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and Proposed Class Counsel
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF KERN**

11
12 BRADLEY GRANADOS, on behalf of
himself and all "aggrieved employees"
13 pursuant to Labor Code § 2698 *et seq.*,

14 Plaintiffs,

15 v.

16 BAKERSFIELD COUNTRY CLUB, a
California corporation, and DOES 1
17 through 10, inclusive,

18 Defendants.
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CASE NO: BCV-21-102124

Assigned to the Hon. Thomas S. Clark, Dept. 17

CLASS ACTION

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION AND
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

DATE: March 3, 2023

TIME: 8:30 a.m.

DEPT.: 17

Complaint Filed: September 10, 2021

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Bradley Granados (“Granados” or
4 “Plaintiff”) and proposed Class Counsel in this action. I have personal knowledge of the facts set
5 forth herein and if called as a witness to testify to them, I could and would do so competently.

6 **Education and Experience:**

7 2. I obtained my BS degree from the University California at Berkeley in 2003. I
8 majored in Business Administration at the Haas School of Business.

9 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
10 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
11 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my
12 studies on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

13 4. Since becoming a member of the Bar, and until his recent retirement, I practiced law
14 with my father, Kenneth, at Gaines & Gaines, APLC. Our practice specializes in litigation, with
15 an emphasis in employment disputes like this one. Over 95% of my practice is devoted to complex
16 employment litigation similar to the instant action.

17 5. My firm has represented employees in complex employment matters such as this
18 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
19 class counsel in dozens of class action matters since my admission to the Bar. A list of the cases
20 in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

21 **Factual and Procedural Background:**

22 6. On July 7, 2021, Plaintiff exhausted the pre-filing requirements of the Labor Code
23 Private Attorneys General Act of 2004 (“PAGA”). On or about November 18, 2021, Plaintiff sent
24 a supplemental letter pursuant to PAGA. Thereafter, on or about October 10, 2022, Plaintiff sent
25 a second supplemental letter pursuant to PAGA.

26 7. On or about September 10, 2021, Plaintiff initiated the Action by filing a
27 Representative Action Complaint for Penalties, pursuant to PAGA, on behalf of himself and all
28 other aggrieved employees. The First Amended Complaint, attached to the Settlement as Exhibit

1 3 and which will be filed as part of the settlement approval process, asserts class and PAGA
2 representative action claims against Defendant for (1) failure to pay all wages earned (Labor Code
3 §§ 204.3, 226.2, 246, 246.5, 247, 247.5, 248, 248.1, 248.2, 510, 550-553, 558.1, 1102.5, 1194,
4 and 1194.2); (2) failure to provide compliant rest periods or compensation in lieu thereof (Labor
5 Code §§ 226.7 and 558; IWC Wage Order 5-2001); (3) failure to provide compliant meal periods
6 or compensation in lieu thereof (Labor Code §§ 226.7, 512, 558, 1197, and 1198; IWC Wage
7 Order 5-2001); (4) failure to comply with itemized employee wage statement provisions (Labor
8 Code §§ 226 and 226.3); (5) failure to timely pay wages due during employment and at separation
9 of employment (Labor Code §§ 201-204 and 210); (6) violation of Business and Professions Code
10 §§ 17200, et seq.; and (7) civil penalties pursuant to Labor Code §§ 2698, et seq. for violations of
11 Labor Code §§ 201 through 204.3, 210, 226, 226.2, 226.3, 226.7, 246, 246.5, 247, 247.5, 248,
12 248.1, 248.2, 510, 512, 550-553, 558, 558.1, 1102.5, 1194, 1194.2, 1197, and 1198 (the "First
13 Amended Complaint").

14 8. Defendant denies any liability or wrongdoing of any kind associated with the claims
15 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
16 purpose other than this settlement. Defendant contends that it has complied at all times with the
17 California Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable
18 federal, state, and local laws and regulations. It is Defendant's position that, if this case were to
19 be litigated, class certification would be inappropriate because Plaintiff is not an adequate class
20 representative, Plaintiff's claims are not typical of putative class members, and individual issues
21 predominate over class issues. The Action, the negotiation and execution of this Settlement
22 Agreement, and all acts performed or documents executed pursuant to or in furtherance of the
23 Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf
24 of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any
25 action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and
26 may not be used as, an admission or evidence of the appropriateness of these or similar claims for
27 class certification in the Action or with respect to any other proceeding. The Parties also agree that
28 in the event the Court does not grant final approval of the Settlement, the First Amended Complaint

1 shall be deemed withdrawn. The parties further agree that Defendant does not waive any defense
2 to the First Amended Complaint and the PAGA claim contained therein. The parties further
3 acknowledge that the filing of the First Amended Complaint is for settlement purposes only.

4 9. The Class Representative contends that Defendant violated the California Labor
5 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
6 certification.

7 **Investigation and Settlement Discussions**

8 10. My colleagues and I have conducted a thorough investigation into the facts and law
9 during the prosecution of this class action case, including the exchange of extensive informal
10 discovery and the review and verification of statistical data and other facts and information
11 provided by Defendant. My colleagues and I have investigated the applicable law as applied to
12 the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and
13 the damages and other losses claimed by Plaintiff.

14 11. On August 18, 2022, following their exchange of information and documents
15 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties
16 engaged in arm's-length negotiations with the assistance of mediator Judge Howard R. Broadman
17 (Ret.), through which they were able to reach the resolution of the Action set forth herein.

18 12. Based on our independent investigation and evaluation, my colleagues and I are of
19 the opinion that settlement for the consideration and on the terms set forth in their Settlement
20 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
21 light of all known facts and circumstances, including the risk of significant delay, the risk the
22 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.

23 13. The Parties agree that the Settlement Class described herein may be certified for
24 settlement purposes only and that this motion for approval seeking, inter alia, certification of the
25 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
26 approved, the certification will have no force or effect and will immediately be revoked. The
27 Parties further agree that certification for purposes of the settlement is in no way an admission that
28 class certification is proper under the more stringent standard applied for litigation and that

1 evidence of this limited Stipulation for settlement purposes only will not be admissible for any
2 purpose in this or any other proceeding.

3 14. The parties jointly prepared the Settlement Agreement and Release of Claims
4 ("Settlement Agreement", "Settlement", or "Stip."). A true and correct copy of the Settlement is
5 attached hereto as **Exhibit B**.

6 15. My office created a comprehensive damage analysis using sampling information
7 obtained through informal discovery. This damage analysis reveals that the negotiated settlement
8 falls within a realistic range of recovery on Class Members' claims.

9 16. Plaintiff claims that Defendant paid Plaintiff and Class Members bonuses and other
10 forms of non-base hourly wages, including, but not limited to, bonuses and split-shift premiums,
11 that were not included in their regular rate of pay for purposes of computing the proper overtime
12 rate and sick pay, in violation of Labor Code §§ 510 and 1194. As a result, they were allegedly
13 not properly compensated for work performed in excess of 8 hours in a workday and worked
14 performed in excess of 40 hours in a workweek at a rate no less than one and one-half times the
15 regular rate of pay, in violation of Labor Code §§ 510 and 1194. Plaintiff calculates the damage
16 liability for this claim at up to approximately \$30,000 and PAGA civil penalty liability for this
17 claim at \$162,200.

18 17. Plaintiff also asserts that Defendant failed to pay Plaintiff and Class Members
19 premium wages for missed, denied and unauthorized rest periods in violation of Labor Code §
20 226.7 and IWC Wage Order 5-2001. Plaintiff and other Class Members contend that they were
21 denied, and therefore unable to take, 10-minute on-the-clock rest periods for every four hours of
22 work or major fraction thereof, but were not paid premium wages of one hour's pay for each
23 missed, denied and unauthorized rest period. When they were able to take a rest period, they allege
24 that they were oftentimes on-duty, late or cut short. Based on a 25% violation rate, estimated
25 based on Plaintiff's experience, he calculates the damage liability for this claim at up to \$250,000
26 and PAGA civil penalty liability totaling up to \$295,500.

27 18. Plaintiff further alleges that Defendant failed to permit or authorize Plaintiff and
28 Class Members to take timely 30-minute meal periods for shifts greater than 5 hours in length, in

1 violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 5-2001. Based on an
2 analysis of a wage and time data provided by Defendant through informal discovery, Plaintiff has
3 ascertained a meal period violation rate of 59.4%. Plaintiff calculates premium wages on this
4 claim at up to \$250,000 and PAGA civil penalty liability for this claim at \$175,500.

