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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

WILLIE MARQUEZ and ANDY MIKHAEL,
on behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

ACCURATE DELIVERY SYSTEMS, INC., a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. CIVSB2125337

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

**COMPENDIUM OF DECLARATIONS IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: July 13, 2023

Time: 10:00 a.m.

Department: S-26

Complaint Filed: August 31, 2020

LIDMAN LAW, APC

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Attorneys for Plaintiff,
JULIO GARCIA

1 With respect to the declarations and supporting exhibits cited in Plaintiffs' Motion for Preliminary
2 Approval of Class Action Settlement ("Plaintiffs' Motion"), the following are hereby concurrently filed
3 with the Court:

- 4 **Exhibit A:** Declaration of Scott M. Lidman in support of Plaintiffs' Motion ("Lidman Decl.")
- 5 **Exhibit 1 to Lidman Decl.:** Stipulation of Class Action and PAGA Settlement
- 6 **Exhibit 2 to Lidman Decl.:** Confirmation re: submission of
7 Settlement Agreement to LWDA
- 8 **Exhibit B:** Declaration of Elizabeth Nguyen in support of Plaintiffs' Motion
- 9 **Exhibit C:** Declaration of Milan Moore in support of Plaintiffs' Motion
- 10 **Exhibit D:** Declaration of Paul K. Haines in support of Plaintiffs' Motion
- 11 **Exhibit E:** Declaration of Plaintiff Julio Garcia in support of Plaintiffs' Motion
- 12 **Exhibit F:** Declaration of Kyle Nordrehaug in support of Plaintiffs' Motion ("Nordrehaug
13 Decl.")
- 14 **Exhibit 1 to Nordrehaug Decl.:** Blumenthal Nordrehaug Bhowmik De
15 Blouw LLP Resume
- 16 **Exhibit 2 to Nordrehaug Decl.:** May 28, 2021 LWDA Notice
- 17 **Exhibit G:** Declaration of Plaintiff Willie Marquez in support of Plaintiffs' Motion
- 18 **Exhibit H:** Declaration of Plaintiff Ahdy Mikhael in support of Plaintiffs' Motion
- 19
- 20 **Exhibit I:** Declaration of Jodey Lawrence in support of Plaintiffs' Motion ("Lawrence
21 Decl.")
- 22 **Exhibit A to Lawrence Decl.:** Phoenix Settlement Administrators'
23 Curriculum Vitae
- 24 **Exhibit B to Lawrence Decl.:** Phoenix Settlement Administrators' Data
25 Center Policies and Procedures
- 26 **Exhibit C to Lawrence Decl.:** Phoenix Settlement Administrators' Server,
27 Facility and Maintenance Security Protocols
28 and Review

Exhibit D to Lawrence Decl.: Phoenix Settlement Administrators'

Semiannual Training Materials

Exhibit E to Lawrence Decl.: Phoenix Settlement Administrators'

Insurance Policy

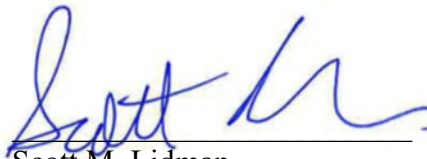
Exhibit F to Lawrence Decl.: Phoenix Settlement Administrators' Cost

Breakdown

Dated: April 28, 2023

Respectfully submitted,
LIDMAN LAW, APC

By:



Scott M. Lidman
Attorney for Plaintiff
JULIO GARCIA

EXHIBIT A

EXHIBIT A

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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on behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

ACCURATE DELIVERY SYSTEMS, INC., a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. CIVSB2125337

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

**DECLARATION OF SCOTT M.
LIDMAN IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date:

Time:

Division: S-26

Complaint Filed: August 31, 2020

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Attorneys for Plaintiff,
JULIO GARCIA

1 I, SCOTT M. LIDMAN, declare as follows:

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

7 2. I am a 1998 graduate of Santa Clara University School of Law, where I graduated *summa*
8 *cum laude*. During law school, I worked as a summer associate for the international employment law firm
9 of Littler Mendelson, P.C., located in Los Angeles, California.

10 3. Since graduating from law school, my practice has focused exclusively on employment
11 litigation. In September 1998, I began working as an associate attorney at the international law firm of
12 Littler Mendelson P.C., at its Los Angeles office, which according to its website is the largest law firm in
13 the world exclusively devoted to representing management in employment, employee benefits and labor
14 law matters.

15 4. In 2000, I left Littler Mendelson to work at the Los Angeles office of Jones Day, which
16 was at the time one of the largest international firms in the world. During my employment at Jones Day,
17 I worked exclusively in the labor and employment department. In or around 2003, I went to work at the
18 law firm of Loeb & Loeb, again working exclusively in the Labor & Employment department. In 2008, I
19 returned to Littler Mendelson, was promoted to Shareholder in 2009, and from 2008 until the end of 2017,
20 I practiced exclusively labor and employment law, with a strong emphasis and most of my time working
21 on wage and hour class actions venued in both state and federal courts. During that time and my legal
22 career in general, I also worked on a number of single and multi-plaintiff wage and hour matters as well.

