

JEREMY F. BOLLINGER (SBN 240132)
DENNIS F. MOSS (SBN 77512)
ARI E. MOSS (SBN 238579)
JORGE A. FLORES (SBN 333441)
MOSS BOLLINGER LLP
15300 Ventura Blvd., Ste. 207
Sherman Oaks, California 91403
Telephone: (310) 982-2984
Facsimile: (818) 963-5954
dennis@mossbollinger.com
jeremy@mossbollinger.com
ari@mossbollinger.com
anthony@mossbollinger.com

Attorneys for Plaintiff HECTOR CHAVEZ

Additional counsel listed on following page

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

HECTOR CHAVEZ, an individual, on behalf
of himself and other similarly aggrieved
employees and the State of California,

Plaintiff,

vs.

**ASURION, LLC; ASURION UBIF
FRANCHISE, LLC; and DOES 1-50,**

Defendants.

Unlimited Jurisdiction

Case No.: 21SMCV01620

[Assigned to Hon. Edward B. Moreton Jr. for
all purposes, Dept. 200]

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
CLASS NOTICE**

1 ELIZABETH STAGGS-WILSON, Bar No. 183160

2 estaggs-wilson@littler.com

3 **LITTLER MENDELSON P.C.**

4 633 West 5th Street, 63rd Floor

5 Los Angeles, CA 90071

6 JYOTI MITTAL, Bar No. 288084

7 jmittal@littler.com

8 2049 Century Park East, 5th Floor

9 Los Angeles, CA 90067

10 **LITTLER MENDELSON P.C.**

11 Attorneys for Defendants ASURION LLC, and

12 ASURION UBIF FRANCHISE, LLC

CLASS ACTION AND PAGA SETTLEMENT

AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Hector Chavez (“Plaintiff”) and defendants Asurion, LLC and Asurion UBIF Franchise, LLC (collectively “Asurion” or “Defendants”). The Agreement refers to Plaintiff and Asurion collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Asurion captioned *Hector Chavez v. Asurion, LLC et al.* initiated on October 4, 2021 and pending in Superior Court of the State of California, County of Los Angeles, Case No. 21SMCV01620.
- 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employees” means all current and former non-exempt, hourly-paid employees of Asurion employed in California at any time during the PAGA Period.
- 1.5. “Class” means all current and former non-exempt, hourly-paid employees of Asurion employed in California at any time during the Class Period.
- 1.6. “Class Counsel” means Jeremy F. Bollinger, Dennis F. Moss, Ari E. Moss, and Jorge A. Flores of Moss Bollinger LLP.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

- 1.8. “Class Data” means Class Member identifying information in Asurion’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from June 29, 2020, to the date of Preliminary Approval of the Class Settlement, or October 1, 2022, whichever is sooner.
- 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Los Angeles.
- 1.16. “Asurion” means Asurion, LLC and Asurion UBIF Franchise, LLC.

- 1.17. “Defense Counsel” means Elizabeth Staggs-Wilson, Jyoti Mittal, and Laura Schneider of Littler Mendelson, PC.
- 1.18. “Effective Date” means later of: (i) if no timely objections are filed, or are withdrawn prior to Final Approval, then sixty (60) calendar days after the date the Court enters Judgment; or (ii) if a Class Member files an objection to the Settlement, the Effective Date shall be the later of the following events: five (5) business days after the period for filing any appeal, writ, or other appellate proceeding opposing Final Approval has elapsed without any appeal, writ, or other appellate proceeding having been filed; or, if any appeal, writ, or other appellate proceeding opposing Final Approval has been filed, five business days after any appeal, writ, or other appellate proceedings opposing the Settlement has finally and conclusively dismissed with no right to pursue further remedies or relief and the Settlement has been upheld with no right to pursue further remedies or relief.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. “Gross Settlement Amount” means Two Hundred Thousand Dollars (\$200,000) which is the total amount Asurion agrees to pay under the Settlement except as provided in Paragraph 4.3 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.
- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of

Workweeks worked during the Class Period.

1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of pay periods worked during the PAGA Period.

1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.

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

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

1.28. “Net Settlement Amount” means the Gross Settlement Amount less proposed attorneys’ fees, costs, and enhancement award to named Plaintiff, and Administrator’s Expenses Payment.

1.29. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Asurion for at least one day during the PAGA Period.

1.30. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.31. “PAGA Period” means the period from July 20, 2020 to the date the Preliminary Approval of the Class Settlement is granted, or October 1, 2022, whichever is sooner.

1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.33. “PAGA Notice” means Plaintiff’s July 20, 2021 letter to Asurion and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.34. “PAGA Penalties” means the PAGA civil penalties to be paid from the Net Settlement Amount. The PAGA Penalties allocation will be 30% of the Net Settlement amount, 25% (approx. \$7,312.50) of which will be distributed to the

Aggrieved Employees and 75% (approx. \$21,937.50) will be distributed to the LWDA in settlement of the PAGA claims.

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

1.36. “Plaintiff” means Hector Chavez, the named plaintiff in the Action.

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

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

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

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

1.41. “Released Parties” means: Asurion, LLC and Asurion UBIF Franchise, LLC, and each of their past, present, and future direct or indirect parents, subsidiaries, predecessors, successors and affiliates, as well as each of their past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Asurion.

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

1.43. “Response Deadline” means forty-five (45) calendar days from the mailing of the Class Notice within which to complete and postmark a written request for exclusion, for return to the Settlement Administrator.

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

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

1 **2. RECITALS.**

2 2.1. On October 4, 2021, Plaintiff commenced this Action by filing a Complaint
3 alleging a single cause of action against Asurion for civil penalties under the
4 Private Attorneys General Act of 2004 (“PAGA”). Within ten (10) calendar
5 days following entry of the Court’s order granting preliminary approval of the
6 Settlement, Plaintiff will file the First Amended Complaint attached hereto as
7 **Exhibit B** alleging causes of action against Asurion for (1) failure to pay meal
8 period and rest break premiums at the “regular rate of compensation;” (2)
9 failure to provide accurate wage statements; (3) failure to timely pay wages
10 upon cessation of employment; (4) unfair competition; and (5) for civil
11 penalties under the California Private Attorneys General Act of 2004 (Labor
12 Code § 2698, et seq.) for (1) improper inclusion of PAGA waiver in arbitration
13 agreement; (2) improper inclusion of confidentiality clause in employment
14 agreement; (3) failure to pay meal period and rest break premiums at the
15 “regular rate of compensation;” (4) failure to timely pay wages during
16 employment; (5) failure to pay sick pay at the “regular rate of pay;” (6) failure
17 to maintain accurate payroll records; and (7) failure to timely pay wages upon
18 cessation of employment. The First Amended Complaint is the operative
19 complaint in the Action (the “Operative Complaint”). Asurion denies the
20 allegations in the Operative Complaint, denies any failure to comply with the
21 laws identified in the Operative Complaint and denies any and all liability for
22 the causes of action alleged.

23 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written
24 notice to Asurion and the LWDA by sending the PAGA Notices.

25 2.3. On June 6, 2022, the Parties participated in an all-day mediation presided over
26 by mediator T. Warren Jackson, Esq. which led to this Agreement to settle the
27 Action.

28 2.4. Prior to mediation, Plaintiff served formal discovery, but the Parties agreed that

Defendant would provide informally the requested discovery Plaintiff and his counsel needed to evaluate the class and PAGA claims, including Asurion's pay data, time data, applicable arbitration agreement with class and representative waivers, Pay Codes, and relevant policies. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal. App. 4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("Dunk/Kullar").

2.5. The Court has not yet granted class certification. For settlement purposes only, the Parties agree that the Class, as defined in Paragraph 1.5 herein, may be certified in the Action. The Parties are not certifying any PAGA claims. In support of this Agreement, Plaintiff will request that the Court certify for settlement purposes only the Class as to all non-PAGA claims that have been asserted, which Asurion shall not oppose or object to.

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

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 4.3 below, Asurion promises to pay Two Hundred Thousand Dollars (\$200,000) and no more, as the Gross Settlement Amount. In no event shall Asurion be liable for the payment of any amounts exceeding the Gross Settlement Amount with the exception of the employer's share of payroll taxes. Specifically, all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Asurion has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved

Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Asurion.

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

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than Ten Thousand Dollars (\$10,000) (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Asurion will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35% of the Gross Settlement Amount, which is currently estimated to be \$70,000 (subject to being increased in the Gross Settlement Amount increases pursuant to Section 8, *infra*) and a Class Counsel Litigation Expenses Payment of not more than \$15,000. Asurion will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later

1 than sixteen (16) court days prior to the Final Approval Hearing. If the
2 Court approves a Class Counsel Fees Payment and/or a Class Counsel
3 Litigation Expenses Payment less than the amounts requested, the
4 Administrator will allocate the remainder to the Net Settlement Amount.
5 Released Parties shall have no liability to Class Counsel or any other
6 Plaintiff's Counsel arising from any claim to any portion any Class
7 Counsel Fee Payment and/or Class Counsel Litigation Expenses
8 Payment. The Administrator will pay the Class Counsel Fees Payment
9 and Class Counsel Expenses Payment using one or more IRS 1099
10 Forms. Class Counsel assumes full responsibility and liability for taxes
11 owed on the Class Counsel Fees Payment and the Class Counsel
12 Litigation Expenses Payment and holds Asurion harmless, and
13 indemnifies Asurion, from any dispute or controversy regarding any
14 division or sharing of any of these Payments.

15 3.2.3. To the Administrator: An Administrator Expenses Payment not to
16 exceed Seven Thousand Five Hundred Dollars (\$7,500) based on 280
17 class members except for a showing of good cause and as approved by
18 the Court. To the extent the Administration Expenses are less or the
19 Court approves payment less than Seven Thousand Five Hundred
20 Dollars (\$7,500), the Administrator will retain the remainder in the Net
21 Settlement Amount.

22 3.2.4. To Each Participating Class Member: An Individual Class Payment
23 calculated as follows: The Net Settlement Amount will be allocated
24 among Participating Class Members on a proportional basis based on
25 the number of Work Weeks worked during the Class Period and whether
26 the Participating Class Member experienced a termination during the
27 Class Period. Participating Class Members shall be allocated one (1)
28 points of credit for each Work Week they worked within the Class

1 Period and five (5) points of credit if the Participating Class Member
2 experienced a termination within the Class Period. One day worked in
3 a given week will be credited as a Work Week for purposes of these
4 calculations. To calculate each Class Member's proportional share, the
5 Administrator will (i) Add all points for all Participating Class Members
6 to obtain the Denominator; (ii) Divide the number of points for each
7 Participating Class Member by the Denominator to obtain each Class
8 Member's portion of the Net Settlement Amount; (iii) Multiply each
9 Participating Class Member's portion of the Net Settlement Amount by
10 the Net Settlement Amount to determine each Class Member's
11 estimated individual settlement payment of the Net Settlement Amount.

