and ESTREMER and the other class members are entitled  
2 to recover from Defendants the statutory penalty wages for each day they were not paid, up to  
3 a thirty (30) day maximum pursuant to California Labor Code section 203.

4 **SIXTH CAUSE OF ACTION**

5 **(Violation of California Labor Code § 204)**

6 **(Against BISCOMERICA CORP. and DOES 1 through 100)**

7 99. Plaintiffs FLORES and ESTREMER incorporate by reference the allegations  
8 contained in paragraphs 1 through 98, and each and every part thereof with the same force and  
9 effect as though fully set forth herein.

10 100. At all times herein set forth, California Labor Code section 204 provides that all  
11 wages earned by any person in any employment between the 1st and 15th days, inclusive, of  
12 any calendar month, other than those wages due upon termination of an employee, are due and  
13 payable between the 16th and the 26th day of the month during which the labor was  
14 performed.

15 101. At all times herein set forth, California Labor Code section 204 provides that all  
16 wages earned by any person in any employment between the 16th and the last day, inclusive,  
17 of any calendar month, other than those wages due upon termination of an employee, are due  
18 and payable between the 1st and the 10th day of the following month.

19 102. At all times herein set forth, California Labor Code section 204 provides that all  
20 wages earned for labor in excess of the normal work period shall be paid no later than the  
21 payday for the next regular payroll period.

22 103. During the relevant time period, Defendants intentionally and willfully failed to  
23 pay Plaintiffs FLORES and ESTREMER and the other class members all wages due to them,  
24 within any time period permissible under California Labor Code section 204.

25 104. Plaintiffs FLORES and ESTREMER and the other class members are entitled  
26 to recover all remedies available for violations of California Labor Code section 204.

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**SEVENTH CAUSE OF ACTION**

**(Violation of California Labor Code § 226(a))**

**(Against BISCOMERICA CORP. and DOES 1 through 100)**

105. Plaintiffs FLORES and ESTREMERERA incorporate by reference the allegations contained in paragraphs 1 through 104, and each and every part thereof with the same force and effect as though fully set forth herein.

106. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

107. Defendants have intentionally and willfully failed to provide Plaintiffs FLORES and ESTREMERERA and the other class members with complete and accurate wage statements. The deficiencies include, but are not limited to: the failure to include the total number of hours worked by Plaintiffs FLORES and ESTREMERERA and the other class members.

108. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiffs FLORES and ESTREMERERA and the other class members have suffered injury and damage to their statutorily-protected rights.

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1 109. More specifically, Plaintiffs FLORES and ESTREMER and the other class  
2 members have been injured by Defendants' intentional and willful violation of California  
3 Labor Code section 226(a) because they were denied both their legal right to receive, and their  
4 protected interest in receiving, accurate and itemized wage statements pursuant to California  
5 Labor Code section 226(a).

6 110. Plaintiffs FLORES and ESTREMER and the other class members are entitled  
7 to recover from Defendants the greater of their actual damages caused by Defendants' failure  
8 to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding  
9 four thousand dollars per employee.

10 111. Plaintiffs FLORES and ESTREMER and the other class members are also  
11 entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor  
12 Code section 226(h).

13 **EIGHTH CAUSE OF ACTION**

14 **(Violation of California Labor Code § 1174(d))**

15 **(Against BISCOMERICA CORP. and DOES 1 through 100)**

16 112. Plaintiffs FLORES and ESTREMER incorporate by reference the allegations  
17 contained in paragraphs 1 through 111, and each and every part thereof with the same force  
18 and effect as though fully set forth herein.

19 113. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a  
20 central location in the state or at the plants or establishments at which employees are  
21 employed, payroll records showing the hours worked daily by and the wages paid to, and the  
22 number of piece-rate units earned by and any applicable piece rate paid to, employees  
23 employed at the respective plants or establishments. These records shall be kept in accordance  
24 with rules established for this purpose by the commission, but in any case shall be kept on file  
25 for not less than two years.

26 114. Defendants have intentionally and willfully failed to keep accurate and complete  
27 payroll records showing the hours worked daily and the wages paid, to Plaintiffs FLORES and  
28 ESTREMER and the other class members.