23 5. During my employment at Littler Mendelson, I played a significant role in the class actions
24 that I was staffed on, and ran many on my own both as an Of Counsel and as a Shareholder. In particular,
25 I received a wide-array of wage and hour class action experience performing the following types of tasks:
26 drafting demurrers, motions to strike and/or dismiss; removing actions from state court to federal court;
27 drafting and responding to written discovery; drafting and opposing discovery related motions; arguing
28 discovery related motions; drafting motions to consolidate related matters; interviewing putative class

1 members and obtaining declarations in connection with class certification; drafting oppositions to motions
2 for class certification; drafting motions for decertification following class certification; conducting
3 exposure analyses to assess the strengths and weaknesses of asserted claims, the likelihood of prevailing
4 at class certification and potential damages resulting from such claims; drafting mediation briefs; serving
5 as the primary contact to in-house counsel; deposing named plaintiffs and putative class members;
6 deposing retained expert witnesses; and defending the depositions of corporate witnesses. I also was
7 involved in the negotiations and settlements of many large wage and hour class actions. In short, I played
8 an integral role in all aspects of litigation from the inception of a matter through and beyond class
9 certification. I also supervised the work of several junior attorneys who were staffed on the same wage
10 and hour class actions.

11 6. Although not exhaustive, below is a list of many of the wage and hour class and PAGA
12 actions that I performed substantial work on while I was a shareholder at Littler Mendelson:

- 13 ► *Ortega v. J.B. Hunt Transport, Inc.*, Case No. 07-cv-8336-RGK-AFMx, United
14 States District Court, Central District of California, Honorable Gary Klausner,
15 presiding¹.
- 16 ► *Aceves v. J.B. Hunt Transport, Inc.*, Case No. CIVDS1306133, California Superior
17 Court, County of San Bernardino, Honorable Michael Sachs, presiding.
- 18 ► *Moreno v. J.B. Hunt Transport, Inc.*, Case No. BC388612, California Superior
19 Court, County of Los Angeles, Honorable Mel Red Recana, presiding.
- 20 ► *Newcomb v. J.B. Hunt Transport, Inc.*, Case No. RG16815734, California Superior
21 Court, County of Alameda, Honorable Winifred Smith, presiding.
- 22 ► *Vaquero v. Stoneledge Furniture, LLC, et al.*, Case No. 12-cv-08590-PA-MAN,
23 United States District Court, Central District of California, Honorable Percy
24 Anderson, presiding.

25
26
27
28 ¹ My work on this matter including proceedings not only in District Court, but also work before the United States Court of Appeals for the Ninth Circuit as well as the United States Supreme Court.

- 1 ▶ *Vaquero v. Stoneledge Furniture, LLC, et al.*, Case No. BC388612, California
2 Superior Court, County of Los Angeles, Honorable Elihu Berle, presiding.²
- 3 ▶ *Dugan v. Stoneledge Furniture, LLC*, Case No. 16-cv-01125-PA-FFMx, United
4 States District Court, Central District of California, Honorable Percy Anderson,
5 presiding.
- 6 ▶ *Klune v. Stoneledge Furniture, LLC*, Case No. 14-cv-03986-PA-FFMx, United
7 States District Court, Central District of California, Honorable Percy Anderson,
8 presiding.
- 9 ▶ *Diaz v. ABM Industries, Inc.; Ampco Parking*, Case No. BC362932, California
10 Superior Court, County of Los Angeles, Honorable Jane Johnson, presiding.³
- 11 ▶ *Adams v. Luxottica Retail North America, Inc.*, Case No. 07CC01346, California
12 Superior Court, County of Orange, Honorable Thierry Patrick Colaw, presiding.
- 13 ▶ *Sakkab v. Luxottica Retail North America, Inc.*, Case No. 12-cv-00436-GPC-KSC,
14 United States District Court, Southern District of California.⁴
- 15 ▶ *Page v. Oakley, Inc.*, Case No. FCS041512, California Superior Court, County of
16 Solano, Honorable Paul Berman, presiding.
- 17 ▶ *Ramirez v. Oakley, Inc.*, Case No. 30-2014-00731617-CU-OE-CJC California
18 Superior Court, County of Orange, Honorable William Claster, presiding.
- 19 ▶ *Ramirez v. Oakley, Inc.*, Case No. 30-2014-00723846-CU-DE-CXC, California
20 Superior Court, County of Orange, Honorable William Claster, presiding.
- 21 ▶ *Sierra v. Oakley, Inc.*, Case No. 13-cv-00319-AG-JPR, United States District
22 Court, Central District of California, Honorable Andrew Guilford, presiding.⁵
- 23 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
24 States District Court, Central District of California, Honorable Margaret Morrow,
25 presiding.

26
27 ² My work on this matter included proceedings not only in the trial court, but also before the California Courts of Appeal and the California Supreme Court.

28 ³ This matter was consolidated and litigated collectively with Case Nos. BC380923, BC 381523 and BC 406663.

⁴ The work I performed on this case included work in the United States Court of Appeals for the Ninth Circuit.

⁵ The work I performed on this case included work in the United States Court of Appeals for the Ninth Circuit.

- 1 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
2 States District Court, Central District of California, Honorable Margaret Morrow,
3 presiding.
- 4 ▶ *Khelghatian v. Comerica Bank, et al.*, Case No. 11-cv-7689-DSF-FFMx, United
5 States District Court, Southern District of California, Honorable John A. Houston,
6 presiding.
- 7 ▶ *Babasa v. Comerica Bank, et al.*, Case No. 11-cv-0595-JAH-BGS, United States
8 District Court, Central District of California, Honorable Margaret Morrow,
9 presiding.
- 10 ▶ *Bernal v. Comerica Bank, et al.*, Case No. 11-cv-01298-JAH-BGS, United States
11 District Court, Central District of California, Honorable Margaret Morrow,
12 presiding.
- 13 ▶ *Khalili v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
14 States District Court, Northern District of California.
- 15 ▶ *Granata v. Comerica Bank, et al.*, Case No. 37-2011-00086316-CU-OE-CTL,
16 California Superior Court, County of San Diego, Honorable Jeffrey B. Barton,
17 presiding.
- 18 ▶ *Mathews v. Comerica Bank, et al.*, Case No. 111CV194781, California Superior
19 Court, County of Santa Clara.
- 20 ▶ *Gallegos v. Comerica Bank, et al.*, Case No. BC455515, California Superior Court,
21 County of Los Angeles, Honorable Terry Green, presiding.
- 22 ▶ *Rumohr v. Comerica Bank, et al.*, Case No. CGC-11-508433, California Superior
23 Court, County of San Francisco.
- 24 ▶ *Smith v. Werner Enterprises*, Case No. 15-cv-02978-RS, United States District
25 Court, Northern District of California, Honorable Richard Seeborg, presiding.