12 3.2.4.1. Tax Allocation of Individual Class Payments. Twenty percent
13 (20%) of each Participating Class Member's Individual Class
14 Payment will be allocated to settlement of wage claims (the
15 "Wage Portion"). The Wage Portions are subject to tax
16 withholding and will be reported on an IRS W-2 Form. Eighty
17 Percent (80%) of each Participating Class Member's Individual
18 Class Payment will be allocated to settlement of claims for
19 interest and penalties (the "Non-Wage Portion"). The Non-
20 Wage Portions are not subject to wage withholdings and will be
21 reported on IRS 1099 Forms. Participating Class Members
22 assume full responsibility and liability for any employee taxes
23 owed on their Individual Class Payment.

24 3.2.4.2. Effect of Non-Participating Class Members on Calculation of
25 Individual Class Payments. Non-Participating Class Members
26 will not receive any Individual Class Payments. The
27 Administrator will retain amounts equal to their Individual Class
28

Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of Thirty Percent (30%) of the Net Settlement Amount, with 75% allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments.

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

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Asurion estimates there are 263 Class Members who collectively worked a total of 7,488 Workweeks, and 249 Aggrieved Employees who worked a total 3,886 of PAGA Pay Periods.

4.2. Class Data. Not later than twenty-eight (28) days after the Court grants Preliminary Approval of the Settlement, Asurion will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for

no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Asurion has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Asurion must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

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

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

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send

1 checks for Individual Settlement Payments to all Participating Class
2 Members (including those for whom Class Notice was returned
3 undelivered). The Administrator will send checks for Individual PAGA
4 Payments to all Aggrieved Employees including Non-Participating
5 Class Members who qualify as Aggrieved Employees (including those
6 for whom Class Notice was returned undelivered). The Administrator
7 may send Participating Class Members a single check combining the
8 Individual Class Payment and the Individual PAGA Payment. Before
9 mailing any checks, the Settlement Administrator must update the
10 recipients' mailing addresses using the National Change of Address
11 Database.

12 4.4.2. The Administrator must conduct a Class Member Address Search for all
13 other Class Members whose checks are returned undelivered without
14 USPS forwarding address. Within five (5) calendar days of receiving a
15 returned check the Administrator must re-mail checks to the USPS
16 forwarding address provided or to an address ascertained through the
17 Class Member Address Search. The Administrator need not take further
18 steps to deliver checks to Class Members whose re-mailed checks are
19 returned as undelivered. The Administrator shall promptly send a
20 replacement check to any Class Member whose original check was lost
21 or misplaced, requested by the Class Member prior to the void date.

22 4.4.3. For any Class Member whose Individual Class Payment check or
23 Individual PAGA Payment check is uncashed and cancelled after the
24 void date, the Administrator shall transmit the funds represented by such
25 checks to the California Controller's Unclaimed Property Fund in the
26 name of the Class Member thereby leaving no "unpaid residue" subject
27 to the requirements of California Code of Civil Procedure Section 384,
28 subd. (b) and no Cy Pres recipient for the Court to approve.

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Asurion to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

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

5.1. Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties (a) The Claims set forth in the Action, predicated on the same or similar facts and/or claims alleged in the Operative Complaint and/or PAGA Letter, as well as any claims that reasonably could have been pled which arise from the same or similar facts concerning the Plaintiff or the putative class, and claims for interest, penalties (including but not limited to waiting time penalties), as well as any claims under the California Labor Code and California Industrial Welfare Commission Wage Orders that were alleged (specifically for violations of Labor Code sections 423.5, 232, 226.7, 204, 246, 1174, 201-203, and Wage Order 4-2001), or which could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Lawsuit; (b) Any claims for injunctive relief, declaratory relief, restitution, fraudulent business practices or punitive damages alleged or which could have been alleged under the facts, allegations and/or claims pleaded in the complaints filed as part of the Lawsuit; and, (c) Any and all other claims under California common law, the California Labor Code including but not limited to the Private Attorneys General Act, the Fair Labor Standards Act, California Industrial Welfare Commission Wage Orders, and the California Business and Professions Code alleged in or that could have been alleged under

1 the same or similar facts, allegations and/or claims pleaded in the Lawsuit. With
2 respect to the Released Claims only this release also includes such claims
3 whether known or known, whether anticipated or unanticipated, including such
4 claims that Settlement Class Members did not know or suspect to exist in their
5 favor that accrued on or before the date of Preliminary Approval, or October 1,
6 2022, whichever is sooner, that could have been alleged under the same or
7 similar facts, allegations and/or claims pleaded in the Action. (“Plaintiff’s
8 Release.”) Plaintiff’s Release does not extend to any claims or actions to
9 enforce this Agreement, or to any claims for vested benefits, unemployment
10 benefits, disability benefits, social security benefits, workers’ compensation
11 benefits that arose at any time, or based on occurrences outside the Class Period.
12 Plaintiff acknowledges that Plaintiff may discover facts or law different from,
13 or in addition to, the facts or law that Plaintiff now knows or believes to be true
14 but agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in
15 all respects, notwithstanding such different or additional facts or Plaintiff’s
16 discovery of them

17 5.1.1. Plaintiff’s Waiver of Rights Under California Civil Code Section 1542.

18 Plaintiff shall be deemed to have, and by operation of the Judgment shall
19 have, expressly waived and relinquished to the fullest extent permitted
20 by law the provisions, rights, and benefits of Section 1542 of the
21 California Civil Code, or any other similar provision under federal or
22 state law that purports to limit the scope of a general release. Plaintiff,
23 for himself, has read Section 1542 of the Civil Code of the State of
24 California, which provides as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO
26 CLAIMS WHICH THE CREDITOR OR RELEASING
27 PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN
28 HIS OR HER FAVOR AT THE TIME OF EXECUTING
THE RELEASE, AND THAT, IF KNOWN BY HIM OR
HER, WOULD HAVE MATERIALLY AFFECTED HIS

OR HER SETTLEMENT WITH THE DEBTOR OR
RELEASED PARTY.

5.1.2. Plaintiff understands that Section 1542 gives the right not to release existing claims of which he is not now aware, unless Plaintiff voluntarily chooses to waive this right. Having been so apprised, Plaintiff nevertheless voluntarily waives the rights described in Section 1542, and elect to assume all risks for claims that now exist in his favor, known or unknown. The release of the claims of Plaintiff as set forth in this Paragraph is a condition precedent to enforcement of the MOU and this Agreement.

5.2. The “Released Class Claims”: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims pleaded in the Amended Complaint in the Action and any PAGA letter sent to the LWDA by Plaintiff in or prior to the Action, and which reasonably could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Action, against the Released Parties, for work performed during the Class Period, including:

5.2.1. The Claims set forth in the Operative Complaint, specifically, (1) Improper inclusion of PAGA waiver in arbitration agreement; (2) Improper inclusion of confidentiality clause in employment agreement; (3) Failure to pay meal period and rest break premiums at the “regular rate of compensation;” (4) Failure to timely pay wages during employment under; (5) Failure to pay sick pay at the “regular rate of pay;” (6) failure to maintain accurate payroll records; (7) failure to timely pay wages upon termination; and, (8) Violation of the California Private Attorneys General Act of 2004 (Labor Code § 2698, et seq.) predicated on the same or similar facts and/or claims alleged in the

1 Action and/or any PAGA letter sent to the LWDA by Plaintiff in or prior
2 to the Action, as well as any claims that reasonably could have been
3 pled which arise from the same or similar facts concerning Plaintiff or
4 the putative class, and claims for interest, penalties (including but not
5 limited to waiting time penalties), as well as any claims under the
6 California Labor Code and California Industrial Welfare Commission
7 Wage Orders that were alleged (specifically for violations of Labor
8 Code sections 423.5, 232, 226.7, 204, 246, 1174, 201-203, and Wage
9 Order 4-2001), or which could have been alleged under the same or
10 similar facts, allegations and/or claims pleaded in the Action;

11 5.2.2. Any claims for injunctive relief, declaratory relief, restitution,
12 fraudulent business practices or punitive damages alleged or which
13 reasonably could have been alleged under the facts, allegations and/or
14 claims pleaded in the complaints filed as part of the Lawsuit; and,

15 5.2.3. Any and all other claims under California common law, the California
16 Labor Code including but not limited to the Private Attorneys General
17 Act, the Fair Labor Standards Act, California Industrial Welfare
18 Commission Wage Orders, and the California Business and Professions
19 Code alleged in or that reasonably could have been alleged under the
20 same or similar facts, allegations and/or claims pleaded in the Lawsuit.
21 With respect to the Released Claims only this release also includes such
22 claims whether known or known, whether anticipated or unanticipated,
23 including such claims that Settlement Class Members did not know or
24 suspect to exist in their favor that accrued on or before the date of
25 Preliminary Approval, or October 1, 2022, whichever is sooner, that
26 could have been alleged under the same or similar facts, allegations
27 and/or claims pleaded in the Action.
28

1 5.2.4. The claims set forth in subparagraphs 5.2.1-5.2.4 hereinabove shall be
2 collectively referred to as the “Released Claims.”

3 5.3. The “Release of PAGA Claims”: All Aggrieved Employees are deemed to
4 release, on behalf of themselves and their respective former and present
5 representatives, agents, attorneys, heirs, administrators, successors, and assigns,
6 the Released Parties from any and all claims for violation of the California
7 Private Attorneys General Act of 2004 (Labor Code § 2698, et seq.), predicated
8 on the facts and/or claims alleged in the Action and/or any PAGA letter sent to
9 the LWDA by Plaintiff or in any way premised in whole or in part on any of
10 the Released Class Claims that arose at any time during the PAGA Period. The
11 Aggrieved Employees will be issued a check for their share of the PAGA
12 Penalties and will not have the opportunity to opt out of, or object to, the PAGA
13 Penalties and release of the Released PAGA Claims set forth in this Paragraph.
14 The Aggrieved Employees are bound by the release of the Released PAGA
15 Claims regardless of whether they cash or deposit their Individual PAGA
16 Payment or opt out of being a Settlement Class Member in accordance with
17 Paragraph 7.5.