5 19. Plaintiff also argues that Defendant failed to issue Plaintiff and Class Members
6 accurately itemized wage statements. As detailed above, Plaintiff and Class Members contend
7 that they were not paid all wages due. As a result, the wage statements issued by Defendant to
8 Plaintiff and Class Members would fail to accurately state all gross wages earned, in violation of
9 Labor Code § 226(a)(1), and net wages earned, in violation of Labor Code § 226(a)(5). Separately,
10 the wage statements issued to Plaintiff and other Class Members allegedly failed to list the total
11 hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, and all applicable hourly rates
12 in effect during the pay period and the corresponding number of hours worked, in violation of
13 Labor Code §§ 226(a)(9) and 226.3. Plaintiff calculates the statutory penalty liability for this
14 claim at up to \$289,850 and PAGA civil penalty liability for this claim at \$295,500.

15 20. Defendant also allegedly failed to pay Plaintiff and certain Class Members all wages
16 due timely upon separation of employment, in violation of Labor Code §§ 201-203. This is a
17 derivative claim for which Plaintiff calculates the statutory penalty liability at \$175,468 and PAGA
18 civil penalty liability at \$5,600.

19 21. The discount negotiated for settlement here is a reasonable compromise, particularly
20 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves
21 a 50% or higher hurdle, especially with respect to the meal and rest period claims, to which
22 Defendant maintains strong arguments to defeat class certification (in addition to multiple defenses
23 on the merits of the claims). Class certification is a substantial risk in any class action case. Here,
24 while Plaintiff maintains that the requirements of class certification are met, Defendant proffers
25 various arguments why class treatment is not appropriate, including but not limited to that
26 individualized inquires among class members predominate over common ones. If Defendant was
27 to defeat Plaintiff's class certification motion, there would be no class wide relief whatsoever, and
28 most class members would likely not file individual claims.

1 22. Plaintiff also faced the risk of a loss on the merits on his claims. It is very possible
2 that the Court would agree with Defendant's position that its policies and practices complied with
3 the requirements of California law or could not be certified. In such a case, the value of the
4 majority of Plaintiff's claims would be zero.

5 23. Plaintiff faced the risk that he would not obtain a maximum damage/penalty award
6 on all (or any of) his claims. For example, Plaintiff seeks discretionary penalties pursuant to the
7 PAGA. Even if Plaintiff did prevail on these claims, it is possible that the Court would not impose
8 all penalties pursuant to its discretionary power to reduce them.

9 24. Defendant strongly contends that its policies and practices do not violate any laws.
10 It contends that it properly provided for all meal and rest periods and fully compensated its
11 employees for all time worked. It further contends that the wage statements it provides to its
12 employees are fully compliant with California law.

13 25. When the costs and risks of non-certification and loss on the merits are considered,
14 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

15 26. The settlement for each Class Member is fair, reasonable and adequate, given the
16 inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
17 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the
18 Action.

19 **Class Certification Requirements:**

20 27. To date, no class has been certified. The Stipulation of Settlement contains a
21 provision pursuant to which we stipulate to the Court's provisional certification of the
22 approximately 175-member Settlement Class, but do so for purposes of this settlement only.

23 28. In this case, the Class Members are identifiable from Defendant's employment and
24 payroll records. Further, the Settlement Class is sufficiently numerous to warrant certification.
25 According to Defendant's records, the Class comprises approximately 175 employees.

26 29. The Class Members' claims all stem from a common source: members of the
27 Settlement Class allege that Defendant violated the same Labor Code provisions in connection
28 with their employment. All members of the Class seek the same relief under the same California

1 laws (related to unpaid wages due, unpaid meal and rest period premiums, inaccurate or
2 incomplete wage statements, failure to timely pay wages due during employment and upon
3 separation, and derivative claims). Under these circumstances, the commonality requirement is
4 satisfied for purposes of certifying the Settlement Class for settlement purposes.

5 30. In this case, named Plaintiff and proposed Class Representative Bradley Granados
6 is a former non-exempt employee who worked for Defendant in the State of California during the
7 Class Period. He contends that Defendant failed to pay all wages due, failed to provide meal and
8 rest periods, failed to comply with itemized employee wage statement provisions, and failed to
9 timely pay wages due at the separation of employment, in violation of Labor Code §§ 201-204.3,
10 210, 226, 226.2, 226.3, 226.7, 246, 246.5, 247, 247.5, 248, 248.1, 248.2, 510, 512, 550-553, 558,
11 558.1, 1102.5, 1194, 1197, 1198, 2698, and 2699, among other Labor Code provisions. He has
12 the same claims as those that the members of the Settlement Class would reasonably be expected
13 to bring based on the course of conduct alleged herein.

14 31. Plaintiff has also demonstrated that he will aggressively and competently assert the
15 interests of the proposed Settlement Class; he has taken an active role in this litigation and has no
16 apparent conflicts with other class members.

17 **Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)**

18 32. Concurrently with the filing of this Motion, my office is transmitting the Settlement
19 Agreement (and these approval documents) to the LWDA, in compliance with Labor Code §
20 2699(1)(2).

21 I declare, under penalty of perjury, under the laws of the State of California, that the
22 foregoing is true and correct. Executed this 3rd day of February, 2023 at Westlake Village,
23 California.

24 *Daniel F. Gaines*
25 _____
26 DANIEL F. GAINES
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28

EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaience OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

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

BRADLEY GRANADOS, on behalf of
himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*,

Plaintiff,

v.

BAKERSFIELD COUNTRY CLUB, a
California corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: BCV-21-102124

Assigned to the Hon. Thomas S. Clark, Dept. 17

CLASS ACTION

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: September 10, 2021

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims (“Settlement Agreement,” “Stipulation,”
3 or “Stipulation of Settlement”) is made and entered into by and between Plaintiff Bradley Granados
4 (“Granados” or “Plaintiff” or “Class Representative”), individually and on behalf of the Settlement
5 Class and all others similarly situated, and Defendant Bakersfield Country Club (“Defendant”),
6 subject to the terms and conditions herein and the Court’s approval.

7 **A. Definitions.**

8 1. Plaintiff, the Settlement Class (as defined below), and Defendant are collectively
9 referred to herein as “the Parties.”

10 2. Daniel F. Gaines, Alex P. Katofsky, and Evan S. Gaines of Gaines & Gaines, APLC
11 are counsel of record for Plaintiff. For purposes of this settlement only, the firm of Gaines &
12 Gaines, APLC shall be designated as “Class Counsel.”

13 3. The “Action” means the case entitled *Bradley Granados v. Bakersfield Country*
14 *Club*, Case No. BCV-21-102124, pending before the Superior Court of the State of California for
15 the County of Kern.

16 4. The “Settlement Class” shall be defined as “all non-exempt California employees
17 of Defendant Bakersfield Country Club between September 10, 2017 and November 30, 2022 (the
18 “Class Period”).” Defendant represents that Class Members worked no more than 16,500
19 workweeks during the Class Period.

20 5. Members of the Settlement Class shall collectively be referred to as a “Class
21 Member” or “Class Members.” Any Class Member who files a timely Request for Exclusion, as
22 detailed below, will be excluded from the final Settlement Class.

23 **B. General.**

24 1. On July 7, 2021, Plaintiff exhausted the pre-filing requirements of the Labor Code
25 Private Attorneys General Act of 2004 (“PAGA”). On or about November 18, 2021, Plaintiff sent
26 a supplemental letter pursuant to PAGA. Thereafter, on or about October 10, 2022, Plaintiff sent a
27 second supplemental letter pursuant to PAGA.

1 2. On or about September 10, 2021, Plaintiff initiated the Action by filing a
2 Representative Action Complaint for Penalties, pursuant to PAGA, on behalf of himself and all
3 other aggrieved employees. The First Amended Complaint, attached hereto as **Exhibit 3** and which
4 will be filed as part of the settlement approval process, asserts class and PAGA representative action
5 claims against Defendant for (1) failure to pay all wages earned (Labor Code §§ 204.3, 226.2, 246,
6 246.5, 247, 247.5, 248, 248.1, 248.2, 510, 550-553, 558.1, 1102.5, 1194, and 1194.2); (2) failure
7 to provide compliant rest periods or compensation in lieu thereof (Labor Code §§ 226.7 and 558;
8 IWC Wage Order 5-2001); (3) failure to provide compliant meal periods or compensation in lieu
9 thereof (Labor Code §§ 226.7, 512, 558, 1197, and 1198; IWC Wage Order 5-2001); (4) failure to
10 comply with itemized employee wage statement provisions (Labor Code §§ 226 and 226.3); (5)
11 failure to timely pay wages due during employment and at separation of employment (Labor Code
12 §§ 201-204 and 210); (6) violation of Business and Professions Code §§ 17200, *et seq.*; and (7)
13 civil penalties pursuant to Labor Code §§ 2698, *et seq.* for violations of Labor Code §§ 201
14 through 204.3, 210, 226, 226.2, 226.3, 226.7, 246, 246.5, 247, 247.5, 248, 248.1, 248.2, 510, 512,
15 550-553, 558, 558.1, 1102.5, 1194, 1194.2, 1197, and 1198 (the "First Amended Complaint").