26 7. In January 2018, I voluntarily resigned from Littler Mendelson in order to open my own
27 law firm, Lidman Law, APC, to represent employees with work-related claims, including primarily wage
28 and hour claims and almost exclusively on a class-action basis. I am the President and Shareholder of

Lidman Law. Currently, over ninety percent (90%) of my practice is dedicated exclusively to the prosecution of wage and hour class actions, and I am currently responsible for prosecuting over sixty-five (65) wage and hour class actions filed in State courts throughout California, with several of them having been removed to Federal courts. I believe that my professional experience renders me more than qualified to serve as class counsel in this lawsuit involving claims of underpaid overtime and minimum wages, meal and rest period violations, and derivative penalty claims. Not only have I litigated dozens of wage and hour cases throughout my career involving similar claims, including the wage and hour class actions identified above, I have litigated similar claims from both plaintiff and defense perspectives. As a result, I am able to realistically assess and evaluate the facts and legal arguments that can be made in pursuit and defense of similar wage and hour claims, as well as those facts and arguments in support and in opposition to class certification. Consequently, I am able to appreciate the significant risks, uncertainties, and delay involved in wage and hour class action litigation.

8. I have been appointed Class Counsel in: *Guardado v. Wesley Allen, Inc.*, Case No. BC683027, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl presiding; *Rodriguez v. Satco, Inc.*, Case No. BC682137, California Superior Court, County of Los Angeles, Honorable Judge Ann I. Jones presiding; *Ong v. Howard's Appliances, Inc.*, Case No. 30-2017-00964213-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Claster presiding; *Hanke v. C&W Facility Services, Inc.*, Case No. CIVDS1814412, California Superior Court, County of San Bernardino, Honorable Judge David Cohn presiding; *Molina v. Mader News, Inc.*, Case No. BC685960, California Superior Court, County of Los Angeles, Honorable Judge Yvette M. Palazuelos presiding; *Alvarez v. Salamander Fire Protection, Inc.*, Case No. BC688326, California Superior Court, County of Los Angeles, Honorable Judge William F. Highberger presiding; *Rodriguez v. H.F. Cox, Inc.*, Case No. BC653164, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl presiding; *Fregoso v. Amerigas Propane, Inc.*, Case No. BC697973, California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Teran v. Western Plastics, Inc.*, Case No. RIC1722619, California Superior Court, County of Riverside, Honorable Judge Sunshine Sykes presiding; *Villegas de Torres v. El Monte Superstore Inc.*, Case No. BC688477, California Superior Court, County of Los Angeles, Honorable Judge Daniel J. Buckley

presiding; *Huynh v. Polypeptide Laboratories, Inc.*, Case No. BC680872, California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Guzman v. Century Blinds*, Case No. RIC1723654, California Superior Court, County of Riverside, Honorable Judge Sunshine S. Sykes presiding; *George v. Convergence Marketing*, Case No. CIVDS1901039, California Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Coffee, et al. v. Flyers Transportation Energy, LLC*, Case No. 34-2017-00222084, California Superior Court, County of Sacramento, Honorable Judge Alan G. Perkins presiding; *Romero v. Fillmore Hospitality, LLC*, Case No. BC705667, California Superior Court, County of Los Angeles, Honorable Judge Maren E. Nelson presiding; *Wennerstrom, et al. v. Giant Inland Empire R.V. Center*, Case No. CIVDS1617291, California Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Contreras, et al. v. Letter Ride, LLC*, Case No. 37-2018-00020841-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge Eddie C. Sturgeon presiding; *Davis v. WeDriveU*, Case No. 18CV322578, California Superior Court, County of Santa Clara, Honorable Judge Brian C. Walsh presiding; *Acuna v. Canton Food Co., Inc.*, Case No. BC685001, California Superior Court, County of Los Angeles, Honorable Judge David S. Cunningham presiding; and *Contreras v. Worldwide Flight Services, Inc.*, Case No. 2:18-cv-06036-PSG-SS, United States District Court for the Central District of California, the Honorable Judge Philip S. Gutierrez presiding.

9. As co-lead counsel for Plaintiff Garcia and the proposed Settlement Class, I have been intimately involved in every aspect of this case from its inception through the present, and I believe that the proposed Settlement is a favorable result for the Settlement Class Members under the circumstances presented.