18 **6. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare
19 and file a motion for preliminary approval (“Motion for Preliminary Approval”) that
20 complies with the Court’s current checklist for Preliminary Approval.

21 6.1. Asurion’s Declaration in Support of Preliminary Approval. Within Ten (10)
22 days of the full execution of this Agreement, Asurion will prepare and deliver
23 to Class Counsel a signed Declaration from Asurion and Defense Counsel
24 disclosing all facts relevant to any actual or potential conflicts of interest with
25 the Administrator. In their Declarations, Defense Counsel and Asurion shall
26 aver that they are not aware of any other pending matter or action asserting
27 claims that will be extinguished or adversely affected by the Settlement.
28

6.2. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members ; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members and/or the Administrator ; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

1 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
2 responsible for expeditiously finalizing and filing the Motion for Preliminary
3 Approval no later than twenty-one (21) days after the full execution of this
4 Agreement; obtaining a prompt hearing date for the Motion for Preliminary
5 Approval; and for appearing in Court to advocate in favor of the Motion for
6 Preliminary Approval. Class Counsel is responsible for delivering the Court's
7 Preliminary Approval to the Administrator.

8 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
9 for Preliminary Approval and/or the supporting declarations and documents,
10 Class Counsel and Defense Counsel will expeditiously work together on behalf
11 of the Parties by meeting in person or by telephone, and in good faith, to resolve
12 the disagreement. If the Court does not grant Preliminary Approval or
13 conditions Preliminary Approval on any material change to this Agreement,
14 Class Counsel and Defense Counsel will expeditiously work together on behalf
15 of the Parties by meeting in person or by telephone, and in good faith, to modify
16 the Agreement and otherwise satisfy the Court's concerns.

17 **7. SETTLEMENT ADMINISTRATION.**

18 7.1. Selection of Administrator. The Parties have jointly selected Phoenix
19 Settlement Administrators to serve as the Administrator and verified that, as a
20 condition of appointment, the Administrator agrees to be bound by this
21 Agreement and to perform, as a fiduciary, all duties specified in this Agreement
22 in exchange for payment of Administration Expenses. The Parties and their
23 Counsel represent that they have no interest or relationship, financial or
24 otherwise, with the Administrator other than a professional relationship arising
25 out of prior experiences administering settlements.

26 7.2. Employer Identification Number. The Administrator shall have and use its own
27 Employer Identification Number for purposes of calculating payroll tax
28 withholdings and providing reports state and federal tax authorities.

1 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund
2 that meets the requirements of a Qualified Settlement Fund (“QSF”) under US
3 Treasury Regulation section 468B-1.

4 7.4. Notice to Class Members.

5 7.4.1. No later than three (3) business days after receipt of the Class Data, the
6 Administrator shall notify Class Counsel that the list has been received
7 and state the number of Class Members, PAGA Members, Workweeks,
8 and Pay Periods in the Class Data.

9 7.4.2. Using best efforts to perform as soon as possible, and in no event later
10 than fourteen (14) days after receiving the Class Data, the Administrator
11 will send to all Class Members identified in the Class Data, via first-
12 class United States Postal Service (“USPS”) mail, the Class Notice
13 substantially in the form attached to this Agreement as Exhibit A. The
14 first page of the Class Notice shall prominently estimate the dollar
15 amounts of any Individual Class Payment and/or Individual PAGA
16 Payment payable to the Class Member/Aggrieved Employee, and the
17 number of Workweeks and PAGA Pay Periods (if applicable) used to
18 calculate these amounts. Before mailing Class Notices, the
19 Administrator shall update Class Member addresses using the National
20 Change of Address database.

21 7.4.3. Not later than five (5) business days after the Administrator’s receipt of
22 any Class Notice returned by the USPS as undelivered, the
23 Administrator shall re-mail the Class Notice using any forwarding
24 address provided by the USPS. If the USPS does not provide a
25 forwarding address, the Administrator shall conduct a Class Member
26 Address Search, and re-mail the Class Notice to the most current address
27 obtained. The Administrator has no obligation to make further attempts
28 to locate or send Class Notice to Class Members whose Class Notice is

1 returned by the USPS a second time.

2 7.4.4. If the Administrator, Asurion or Class Counsel is contacted by or
3 otherwise discovers any persons who believe they should have been
4 included in the Class Data and should have received Class Notice, the
5 Parties will expeditiously meet and confer in person or by telephone,
6 and in good faith, in an effort to agree on whether to include them as
7 Class Members. If the Parties agree, such persons will be Class
8 Members entitled to the same rights as other Class Members, and the
9 Administrator will send, via email or overnight delivery, a Class Notice
10 requiring them to exercise options under this Agreement not later than
11 fourteen (14) days after receipt of Class Notice, or the deadline dates in
12 the Class Notice, whichever are later.

13 7.5. Requests for Exclusion (Opt-Outs).

14 7.5.1. Each Class Member shall have forty-five (45) calendar days from the
15 mailing of the Notice within which to complete and postmark a written
16 request for exclusion, for return to the Settlement Administrator. The
17 request need not be in any particular form and will be considered a valid
18 request for exclusion so long as it communicates a clear desire by the
19 Settlement Class Member not to be included in the Settlement and/or
20 Settlement Class, and identifies his/her/their full name and date of birth,
21 and current address along with his/her/their signature. No requests for
22 exclusion shall be accepted if postmarked after the forty-five (45)
23 calendar day period for the filing of exclusions. Class Members are
24 responsible to maintain a photocopy of their request for exclusion,
25 reflecting that it was submitted in a timely manner. Any disputes
26 regarding the timeliness of a request for exclusion or whether a written
27 communication constitutes a valid request that cannot be resolved
28 between the Parties shall be determined by the Court, whose

determination shall be final. A Class Member, who is also an Aggrieved Employee, cannot opt-out of the PAGA component of the Settlement.

7.5.2. Any Class Member who validly excludes himself/herself/themselves from this Settlement shall not be bound by the Class Released Claims and shall not be entitled to any portion of the Net Settlement Amount.

7.5.3. If thirteen or more of the Class Members opt out of the Settlement by submitting valid and timely requests for exclusion, Defendants shall have the sole and absolute discretion to rescind/void the Agreement within twenty (20) days after receiving from the Settlement Administrator the final list of requests for exclusion. Defendants agree to meet and confer in good faith with Class Counsel before rescinding or voiding the Agreement. In the event that Defendants elect to rescind/void the Agreement, Defendants shall provide written notice of such rescission to Class Counsel. Such rescission shall have the same effect as a termination of the Agreement for failure to satisfy a condition of settlement, and the Agreement shall become null and void and have no further force or effect. The Parties specifically agree not to solicit opt-outs, directly or indirectly, through any means.

7.6. Challenges to Calculation of Workweeks. Each Class Member shall have forty-five (45) days after the Administrator mails the Class Notice to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of

1 Workweeks and/or Pay Periods shall be final and not appealable or otherwise
2 susceptible to challenge. The Administrator shall promptly provide copies of
3 all challenges to calculation of Workweeks and/or Pay Periods to Defense
4 Counsel and Class Counsel and the Administrator's determination the
5 challenges.

6 7.7. Objections to Settlement.

7 7.7.1. Only Participating Class Members may object to the class action
8 components of the Settlement and/or this Agreement, including
9 contesting the fairness of the Settlement, and/or amounts requested for
10 the Class Counsel Fees Payment, Class Counsel Litigation Expenses
11 Payment and/or Class Representative Service Payment.

12 7.7.2. Participating Class Members may send written objections to the
13 Administrator, by fax, email, or mail. In the alternative, Participating
14 Class Members may appear in Court (or hire an attorney to appear in
15 Court) to present verbal objections at the Final Approval Hearing. A
16 Participating Class Member who elects to send a written objection to the
17 Administrator must do so not later than forty-five (45) days after the
18 Administrator's mailing of the Class Notice

19 7.7.3. Any Class Member, who does not affirmatively opt-out of the
20 Settlement by submitting a valid and timely request for exclusion, may
21 object to the approval of class action settlement ("Objecting Class
22 Member"). Any Class Member who makes a timely request for
23 exclusion has waived their right to object.

24 7.7.4. Non-Participating Class Members have no right to object to any of the
25 class action components of the Settlement.

26 7.7.5. Counsel for the Parties shall file any response to the objections
27 submitted by Objecting Class Members, if any, at least seven (7)
28 calendar days before the date of the Final Approval Hearing.

1 7.7.6. At no time shall any of the Parties or their counsel seek to solicit or
2 otherwise encourage Class Members to submit written objections to the
3 Settlement or to appeal from the Court’s Final Judgment. Class Counsel
4 shall not represent any Class Members with respect to any such
5 objections to this Settlement.

6 7.8. Administrator Duties. The Administrator has a duty to perform or observe all
7 tasks to be performed or observed by the Administrator contained in this
8 Agreement or otherwise.

9 7.8.1. Requests for Exclusion (Opt-outs) and Exclusion List. The
10 Administrator will promptly review on a rolling basis Requests for
11 Exclusion to ascertain their validity. Not later than five (5) days after
12 the expiration of the deadline for submitting Requests for Exclusion, the
13 Administrator shall email a list to Defense Counsel containing (a) the
14 names and other identifying information of Class Members who have
15 timely submitted valid Requests for Exclusion (“Exclusion List”); (b)
16 the names and other identifying information of Class Members who
17 have submitted invalid Requests for Exclusion; (c) copies of all
18 Requests for Exclusion from Settlement submitted (whether valid or
19 invalid). Separately, the Administrator shall email a list to Class
20 Counsel containing (a) the names on the Exclusion List.

21 7.8.2. Weekly Reports. The Administrator must, on a weekly basis, provide
22 written reports to Class Counsel and Defense Counsel that, among other
23 things, tally the number of: Class Notices mailed or re-mailed, Class
24 Notices returned undelivered, Requests for Exclusion (whether valid or
25 invalid) received, objections received, challenges to Workweeks and/or
26 Pay Periods received and/or resolved, and checks mailed for Individual
27 Class Payments and Individual PAGA Payments (“Weekly Report”).
28 The Weekly Reports must include provide the Administrator’s

assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

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

7.8.4. Final Report by Settlement Administrator. Within [10] days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least thirty (30) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. CLASS SIZE ESTIMATES. Based on its records, Asurion estimates that, as of the date of the mediation (1) there were 263 Class Members and 7,488_total Workweeks during the Class Period and (2) there were 249 Aggrieved Employees who worked

3,886 PAGA Pay Periods during the PAGA Period. If the total number of pay periods increases by more than 15% (or 583 pay periods), the Parties agree that the Gross Settlement Amount will be proportionately increased on a pro rata basis for pay periods in excess of 4,469 through the date of preliminary approval or October 1, 2022, whichever comes sooner, or, Defendants in their sole discretion can limit the release period to the point at which 4,469 pay periods is reached.