16 3. Defendant denies any liability or wrongdoing of any kind associated with the claims
17 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
18 purpose other than this settlement. Defendant contends that it has complied at all times with the
19 California Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable
20 federal, state, and local laws and regulations. It is Defendant's position that, if this case were to be
21 litigated, class certification would be inappropriate because Plaintiff is not an adequate class
22 representative, Plaintiff's claims are not typical of putative class members, and individual issues
23 predominate over class issues. The Action, the negotiation and execution of this Settlement
24 Agreement, and all acts performed or documents executed pursuant to or in furtherance of the
25 Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf
26 of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any
27 action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and
28 may not be used as, an admission or evidence of the appropriateness of these or similar claims for

1 class certification in the Action or with respect to any other proceeding. The Parties also agree that
2 in the event the Court does not grant final approval of the Settlement, the First Amended Complaint
3 shall be deemed withdrawn. The parties further agree that Defendant does not waive any defense
4 to the First Amended Complaint and the PAGA claim contained therein. The parties further
5 acknowledge that the filing of the First Amended Complaint is for settlement purposes only.

6 4. The Class Representative contends that Defendant violated the California Labor
7 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
8 certification.

9 5. Class Counsel represent that they have conducted a thorough investigation into the
10 facts and law during the prosecution of this class action case, including the exchange of extensive
11 informal discovery and the review and verification of statistical data and other facts and information
12 provided by Defendant. Counsel for the Parties also represent that they have investigated the
13 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and
14 potential defenses thereto, and the damages and other losses claimed by Plaintiff.

15 6. On August 18, 2022, following their exchange of information and documents
16 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties
17 engaged in arm's-length negotiations with the assistance of mediator Judge Howard R. Broadman
18 (Ret.), through which they were able to reach the resolution of the Action set forth herein.

19 7. Based on their own independent investigation and evaluation, Class Counsel are of
20 the opinion (and will so represent to the Court) that settlement for the consideration and on the
21 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
22 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
23 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
24 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
25 that this settlement is fair and in the best interest of the Settlement Class.

26 8. The Parties agree that the Settlement Class described herein may be certified for
27 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
28 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not

1 approved, the certification will have no force or effect and will immediately be revoked. The
2 Parties further agree that certification for purposes of the settlement is in no way an admission that
3 class certification is proper under the more stringent standard applied for litigation and that
4 evidence of this limited Stipulation for settlement purposes only will not be admissible for any
5 purpose in this or any other proceeding.

6 **C. Terms of Settlement.**

7 1. The financial terms of the settlement are as follows:

8 (a) **Gross Settlement Amount:** The Parties agree to settle this Action for a
9 Gross Settlement Amount of Two Hundred Thousand Dollars (\$200,000) (the "Gross Settlement
10 Amount"), subject to any increase based on the escalator provision in paragraph H(16) herein. The
11 Gross Settlement Amount includes the attorneys' fees of Class Counsel; litigation costs and
12 expenses (which includes, without limitation, all such fees and costs incurred to date, as well as
13 such fees and costs to be incurred in documenting the settlement, providing any notices required as
14 part of the settlement, securing Court approval of the settlement, and obtaining judgment in the
15 Action); the Enhancement Payment to the Class Representative, as approved by the Court; the
16 payment to the California Labor and Workforce Development Agency ("LWDA"); and all costs of
17 administration, including, without limitation, settlement administration fees and expenses. All
18 employer payroll tax obligations due on wage payments made from the Net Settlement Amount
19 shall be paid by Defendant separate and apart from the Gross Settlement Amount.

20 (b) **Net Settlement Amount:** "Net Settlement Amount" is defined as the Gross
21 Settlement Amount less the amounts approved and awarded by the Court for: attorneys' fees and
22 documented litigation costs and expenses incurred or advanced by Class Counsel; the Enhancement
23 Payment to the Class Representative; the payment to the LWDA pursuant to PAGA; and the costs
24 of administering the settlement.

25 (c) **Individual Payment Amounts:** "Individual Payment Amount" means the
26 portion of the Net Settlement Amount distributable to each Class Member who participates in the
27 Settlement (i.e., who does not submit a valid request for exclusion form). The Individual Payment
28 Amounts will be calculated by dividing the Net Settlement Amount by the total workweeks worked

1 by all participating Class Members in California in a non-exempt position during the Class Period,
2 which will yield the applicable workweek rate. The workweek rate shall be multiplied by the
3 number of workweeks each individual participating Class Member worked for Defendant in
4 California in a non-exempt position during the Class Period to yield their Individual Payment
5 Amount. Each Participating Settlement Class Member who does not opt out will receive an
6 Individual Payment Amount equal to their individual workweeks worked in California in a non-
7 exempt position during the Class Period multiplied by the workweek rate.

8 i. For purposes of calculating applicable taxes and withholdings, each
9 Individual Payment Amount shall be allocated as follows: eighty percent (80%) as penalties and
10 interest; and twenty percent (20%) as wages. The Settlement Administrator will be responsible for
11 issuing to participating Class Members IRS Forms W-2 for amounts deemed "wages" and IRS
12 Forms 1099 for the amounts allocated as penalties and interest. All Individual Payment Amounts
13 paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally
14 mandated treatment as required by law. No tax advice has been given to any Class Member. No
15 tax result is guaranteed as related to any payment under this Settlement Agreement. Defendant
16 makes no representation as to the tax treatment or legal effect of the payments called for under this
17 Settlement Agreement. Each Class Member who receives an Individual Payment Amount will be
18 responsible for correctly characterizing the payment for tax purposes and for payment of any taxes
19 owing on said amount. Notwithstanding the treatment of the payments to each Class Member
20 above, none of the payments called for by this Settlement Agreement, including the wage portion,
21 are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit
22 or retirement plan.

23 (d) **PAGA Payment:** The Parties agree that Ten Thousand Dollars (\$10,000)
24 shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this amount, Seventy-
25 Five percent (75%), or Seven Thousand Five Hundred Dollars (\$7,500), shall be paid to the LWDA,
26 and the remaining Twenty-Five percent (25%), or Two Thousand Five Hundred Dollars (\$2,500),
27 shall be included in the Net Settlement Amount for payment to Class Members.

1 (e) **Enhancement Payment to Class Representative:** The amount awarded to
2 the Class Representative as an Enhancement Payment will be set by the Court in its discretion, not
3 to exceed Eight Thousand Dollars (\$8,000). This amount will be deducted from the Gross
4 Settlement Amount. An IRS Form 1099 will be issued to the Class Representative for his
5 Enhancement Payment. Defendant agrees not to dispute or otherwise object to the Enhancement
6 Payment if Plaintiff requests \$8,000 or less.

7 (f) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
8 deducted from the Gross Settlement Amount in an amount to be set by the Court taking into account
9 the settlement award that has been made available for the Settlement Class by the efforts of Class
10 Counsel. The amount awarded shall not exceed 35% of the Gross Settlement Amount (i.e., Seventy
11 Thousand Dollars (\$70,000)). An IRS Form 1099 will be issued to Class Counsel with respect to
12 its award of attorneys' fees. Defendant agrees not to dispute or otherwise object to the attorneys'
13 fee award requested by Class Counsel so long as the request does not exceed 35% of the Gross
14 Settlement Amount.

15 (g) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
16 the Gross Settlement Amount in an amount to be set by the Court for documented out-of-pocket
17 litigation costs and expenses, not to exceed Five Thousand Dollars (\$5,000). An IRS Form 1099
18 will be issued to Class Counsel with respect to its award of costs and expenses. Defendant agrees
19 not to dispute or otherwise object to the attorneys' cost award requested by Class Counsel so long
20 as the request does not exceed \$5,000.

21 (h) **Settlement Administration Costs:** The fees and other charges of the
22 Settlement Administrator to administer the Settlement are expected to total no more than Seven
23 Thousand Five Hundred Dollars (\$7,500), and will be paid from the Gross Settlement Amount.
24 These fees shall include any costs associated with the required tax reporting on any Individual
25 Payment Amounts, and the issuing of any and all W-2 and 1099 forms. Subject to approval of the
26 Court, the Parties have agreed that CPT Group will serve as a neutral third-party claims'
27 administrator ("Settlement Administrator") to perform all acts related to providing notice to the
28 Settlement Class. Settlement Administrator shall be responsible for (a) printing and distributing

1 the Court-approved Notice of Class Action Settlement (“Class Notice”) to all Class Members; (b)
2 administering the settlement; (c) processing exclusions, objections, and field inquiries from Class
3 Members; (d) resolving disputes; (e) calculating the Individual Payment Amount each Participating
4 Class Members is eligible to receive and applicable taxes and withholdings as well as any additional
5 employer payroll tax obligations due on wage payments made from the Net Settlement Amount ;
6 (f) distributing the Gross Settlement Amount as directed by the Court and set forth herein and
7 simultaneously pay the withholdings to the applicable authorities with the necessary reports,
8 submitting copies to Defendant and Defendant’s counsel; (g) tax reporting; (h) providing necessary
9 weekly status reports; and (i) other duties and responsibilities set forth herein.