10. Defendant Accurate Delivery Systems, Inc. (“Defendant” or “Accurate Delivery”) is a transportation/courier company that delivers, among other goods, perishable food products in refrigerated transport vehicles. On August 18, 2021, Plaintiff Julio Garcia filed a class action Complaint against Defendant in Los Angeles County Superior Court, in the matter entitled *Julio Garcia v. Accurate Delivery Systems, Inc., a California corporation; and Does 1 through 100, inclusive*, Case No. 21STCV30557. On January 27, 2022, pursuant to a request by Plaintiff Julio Garcia, the Los Angeles County Superior Court dismissed his action without prejudice. On August 18, 2021, Plaintiffs Julio Garcia sent a letter to

1 the California Labor & Workforce Development Agency exhausting his administrative remedies before
2 filing a civil claim under the PAGA against Defendant. The LWDA took no action in response to that
3 letter. On January 11, 2022, a First Amended Complaint was filed in the Action on behalf of Plaintiffs
4 Willie Marquez, Ahdy Mikhael, and Julio Garcia (“Plaintiffs”) alleging the following claims: (1) all
5 claims for unfair business practices that could have been premised on the facts, claims, causes of action
6 or legal theories described above; (2) failure to pay all minimum wages owed, including without
7 limitation resulting from unlawful/improper rounding, and failing to pay for non-productive time under
8 the commission pay plan; (3) failure to pay all overtime wages owed, including without limitation
9 resulting from unlawful/improper rounding, miscalculating the regular rate of pay, and failing to pay for
10 non-productive time under the commission pay plan; (4) failure to provide meal periods, pay premium
11 wages for non-compliant meal periods, and failure to record meal periods; (5) failure to authorize and
12 permit rest periods, pay premium wages for non-compliant rest periods, or the failure to separately pay
13 premiums for rest periods under the commission pay plan; (6) failure to issue accurate, itemized wage
14 statements (7) failure to timely pay all wages due upon separation of employment; (8) failure to reimburse
15 necessary business expenses; and (9) violations of the California Labor Code Private Attorney General
16 Act of 2004 (“PAGA”) seeking civil penalties premised on the facts, claims, causes of action and legal
17 theories described above.

18 11. After agreeing to participate in early mediation, Accurate Deliver informally produced
19 documents and information relevant to the claims alleged in advance of mediation, including without
20 limitation timekeeping and payroll data for the putative class. Additionally, Accurate Delivery produced
21 information and data points needed for a fruitful mediation, including without limitation, the number of
22 employees, workweeks at issue, pay periods at issue, meal and rest period policies and procedures, and
23 payroll policies. After a review and analysis of the documents and information produced by Accurate
24 Delivery, Class Counsel drew on their extensive experience in similar cases to assess the strengths and
25 weaknesses of Plaintiffs’ case. This discovery allowed the parties to assess the merits and value of
26 Plaintiffs’ claims and Accurate Delivery’s defenses thereto, if a settlement could not be reached.

27 12. On March 7, 2023, a mediation was held with Lynn Frank, a well-respected wage and
28 hour class action mediator. During mediation, the parties vigorously debated their opposing legal

positions, the likelihood of certification of Plaintiffs' claims, and the legal basis for the claims and defenses. Ultimately, the parties agreed in principle on a class-wide resolution. *Id.* In the weeks that followed, the parties finalized the terms of settlement and executed the Stipulation of Class Action and PAGA Settlement ("Settlement"). A true and correct copy of the fully executed Settlement executed is attached hereto as **Exhibit 1**. The proposed Notice Packet documents are attached as Exhibit C to the Settlement.

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

Gross Settlement Amount ("GSA"):	\$900,000.00
Minus Court-approved attorneys' fees (update to 1/3 of GSA):	\$300,000.00
Minus Court-approved, verified costs (up to \$30,000):	\$30,000.00
Minus Court-approved Class Representative Service Awards:	\$30,000.00
Minus Settlement Administration Costs:	\$5,750.00
Minus PAGA civil penalties payable to LWDA:	\$22,500.00
Net Settlement Amount ("NSA"):	\$511,750.00

With the exception of the Settlement Administrator's fees, if required by the Settlement Administrator, the Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and PAGA Employees. Defendant agrees to deposit the Gross Settlement Amount with the Settlement Administrator in twenty-four (24) equal installments of Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00). The first Settlement Installment shall be paid by no later than June 6, 2023. and will be deposited with the Settlement Administrator in an escrow account set up by it. The second through twenty-fourth Settlement Installment payments shall be due every thirty (30) days thereafter. The employer's share of payroll taxes and any increase to the Gross Settlement Amount due pursuant to the Escalator Clause, if applicable, shall be deposited with the Settlement Administrator along with the twenty-fourth and final Settlement Installment. *See Settlement, ¶ 4.B.*⁶

⁶ The Settlement Administrator shall hold all portions of the Gross Settlement Amount in an interest-bearing account for benefit of the Settlement Class until the time for disbursement. In the event that the

After deducting amounts for the Court-approved attorneys' fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA civil penalties payable to the LWDA, the Settlement requires Accurate Delivery to pay a Net Settlement Amount ("NSA") of at least **\$511,750.00** to all Settlement Class members who do not timely opt out.

14. According to Accurate Delivery, there are approximately 88 total Settlement Class members (who worked a total of approximately 14,814 workweeks during the relevant time period and 2,940 pay periods). The class is defined as:

All current and former Delivery Drivers of Defendant Accurate Delivery Systems, Inc. who worked at any time in California during the Class Period. The "Class Period" shall mean the time period between August 18, 2017 and the earlier of the date of preliminary approval or June 7, 2023.

Thus, the average Individual Settlement Payment is projected to be approximately **\$5,815.34 (which is approximately \$34.55 per workweek)** and the average individual PAGA Employee settlement payment to the 56 PAGA Employees is projected to be approximately **\$133.93 (which is approximately \$2.55 per pay period)**.