9. **ASURION’S RIGHT TO WITHDRAW.** If thirteen (13) or more Class Members timely opt out of the Settlement by submitting valid and timely requests for exclusion, Asurion shall have the sole and absolute discretion to rescind/void the Agreement within twenty (20) days after receiving from the Settlement Administrator the final list of requests for exclusion. Asurion agrees to meet and confer in good faith with Class Counsel before rescinding or voiding the Agreement. The Parties agree that, if Asurion elects to rescind/void the Agreement, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Asurion will remain responsible for paying all Settlement Administration Expenses incurred to that point. Asurion must notify Class Counsel and the Court of its election to withdraw not later than twenty (20) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

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

- 10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to

perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

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

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

12. **ADDITIONAL PROVISIONS.**

12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Asurion that any of the allegations in the Operative Complaint have merit or that Asurion has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Asurion's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Asurion reserves the right to contest certification

1 of any class for any reasons, and Asurion reserves all available defenses to the
2 claims in the Action, and Plaintiff reserves the right to move for class
3 certification on any grounds available and to contest Asurion's defenses. The
4 Settlement, this Agreement and Parties' willingness to settle the Action will
5 have no bearing on, and will not be admissible in connection with, any litigation
6 (except for proceedings to enforce or effectuate the Settlement and this
7 Agreement).

8 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
9 Asurion and Defense Counsel separately agree that, until the Motion for
10 Preliminary Approval of Settlement is filed, they and each of them will not
11 disclose, disseminate and/or publicize, or cause or permit another person to
12 disclose, disseminate or publicize, any of the terms of the Agreement directly
13 or indirectly, specifically or generally, to any person, corporation, association,
14 government agency, or other entity except: (1) to the Parties' attorneys,
15 accountants, or spouses, all of whom will be instructed to keep this Agreement
16 confidential; (2) to the extent necessary to report income to appropriate taxing
17 authorities; (3) in response to a court order or subpoena; or (4) in response to
18 an inquiry or subpoena issued by a state or federal government agency. Each
19 Party agrees to immediately notify each other Party of any judicial or agency
20 order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel,
21 Asurion and Defense Counsel separately agree not to, directly or indirectly,
22 initiate any conversation or other communication, before the filing of the
23 Motion for Preliminary Approval, any with third party regarding this
24 Agreement or the matters giving rise to this Agreement except to respond only
25 that "the matter was resolved," or words to that effect. This paragraph does not
26 restrict Class Counsel's communications with Class Members in accordance
27 with Class Counsel's ethical obligations owed to Class Members.
28

12.3. Non-Publicity Post Preliminary Approval. Class Counsel and Plaintiff agree not to publicize the terms of this Settlement with the media, including but not limited to, any newspaper, journal, magazine, website and/or online reporter of settlements or on any website.

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

12.5. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

12.6. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Asurion, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

12.7. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the

1 Agreement that may become necessary to implement the Settlement, the Parties
2 will seek the assistance of a mediator and/or the Court for resolution.

3 12.8. No Prior Assignments. The Parties separately represent and warrant that they
4 have not directly or indirectly assigned, transferred, encumbered, or purported
5 to assign, transfer, or encumber to any person or entity and portion of any
6 liability, claim, demand, action, cause of action, or right released and
7 discharged by the Party in this Settlement.

8 12.9. No Tax Advice. Neither Plaintiff, Class Counsel, Asurion nor Defense Counsel
9 are providing any advice regarding taxes or taxability, nor shall anything in this
10 Settlement be relied upon as such within the meaning of United States Treasury
11 Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12 12.10. Modification of Agreement. This Agreement, and all parts of it, may be
13 amended, modified, changed, or waived only by an express written instrument
14 signed by all Parties or their representatives, and approved by the Court.

15 12.11. Agreement Binding on Successors. This Agreement will be binding upon, and
16 inure to the benefit of, the successors of each of the Parties.

17 12.12. Applicable Law. All terms and conditions of this Agreement and its exhibits
18 will be governed by and interpreted according to the internal laws of the state
19 of California, without regard to conflict of law principles.

20 12.13. Cooperation in Drafting. The Parties have cooperated in the drafting and
21 preparation of this Agreement. This Agreement will not be construed against
22 any Party on the basis that the Party was the drafter or participated in the
23 drafting.

24 12.14. Confidentiality. To the extent permitted by law, all agreements made, and
25 orders entered during Action and in this Agreement relating to the
26 confidentiality of information shall survive the execution of this Agreement.

27 12.15. Use and Return of Class Data. Information provided to Class Counsel pursuant
28 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data

provided to Class Counsel by Asurion in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Asurion unless, prior to the Court's discharge of the Administrator's obligation, Asurion makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

12.16. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

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

12.18. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff: Jeremy F. Bollinger
 Moss Bollinger LLP
 15300 Ventura Blvd., Ste. 207
 Sherman Oaks, CA 91430

To Asurion: Elizabeth Staggs-Wilson
Littler Mendelson, PC
633 West Fifth Street, 63rd Floor
Los Angeles, CA 90071

12.19. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.20. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

SIGNATURES ON NEXT PAGE

[Signature Page]

IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release between Plaintiff and Defendants as of the date(s) set forth below:

Dated: 10/11/2022

DocuSigned by:
Hector Chavez
BBD3D207A6A5449...
HECTOR CHAVEZ
Plaintiff and Class Representative

Dated: _____

[NAME], [TITLE]
ASURION, LLC and ASURION UBIF
FRANCHISE, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: 10/11/2022

MOSS BOLLINGER, LLP

By: _____
DocuSigned by:
Jeremy F. Bollinger
Dennis F. Moss
Ari E. Moss
Jorge A. Flores
Attorneys for Plaintiff HECTOR CHAVEZ

Dated: _____

LITTLER MENDELSON, P.C.

By: _____
Elizabeth Staggs-Wilson
Jyoti Mittal
Laura Schneider
Attorneys for Defendants ASURION, LLC and
ASURION UBIF FRANCHISE, LLC

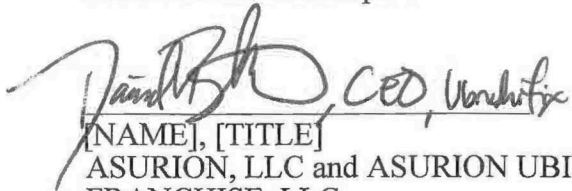
[Signature Page]

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release between Plaintiff and Defendants as of the date(s) set forth below:

Dated: _____, 2022

HECTOR CHAVEZ
Plaintiff and Class Representative

Dated: October 5, 2022


[NAME], [TITLE]
ASURION, LLC and ASURION UBIF
FRANCHISE, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: July __, 2022

MOSS BOLLINGER, LLP

By: _____

Jeremy F. Bollinger
Dennis F. Moss
Ari E. Moss
Jorge A. Flores
Attorneys for Plaintiff HECTOR CHAVEZ

Dated: July __, 2022

LITTLER MENDELSON, P.C.

By: _____

Elizabeth Staggs-Wilson
Jyoti Mittal
Laura Schneider
Attorneys for Defendants ASURION, LLC and
ASURION UBIF FRANCHISE, LLC

[Signature Page]

IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release between Plaintiff and Defendants as of the date(s) set forth below:

Dated: _____

HECTOR CHAVEZ
Plaintiff and Class Representative

Dated: _____

[NAME], [TITLE]
ASURION, LLC and ASURION UBIF
FRANCHISE, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: _____

MOSS BOLLINGER, LLP

By: _____

Jeremy F. Bollinger
Dennis F. Moss
Ari E. Moss
Jorge A. Flores
Attorneys for Plaintiff HECTOR CHAVEZ

Dated: October 5, 2022

LITTLER MENDELSON, P.C.

By: _____

Elizabeth Staggs-Wilson
Jyoti Mittal
Laura Schneider
Attorneys for Defendants ASURION, LLC and
ASURION UBIF FRANCHISE, LLC

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

EXHIBIT

A

1
2 **COURT APPROVED NOTICE OF CLASS ACTION AND PAGA SETTLEMENT AND**
3 **HEARING DATE FOR FINAL COURT APPROVAL**

4 Hector Chavez v. Asurion, LLC, et al.

5 Los Angeles Superior Court Case No. 21SMCV01620

6
7 ***The Superior Court for the State of California authorized this Notice. Read it carefully!***
8 ***It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***
9

10 **You may be eligible to receive money** from an employee class action and PAGA lawsuit
11 (“Action”) against Asurion, LLC and Asurion UBIF Franchise, LLC (together “Asurion”) for alleged
12 wage and hour violations. The Action was filed by a[former] Asurion employee, Hector Chavez
13 (“Plaintiff”) and seeks payment of (1) back wages and other relief for a class of current and former
14 non-exempt, hourly paid employees (“Class Members”) of UBIF Franchise LLC, employed in
15 California at any time from June 29, 2020, through the date of preliminary approval or October 1,
16 2022, whichever is sooner; and (2) penalties under the California Private Attorney General Act
17 (“PAGA”) for all current and former non-exempt, hourly paid employees of UBIF Franchise LLC,
18 employed in California at any time from July 20, 2020, through the date of preliminary approval or
19 October 1, 2022, whichever is sooner (“Aggrieved Employees”). The Class Period is from June 29,
20 2020 through [REDACTED]. The PAGA Period is from July 20, 2022 through [REDACTED].

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

24 Based on Asurion’s records, and the Parties’ current assumptions, your **Individual Class**
25 **Payment is estimated to be \$ [REDACTED] (less withholding) and your Individual PAGA Payment is**
26 **estimated to be \$ [REDACTED].** The actual amount you may receive likely will be different and will depend
27 on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to
28

Asurion's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on Asurion's records showing that **you worked [REDACTED] workweeks** during the Class Period and **you worked [REDACTED] workweeks** during the PAGA Period and that **you experienced [REDACTED] terminations**. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Asurion to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Asurion.