10 (i) **No Warranty by Defendant:** Plaintiff understands and agrees that
11 Defendant is not providing Plaintiff or Class Members with tax or legal advice and that Defendant
12 makes no representations regarding tax obligations or consequences, if any, related to this
13 Settlement Agreement.

14 **D. Release of Claims.**

15 1. Upon the Effective Date, and subject to Defendant’s full payment of the Gross
16 Settlement Amount, Plaintiff and all Settlement Class Members who do not timely opt-out will be
17 deemed to have fully released and discharged Defendant Bakersfield Country Club and all its
18 present and former parent companies, subsidiaries, divisions, related or affiliated companies,
19 shareholders, officers, directors, members, employees, agents, attorneys, insurers, successors and
20 assigns, and any individual or entity which could be liable for any of the Released Claims as
21 defined below (“Released Parties”) from any and all Released Claims which arose during their
22 employment in a non-exempt position in California during the Class Period.

23 2. The “Released Claims” include any and all claims, demands, rights, liabilities and
24 causes of action, whether under state or federal law, that were pled in any of the Complaints in the
25 Action, including the First Amended Complaint pursuant to the terms of this Agreement, or which
26 could have been pled in any of the Complaints in the Action, that arose during the Class Period
27 during employment in a non-exempt position in California. This includes claims arising out of or
28 related to allegations set forth in any complaint filed in this Action or any PAGA Notice to the

1 LWDA related to this matter, including but not limited to: claims for minimum wage violations;
2 failure to pay overtime wages; failure to pay wages timely, failure to pay wages properly or timely
3 at separation of employment; failure to pay all wages due; rest period violations; meal period
4 violations; failure to keep proper records; itemized wage statement violations; waiting time
5 penalties; retaliation, unfair competition; declaratory relief; claims under Labor Code sections 201
6 through 204.3, 210, 226, 226.2, 226.3, 226.7, 246, 246.5, 247, 247.5, 248, 248.1, 248.2, 510,
7 512, 550, 551, 552, 553, 558, 558.1, 1102.5 (based on wage and hour claims), 1194, 1194.2, 1197
8 through 1198, the applicable IWC Wage Order(s) and California Business and Professions Code
9 § 17200 et seq. (based on the foregoing Labor Code violations); and claims for civil penalties
10 pursuant to the California Labor Code and/or the Private Attorneys General Act (based on the
11 foregoing Labor Code violations); including, but not limited to, wages, injunctive relief; liquidated
12 damages, penalties of any nature; interest; fees; costs; and all other claims and allegations made
13 or which could have been made in the Action.

14 3. Upon the Effective Date and subject to Defendant's full payment of the Gross
15 Settlement Amount, Plaintiff Granados shall be deemed to have fully, finally, and forever released
16 the Released Parties from the Released Claims and any and all claims, obligations, demands,
17 actions, rights, causes of action, and liabilities against the Released Parties, of whatever kind and
18 nature, character, and description, whether in law or equity, whether sounding in tort, contract,
19 federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law,
20 whether known or unknown, and whether anticipated or unanticipated, including unknown claims
21 covered by Civil Code Section 1542, arising through the date of his signature hereon, for any type
22 of relief, including, without limitation, claims for wages, damages, unpaid costs, penalties,
23 liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or
24 equitable relief. These claims include, but are not limited to, the Released Claims, as well as any
25 other claims under any provision of the California Labor Code or any applicable California
26 Industrial Welfare Commission Wage Orders, and claims under local, state, or federal
27 discrimination statutes, including, without limitation, the California Fair Employment and
28 Housing Act, California Government Code §§ 12940 et seq.; the Unruh Civil Rights Act,

1 California Civil Code §§ 51 et seq.; the California Constitution; Title VII of the Civil Rights Act
2 of 1964, 42 U.S.C. §§ 2000 et seq.; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et
3 seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq.; and all of
4 their implementing regulations and interpretive guidelines. With respect to these Released Claims
5 as described in this Section, Plaintiff Granados shall be deemed to have expressly waived and
6 relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits he may
7 otherwise have had pursuant to Section 1542 of the California Civil Code, which provides as
8 follows:

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

13 Notwithstanding Section 1542, Plaintiff understands and agrees that this Agreement shall
14 act as a release of all future claims that may arise from Plaintiff Granados' employment or
15 separation from employment with Defendant, or any other matters that existed between Plaintiff
16 Granados and the Released Parties up to the date of this Agreement, whether such claims are
17 currently known or unknown, and that Plaintiff intentionally waives any rights he may have under
18 the provisions of Section 1542, as well as under any other statutes or common law principles of
19 similar effect in the State of California or in any other state.

20 **E. Notice and Exclusion Process.**

21 1. Within ten (10) calendar days after entry of the order granting preliminary approval
22 of this Settlement, Defendant shall provide to the Settlement Administrator a list of all Class
23 Members, including their last known addresses, telephone numbers, social security numbers, and
24 their dates of employment in a non-exempt position in California during the Class Period
25 ("Settlement Class Information"). The names, addresses, telephone numbers, and Social Security
26 numbers will only be disclosed to the Settlement Administrator and not to Plaintiff's Counsel. All
27 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This
28 information shall be kept confidential and shall not be disclosed, either in writing or orally, by the

1 Settlement Administrator. The Settlement Administrator shall use due care with respect to the
2 storage, custody, use, and/or dissemination of the confidential information. Such information must
3 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

4 2. A notice of pendency of class action, proposed settlement, and hearing date for
5 Court approval ("Class Notice") in the form attached hereto as **Exhibit 1**, and as approved by the
6 Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail,
7 within twenty (20) calendar days after entry of the order granting preliminary approval. Attached
8 to the Class Notice will be a request for exclusion form ("Request for Exclusion Form") in the form
9 attached hereto as **Exhibit 2**.

10 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
11 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
12 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the
13 Class Member received the Class Notice. In the event of returned or non-deliverable notices, the
14 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
15 notices.

16 4. Each Class Member will be fully advised of the settlement, the ability to object to
17 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
18 inform the Class Members of the Court-established deadlines for filing objections and a Request
19 for Exclusion Form.

20 5. Each Class Notice will contain personalized information setting forth the number of
21 workweeks each Class Member worked for Defendant in California in a non-exempt position
22 during the Class Period and their estimated Individual Payment Amount. To the extent a Class
23 Member disputes any of the information listed on his or her Class Notice, the Class Member may
24 produce evidence to the Settlement Administrator showing such information the Class Member
25 contends should be reflected in the Class Notice. Defendant's records will be presumed
26 determinative, however, and the Settlement Administrator's decision on these matters will be final.
27 The Class Notice will also set forth IRS W-9 information if required.

1 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
2 to receive an Individual Payment Amount which shall be mailed to them subject to the occurrence
3 of the Effective Date.

4 7. In order to elect not to participate in the Settlement, a Class Member must submit a
5 Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five
6 (45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to
7 Class Members, unless the Court requires a longer period, in which case the Court ordered
8 exclusion period will apply. The date of the postmark shall be deemed the date of submission. The
9 timeliness of submitted Request for Exclusion Forms will be determined by valid postmark. If the
10 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended to the
11 next day on which the U.S. Postal Service is open.

12 8. The deadline for submission of Exclusion Forms shall be extended once by 30 days
13 for those Class Members whose Class Notice and Exclusion Form are returned as "undeliverable."
14 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
15 on which the U.S. Postal Service is open.

16 9. The Settlement Administrator will search for additional addresses on returned mail
17 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days
18 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second
19 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not
20 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
21 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
22 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
23 Settlement Administrator will search using the social security number for a more current address.
24 If no address is found within 10 days, no further action is required.

25 10. The Settlement Administrator will notify the Parties of the total number of valid
26 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
27 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice
28 and Request for Exclusion Forms to Class Members).

1 11. In order to object to the settlement, a Class Member must mail his or her objection
2 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the
3 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
4 period, in which case the Court ordered objection period will apply. If the 45th day falls on a
5 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
6 which the U.S. Postal Service is open. Under no circumstances shall the objection deadline be
7 extended for any reason.

8 12. The Settlement Administrator shall provide to the Parties, at least twelve (12)
9 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration
10 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request
11 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve
12 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report
13 listing the amount of all payments to be made to each Class Member without names or personal
14 identifying information.