**TENTH CAUSE OF ACTION**

**(Violation of California Business & Professions Code §§ 17200, et seq.)**

**(Against BISCOMERICA CORP. and DOES 1 through 100)**

122. Plaintiffs FLORES and ESTREMERERA incorporate by reference the allegations contained in paragraphs 1 through 121, and each and every part thereof with the same force and effect as though fully set forth herein.

123. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants' competitors. Accordingly, Plaintiffs FLORES and ESTREMERERA seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

124. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code section 17200, et seq.

125. A violation of California Business & Professions Code section 17200, et seq. may be predicated on the violation of any state or federal law. In this instant case, Defendants' policies and practices of requiring employees, including Plaintiffs FLORES and ESTREMERERA and the other class members, to work overtime without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees, including Plaintiffs FLORES and ESTREMERERA and the other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Defendants' policies and practices of failing to pay minimum wages violate California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiffs FLORES and ESTREMERERA and the other class members violate California Labor Code sections 201, 202 and 204. Defendants also violated California Labor Code sections 226(a), 1174(d), 2800 and 2802.

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1           126. As a result of the herein described violations of California law, Defendants  
2 unlawfully gained an unfair advantage over other businesses.

3           127. Plaintiffs FLORES and ESTREMER and the other class members have been  
4 personally injured by Defendants' unlawful business acts and practices as alleged herein,  
5 including but not necessarily limited to the loss of money and/or property.

6           128. Pursuant to California Business & Professions Code sections 17200, et seq.,  
7 Plaintiffs FLORES and ESTREMER and the other class members are entitled to restitution of  
8 the wages withheld and retained by Defendants during a period that commences four years  
9 preceding the filing of this Complaint; an award of attorneys' fees pursuant to California Code  
10 of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

11                           **ELEVENTH CAUSE OF ACTION**

12                           **Violation of California Labor Code § 2698, et seq.**

13                           **(Against BISCOMERICA CORP. and DOES 1 through 100)**

14           129. Plaintiff HANSEN incorporates by reference the allegations contained in  
15 paragraphs 1 through 128, and each and every part thereof with the same force and effect as  
16 though fully set forth herein.

17           130. PAGA expressly establishes that any provision of the California Labor Code  
18 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its  
19 departments, divisions, commissions, boards, agencies or employees for a violation of the  
20 California Labor Code, may be recovered through a civil action brought by an aggrieved  
21 employee on behalf of himself or herself, and other current or former employees.

22           131. Whenever the LWDA, or any of its departments, divisions, commissions,  
23 boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action  
24 is authorized to exercise the same discretion, subject to the same limitations and conditions, to  
25 assess a civil penalty.

26           132. Plaintiff HANSEN and the other hourly-paid or non-exempt employees are  
27 "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are all  
28 current or former employees of Defendants, and one or more of the alleged violations was

committed against them.

**Failure to Pay Overtime**

133. Defendants' failure to pay legally required overtime wages to Plaintiff HANSEN and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 510 and 1198.

**Failure to Provide Meal Periods**

134. Defendants' failure to provide legally required meal periods to Plaintiff HANSEN and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

**Failure to Provide Rest Periods**

135. Defendants' failure to provide legally required rest periods to Plaintiff HANSEN and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code section 226.7.

**Failure to Pay Minimum Wages**

136. Defendants' failure to pay legally required minimum wages to Plaintiff HANSEN and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 1194, 1197 and 1197.1.

**Failure to Timely Pay Wages Upon Termination**

137. Defendants' failure to timely pay wages to Plaintiff HANSEN and the other aggrieved employees upon termination in accordance with Labor Code sections 201 and 202 constitutes unlawful and/or unfair activity prohibited by Labor Code sections 201 and 202.

**Failure to Timely Pay Wages During Employment**

138. Defendants' failure to timely pay wages to Plaintiff HANSEN and the other aggrieved employees during employment in accordance with Labor Code section 204 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

**Failure to Provide Complete and Accurate Wage Statements**

139. Defendants' failure to provide complete and accurate wage statements to Plaintiff HANSEN and the other aggrieved employees in accordance with Labor Code section 226(a)

constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

**Failure to Keep Complete and Accurate Payroll Records**

140. Defendants' failure to keep complete and accurate payroll records relating to Plaintiff HANSEN and the other aggrieved employees in accordance with California Labor Code section 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

**Failure to Reimburse Necessary Business-Related Expenses and Costs**

141. Defendants' failure to reimburse Plaintiff HANSEN and the other aggrieved employees for necessary business-related expenses and costs in accordance with California Labor Code sections 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

142. Pursuant to California Labor Code section 2699, Plaintiff HANSEN, individually, and on behalf of all aggrieved employees, requests and are entitled to recover from Defendants and each of them, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all penalties pursuant to PAGA against Defendants, and each of them, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11010 et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two

1 hundred dollars (\$200) for each aggrieved employee per pay period for  
2 each subsequent violation; and

3 d. Any and all additional penalties and sums as provided by the California  
4 Labor Code and/or other statutes.