If you worked for Asurion during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. If you do nothing, and the Court approves the Settlement, as a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Asurion.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Asurion, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. If you are

an Aggrieved Employee, you cannot opt-out of the PAGA portion of the proposed Settlement.

Asurion will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Asurion that are covered by this Settlement ("Released Claims").
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is 	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Asurion must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims .
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff,

Written Objections Must be Submitted by <u> </u>	but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. <i>See</i> Section 7 of this Notice.
You Can Participate in the <u> </u> Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on <u> </u>. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. <i>See</i> Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by <u> </u>	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Asurion’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by <u> </u>. <i>See</i> Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a [former] Asurion employee. The Action accuses Asurion of violating California labor laws by failing to pay meal and rest period premiums at the regular rate, failing to pay wages due upon termination, failing to provide accurate itemized wage statements, and committing unfair business practices. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action:

Jeremy F. Bollinger, Dennis F. Moss, Ari E. Moss, and Jorge A. Flores of Moss Bollinger LLP (“Class Counsel.”)

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

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

So far, the Court has made no determination whether Asurion or Plaintiff is correct on the merits.

In the meantime, Plaintiff and Asurion hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Asurion have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Asurion does not admit any violations or concede the merit of any claims.

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

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

1. Asurion Will Pay Two Hundred Thousand Dollars (\$200,000) as the Gross Settlement Amount (“Gross Settlement”). Asurion has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties

1 to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the
2 Court grants Final Approval, Asurion will fund the Gross Settlement not more than fourteen (14)
3 calendar days after the Judgment entered by the Court become final. The Judgment will be final on
4 the date the Court enters Judgment, or a later date if Participating Class Members object to the
5 proposed Settlement or the Judgment is appealed.

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

9 A. Up to **\$70,000** (**35%** of the Gross Settlement) to Class Counsel for attorneys’
10 fees (subject to increase if the Gross Settlement increases) and up to **\$15,000**
11 for their litigation expenses. To date, Class Counsel have worked and incurred
12 expenses on the Action without payment.

13 B. Up to **\$10,000** as a Class Representative Award for filing the Action, working
14 with Class Counsel and representing the Class. A Class Representative Award
15 will be the only monies Plaintiff will receive other than Plaintiff’s Individual
16 Class Payment and any Individual PAGA Payment.

17 C. Up to **\$7,500** to the Administrator for services administering the Settlement.

18 D. Approximately **\$29,250** for PAGA Penalties for PAGA Penalties, allocated
19 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to
20 the Aggrieved Employees based on their PAGA Period Pay Periods.

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

23 3. Net Settlement Distributed to Class Members. After making the above deductions in
24 amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the
25 “Net Settlement”) by making Individual Class Payments to Participating Class Members based on
26 their Class Period Workweeks.

27 4. Taxes Owed on Payments to Class Members. Plaintiff and Asurion are asking the
28 Court to approve an allocation of **20%** of each Individual Class Payment to taxable wages (“Wage

Portion”) and **80%** to non-economic damages and interest (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. (Asurion will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

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

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than , that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Asurion. You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give

up their right to assert PAGA claims against Asurion based on the PAGA Period facts alleged in the Action.

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

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

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

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

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action including, e.g., any and all claims including, but not limited to: (1) Improper inclusion of PAGA waiver in arbitration agreement; (2) Improper inclusion of confidentiality clause in employment agreement; (3) Failure to pay meal period and rest break premiums at the “regular rate of compensation;” (4) Failure to timely pay wages during employment under; (5) Failure to pay sick pay at the “regular rate of pay;” (6) failure to maintain accurate payroll records; (7) failure to timely pay wages upon termination; and, (8) Violation of the California Private Attorneys General Act of 2004 (Labor Code § 2698, et seq.) predicated

on the same or similar facts and/or claims alleged in the Lawsuit and/or any PAGA letter sent to the LWDA by Plaintiff in or prior to the Lawsuit, as well as any claims that reasonably could have been pled which arise from the same or similar facts concerning the Named Plaintiff or the putative class, and claims for interest, penalties (including but not limited to waiting time penalties), as well as any claims under the California Labor Code and California Industrial Welfare Commission Wage Orders that were alleged (specifically for violations of Labor Code sections 423.5, 232, 226.7, 204, 246, 1174, 201-203, and Wage Order 4-2001), or which could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Lawsuit. Except as set forth in Section 5.2 of the Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Asurion has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Asurion, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Asurion or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims of PAGA predicated on the facts and/or claims alleged in the Action and/or any PAGA letter sent to the LWDA by Plaintiff or in any way premised in whole or in part on any of the Released Class Claims that arose at any time during the PAGA Period, including, but not limited to: (1) Improper inclusion of PAGA waiver in arbitration agreement; (2) Improper inclusion of confidentiality clause in employment agreement; (3) Failure to pay meal period and rest break premiums at the "regular rate of compensation;" (4) Failure to timely pay wages during employment under; (5) Failure to pay sick pay at the "regular rate of pay;" (6) failure to maintain accurate payroll records; and (7) failure to timely pay wages upon termination; and, (8) Violation of the California Private Attorneys General Act of 2004 (Labor Code § 2698, et seq.) predicated on the same or similar facts and/or claims alleged in the Lawsuit and/or any PAGA letter sent to the LWDA by Plaintiff in or prior to the Lawsuit, as well as any claims that reasonably could have been pled which arise from the same or similar facts concerning the Named Plaintiff or the putative class, and claims for interest, penalties (including but not limited to waiting time penalties), as well as any claims under the California Labor Code and California Industrial Welfare Commission Wage

Orders that were alleged (specifically for violations of Labor Code sections 423.5, 232, 226.7, 204, 246, 1174, 201-203, and Wage Order 4- 20010), or which could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Lawsuit.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments using the following formula: The Net Settlement Amount will be allocated among Participating Class Members on a proportional basis based on the number of Work Weeks worked during the Class Period and whether the Participating Class Member experienced a termination during the Class Period. Participating Class Members shall be allocated one (1) points of credit for each Work Week they worked within the Class Period and five (5) points of credit if the Participating Class Member experienced a termination within the Class Period. One day worked in a given week will be credited as a Work Week for purposes of these calculations. To calculate each Class Member's proportional share, the Administrator will (i) Add all points for all Participating Class Members to obtain the Denominator; (ii) Divide the number of points for each Participating Class Member by the Denominator to obtain each Class Member's portion of the Net Settlement Amount; (iii) Multiply each Participating Class Member's portion of the Net Settlement Amount by the Net Settlement Amount to determine each Class Member's estimated individual settlement payment of the Net Settlement Amount.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing approximately \$7,312.50 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.

3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Asurion's records, are stated in the first page of this Notice. You have until [REDACTED] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information. You need to support your challenge by sending

copies of pay stubs or other records. The Administrator will accept Asurion's calculation of Workweeks and/or Pay Periods based on Asurion's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Asurion's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

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

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

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as **Hector Chavez v. Asurion, LLC, et al., Los Angeles Superior Court Case No. 21SMCV01620**, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Asurion are asking the Court to approve. At least sixteen (16) court days before the [INSERT DATE OF FINAL APPROVAL HEARING] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website (url) or the Court's website (url).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is .** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action **Hector Chavez v. Asurion, LLC, et al., Los Angeles Superior Court Case No. 21SMCV01620** and include your name, current address, telephone number, and approximate dates of employment for and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on at (time) in Department R of the Los Angeles Superior Court, located at 1725 Main Street, Santa Monica,

CA 90401. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information. It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website [redacted] beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Asurion and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to [redacted] (specify entity) 's website at [redacted] (url). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. 21SMCV01620. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel: Jeremy F. Bollinger, Dennis F. Moss, Ari E. Moss, Jorge A. Flores
Name of Attorney: Jeremy F. Bollinger
Email Address: jeremy@mossbollinger.com
Name of Firm: Moss Bollinger LLP
Mailing Address: 15300 Ventura Blvd., Ste. 207, Sherman Oaks, California 91403
Telephone: (310) 982-2984

Settlement Administrator:

Name of Company: [redacted]
Email Address: [redacted]
Mailing Address: [redacted]
Telephone: [redacted]
Fax Number: [redacted]

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

5 **11. WHAT IF I CHANGE MY ADDRESS?**

6 To receive your check, you should immediately notify the Administrator if you move or
7 otherwise change your mailing address.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT

B

JEREMY F. BOLLINGER (SBN 240132)
DENNIS F. MOSS (SBN 77512)
ARI E. MOSS (SBN 238579)
JORGE A. FLORES (SBN 333441)
MOSS BOLLINGER LLP
15300 Ventura Blvd., Ste. 207
Sherman Oaks, California 91403
Telephone: (310) 982-2984
Facsimile: (818) 963-5954
dennis@mossbollinger.com
jeremy@mossbollinger.com
ari@mossbollinger.com
anthony@mossbollinger.com

Attorneys for Plaintiff HECTOR CHAVEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

HECTOR CHAVEZ, an individual, on behalf
of himself and other similarly aggrieved
employees and the State of California,

Plaintiff,

vs.

**ASURION, LLC; ASURION UBIF
FRANCHISE, LLC; and DOES 1-50,**

Defendants.

Unlimited Jurisdiction

Case No.: 21SMCV01620

[Assigned to Hon. Edward B. Moreton Jr.
for all purposes, Dept. 200]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES:**

- 1. FAILURE TO PAY MEAL AND
REST PERIOD PREMIUMS AT
THE REGULAR RATE OF
COMPENSATION**
- 2. FAILURE TO ISSUE ACCURATE
ITEMIZED WAGE STATEMENTS**
- 3. FAILURE TO TIMELY PAY
WAGES UPON TERMINATION**
- 4. UNFAIR COMPETITION**
- 5. CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT OF 2004 ("PAGA")**

DEMAND FOR JURY TRIAL

FIRST AMENDED COMPLAINT

1
2 Plaintiff Hector Chavez (“Plaintiff”), on behalf of himself and all other similarly
3 situated persons and the State of California, complains and alleges as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this lawsuit as a class action on behalf of other similarly situated
6 persons who work or worked for Asurion LLC and Asurion UBIF Franchise LLC (“Asurion” or
7 “Defendants”) and, as a proxy for the State of California, brings a representative law enforcement
8 action under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code Section 2698 et
9 seq., to recover civil penalties against Defendants. Plaintiff’s class claims are premised on
10 Defendants’ failure to pay rest and meal period premiums at the correct regular rate of
11 compensation, failure to pay paid sick leave at the correct regular rate of pay, failure to issue
12 accurate itemized wage statements, and failure to timely pay all wages upon cessation of
13 employment. In addition, Plaintiff seeks civil penalties pursuant to PAGA based on Defendants’
14 inclusion of an unlawful PAGA waiver in its arbitration agreements, inclusion of an unlawful
15 confidentiality clause in its employment agreement related to the disclosure of wages, failure to
16 pay meal and rest period premiums at the correct regular rate of compensation, failure to pay paid
17 sick leave at the correct regular rate of pay, failure to maintain complete and accurate records,
18 failure to timely pay all wages during employment, and failure to timely pay all wages upon
19 cessation of employment.