15 13. The Effective Date of this Settlement Agreement ("Effective Date") is 30 days after
16 all of the following events have occurred: (a) the Settlement Agreement and related documents are
17 approved and executed by all Parties and by Class Counsel and Defense Counsel; (b) the Court has
18 given preliminary approval to the Settlement; (c) notice has been given to the Class Members
19 providing them with an opportunity to Opt-Out of the Class Settlement; (d) the Court has held a
20 Final Approval and Fairness Hearing and entered a final order and judgment certifying the Class
21 and approving this Stipulation; (e) notice of final judgment has been given to the Class Members
22 pursuant to California Rules of Court, rule 3.771(b) through a posting on the Settlement
23 Administrator's website; and (f) the later of the following events: (1) the expiration of the period
24 for filing any appeal, writ, or other appellate proceeding opposing the Class Settlement has elapsed
25 without any appeal, writ or other appellate proceeding having been filed; (2) or the dismissal of any
26 appeal, writ, or other appellate proceeding opposing the Class Settlement with no right to pursue
27 further remedies or relief; or (3) any appeal, writ, or the issuance of such other final appellate order
28 upholding the Court's final order with no right to pursue further remedies or relief. If one or more

1 objections are filed which are not subsequently withdrawn, and in the event there is a timely-filed
2 motion to set aside judgment or to intervene, the expiration of the period for filing any appeal, writ,
3 or other appellate proceeding opposing the Class Settlement will be based on the later of the court's
4 ruling or order on any such motion or entry of final order and judgment certifying the Class and
5 approving this Stipulation.

6 14. Class Members must cash each of their Individual Payment Amount checks within
7 one hundred eighty (180) calendar days after they are mailed by the Settlement Administrator. The
8 value of any checks uncashed more than one hundred eighty (180) days after mailing shall be
9 distributed to a *cy pres*, "Children's Miracle Network," with funds to stay locally for the Lauren
10 Small Children's Center at Memorial Hospital pursuant to C.C.P. § 384. If the Court does not
11 approve said selection, another *cy pres* is to be selected by Defendant, subject to the approval of
12 the Court.

13 **F. Duties of the Parties Prior to Court Approval.**

14 1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the
15 Court for preliminary approval of this settlement and entry of an order accomplishing the
16 following:

- 17 (a) scheduling a fairness hearing on the question of whether the proposed
18 settlement should be finally approved as fair, reasonable and adequate as to the Class Members;
- 19 (b) approving as to form and content the proposed Class Notice;
- 20 (c) approving as to form and content the proposed Request for Exclusion
21 Form;
- 22 (d) preliminarily certifying the Settlement Class for purposes of settlement;
- 23 (e) preliminarily approving the PAGA payment of \$7,500 to the LWDA;
- 24 (f) preliminarily setting attorneys' fees and costs payable to Class Counsel;
- 25 (g) preliminarily setting the enhancement payment to the Class Representative;
- 26 (h) preliminarily approving CPT Group as the Settlement Administrator and
27 its estimated fees and costs of \$7,500; and
- 28 (i) permitting Plaintiff to file the First Amended Complaint.

1 The Parties shall submit this Settlement Agreement to the Court and the LWDA in support
2 of Plaintiff's unopposed motion for preliminary approval of the settlement.

3 **G. Duties of the Parties in Connection with and Following Final Court Approval.**

4 1. In connection with the hearing on final approval of the settlement provided for in
5 this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10)
6 calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered
7 by the Court):

8 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable
9 and adequate, and directing consummation of its terms and provisions;

10 (b) approving Class Counsel's application for an award of attorneys' fees and
11 reimbursement of documented litigation costs and expenses, the Enhancement Payment to the
12 Class Representative, the PAGA Payment to the LWDA, and the costs of administering the
13 settlement; and

14 (c) entering judgment in this Action in accordance with this Stipulation,
15 pursuant to Cal. Rules of Court, Rule 3.769(h).

16 2. Class Counsel shall file an application for attorneys' fees and reimbursement of
17 costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing
18 on final approval (unless otherwise ordered by the Court).

19 3. Defendant shall deposit the Gross Settlement Amount, plus applicable employer
20 payroll taxes, with the Settlement Administrator as follows:

21 (1) One Hundred Thousand Dollars (\$100,000) due on the Effective Date, but no
22 sooner than March 15, 2023, and

23 (2) One Hundred Thousand Dollars (\$100,000), plus all employer-side payroll taxes
24 due, on the latter of June 15, 2023, or ninety (90) days after the first payment.

25 4. All installment payments shall be paid into a Qualified Settlement Fund created by
26 the Settlement Administrator. The Settlement Administrator will issue pro rata payments for the
27 obligations due for Class Members' Individual Payment Amounts, Class Counsel's attorneys' fees
28

1 and costs, cost of administration, the Enhancement Payment to Plaintiff, and the payment to the
2 LWDA promptly after each installment payment by Defendant.

3 **H. Miscellaneous Provisions:**

4 1. **Voiding the Agreement.**

5 A failure of the Court to approve any material condition of this Settlement Agreement which
6 effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or
7 materially modified on appellate review, shall render the entire Stipulation of Settlement voidable
8 and unenforceable as to all Parties herein at the option of any Party. If more than five percent (5%)
9 of the Class Members opt out of the Settlement, Defendant may, at its election, rescind the
10 Settlement and all actions taken in furtherance of it will thereby be null and void. Defendant must
11 exercise this right of rescission, in writing, to Class Counsel within fifteen (15) business days after
12 the Settlement Administrator notifies the Parties of a greater than five (5%) opt-out rate.

13 2. **Parties' Authority.**

14 The signatories hereto represent that they are fully authorized to enter into this Settlement
15 Agreement and bind the Parties hereto to the terms and conditions hereof.

16 3. **Mutual Full Cooperation.**

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

26 4. **No Prior Assignments.**

27 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
28 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or

entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Stipulation of Settlement.

5. No Admission.

Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

6. Construction.

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

7. Captions and Interpretations.

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

8. Modification.

This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by each of the Parties hereto on their attorneys.

///

1 **9. Integration Clause.**

2 This Settlement Agreement contains the entire agreement between the Parties relating to
3 the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements,
4 understandings, representations, and statements, whether oral or written and whether by a Party or
5 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in
6 writing.

7 **10. Binding on Assigns.**

8 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
9 hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

10 **11. Governing Law.**

11 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
12 according to the laws of the State of California, without giving effect to any conflict of law
13 principles or choice of law principles.

14 **12. Signatures of All Class Members Unnecessary to be Binding.**

15 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
16 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,
17 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release
18 provided herein and such shall have the same force and effect as if this Settlement Agreement was
19 executed by each Class Member.

20 **13. Counterparts.**

21 This Settlement Agreement may be executed in counterparts, and when each Party has
22 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
23 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
24 Agreement, which shall be binding upon and effective as to all Parties.

25 **14. Confidentiality**

26 Until Plaintiff files his motion for preliminary approval of the class action settlement, the
27 Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the
28 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing

1 agencies, or as otherwise required by law.

2 **15. No Publicity**

3 Plaintiff and his Counsel will not contact the media about the settlement or respond to any
4 inquiries by the media regarding the Settlement, other than to state that the matter was amicably
5 settled, and the Court did not find Defendant liable. Plaintiff and his Counsel also will not post any
6 information about the settlement on social media or their firms' websites.

7 **16. Representation Regarding Class Size.**

8 Defendant has represented that there are no more than approximately 175 Class Members
9 who worked no more than 16,500 workweeks during the Class Period. Should either of these
10 numbers increase, Defendant has the option to either: (1) increase the Gross Settlement Amount
11 proportionately based on the larger increase (for example, if there are 18,150 workweeks or 192
12 employees [i.e., an exactly 10% increase for both], the Gross Settlement Amount will increase by
13 10% to \$220,000); or (2) elect to end the Class Period on the day prior to when covered workweeks
14 first exceed 16,500 and total employees first exceed 175 in lieu of paying an increase to the Gross
15 Settlement Amount.

16 **17. Default; Notice; Cure; Acceleration; Time is of the Essence.**

17 Time is of the essence with respect to all provisions of this Agreement. If Defendant fails
18 to timely make any payment due hereunder, it shall be in default of its obligations. Plaintiff shall
19 thereafter give notice of default and Defendant must cure said default within five (5) business days
20 thereof. In the event of an uncured default, all unpaid amounts shall be accelerated and be all due
21 and payable together with interest at the legal rate from the date of default.