5 143. Pursuant to California Labor Code section 2699(i), civil penalties recovered by  
6 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor  
7 and Workforce Development Agency for the enforcement of labor laws and education of  
8 employers and employees about their rights and responsibilities and twenty-five percent (25%)  
9 to the aggrieved employees.

10 144. Further, Plaintiff HANSEN is entitled to seek and recover reasonable attorneys'  
11 fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other  
12 applicable statute.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs FLORES and ESTREMER, individually, and on behalf of other members of  
15 the general public similarly situated, and Plaintiff HANSEN, individually, and on behalf of  
16 other aggrieved employees pursuant to the California Private Attorneys General Act, request a  
17 trial by jury.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs FLORES and ESTREMER, individually, and on behalf of  
20 other members of the general public similarly situated, and Plaintiff HANSEN, individually,  
21 and on behalf of other aggrieved employees pursuant to the California Private Attorneys  
22 General Act, pray for relief and judgment against Defendants, jointly and severally, as follows:

23 **Class Certification**

- 24 1. That this action be certified as a class action;
- 25 2. That Plaintiffs FLORES and ESTREMER be appointed as the representatives  
26 of the Class;
- 27 3. That counsel for Plaintiffs be appointed as Class Counsel; and

28 ///

4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

**As to the First Cause of Action**

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiffs FLORES and ESTREMER and the other class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and

9. For such other and further relief as the Court may deem just and proper.

**As to the Second Cause of Action**

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiffs FLORES and ESTREMER and the other class members;

11. That the Court make an award to Plaintiffs FLORES and ESTREMER and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

1           16.     For such other and further relief as the Court may deem just and proper.

2                               **As to the Third Cause of Action**

3           17.     That the Court declare, adjudge and decree that Defendants violated California  
4 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all  
5 rest periods to Plaintiffs FLORES and ESTREMER and the other class members;

6           18.     That the Court make an award to Plaintiffs FLORES and ESTREMER and the  
7 other class members of one (1) hour of pay at each employee's regular rate of compensation  
8 for each workday that a rest period was not provided;

9           19.     For all actual, consequential, and incidental losses and damages, according to  
10 proof;

11          20.     For premium wages pursuant to California Labor Code section 226.7(c);

12          21.     For pre-judgment interest on any unpaid wages from the date such amounts  
13 were due; and

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

15                               **As to the Fourth Cause of Action**

16          23.     That the Court declare, adjudge and decree that Defendants violated California  
17 Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to  
18 Plaintiffs FLORES and ESTREMER and the other class members;

19          24.     For general unpaid wages and such general and special damages as may be  
20 appropriate;

21          25.     For statutory wage penalties pursuant to California Labor Code section 1197.1  
22 for Plaintiffs FLORES and ESTREMER and the other class members in the amount as may  
23 be established according to proof at trial;

24          26.     For pre-judgment interest on any unpaid compensation from the date such  
25 amounts were due;

26          27.     For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
27 California Labor Code section 1194(a);

28          28.     For liquidated damages pursuant to California Labor Code section 1194.2; and

29. For such other and further relief as the Court may deem just and proper.

**As to the Fifth Cause of Action**

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiffs FLORES and ESTREMER and the other class members no longer employed by Defendants;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiffs FLORES and ESTREMER and the other class members who have left Defendants' employ;

33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

34. For such other and further relief as the Court may deem just and proper.

**As to the Sixth Cause of Action**

35. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiffs FLORES and ESTREMER and the other class members;

36. For all actual, consequential, and incidental losses and damages, according to proof;

37. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

38. For such other and further relief as the Court may deem just and proper.

**As to the Seventh Cause of Action**

39. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiffs FLORES and ESTREMER and the other class members, and willfully failed

1 to provide accurate itemized wage statements thereto;

2 40. For actual, consequential and incidental losses and damages, according to proof;

3 41. For statutory penalties pursuant to California Labor Code section 226(e);

4 42. For injunctive relief to ensure compliance with this section, pursuant to  
5 California Labor Code section 226(h); and

6 43. For such other and further relief as the Court may deem just and proper.