15. Settlement Class members' claims arise from Accurate Delivery's common, uniform policies and practices that applied to Settlement Class members during the class period. Specifically, Plaintiffs alleged that Accurate Delivery's common and uniform policies and practices resulted in the following violations: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide all legally-required meal periods; (4) failure to authorize and permit all legally-required rest periods; (5) failure to reimburse necessary business expenses; (6) failure to provide

Gross Settlement amount is not paid as required under Paragraph 4.B. of this Agreement, after Defendant's counsel receives written notice of the default, and given ten (10) days to cure, then at Plaintiffs' option, the Settlement, Final Approval Order, and Judgment may be enforced by remedies available and Defendant agrees to the payment of reasonable attorneys' fees and costs necessary in enforcing the Agreement. The Parties agree that unless otherwise ordered by the Court, there shall be no disbursements of the Gross Settlement Amount unless and until the Court has issued final approval of the Settlement, and the Gross Settlement Amount and employer-side taxes have been fully funded. If for any reason the Court denies approval with prejudice of the Settlement, any portion of the Gross Settlement Amount deposited by Defendant with the Administrator as of that date of denial shall be returned to Defendant in full. Settlement, ¶ 4.C.

accurate, itemized wage statements, (7) failure to timely pay all wages upon termination; (8) engagement in unfair competition; and (9) liability for civil penalties under the PAGA.

16. As described in the accompanying Motion for Preliminary Approval, Plaintiffs allege that they and the other Settlement Class Members were not fully compensated for all of their time worked. Specifically, Plaintiffs allege Accurate Delivery maintained a commission pay plan. Moreover, Plaintiffs allege that Accurate Delivery's commission pay plan failed to separately compensate Plaintiffs and the other non-exempt Delivery Drivers for time spent working on tasks which were not compensated on a commissions basis (e.g., non-productive time). Specifically, Plaintiffs allege the tasks included, without limitation, waiting around for customers, fueling the delivery vans, washing delivery vans, completing paperwork, conducting pre- and post-shift inspections on the vans at the beginning and end of shifts, loading and unloading the delivery vehicle and taking rest periods. Plaintiffs estimate that on average they worked approximately 1 hour on non-productive time per shift, or 5 hour per week. As such, Plaintiffs estimate Accurate Delivery's exposure at approximately \$710,216 (10,918 workweeks with commission only pay x 5 hours of NPT/week x \$13.01 average minimum wage⁷ = \$710,216).

17. Accurate Delivery contends that it compensated Settlement Class Members for all of their time worked, including alleged "non-productive" time. Accurate Delivery also contends that any unpaid time was *de minimis* and therefore non-compensable. *Id.* Accurate Delivery further asserts that Plaintiffs would be unable to certify this class given the individualized inquiries that would be required to assess time spent on "non-productive" activities. In light of these defenses, Plaintiffs discounted the maximum exposure by 35% for the risk of non-certification, and an additional 40% to account for Accurate Delivery's defenses on the merits, to arrive at an estimated exposure of approximately \$276,984.24.

18. Plaintiffs allege that they and Settlement Class Members were also not authorized and permitted to take all required rest periods due to Accurate Delivery's rest period policies and practices that fail to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*. Specifically, Plaintiffs allege that due to Accurate Delivery's commission pay plan and the work demands imposed, Accurate Delivery failed to authorize and permit paid rest periods on shifts over 3.5 hours. As

⁷ Minimum wage in 2017 was \$10.50, in 2018 it was \$11.00, in 2019 it was \$12.00, in 2020 it was \$13.00, in 2021 it was \$14.00, in 2022 it was \$15.00, and in 2023 it is \$15.50. Therefore, the average minimum wage is \$13.01.

1 such, Plaintiffs allege Defendant fail to relinquish control in violation of California law and resulted in at
2 least one rest period violation on every shift in excess of 3.5 hours. Accordingly, Plaintiffs calculated
3 Defendant's maximum exposure for rest period violations at \$1,555,470 (14,814 workweeks x 5 violations
4 per workweek x \$21.00 (average rate of pay)).

5 19. Accurate Delivery contends it has always maintained and enforced lawful rest period
6 policies and practices, and that Settlement Class Members were authorized and permitted to take all off-
7 duty paid rest periods in compliance with California law. Further, Accurate Delivery contends that
8 Plaintiffs' rest period claim is inherently unsuited for class treatment as it requires an individualized inquiry
9 into whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest
10 period, which would devolve into an unmanageable series of mini-trials. Accordingly, Plaintiffs
11 discounted the maximum exposure by 50% for the risk of non-certification, and an additional 45% to
12 account for Accurate Delivery's defenses on the merits to arrive at an estimated exposure of \$427,754.25.

13 20. Plaintiffs allege that they and Settlement Class Members were not fully compensated for
14 all of their time worked. Specifically, Plaintiffs allege that Accurate Delivery would unlawfully shave
15 their work time and/or round their work time such that they would not be fully paid for all time worked
16 when it started keeping track of their hours worked in September 2021. Plaintiffs also allege that this time
17 shaving and/or rounding practice utilized by Accurate Delivery was not-even handed over time and would
18 almost exclusively round and shave in Accurate Delivery's favor such that the employees were routinely
19 underpaid for their time worked and it appeared on average to be an underpayment of approximately 25
20 minutes per week. Accordingly, Plaintiffs calculated a total wage underpayment of approximately \$43,134
21 ((3,947 workweeks x .42 per workweek x \$13.01 average minimum wage) + (\$21,567 liquidated damages
22 under Labor Code section 1194.2).

23 21. Accurate Delivery contends that it compensated Settlement Class Members for all of their
24 time worked. Accurate Delivery also contends that its rounding practices were lawful, and any unpaid
25 time for rounding was *de minimis* and therefore non-compensable. Accurate Delivery further asserts that
26 Plaintiffs would be unable to certify a rounding class given the individualized inquiries that would be
27 required, and also that Accurate Delivery's rounding policy/mechanism was, according to it, neutral on its
28 face and in its application. In light of these defenses, Plaintiffs discounted the maximum exposure by 40%

1 for the risk of non-certification, and an additional 30% to account for Accurate Delivery's defenses on the
2 merits, to arrive at an estimated exposure of \$18,116.28.