20 **JURISDICTION AND VENUE**

21 2. Venue is proper in this judicial district pursuant to California Code of Civil
22 Procedure § 395.5 because the acts alleged herein, in part, took place in Marina Del Rey,
23 California.

24 3. The California Superior Court has jurisdiction in this matter because Plaintiff is a
25 resident of California, Defendants are qualified to do business in California and Defendants
26 regularly conduct business in California. Further, there is no federal question at issue as the claims
27 herein are based solely on California law.

4. This court has jurisdiction over this action under Article 6 of the California Constitution and California Code of Civil Procedure §410.10.

5. This Court has jurisdiction over Plaintiff's and Class Members' claims under California Labor Code §§ 201-203, 218, 226, 226.7 and 246.

6. This Court has jurisdiction over Plaintiff's and Class Members' claims for restitution of unpaid wages and other ill-gotten benefits arising from Defendants' unlawful and/or unfair business practices under California Business & Professions Code §§ 17200 *et seq.*

THE PARTIES

A. Plaintiff

7. Plaintiff is over the age of eighteen, and at times mentioned in this complaint, was a resident of California. During the relevant period, Plaintiff was employed by Defendants in California as an hourly paid non-exempt employee at Defendants' electronics repair shops selling warranties, fixing cell phones and other electronic devices from approximately October 2020 through April 2021. Plaintiff and other similarly situated persons earned sales incentives/bonuses for reaching certain sales goals and for each warranty/insurance product they sold on household electronics.

8. Plaintiff seeks to represent similarly situated non-exempt employees of Defendants who, during the relevant period, were subjected to violations of California law, as follows: Labor Code Sections 201-204, 226.7, 232, 246(*l*), 432.5, 1174(d), 1174.5, Business and Professions Code Sections 17200 et seq., and the applicable Industrial Welfare Commission (“IWC”) Wage Orders, including, Wage Order 4-2001.

9. As such, Plaintiff appears in this action on behalf of himself and on behalf of all other similarly situated persons and the State of California.

B. Defendants

10. Plaintiff is informed and believes, and thereon alleges, that Defendants Asurion LLC and Asurion UBIF Franchise LLC (collectively, “Asurion”) are Delaware limited liability companies that do business in California, including in Ventura and Los Angeles Counties, among

1 others. Asurion is a leading provider of device insurance, warranty and support services for cell
2 phones, consumer electronics and home appliances. At all times relevant to this action, Asurion
3 has made its services available throughout California, in part, through its subsidiary uBreakiFix,
4 an electronics repair shop.

5 11. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
6 participation in the conduct herein alleged, of the Defendants sued herein as DOES, but is informed
7 and believes and thereon alleges that said Defendants are legally responsible for the wrongful
8 conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will
9 amend this complaint to allege the true names and capacities of the DOE Defendants when
10 ascertained. Defendants Asurion LLC and Asurion UBIF Franchise LLC and the DOE Defendants
11 are collectively referred to herein as “Defendants.”

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

16 **FACTS RELEVANT TO PLAINTIFF’S CLAIMS**

17 13. At all relevant times, Defendants employed Plaintiff and other similarly aggrieved
18 employees subject to Labor Code Section 435.2. Labor Code Section 432.5 provides: “No
19 employer, or agent, manager, superintendent, or officer thereof, shall require any employee or
20 applicant for employment to agree, in writing, to any term or condition which is known by such
21 employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

22 14. When Defendants hired Plaintiff, they required Plaintiff to sign a document entitled
23 “Employment, Confidential Information, Invention Assignment and Arbitration Agreement” as a
24 condition of employment (the “Agreement”). Among other things, the Agreement contains an
25 arbitration agreement and confidentiality agreement. Attached as **Exhibit A** to **Exhibit 1** hereto is
26 a true and correct copy of the Agreement dated October 30, 2020. On information and belief,
27 Defendants also required all other aggrieved employees to sign the Agreement as a condition of

1 employment.

2 15. The Agreement Defendants required Plaintiff to sign as a condition of his
3 employment contains in Section 7(D) a purported waiver of Plaintiff's right to bring any claim
4 related to his employment on a representative basis under California's Private Attorneys General
5 Act of 2004, Labor Code Section 2698 et seq. ("PAGA") that is unenforceable as a matter of settled
6 California Law.

7 16. Section 7(D) of the Agreement states in bold, in relevant part:

8 ***Class Action Waiver. Both the Company and I agree to bring any dispute in***
9 ***arbitration on an individual basis only, and not on a class, collective,***
10 ***representative or private attorney general basis. There will be no right or***
11 ***authority for any dispute to be brought, heard or arbitrated as a class,***
12 ***collective, representative or private attorney general action, or as a member***
13 ***in any purported class, collective, representative or private attorney general***
14 ***proceeding, including without limitation pending but not certified class actions***
15 ***("Class Action Waiver").*** Disputes regarding the validity and enforceability of the
16 Class Action Waiver may be resolved only by a civil court of competent jurisdiction
17 and not by an arbitrator.

18 (Exhibit A to Exhibit 1 hereto at § 7 (original bold and italics).)

19 17. At the time Defendants required Plaintiff to sign the Agreement containing the
20 waiver of his right to a trial of PAGA claims in October 2020, it was well-established that such
21 PAGA waivers are contrary to California law and unenforceable. *See Iskanian v. CLS*
22 *Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 384 ("We conclude that where, as here,
23 an employment agreement compels the waiver of representative claims under the PAGA, it is
24 contrary to public policy and unenforceable as a matter of state law."); *Juarez v. Wash Depot*
25 *Holdings, Inc.* (2018) 24 Cal. App. 5th 1197, 1202–03 ("court properly concluded that the PAGA
26 waiver set forth in the handbook is unenforceable as against public policy"); *Lawson v. ZB, N.A.*
27 (2017) 18 Cal. App. 5th 705, 725, as modified (Dec. 21, 2017) (same).

28 18. Despite knowing that the Agreement contains an unlawful and unenforceable
PAGA waiver, Defendants continued to require its employees to sign these arbitration agreements
during the one-year period preceding Plaintiff's submission of his notice letter to Defendants and

1 the LWDA. By requiring Plaintiff and other aggrieved employees to sign mandatory arbitration
2 agreements that Defendants knew contained an unlawful PAGA waiver, Defendants violated
3 section 432.5. In doing so, Defendants deterred their employees from pursuing PAGA claims that
4 the employees otherwise are entitled to pursue in court.

5 19. At all relevant times, Defendants employed Plaintiff and other similarly aggrieved
6 employees subject to Labor Code Section 232. Under Labor Code Section 232, employers are
7 prohibited from preventing an employee “from disclosing the amount of his or her wages” (Lab.
8 Code § 232(a)) and prohibits employers to “require an employee to sign a waiver or other
9 document that purports to deny the employee the right to disclose the amount of his or her wages”
10 (Lab. Code § 232(b)).

11 20. Section 2 of the Agreement Defendants required Plaintiff and other similarly
12 aggrieved employees to sign as a condition of employment is entitled “Confidential Information”
13 and precluded Plaintiff from disclosing his wages by requiring:

14 at all times during the term of my employment and thereafter, to hold in strictest
15 confidence, and not to use or to disclose to any person, firm or corporation, except
16 as such use or disclosure is required in connection with my work for the Company
17 or unless the Chief Executive Officer of the Company (or his/her designee)
18 otherwise expressly authorizes in writing, any Confidential Information.” Section
19 2 defines “Confidential Information” to include, among other things, “information
20 regarding the skills, compensation and career path and evaluations of the
21 Company’s employees.

22 (Exhibit A to Exhibit 1 hereto at § 2.)

23 21. At all relevant times, Defendants employed Plaintiff and other similarly situated
24 employees subject to Labor Code Section 226.7 and the applicable Wage Orders, including Wage
25 Order 4-2001(11) and (12). Labor Code Section 226.7 (emphasis added) states, in relevant part:
26 “If an employer fails to provide an employee a meal or rest or recovery period in accordance with
27 a state law,..., the employer shall pay the employee one additional hour of pay at the employee’s
28 *regular rate of compensation* for each work day that the meal or rest period is not provided.”

22. Similarly, Wage Order 4-2001(11) (emphasis added) provides: “If an employer

1 fails to provide an employee a meal period in accordance with the applicable provisions of this
2 order, the employer shall pay the employee one (1) hour of pay at the employee's *regular rate of*
3 *compensation* for each workday that the meal period is not provided." Wage Order 4-2001(11)(B),
4 (12)(B) (same re rest periods).

5 23. During the relevant period, Defendants paid premium wages to Plaintiff and other
6 similarly situated employees for violations of the California's meal and rest period laws. However,
7 Defendants paid these employees one hour of pay at their base hourly rates when compensating
8 those employees for violations of the meal and rest period requirements, including in periods when
9 employees earned bonuses and other non-discretionary remuneration (noted on their wage
10 statements as "Sales Incentive", "UBIF bonus" and "Ace Reward" among others) required to be
11 factored into an employee's regular rate of compensation. *Ferra v. Loews Hollywood Hotel, LLC*
12 (Cal. July 15, 2021) --- P.3d ---- (holding that when employers pay one-hour meal and rest period
13 premiums to employees who report that they were not provided compliant meal or rest periods,
14 the pay is not at the employee's normal "base" hourly rate but must be at the same FLSA "regular
15 rate" that is used to calculate overtime premiums).

16 24. For example, during the two pay periods in the month of November 2020,
17 Defendants paid Plaintiff premiums for 14 meal period violations. For that same month, Plaintiff
18 earned and was paid \$370 in Sales Incentives and a UBIF bonus of \$39.29. However, Defendants
19 paid Plaintiff's premiums at his base hourly rate of \$13.00 because it did not factor the Sales
20 Incentive or UBIF bonus into the regular rate of compensation for the premiums.