7 **As to the Eighth Cause of Action**

8 44. That the Court declare, adjudge and decree that Defendants violated California  
9 Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records  
10 for Plaintiffs FLORES and ESTREMER and the other class members as required by  
11 California Labor Code section 1174(d);

12 45. For actual, consequential and incidental losses and damages, according to proof;

13 46. For statutory penalties pursuant to California Labor Code section 1174.5; and

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

15 **As to the Ninth Cause of Action**

16 48. That the Court declare, adjudge and decree that Defendants violated California  
17 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs FLORES and  
18 ESTREMER and the other class members for all necessary business-related expenses as  
19 required by California Labor Code sections 2800 and 2802;

20 49. For actual, consequential and incidental losses and damages, according to proof;

21 50. For the imposition of civil penalties and/or statutory penalties;

22 51. For reasonable attorneys' fees and costs of suit incurred herein; and

23 52. For such other and further relief as the Court may deem just and proper.

24 **As to the Tenth Cause of Action**

25 53. That the Court decree, adjudge and decree that Defendants violated California  
26 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiffs FLORES  
27 and ESTREMER and the other class members all overtime compensation due to them, failing  
28 to provide all meal and rest periods to Plaintiffs FLORES and ESTREMER and the other

1 class members, failing to pay at least minimum wages to Plaintiffs and the other class  
2 members, failing to pay Plaintiffs FLORES's and ESTREMERAS and the other class  
3 members' wages timely as required by California Labor Code section 201, 202 and 204 and by  
4 violating California Labor Code sections 226(a), 1174(d), 2800 and 2802.

5 54. For restitution of unpaid wages to Plaintiffs FLORES and ESTREMERAS and all  
6 the other class members and all pre-judgment interest from the day such amounts were due and  
7 payable;

8 55. For the appointment of a receiver to receive, manage and distribute any and all  
9 funds disgorged from Defendants and determined to have been wrongfully acquired by  
10 Defendants as a result of violation of California Business and Professions Code sections  
11 17200, et seq.;

12 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
13 California Code of Civil Procedure section 1021.5;

14 57. For injunctive relief to ensure compliance with this section, pursuant to  
15 California Business and Professions Code sections 17200, et seq.; and

16 58. For such other and further relief as the Court may deem just and proper.

17 **As to the Eleventh Cause of Action**

18 59. For civil penalties pursuant to California Labor Code sections 2699(a), (f) and  
19 (g), including an amount sufficient to recover underpaid wages pursuant to Labor Code section  
20 558, costs/expenses, and attorneys' fees for violation of California Labor Code sections 01,  
21 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1182.12, 1192, 1194,  
22 1194.2, 1197, 1197.1, 1198, 2800, and 2802; and

23 59. For such other and further relief as the Court may deem equitable and appropriate.

24 Dated: July 29, 2021

**LAWYERS for JUSTICE, PC**

25  
26 By:   
27 Edwin Aiwasian  
28 Attorneys for Plaintiffs

**PROOF OF SERVICE**

*STATE OF CALIFORNIA, COUNTY OF LOS ANGELES*

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 410 West Arden Avenue, Suite 203, Glendale, California 91203.

On July 30, 2021, I served the foregoing document(s) described as: **FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT FOR DAMAGES & ENFORCEMENT UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE § 2698, ET SEQ.** on interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope addressed as follows:

Richard D. Marca  
Jeff T. Olsen  
**VARNER & BRANDT LLP**  
3750 University Avenue, Suite 610  
Riverside, CA 92501

Julie W. O'Dell  
Jessica M. Ewert  
**LEWIS BRISBOIS BISGAARD & SMITH LLP**  
650 Town Center Drive, Suite 1400  
Costa Mesa, California 92626

*Attorneys for Defendant Biscomerica Corp.*

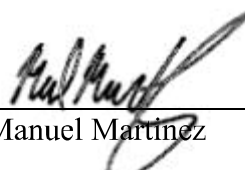
**[X] BY U.S. MAIL**

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

**[X] STATE**

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

Executed on July 30, 2021, at Glendale, California.

  
\_\_\_\_\_  
Manuel Martinez