22 **18. Continuing Jurisdiction.**

23 The Parties agree that upon the occurrence of the entry of judgment in this case pursuant to
24 the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of
25 Civil Procedure Section 664.6 and all other applicable law, and the Court shall retain exclusive and
26 continuing equity jurisdiction of this Action over all Parties and Class Members to interpret and
27 enforce the terms, conditions and obligation of the Agreement.
28

1 Dated: 01 / 31 / 2023

By:

BRADLEY GRANADOS
Plaintiff and Class Representative

2
3
4 Dated: _____

BAKERSFIELD COUNTRY CLUB

By: _____

Its: _____

8
9 **APPROVED AS TO FORM AND CONTENT:**

10 Dated: 1/31/2023

GAINES & GAINES, APLC

By:

Daniel P. Gaines, Esq.
Alex P. Katofsky, Esq.
Counsel for Plaintiff and Class
Representative

14
15 Dated: _____

LEBEAU · THELEN, LLP

By: _____

Thomas P. Fehér, Esq.
Counsel for Defendant

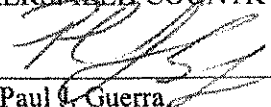
1 Dated: _____

By:

2 BRADLEY GRANADOS
3 Plaintiff and Class Representative

4 Dated: 02/02/2023

BAKERSEFIELD COUNTRY CLUB

5 By: 

6 Paul Guerra

7 Its: President

8 **APPROVED AS TO FORM AND CONTENT:**

9 Dated: _____

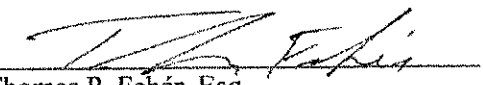
GAINES & GAINES, APLC

10 By: _____

11 Daniel F. Gaines, Esq.
12 Alex P. Katofsky, Esq.
13 Counsel for Plaintiff and Class
14 Representative

15 Dated: 2/6/23

LEBEAU · THELEN, LLP

16 By: 

17 Thomas P. Fehér, Esq.
18 Counsel for Defendant
19
20
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EXHIBIT 1

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

BRADLEY GRANADOS, on behalf of himself
and all “aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

BAKERSFIELD COUNTRY CLUB, a
California corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: BCV-21-102124

Assigned to the Hon. Thomas S. Clark, Dept. 17

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

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$200,000 to pay claims to all individuals who worked for Bakersfield Country Club (“Defendant”) as non-exempt employees in California at any time between September 10, 2017 and November 30, 2022 (“Settlement Class”).
- The settlement resolves a lawsuit alleging that Defendant failed to pay all wages earned; provide compliant meal and rest periods or premium compensation in lieu thereof; timely issue wages during employment and upon separation of employment; and issue accurate and complete itemized wage statements. The Settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$70,000 as attorneys’ fees and \$5,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and believes all appropriate wages were paid and that it otherwise complied with any Labor Code obligations. The Parties disagree on how much money could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below.
Exclude Yourself	To exclude yourself, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you may receive no money from the Settlement . This is the only option that allows you to ever be part of any other lawsuit against Bakersfield Country Club about the legal claims that were brought in this case.
Object	Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement, as detailed below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On September 10, 2021, Plaintiff Bradley Granados ("Plaintiff"), a former employee of Bakersfield Country Club, filed this lawsuit in the Kern County Superior Court. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendant at any time between September 10, 2017 and November 30, 2022 ("Class Period"). Specifically, the lawsuit alleges that members of the Class were not provided all wages earned; compliant meal and rest periods or premium compensation in lieu thereof; were not timely issued wages during and upon separation of employment; and were not issued accurate and complete itemized wage statements. The Settlement seeks recovery of wages, damages, interest, statutory and civil penalties, restitution, attorneys' fees and costs. Defendant denies all of the material allegations in the lawsuit and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiff's Attorneys

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

Defendant's Attorneys

Thomas P. Fehér, Esq.
Lebeau · Thelen, LLP
5001 East Commercenter Drive, Suite 300
P.O. Box 12092
Bakersfield, CA 93389
Phone: (661) 325-8962

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes he would have prevailed on his claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement and Release of Claims ("Settlement" or "Settlement Agreement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiff and Plaintiff's Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all individuals who worked for Bakersfield Country Club as non-exempt employees in California at any time between September 10, 2017 and November 30, 2022.

C. What does the Settlement provide?

1. Gross Settlement Amount.

The Settlement provides that Defendant will pay \$200,000 (the "Gross Settlement Amount") to settle the lawsuit.

2. Net Settlement Amount.

The "Net Settlement Amount" is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount is the Gross Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Participating Class Members. The Court will fix these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed \$70,000;

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$5,000;

(c) **Enhancement Payment to the Class Representative** in an amount set by the Court, not to exceed \$8,000 for his service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$7,500, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$10,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). 75% or \$7,500, shall be paid to the California Labor and Workforce Development Agency. The remaining 25% or \$2,500, shall be included in the Net Settlement Amount for payment to members of the Settlement Class.

3. **Individual Payment Amount.**

Your share of the Net Settlement Amount will be determined by the formula detailed in section E below.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount, Plaintiff and all Settlement Class Members who do not timely opt-out will be deemed to have fully released and discharged Defendant Bakersfield Country Club and all its present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, members, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be liable for any of the Released Claims as defined below ("Released Parties") from any and all Released Claims which arose during their employment in a non-exempt position in California during the Class Period.

The "Released Claims" include any and all claims, demands, rights, liabilities and causes of action, whether under state or federal law, that were pled in any of the Complaints in the Action, including the First Amended Complaint pursuant to the terms of this Agreement, or which could have been pled in any of the Complaints in the Action, that arose during the Class Period during employment in a non-exempt position in California. This includes claims arising out of or related to allegations set forth in any complaint filed in this Action or any PAGA Notice to the LWDA related to this matter, including but not limited to: claims for minimum wage violations; failure to pay overtime wages; failure to pay wages timely, failure to pay wages properly or timely at separation of employment; failure to pay all wages due; rest period violations; meal period violations; failure to keep proper records; itemized wage statement violations; waiting time penalties; retaliation, unfair competition; declaratory relief; claims under Labor Code sections 201 through 204.3, 210, 226, 226.2, 226.3, 226.7, 246, 246.5, 247, 247.5, 248, 248.1, 248.2, 510, 512, 550, 551, 552, 553, 558, 558.1, 1102.5 (based on wage and hour claims), 1194, 1194.2, 1197 through 1198, the applicable IWC Wage Order(s) and California Business and Professions Code § 17200 et seq. (based on the foregoing Labor Code violations); and claims for civil penalties pursuant to the California Labor Code and/or the Private Attorneys General Act (based on the foregoing Labor Code violations); including, but not limited to, wages, injunctive relief; liquidated damages, penalties of any nature; interest; fees; costs; and all other claims and allegations made or which could have been made in the Action.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) shall receive an "Individual Payment Amount," which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).

The Individual Payment Amounts will be calculated by dividing the Net Settlement Amount by the total workweeks worked by all participating Class Members in California in a non-exempt position during the Class Period, which will yield the applicable workweek rate. The workweek rate shall be multiplied by the number of workweeks each individual participating Class Member worked for Defendant in California in a non-exempt position during the Class Period to yield their Individual Payment Amount. Each Participating Settlement Class Member who does not opt out will receive an Individual Payment Amount equal to their individual workweeks worked in California in a non-exempt position during the Class Period multiplied by the workweek rate.

For tax purposes, the Individual Payment Amount will be apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 80% to penalties and interest (reported on an IRS Form 1099). All Individual Payment Amounts paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, during the period of time from September 10, 2017 through November 30, 2022 you worked [REDACTED] workweeks while employed as a non-exempt employee in California. Based on these workweeks, you are entitled to an Individual Payment Amount of approximately \$[REDACTED]. These amounts are subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than [REDACTED], 2023. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on [REDACTED], at 8:30 a.m., in the Courtroom of Judge Thomas S. Clark of the Kern County Superior Court, Department 17, located at 1415 Truxton Ave., Bakersfield, CA 93301. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiff's Attorneys; and (v) the amount that should be awarded to Plaintiff as an enhancement payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

• OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an

explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than [redacted]. The Settlement Administrator's address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person (or if available by court call or zoom) or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than [redacted].

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself ("opt out") from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by sending the enclosed Request for Exclusion form to the Settlement Administrator at the above-stated address. You must completely fill out the enclosed form and mail it to the Settlement Administrator, [redacted], postmarked no later than [redacted] or it will be rejected.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed "Settlement Agreement and Release of Claims" which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Kern County Superior Court, located at 1415 Truxton Ave., Bakersfield, CA 93301.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number], or Counsel for the Class or for Defendant, at their numbers above.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS *Bradley Granados v. Bakersfield Country Club, and Does 1 Through 10, Inclusive, Defendants*, Kern County Superior Court, Case No. BCV-21-102124. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.**

I confirm that I was employed by Defendant Bakersfield Country Club as a non-exempt employee in California between September 10, 2017 and November 30, 2022.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE **[45 days after mailing of Notice]**. Send this signed request for exclusion form to the Settlement Administrator:

Bakersfield Country Club Claims Administrator
c/o CPT Group

EXHIBIT 3

1 DANIEL F. GAINES, ESQ. SBN 251488
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2 ALEX P. KATOFISKY, ESQ. SBN 202754
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4 **GAINES & GAINES, APLC**
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5 Westlake Village, CA 91362
Telephone: (818) 703-8985
6 Facsimile: (818) 703-8984

7 Attorneys for Plaintiff Bradley Granados, on behalf of himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF KERN**

11 BRADLEY GRANADOS, on behalf of
12 himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*,

13 Plaintiffs,

14 v.