3 22. Plaintiffs allege that they and Settlement Class Members were not provided all legally
4 required meal periods due to Accurate Delivery's meal period policies and practices. Specifically, up
5 until September 2021 when Accurate Delivery changed its timekeeping practices and began tracking meal
6 periods, Accurate Delivery automatically deducted 30 minutes of work time for purported meal periods.
7 Further, once Accurate Delivery began tracking the start and stop times for meal periods, as a result of the
8 work demands imposed by Accurate Delivery, Plaintiffs allege that they were often provided with a meal
9 period late, short, and/or missed in violation of California law. Therefore, Plaintiffs calculated Accurate
10 Delivery's maximum exposure the alleged meal period violations at approximately \$1,560,825 ((10,918
11 workweeks with auto-deduct x 5 shifts/week x \$21.00 average hourly rate) + (3,947 workweeks with
12 recorded meal periods x 5 shifts/week x \$21.00 average hourly rate)).

13 23. Accurate Delivery counters that Plaintiffs' exposure analysis on this claim is overreaching
14 because it has always provided non-exempt employees with an opportunity to take legally compliant meal
15 periods. Accurate Delivery also contends that any non-compliant meal periods reflected in employee
16 timekeeping records during the time period for which employees recorded meal periods were solely the
17 result of employee choice, rather than any policy or practice of Accurate Delivery. Accurate Delivery
18 points out that under it is only required to "provide" the opportunity to take meal periods, not "ensure"
19 meal periods are taken, and that they have always done so. Finally, Accurate Delivery contends Plaintiffs'
20 meal period claim is not suited for class certification, since individual inquiries would be required to assess
21 which employees took non-compliant meal periods, how many meal periods were non-compliant or
22 missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal
23 period during a particular shift. Accordingly, Plaintiffs discounted the maximum exposure by 35% for the
24 risk of non-certification, and an additional 35% to account for Accurate Delivery's defenses on the merits
25 to arrive at an estimated exposure of \$659,448.56.

26 24. Plaintiffs allege that up until September 2021 Accurate Delivery failed to reimburse them
27 and Settlement Class members for necessary business expenditures, including the use of their personal
28 cellular phones for work activities, as required under Labor Code section 2802 and by *Cochran v.*

1 *Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137. Plaintiffs contend that Accurate Delivery
2 required them to use their personal cellular phones to make and receive phone calls. Plaintiffs estimate
3 that, on average, Settlement Class members incurred about \$30.00 in data usage expenses per month and
4 there were approximately 49 months during the relevant time period. Accordingly, Plaintiffs calculate
5 Accurate Delivery's maximum exposure for this claim at approximately \$129,360 (49 months x
6 \$30.00/month x 88).

7 25. Accurate Delivery contends that it provided employees with tools to communicate and their
8 use of their personal cellular phones were not needed. Further, Accurate Delivery argues that any expenses
9 incurred were minimal given the affordability of cellular usage plans. Accurate Delivery also argues that
10 this claim is not suitable for class treatment because it would require individualized determinations as to
11 whether each employee used a personal cellular phone and how often. Accordingly, Plaintiffs discounted
12 the maximum exposure by 40% for the risk of non-certification, and an additional 45% to account for
13 Accurate Delivery's defenses on the merits, to arrive at an estimated exposure of \$42,688.80.

14 26. Plaintiffs allege that as a result of the above, Accurate Delivery issued inaccurate wage
15 statements in violation of Labor Code § 226 because the wage statements. There were approximately
16 2,940 wage statements issued during the relevant time period. Therefore, Plaintiffs calculated Accurate
17 Delivery's maximum exposure for wage statement violations at approximately \$291,900 (\$50.00 x 42
18 current employees + \$100 x 2,898 subsequent wage statements).

19 27. Accurate Delivery contends that its alleged wage statement violations could not be shown
20 to be "knowing and intentional," and that Plaintiffs cannot show that they or any other employee
21 "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e)
22 for imposition of penalties. As such, Plaintiffs discounted the calculated exposure by 55% for a risk of
23 non-certification and an additional 40% for a risk of being unsuccessful on the merits, to arrive at an
24 estimated total of \$78,813.00.

25 28. Plaintiffs alleges Accurate Delivery is also liable for waiting time penalties under Labor
26 Code section 203 as a result of its failure to timely pay all wages upon separation. Based on the data
27 provided by Defendant, there were approximately 46 Settlement Class Members who have separated their
28 employment with Accurate Delivery during the relevant time period who could be entitled to waiting time

1 penalties. Therefore, Plaintiffs calculated Accurate Delivery's maximum exposure for waiting time
2 penalties at approximately \$231,840 (46 former employees x \$21.00/hour x 30 days x 8 hours/day).

3 29. Accurate Delivery asserts it has strong defenses to the waiting time claim because there
4 exist good-faith disputes as to Plaintiffs' underlying claims, precluding imposition of penalties.
5 Accordingly, Plaintiffs discounted the maximum exposure by 35% for the risk of non-certification, and an
6 additional 40% to account for Accurate Delivery's defenses on the merits, to arrive at an estimated
7 exposure of \$90,417.60.

8 30. Plaintiffs also seek civil penalties under the PAGA as a result of the foregoing alleged
9 Labor Code violations. Plaintiff calculated Accurate Delivery's maximum exposure at \$294,000 (2,940
10 pay periods x \$100 initial violation rate).