21 25. During the relevant period, Plaintiff and other similarly situated employees were
22 entitled to "paid sick days" pursuant to the California Healthy Workplaces, Healthy Families Act
23 of 2014, California Labor Code sections 245, et seq.

24 26. Labor Code Section 246(l) requires that employers pay sick time pay to non-exempt
25 employees at the employee's "regular rate of pay." Employers may either calculate "paid sick
26 days" for non-exempt employees in California at the regular rate of pay for the workweek in which
27 the employee uses paid sick time or by dividing the employee's total wages, not including overtime

1 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of
2 employment. (Lab. Code § 246(l)(1-2)). The "regular rate of pay" includes all remuneration for
3 employment paid to the employee and includes non-discretionary incentive bonuses.

4 27. On information and belief, during the relevant period, similarly situated employees
5 accrued and took paid sick leave. However, Defendants failed to include such non-discretionary
6 remuneration when determining the "regular rate of pay" for these employees for purposes of sick
7 time pay when they were paid sick time pay and non-discretionary bonuses in the same pay period.
8 Instead, Defendants only paid these aggrieved employees paid sick leave at their base hourly rate,
9 rather than at their "regular rate of pay."

10 28. At all relevant times, Defendants employed Plaintiff and other similarly situated
11 employees subject to Labor Code Section 204. California Labor Code § 204, subdivision (a), states
12 that all wages earned are due and payable twice during each calendar month on days designated in
13 advance by the employers.

14 29. During the relevant period, Defendants did not correctly pay Plaintiff and other
15 similarly situated employees the meal and rest premiums owed for meal and rest break violations
16 (as alleged above). Defendants also failed to include such non-discretionary remuneration when
17 determining the "regular rate of pay" for these employees for purposes of sick time pay when they
18 were paid sick time pay and incentive bonuses in the same pay period. Defendants willfully failed
19 to timely pay Plaintiff and other similarly aggrieved employees all wages due for work performed
20 and this failure continued through the time in which they were employed by Defendants. As a
21 result, Defendants violated Labor Code § 204.

22 30. Labor Section 226(a) requires employers to list on an employee's wage statement,
23 inter alia, "(1) Gross wages earned...and (5) net wages earned..."

24 31. Plaintiff and similarly situated employees of Defendants received wage statements
25 that did not list all wages earned, including meal and rest period premiums wages and the full
26 amount of sick pay wages. As alleged above, Plaintiff and similarly situated employees were
27 entitled to premium wages that were not paid and, therefore, are entitled to penalty payments

1 pursuant to Labor Code Section 226.

2 32. Labor Code Section 1174 states, “[e]very person employing labor in this state
3 shall...(d) [k]eep, at a central location in the state or at the plants or establishments at which
4 employees are employed, payroll records showing the hours worked daily by and the wages paid
5 to, ..., employees employed at the respective plants or establishments.” The “Records” section of
6 the applicable IWC Wage Order states that every employer shall keep accurate information with
7 respect to each one of its employees, including time records showing when the employee begins
8 and ends each work period and meal period, total hours worked in the payroll period and applicable
9 rates of pay, and total wages paid each payroll period. (*See* Wage Order 4-2001(7)).

10 33. Defendants failed to keep accurate information with respect to Plaintiff’s and other
11 similarly situated employees’ payroll, including the applicable rates of pay and total wages earned
12 (such as non-discretionary remuneration when determining the regular rate of compensation for
13 the payment of meal and rest period premiums) each payroll period as required by the “Records”
14 section of the applicable IWC Wage Order. Therefore, Defendants knowingly and intentionally
15 failed to keep and maintain accurate records as required by Labor Code section 1174.

16 34. Pursuant to Labor Code Section 201 and 202, Defendants are required to
17 immediately pay all wages owed in the case of a discharge or resignation when the resigning
18 employee provided at least three days’ notice of resignation or within 72 hours for those employees
19 who resign and provide less than 3 days’ notice. Labor Code Section 203 provides for continuation
20 of wages, from the day earned and unpaid were due upon termination until paid, for a maximum
21 of 30 days.

22 35. Plaintiff and others have ceased their employment with Defendants. Upon the
23 cessation of that employment relationship (and as prescribed by statute), they did not receive all
24 wages owed. Namely, said former employees (including Plaintiff) did not receive all wages due to
25 Defendants’ failure to account for all sick leave pay and failure to pay all premium wages for
26 missed rest and meal periods. Plaintiff and those similarly situated, upon termination, did not
27 receive all owed wages on the date of termination, or within 72 hours if they resigned. Therefore,

Defendants have violated and continue to violate Labor Code Sections 201 and 202, because they have not paid the aforementioned wages and have violated Section 203 because they have not paid the waiting time penalties for their failure to pay the final wages at the cessation of employment.

CLASS DEFINITIONS AND CLASS ALLEGATIONS

36. Plaintiff brings this action on behalf of himself, on behalf of all others similarly situated, and as a member of the Class defined as follows:

All current and former non-exempt, hourly paid employees of UBIF Franchise LLC, employed in California at any time from June 29, 2020, through the date of preliminary approval or October 1, 2022, whichever is sooner.

37. This action has been brought and may be properly maintained as a class action pursuant to the provisions of California Code of Civil Procedure § 382 and other applicable law.

38. **Numerosity:** Code of Civil Procedure § 382: member of the class are so numerous that their individual joinder is impracticable. Plaintiff estimates that there are no less than 50 persons in each of the classes. The precise number of Class members and their addresses are unknown to Plaintiff. However, Plaintiff is informed and believes that the number can be obtained from Defendants records. Class members may be notified of the pendency of this action by mail, electronic mail, the internet, or published notice.

39. **Existence of Predominance of Common Question of Fact and Law:** Code of Civil Procedure § 382: Common questions of law and fact exist as to all members of the Classes. These questions predominate over any questions effecting only individual members of the classes. These common factual and legal questions include:

- (a) Whether Defendants failed to factor non-discretionary renumeration into the payment of premium wages based on meal and rest period violations;
- (b) Whether Defendants failed to factor non-discretionary renumeration into the payment of paid sick leave;
- (c) Whether Defendants issued accurate itemized wage statements;
- (d) Whether Defendants failed to provide class members who ceased employment

with Defendants all wages owed at the time of the cessation of employee-employer relationship;

(e) Whether Defendants committed unlawful business practices or acts within the meaning of Business & Professions Code Sections 17200 *et seq.*;

(f) Whether, as a consequence of Defendants' unlawful conduct, the members of the Classes are entitled to restitution, and/or equitable relief;

(g) Whether Defendants' affirmative defenses, if any, raise any common issues of law or fact as to Plaintiff and the class members as a whole.

40. **Typicality:** Plaintiff's claims are typical of the claims of the members of each Class because Plaintiff, as an hourly paid employee, was exposed to the same unlawful business practices as the members of the classes. Plaintiff sustained the same types of injuries and losses that the class members sustained. Plaintiff is subject to the same affirmative defenses as the members of the class.

41. **Adequacy:** Plaintiff will adequately and fairly protect the interests of the members of the Class. Plaintiff has no interest adverse to the interests of absent Class members. Plaintiff is represented by legal counsel who has substantial class action experience in civil litigation and employment law.

42. **Superiority:** A class action is superior to other available means for fair and efficient adjudication of the claims of the Class and would be beneficial for the parties and the court. Class action treatment will allow a large number of similarly situated persons to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. The monetary amounts due to many individual Class members are likely to be relatively small, and the burden and expense of individual litigation would make it difficult or impossible for individual members of the Class to seek and obtain relief. A class action will serve an important public interest by permitting such individuals to effectively pursue recovery of the sums owed to them. Further,

1 class litigation prevents the potential for inconsistent or contradictory judgments raised by
2 individual litigation.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY MEAL AND REST PERIOD PREMIUMS AT THE REGULAR**
5 **RATE OF COMPENSATION**

6 **(By Plaintiff and the Class Against Defendants)**

7 43. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
8 though set forth herein.

9 44. At all relevant times, Plaintiff and other members of the Class were employees of
10 Defendants covered by Labor Code Section 226.7 and the applicable IWC Wage Orders,
11 including Wage Order 4-2001.

12 45. Labor Code Section 226.7 and the applicable Wage Orders, including Wage Order
13 4-2001(11) and (12). Labor Code Section 226.7 (emphasis added) states, in relevant part: “If an
14 employer fails to provide an employee a meal or rest or recovery period in accordance with a state
15 law,..., the employer shall pay the employee one additional hour of pay at the employee’s *regular*
16 *rate of compensation* for each work day that the meal or rest period is not provided.”

17 46. Similarly, Wage Order 4-2001(11) (emphasis added) provides: “If an employer
18 fails to provide an employee a meal period in accordance with the applicable provisions of this
19 order, the employer shall pay the employee one (1) hour of pay at the employee’s *regular rate of*
20 *compensation* for each workday that the meal period is not provided.” Wage Order 4-2001(11)(B),
21 (12)(B) (same re rest periods).

22 47. As alleged above, Defendants failed to pay premium wages to Plaintiff and other
23 members of the Class at the correct regular rate of compensation for meal and rest break
24 violations.

25 48. As a result of Defendants’ unlawful conduct, Plaintiff and other members of the
26 Class have suffered damages in an amount, subject to proof, to the extent they were not paid all
27 premiums owed for meal and rest period violations.

49. Pursuant to Labor Code Section 218, Plaintiff and other members of the Class are entitled to recover the full amount of their unpaid additional pay for meal and rest period violations. Pursuant to Labor Code Section 218.5, Plaintiff and other members of the Class are entitled to recover their reasonable attorney's fees and costs of suit. Pursuant to Labor Section 218.6 or Civil Code Section 3287(a), Plaintiff and other members of the Class are entitled to recover prejudgment interest on the additional pay owed for meal and rest period violations.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(By Plaintiff and the Class Against Defendants)

50. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

51. Labor Code Section 226(a) requires Defendants to accurately set forth gross wages earned and net wages earned. Defendants have knowingly and intentionally failed to comply with Labor Code Section 226(a) on each and every wage statements provided to Plaintiff and members of the Class by failing to accurately list all wages earned, including premium wages, including the full amount of sick pay wages.