15 BAKERSFIELD COUNTRY CLUB, a
16 California corporation, and DOES 1 through
10, inclusive,

17 Defendants.

CASE NO: BCV-21-102124

Assigned to the Hon. Thomas S. Clark, Dept. 17

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

**1. FAILURE TO PROVIDE REST
PERIODS, OR PREMIUM
COMPENSATION IN LIEU THEREOF
(LABOR CODE §§ 226.7 AND 558; IWC
WAGE ORDER NOS. 2, 5, AND 10)**

**2. FAILURE TO PROVIDE MEAL
PERIODS, OR PREMIUM
COMPENSATION IN LIEU THEREOF
(LABOR CODE §§ 226.7, 512, 558, AND
1197-1198; IWC WAGE ORDER NOS. 2, 5,
AND 10)**

**3. FAILURE TO PAY ALL WAGES DUE,
INCLUDING MINIMUM AND OVERTIME
WAGES (LABOR CODE §§ 201-204.3, 210,
226.2, 246, 246.5, 247, 247.5, 248, 248.1, 248.2,
510, 550-553, 558.1, 1102.5, 1194, AND
1194.2; IWC WAGE ORDER NOS. 2, 5,
AND 10)**

**4. KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT
PROVISIONS (LABOR CODE §§ 226 AND
226.3)**

1 5. FAILURE TO PAY WAGES DUE
2 DURING EMPLOYMENT AND AT
3 SEPARATION OF EMPLOYMENT
4 (LABOR CODE §§ 201-204 AND 210)

5 6. VIOLATION OF BUSINESS AND
6 PROFESSIONS CODE § 17200

7 7. PENALTIES PURSUANT TO LABOR
8 CODE § 2699 FOR VIOLATIONS OF
9 LABOR CODE §§ 201-204.3, 210, 226, 226.2,
10 226.3, 226.7, 246, 246.5, 247, 247.5, 248, 248.1,
11 248.2, 510, 512, 550-553, 558, 558.1, 1102.5,
12 1194, 1197, AND 1198

13 **DEMAND FOR JURY TRIAL**

14 *Complaint Filed: September 10, 2021*

1 Plaintiff BRADLEY GRANADOS ("Plaintiff"), individually and on behalf of all similarly
2 situated individuals (the "Class"), on behalf of the general public, and as an "aggrieved employee"
3 under the Labor Code Private Attorneys General Act of 2004, complains of BAKERSFIELD
4 COUNTRY CLUB, a California corporation, and/or any subsidiaries or affiliated companies
5 (hereinafter referred to as "Defendants"), as follows:

6 I.

7 **INTRODUCTION AND FACTUAL BACKGROUND**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure § 382
9 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all other employees who work or formerly
10 worked for Defendants within the State of California.

11 2. From September 10, 2017 through the present (the "liability period"), Defendants have
12 had consistent policies of failing to provide Class Members (as defined below) legally compliant meal
13 and rest periods, or premium compensation in lieu thereof; failing to pay Class Members all wages
14 due, including minimum and overtime wages; failing to provide accurately itemized wage statements
15 to Class Members; and failing to timely pay wages during employment and upon separation of
16 employment to Class Members.

17 3. Plaintiff, on behalf of himself and the members of the Class, brings this action pursuant
18 to Labor Code §§ 201-204.3, 210, 226, 226.2, 226.3, 226.7, 246, 246.5, 247, 247.5, 248, 248.1, 248.2,
19 510, 512, 550-553, 558, 558.1, 1102.5, 1194, 1194.2, 1197 and 1198, seeking compensation for
20 unpaid minimum and overtime wages, premium meal and rest period wages, statutory penalties, civil
21 penalties, liquidated damages, injunctive and other equitable relief, and reasonable attorneys' fees
22 and costs.

23 4. Plaintiff, on behalf of himself and Class Members and pursuant to Business &
24 Professions Code §§ 17200-17208, seeks injunctive relief, restitution, and disgorgement of all
25 benefits Defendants enjoyed from their failure to pay all wages due to Class Members.

26 5. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395
27 because Defendants employed Plaintiff and Class Members in Kern County, California.
28

6. Plaintiff, on behalf of himself and all aggrieved employees pursuant to Labor Code §§ 2698 *et seq.*, seeks penalties for Defendants' various violations of the California Labor Code.

II.

PARTIES

A. Plaintiff

7. Plaintiff BRADLEY GRANADOS was employed by Defendants as a non-exempt employee from October 2019 through June 2021 in Kern County, California.

8. During her work with Defendants, Plaintiff was:

- a. Willfully denied compliant rest periods or compensation in lieu thereof;
- b. Willfully denied compliant meal periods or compensation in lieu thereof;
- c. Willfully denied the payment of all minimum and overtime wages due;
- d. Willfully denied accurately itemized wage statements; and
- e. Willfully denied the timely payment of wages upon during employment and upon separation of his employment.

B. Defendant

9. Defendant BAKERSFIELD COUNTRY CLUB is a California corporation. Defendant BAKERSFIELD COUNTRY CLUB employed Plaintiff and Class Members throughout the State of California, including Kern County, California.

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

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,

1 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
2 attributable to the other Defendants.

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

6 **III.**

7 **CLASS ACTION ALLEGATIONS**

8 13. Plaintiff brings this action on behalf of himself, and all others similarly situated as a
9 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the
10 following class composed of and defined as follows:

11 **THE CLASS**

12 All current and former non-exempt employees who worked for
13 Defendants in California at any time between September 10, 2017 and
14 November 30, 2022.

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

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

21 **A. Numerosity**

22 16. The potential members of the Class as defined are so numerous that joinder of all Class
23 Members is impracticable. While the precise number of members of the Class has not been
24 ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 currently employ, and during the relevant time periods employed, approximately 50 persons in the
26 State of California who fall within the Class definition.

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

4 **B. Commonality**

5 18. There are questions of law and fact common to the Class that predominate over any
6 questions affecting only individual Class Members. These common questions of law and fact include,
7 without limitation:

- 8 a. Whether Defendants failed to properly provide compliant rest periods or
9 compensation in lieu thereof to Plaintiff and Class Members, in violation of
10 Labor Code §§ 226.7 and 558 and IWC Wage Order Nos. 2, 5, and 10;
11 b. Whether Defendants failed to properly provide compliant meal periods or
12 compensation in lieu thereof to Plaintiff and Class Members, in violation of
13 Labor Code §§ 226.7, 512, 558, and 1197-1198 and IWC Wage Order Nos. 2,
14 5, and 10;
15 c. Whether Defendants failed to pay all wages due to Plaintiff and Class
16 Members, including minimum and overtime wages, in violation of Labor Code
17 §§ 201-204.3, 210, 226.2, 246, 246.5, 247, 247.5, 248, 248.1, 248.2, 5510, 550-
18 553, 558.1, 1102.5, 1194, and 1194.2 and IWC Wage Order Nos. 2, 5, and 10;
19 d. Whether Defendants failed to provide Plaintiff and Class Members with
20 accurately itemized wage statements, in accordance with Labor Code §§ 226,
21 and 226.3;
22 e. Whether Defendants failed to timely pay Plaintiff and Class Members all
23 wages due and owing during their employment and at the separation of their
24 employment, in violation of Labor Code §§ 201-204 and 210; and
25 f. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
26 to Business & Professions Code § 17200 *et seq.*

27 ///

28 ///

1 **C. Typicality**

2 19. The claims of the named Plaintiff are typical of the claims of members of the Class.
3 Plaintiff and members of the Class sustained injuries and damages arising out of and caused by
4 Defendants' common course of conduct in violation of laws, regulations that have the force and effect
5 of law, and statutes as alleged herein.

6 **D. Adequacy of Representation**

7 20. Plaintiff will fairly and adequately represent and protect the interests of members of
8 the Class. Counsel who represents Plaintiff are competent and experienced in litigating large
9 employment class actions.

10 **E. Superiority of Class Action**

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

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

20 **IV.**

21 **CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

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

24 **FAILURE TO PROVIDE REST PERIODS, OR PREMIUM COMPENSATION IN**
25 **LIEU THEREOF**

26 **(LABOR CODE §§ 226.7 AND 558; IWC WAGE ORDER NOS. 2, 5, AND 10)**

27 23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set
28 forth herein.

24. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and IWC Wage Order Nos. 2, 5, and 10.

25. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied rest periods, in violation of Labor Code §§ 226.7 and 558 and IWC Wage Order Nos. 2, 5, and 10. Plaintiff and Class Members were routinely not authorized and unable to take an off-duty, 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. When they were able to take a rest period, they were oftentimes on-duty, late or cut short. This violates Labor Code §§ 226.7, 558 and IWC Wage Orders No. 2, 5, and 10.

26. Pursuant to Labor Code § 226.7 and IWC Wage Orders No. 2, 5, and 10, Plaintiff seeks the payment of all rest period compensation which he and Class Members are owed, according to proof.

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

V.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE MEAL PERIODS, OR PREMIUM COMPENSATION IN

LIEU THEREOF

(LABOR CODE §§ 226.7, 512, 558, AND 1197-1198; IWC WAGE ORDER NOS. 2, 5,

AND 10)

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

28. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more compliant meal periods as set forth in Labor Code §§ 226.7 and 512 and IWC Wage Order Nos. 2, 5, and 10.

29. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order Nos.

1 2, 5, and 10. Plaintiff and Class Members were routinely denied, and not authorized to take, a proper,
2 timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a
3 second proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten
4 hours, but were not paid premium wages of one hour's pay for each missed first or second meal
5 period. When they did receive a meal period, it was routinely short or provided after the fifth hour of
6 work. Defendant also failed to maintain proper records indicating the start and stop time of each meal
7 period, if one ever occurred. These instances violate Labor Code §§ 226.7, 512, 558, and 1197-1198
8 and IWC Wage Orders including, but not limited to 2, 5, and 10.

9 30. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order Nos. 2, 5, and 10,
10 Plaintiff seeks the payment of all unpaid meal period compensation which he and Class Members are
11 owed, according to proof.

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

13 **VI.**

14 **THIRD CAUSE OF ACTION**

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

16 **FAILURE TO PAY ALL WAGES DUE, INCLUDING MINIMUM AND OVERTIME**
17 **WAGES**

18 **(LABOR CODE §§ 201-204.3, 210, 226.2, 246, 246.5, 247, 247.5, 248, 248.1, 248.2, 5510,**
19 **550-553, 558.1, 1102.5, 1194, AND 1194.2; IWC WAGE ORDER NOS. 2, 5, AND 10)**

20 31. Plaintiff incorporates paragraphs 1 through 30 of this Complaint as though fully set
21 forth herein.

22 32. During the liability period, Defendants failed to timely pay Plaintiff and Class
23 Members all wages due, including minimum and overtime wages, both during employment and at the
24 separation of employment and otherwise violated the provisions of the Labor Code, in violation of
25 Labor Code §§ 201-204.3, 210, 226.2, 246, 246.5, 247, 247.5, 248, 248.1, 248.2, 510, 550-553, 558.1,
26 1102.5, 1194, and 1194.2 and IWC Wage Order Nos. 2, 5, and 10. Plaintiff and Class Members
27 earned bonuses and split-shift premiums and worked overtime hours all during the same pay period.
28 Defendants, however, failed to pay Plaintiff and Class Members at the proper overtime rates and sick

1 pay when they earned these forms of wages – that is, Defendants failed to properly blend bonuses and
2 split shift premiums into their regular rate of pay when calculating the proper overtime rate and sick
3 pay rate.

4 33. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due,
5 Plaintiff and Class Members have been deprived of wages in amounts to be determined at trial, and
6 are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and
7 costs pursuant to Labor Code § 1194 and liquidated damages pursuant to Labor Code § 1194.2.

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

9 **VII.**

10 **FOURTH CAUSE OF ACTION**

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

12 **FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE**

13 **WAGE STATEMENT PROVISIONS**

14 **(LABOR CODE §§ 226 AND 226.3)**

15 34. Plaintiff incorporates paragraphs 1 through 33 of this Complaint as though fully set
16 forth herein.

17 35. Section 226(a) of the California Labor Code requires Defendants to provide wage
18 statements to employees. In those wage statements, Defendants must provide an accurate itemized
19 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee . . . ,
20 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
21 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
22 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of
23 the period for which the employee is paid, (7) the name of the employee and only the last four digits
24 of his or her social security number or an employee identification number other than a social security
25 number, (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable
26 hourly rates in effect during the pay period and the corresponding number of hours worked at each
27 hourly rate by the employee. Defendants have failed to comply with Labor Code § 226(a).

1 36. Defendants failed to issue Plaintiff and Class Members wage statements that fully and
2 accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Class Members
3 were not paid all wages, including overtime wages and meal and rest period premium wages due. As
4 such, the wage statements provided by Defendants failed to accurately state all gross wages earned,
5 in violation of Labor Code §§ 226(a)(1) and 226.3, the total hours worked, in violation of Labor Code
6 §§ 226(a)(2) and 226.3, and net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3.
7 Separately, the wage statements issued to Plaintiffs and Class Members failed to list the total hours
8 worked, in violation of Labor Code §§ 226(a)(2) and 226.3, and all applicable hourly rates in effect
9 during the pay period and the corresponding number of hours worked, in violation of Labor Code §§
10 226(a)(9) and 226.3. Specifically, the wage statements do not list a rate of pay or the hours worked
11 at each rate when Plaintiff and Class Members worked split shifts. Defendants also improperly
12 characterize meal period premium wages as being associated with an hour of work.

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

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

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

VIII.
FIFTH CAUSE OF ACTION
PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
FAILURE TO PAY WAGES DUE DURING EMPLOYMENT AND AT SEPARATION OF
EMPLOYMENT
(LABOR CODE §§ 201-204 AND 210)

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

39. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

40. Defendants failed to pay Plaintiff and certain Class Members all wages due during their employment and at the separation of their employment based on the time frames required by Labor Code §§ 201– 204 and 210. As stated above, Plaintiffs and Class Members were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-204 and 210 and is alleged on behalf of Plaintiff and certain Class Members who have left their employment with Defendants.

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

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

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

///

IX.

SIXTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

43. Plaintiff incorporates paragraphs 1 through 42 of this Complaint as though fully set forth herein.

44. This is a Class Action for Unfair Business Practices. Plaintiff, on his own behalf and on behalf of the general public, and on behalf of others similarly situated, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and Class Members. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

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

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

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

48. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,

1 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
2 guaranteed to all employees under law.

3 49. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
4 §17200 *et seq.* of the Business & Professions Code.

5 50. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
6 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
7 17200 *et seq.* of the Business & Professions Code.

8 51. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
9 similarly situated have been damaged in a sum as may be proven.

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

17 X.

18 SEVENTH CAUSE OF ACTION

19 PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
20 PENALTIES PURSUANT TO LABOR CODE § 2699 FOR VIOLATIONS OF LABOR
21 CODE §§ 201-204.3, 210, 226, 226.2, 226.3, 226.7, 246, 246.5, 247, 247.5, 248, 248.1, 248.2, 510,
22 512, 550-553, 558, 558.1, 1102.5, 1194, 1197, AND 1198

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

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

27 55. For each such violation, Plaintiff and all other aggrieved employees are entitled to
28 penalties in an amount to be shown at the time of trial.

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

57. On July 7, 2021, November 18, 2021, and October 10, 2022, Plaintiff sent letters, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 et seq. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of July 7, 2021, November 18, 2021, or October 10, 2022. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 et seq.

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

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages pursuant to Labor Code § 1194, and liquidated damages pursuant to Labor Code § 1194.2, in the amount of all unpaid minimum and overtime wages due to Plaintiff and Class Members;
2. For compensatory damages in the amount of one hour of wages for each day on which a meal period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§ 226.7 and 512;
3. For compensatory damages in the amount of one hour of wages for each day on which a rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code § 226.7;
4. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
5. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members;
6. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
7. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;

- 1 8. An award of prejudgment and post-judgment interest;
- 2 9. An award providing for payment of costs of suit, pursuant to Labor Code §§ 226(h),
- 3 2699(g)(1), and other applicable law;
- 4 10. An award of attorneys' fees, pursuant to Labor Code §§ 226(h), 2699(g)(1), and other
- 5 applicable law; and
- 6 11. Such other and further relief as this Court may deem just and proper.

7 Dated: December 22, 2022

Respectfully submitted,

8 GAINES & GAINES
9 A Professional Law Corporation

10 By: _____
11 DANIEL F. GAINES
12 EVAN S. GAINES
13 Attorneys for Plaintiff

14 **DEMAND FOR JURY TRIAL**

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

16 Dated: December 22, 2022

Respectfully submitted,

17 GAINES & GAINES
18 A Professional Law Corporation

19 By: _____
20 DANIEL F. GAINES
21 EVAN S. GAINES
22 Attorneys for Plaintiff