11 31. Accurate Delivery argues that Plaintiffs' PAGA claim will fail for the same reasons that
12 their underlying claim will fail. Accurate Delivery also maintains that, given its good faith defenses, this
13 Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Accurate
14 Delivery liable for Plaintiffs' claim, especially given the fact that Accurate Delivery changed its
15 timekeeping and pay practices in September 2021. Therefore, Plaintiffs discounted the maximum
16 exposure figure by 30% for a risk of being unsuccessful on the merits, and an additional 35% to account
17 for the possibility of this Court reducing penalties, to arrive at an estimated exposure of \$133,770.00.

18 32. Using these estimated figures for each of the claims described above, Plaintiffs predicted
19 the realistic total recovery for the Settlement Class would be approximately \$1,727,992.73. The proposed
20 settlement of \$900,000.00 therefore represents approximately 52% of the reasonably forecasted recovery
21 for the Settlement Class. Preliminary approval is appropriate as the settlement will provide tangible
22 monetary relief to Settlement Class members, and will still provide an average recovery to Settlement
23 Class members of approximately **\$5,815.84** and an average individual PAGA Employee settlement
24 payment to be approximately **\$133.93**.

25 33. Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA,
26 which is currently estimated to be \$300,000.00, and up to \$30,000.00 in verified costs reimbursement.
27 Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and
28 time-consuming litigation on a purely contingent fee basis. Class Counsel has incurred substantial

1 attorney fees conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting legal research,
2 reviewing Accurate Delivery's timekeeping and payroll records and other documents and policies,
3 preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this
4 Motion, and otherwise litigating the case. Class Counsel expect to expend additional attorney time in
5 attending the hearing on this Motion, overseeing the Notice process and fielding questions from
6 Settlement Class members, preparing the final approval papers and attending the Final Approval hearing.

7 34. Plaintiff has provided written approval of the split of attorneys' fees in this action.

8 35. Plaintiff Garcia will seek a service award of \$10,000.00 at the time of seeking final
9 approval, and I believe this is reasonable given Plaintiff's efforts in this case and the risks he undertook
10 on behalf of the Settlement Class members, including the risk that he could be liable for Accurate
11 Delivery's costs if this case was unsuccessful. Plaintiff was integral in the prosecution of this action, by,
12 among other things, providing substantial factual information and documents to Class Counsel,
13 participated in meetings with Class Counsel to discuss the claims and theories at issue in the litigation,
14 and otherwise actively participating in the prosecution of their claims. In addition, Plaintiff agreed to a
15 general release of all claims against Defendant.

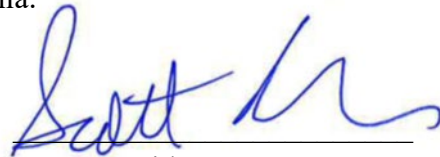
16 36. Although the parties engaged in informal discovery throughout this action, the parties still
17 had significant formal discovery to complete, including written discovery, party depositions, putative
18 class member depositions, and expert discovery had the matter not settled. Moreover, Plaintiffs still had
19 to file for class certification, and faced the prospect of appeals in the wake of a disputed class certification
20 ruling for Plaintiffs and/or an adverse summary judgment ruling. Even if the class sought to be certified
21 by Plaintiffs was in fact certified, the parties would incur considerably more attorneys' fees and costs
22 through a possible decertification motion, trial, and possible appeal. This Settlement avoids those risks
23 and the accompanying expense.

24 37. Plaintiffs served the proposed Settlement Agreement on the California Labor &
25 Workforce Development Agency ("LWDA") on April 28, 2023. A true and correct copy of the email
26 generated by the LWDA website after Plaintiffs submitted the Settlement Agreement to the LWDA is
27 attached hereto as **Exhibit 2**.

1 38. After this Motion is filed, I will cause a copy of it to be submitted to the LWDA and will
2 file a supplemental proof of service prior to the hearing.

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

5 Executed on April 28, 2023 at El Segundo, California.

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EXHIBIT 1

EXHIBIT 1

STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiffs Julio Garcia, Willie Marquez and Ahdy Mikhael (collectively, “Plaintiffs”), individually and on behalf of all members of the Settlement Class and PAGA Employees (both terms defined below), on one hand, and Defendant Accurate Delivery Systems, Inc. (“Defendant”), on the other hand. Plaintiffs and Defendant are referred to herein collectively as the “Parties.” Plaintiffs, the Settlement Class, and the PAGA Employees are represented by Paul K. Haines of Haines Law Group, APC, Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC, and Norman B. Blumenthal, Kyle R. Nordrehaug and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP (collectively, “Class Counsel”). Defendant is represented by Hekmat (Matt) Kordab of Kordab Law Offices and Stella Park and Yalan Zheng of the Law Offices of Park and Zheng.

On August 18, 2021, Plaintiff Julio Garcia filed a class action Complaint against Defendant in Los Angeles County Superior Court, in the matter entitled *Julio Garcia v. Accurate Delivery Systems, Inc., a California corporation; and Does 1 through 100, inclusive*, Case No. 21STCV30557. On January 27, 2022, pursuant to a request by Plaintiff Julio Garcia, the Los Angeles County Superior Court dismissed his action without prejudice.

On August 31, 2021, Plaintiff Willie Marquez filed a representative PAGA action against Defendant, entitled *Willie Marquez. v. Accurate Delivery Services, Inc.*, in the San Bernardino County Superior Court (Case No. CIVSB 2125174), before Hon. David Cohn of Dept. S-26. In June 2022, pursuant to a request by Plaintiff Willie Marquez, the San Bernardino County Superior Court dismissed his action without prejudice.