52. As a consequence of Defendants' knowing and intentional failure to comply with Labor Code section 226(a), Plaintiff and each Class member he seeks to represent are each entitled to actual damages or penalties not to exceed \$4,000 pursuant to Labor Code section 226(b), together with interest thereon and attorneys' fees and costs.

THIRD CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES UPON CESSATION OF EMPLOYMENT

(By Plaintiff and the Class Against Defendants)

53. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

//

//

54. Plaintiff and other members of the Class were employees of Defendants covered by Labor Code Section 201 or 202 whose employment with Defendants ended during the relevant period.

55. Pursuant to Labor Code Sections 201 or 202, Plaintiff and other member of the Class were entitled upon cessation of employment with Defendants to timely payment of all wages earned and unpaid prior to termination. Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid prior to resignation at the time of resignation.

56. As alleged above, Defendants failed to pay Plaintiff and other members of the Class all wages earned and unpaid prior to termination, including premium wages for meal and rest period violations and all sick leave pay in accordance with Labor Code Sections 201 and 202. Plaintiff is informed and thereon alleges that at all relevant times within the applicable limitations period, Defendants maintained and continue to maintain a policy or practice of not paying terminated employees all their final wages, including meal and rest period premium wages and all sick leave pay earned before termination due under Labor Code Sections 202 or 202.

57. Defendants' failure to pay Plaintiff and members of the Class all wages earned prior to termination in accordance with Labor Code Sections 201 or 202 was willful. Defendants had the ability to pay all wages earned by employees prior to termination in accordance with Labor Code Sections 201 or 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code Sections 201 or 202.

58. Pursuant to Labor Code Section 201 or 202, Plaintiff and other members of the Class are entitled to all wages earned prior to termination that Defendants failed to pay them.

59. Pursuant to Labor Code Section 203, Plaintiff and other members of the Class are entitled to continuation of their wages, from the day their earned and unpaid wages were due upon termination until paid, up to a maximum of 30 days.

60. As a result of Defendants' conduct, Plaintiff and members of the Class have suffered damages in an amount, subject to proof, to the extent they were not paid all continuation wages owed under Labor Code Section 203.

61. Pursuant to Labor Code Sections 218 and 218.5, Plaintiff and other members of the Class are entitled to recover the full amount of their unpaid wages, continuation wages under Labor Code Section 203, reasonable attorney's fees and costs of suit. Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiff and other members of the Class are entitled to recover prejudgment interest on the amount of their unpaid wages and unpaid continuation wages.

FOURTH CAUSE OF ACTION

UNFAIR COMPETITION

(By Plaintiff and the Class against Defendants)

62. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

63. Defendants are “persons” as defined under Business & Professions Code § 17021.

64. Plaintiff alleges that Defendants committed the unfair business practices as defined by Cal. Bus. & Prof. Code § 17200 et seq., by violating the laws alleged to have been violated in this Complaint and which allegations are incorporated herein by reference as though set forth herein.

65. At all times relevant to this action, Plaintiff and other members of the Class were employees of Defendants entitled to the benefits of Labor Code Section 201-203, 226, 226.7 and 246.

66. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and other members of the Class their sick pay wages at the rate of pay required by law. Accordingly, Plaintiff and other members of the Class did not receive the full amount of paid

1 sick wages that they were entitled to receive by law.

2 67. During the relevant time period, Defendants intentionally and willfully failed to
3 pay Plaintiff and other members of the Class their meal and rest break premiums wages at the rate
4 of pay required by law. Accordingly, Plaintiff and other members of the Class did not receive the
5 full amount of premium wages that they were entitled to receive by law.

6 68. During the relevant time period, Defendants intentionally and willfully failed to
7 furnish to Plaintiff and other members of the Class accurate itemized wage statements that listed
8 all wages earned, including premium wages. Accordingly, Plaintiff and other members of the Class
9 did not receive accurate wage statements they were entitled to receive by law.

10 69. During the relevant time period, Defendants intentionally and willfully failed to
11 pay Plaintiff and other members of the Class the full amount of their sick pay wages and/or
12 premium wages upon the separation of employment by Defendants and, thereafter, failed to pay
13 waiting time penalties pursuant to Labor Code Section 203 to the members of the Class.
14 Accordingly, Plaintiff and members of the Class did not receive all of the wages they were entitled
15 to receive by law.

16 70. The unlawful conduct of Defendants alleged herein constitutes unfair competition
17 within the meaning of Business and Professions Code 17200. Due to their unlawful and unfair
18 business practices in violation of the Labor Code, Defendants have gained a competitive advantage
19 over other comparable companies doing business in the State of California that comply with their
20 obligations under the Labor Code.

21 71. As a result of Defendants' unfair competition as alleged herein, Plaintiff and other
22 members of the Class have suffered injury in fact and lost money or property. Plaintiff and
23 members of the Class have been deprived of their rights to all paid sick leave wages owed to them,
24 additional premium wages for meal and rest period violations, accurate itemized wage statements,
25 and/or timely payment of all earned wages due upon termination of employment.

26 72. Pursuant to Business and Professions Code Section 17203, Plaintiff and other
27 members of the Class are entitled to restitution of the amount of sick time pay by which Defendants

1 underpaid them, the amount of premium wages by which Defendants underpaid them, and to their
2 reasonable attorneys' fees and costs under Code of Civil Procedure Section 1021.5.

3 **FIFTH CAUSE OF ACTION**

4 **CIVIL PENALTIES UNDER PAGA**

5 **(By Plaintiff, Aggrieved Employees and the State of California against Defendants)**

6 73. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
7 though set forth herein.

8 74. At all times relevant to this action, Plaintiff and other Aggrieved Employees were
9 "aggrieved employees" within the meaning of Labor Code Section 2699.

10 75. Defendants' conduct as described herein, arising from Defendants' requirement
11 that Plaintiff and aggrieved employees sign an arbitration agreement that contains a provision
12 prohibited by law, prohibiting and preventing employees from disclosing the amount of his or her
13 wages, failure to pay rest and meal break premiums at the correct regular rate of compensation,
14 failure to pay sick days at the correct regular rate of pay, failure to maintain complete and accurate
15 records, failure to timely pay all wages during employment, and failure to timely pay all wages
16 upon cessation of employment, constitute violations of Labor Code Sections 201-204, 226.7, 232,
17 246(l), 432.5, 1174(d), 1174.5 and the applicable IWC Wage Orders, including Sections 7, 11, and
18 12 of Wage Order 4-2001.

19 76. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf
20 of himself and other current or former employees, to bring a civil action to recover civil penalties
21 pursuant to the procedures specified in Labor Code Section 2699.3.

22 77. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
23 Section 2699.3. By letter dated July 20, 2021, Plaintiff gave written notice to the LWDA via its
24 online filing system and by certified mail to Defendants of the specific provisions of the Labor
25 Code alleged to have been violated, including the facts and theories to support the alleged
26 violations. A true and correct copy of the July 20, 2021, letter is attached hereto as **Exhibit 1**. To
27 date, more than 65 days after the postmark date of July 20, 2021, the LWDA has not advised

1 Plaintiff that it intends to investigate Plaintiff's allegations.

2 78. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other Aggrieved
3 Employees are entitled to civil penalties for Defendants' violations of the Labor Code and the
4 applicable IWC Wage Orders, including Wage Order 4-2001, in the amount of one hundred dollars
5 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred
6 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant
7 to Labor Code Section 2699(i), 75% of the civil penalties recovered shall be distributed to the
8 LWDA, and 25% shall be distributed to the aggrieved employees.

9 79. Labor Code Section 1174.5 imposes a civil penalty of \$500 for an employer's
10 failure to maintain accurate and complete records. This civil penalty is in addition to the civil
11 penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor
12 Code section 2699 for a violation of Labor Code Section 1174(d).

13 80. Defendants' failure to maintain accurate and complete records constitutes an injury
14 as defined under Labor Code Section 1174. Therefore, Plaintiff and other similarly aggrieved
15 employees have suffered an injury for purposes of Labor Code Sections 1174.5 and 2699 and are
16 entitled to recover the greater of all actual damages or the amount specified in Sections 1174.5 and
17 2699 per violation.

18 81. Pursuant to Labor Code Section 2699(g), Plaintiff is entitled to an award of
19 reasonable attorney's fees and costs in connection with his claims for civil penalties.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff on behalf of himself and all others similarly aggrieved
22 employees, prays for relief and judgment against Defendants as follows:

23 **CLASS CERTIFICATION:**

- 24 1. An order that the action be certified as a class action;
25 2. An order that Plaintiff be certified as the representative of the Class;
26 3. An order that counsel for Plaintiff be confirmed as Class counsel;

ON THE FIRST CAUSE OF ACTION:

1. Damages for unpaid premiums for meal and rest period violations;
2. Prejudgment interest;

ON THE SECOND CAUSE OF ACTION:

1. Damages for inaccurate wage statements for each pay period;
2. Prejudgment interest;

ON THE THIRD CAUSE OF ACTION:

1. Damages for unpaid wages earned prior to termination of employment;
2. Damages for unpaid continuation wages owed for failing to pay all earned wages timely upon termination of employment;
3. Prejudgment interest;

ON THE FOURTH CAUSE OF ACTION:

1. Restitution of all unpaid wages and other monies owed and belonging to Class members that defendants unlawfully withheld from them and retained for themselves;
2. Prejudgment interest;

ON THE FIFTH CAUSE OF ACTION:

1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to aggrieved employees);
2. Costs;
3. Reasonable attorney's fees; and
4. Such other and further relief as this Court may deem just and proper.

ON ALL CAUSES OF ACTION:

1. Judgment in favor of Plaintiff and the putative Class and against Defendants;
2. Reasonable attorney's fees and costs of suit; and
3. Such other relief as the Court deems just and proper.

1 Dated: _____, 2022

MOSS BOLLINGER, LLP

2
3 By: _____

Jeremy F. Bollinger

4 Dennis F. Moss

Ari E. Moss

5 Jorge A. Flores

Attorneys for Plaintiff HECTOR CHAVEZ

6
7 **DEMAND FOR JURY TRIAL**

8 Plaintiff demands a trial by jury for himself and the Classes on all claims so triable.

9 Dated: _____, 2022

10 MOSS BOLLINGER, LLP

11
12 By: _____

Jeremy F. Bollinger

13 Dennis F. Moss

Ari E. Moss

14 Jorge A. Flores

Attorneys for Plaintiff HECTOR CHAVEZ