On August 31, 2021, Plaintiffs Willie Marquez and Ahdy Mikhael filed a class action against Defendant, entitled *Willie Marquez, et al. v. Accurate Delivery Systems, Inc.*, in the San Bernardino County Superior Court (Case No. CIVSB 2125337), before Hon. David Cohn of Dept. S-26 (hereinafter, the “Action”).

On January 11, 2022, a First Amended Complaint was filed in the Action on behalf of Plaintiffs alleging the following claims: (1) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above; (2) failure to pay all minimum wages owed, including without limitation resulting from unlawful/improper rounding, and failing to pay for non-productive time under the commission pay plan; (3) failure to pay all overtime wages owed, including without limitation resulting from unlawful/improper rounding, miscalculating the regular rate of pay, and failing to pay for non-productive time under the commission pay plan; (4) failure to provide meal periods, pay premium wages for non-compliant meal periods, and failure to record meal periods; (5) failure to authorize and permit rest periods, pay premium wages for non-compliant rest periods, or the failure to separately pay premiums for rest periods under the commission pay plan; (6) failure to issue accurate, itemized wage statements (7) failure to timely pay all wages due upon separation of employment; (8) failure to reimburse necessary business expenses; and (9) violations of the California Labor Code Private Attorney General Act of 2004 (“PAGA”) seeking civil penalties premised on the facts, claims, causes of action and legal theories described above.

On May 28, 2021, Plaintiffs Willie Marquez and Ahdy Mikhael sent a letter to the California Labor & Workforce Development Agency (a copy of which is attached hereto as **Exhibit A**) exhausting their administrative remedies before filing a civil claim under the PAGA against Defendant. The LWDA took no action in response to that letter.

On August 18, 2021, Plaintiffs Julio Garcia sent a letter to the California Labor & Workforce Development Agency (a copy of which is attached hereto as **Exhibit B**) exhausting his administrative remedies before filing a civil claim under the PAGA against Defendant. The LWDA took no action in response to that letter.

Given the uncertainty of litigation and Defendant's denial of Plaintiffs' claims, Plaintiffs and Defendant wish to settle both individually and on behalf of the Settlement Class, PAGA Employees, and the State of California. Accordingly, Plaintiffs and Defendant agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiffs and Defendant stipulate to the certification of the "Settlement Class" defined as follows:

All current and former Delivery Drivers of Defendant Accurate Delivery Systems, Inc. who worked at any time in California during the Class Period.

For purposes of this Settlement Agreement, the "Class Period" shall mean the time period between August 18, 2017 and the earlier of the date of preliminary approval or June 7, 2023.

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

2. **PAGA Employees.** For the purposes of this Settlement Agreement only, Plaintiffs and Defendant stipulate to the following definition of "PAGA Employees":

All current and former non-exempt, Delivery Drivers of Defendant Accurate Delivery Systems, Inc. who worked at any time in California during the PAGA Period.

For purposes of this Settlement Agreement, the "PAGA Period" and release under the PAGA shall mean the time period between August 18, 2020 and the earlier of the date of preliminary approval or June 7, 2023.

3. **Release by Settlement Class Members and Plaintiffs.** Plaintiffs and every member of the Settlement Class (except those who timely and properly submit a Request for Exclusion as set forth below) will fully and forever completely release and discharge Defendant, its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys, (collectively the "Released Parties"), as follows:

- A. Settlement Class Members' Release: Settlement Class members and Plaintiffs will release all claims, demands, rights, liabilities and causes of action that were pled or could have been pled based upon the facts alleged in the operative First Amended Complaint in the Action, that arose during the Class Period defined above with respect to the following claims: (a) failure to pay all overtime wages owed, including without limitation resulting from unlawful/improper rounding, miscalculating the regular rate of pay, and failing to pay for non-productive time under the commission pay plan; (b) failure to pay all minimum wages owed, including without limitation resulting from unlawful/improper rounding, and failing to pay for non-productive time under the commission pay plan; (c) failure to provide meal periods, pay premium wages for non-compliant meal periods, and failure to record meal periods; (d) failure to authorize and permit rest periods, pay premium wages for non-compliant rest periods, or the failure to separately pay premiums for rest periods under the commission pay plan; (e) failure to reimburse necessary business expenses; (f) failure to timely pay all wages due upon separation of employment or failure to timely pay wages when due; (g) failure to issue accurate, itemized wage statements; (h) failure to provide paid sick leave or to pay for sick leave; and (i) all claims for unfair business practices that reasonably could have been premised on the facts, claims, causes of action or legal theories described above (collectively, the "Released Class Claims"). The Class Members do not release any claims other than those set forth above, including without limitation claims for vested benefits, wrongful termination, violations of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.
- B. The time period for the release of the Released Class Claims shall be the same time period as the Class Period.
- C. PAGA Release: PAGA Employees, including Plaintiffs (and also including those who opt-out from the Class portion of the Settlement), will release and forever discharge the Released Parties from all claims, demands, rights, liabilities and causes of action for civil penalties under California Labor Code Private Attorneys General Act of 2004 which were pled in the letters to the Labor & Workforce Development Agency ("LWDA") dated May 28, 2021 and August 18, 2021 (**Exhibits A-B**) and the operative First Amended Complaint in the Action, or which could have been pled based upon the facts alleged in the operative First Amended Complaint in the Action that arose during the PAGA Period predicated on the following alleged violations: (a) failure to pay all overtime wages owed, including without limitation resulting from unlawful/improper rounding, miscalculating the regular rate of pay, and failing to pay for non-productive time under the commission pay plan; (b) failure to pay all minimum wages owed, including without limitation resulting from unlawful/improper rounding, and failing to pay for non-productive time under the commission pay plan; (c) failure to provide meal periods, pay premium wages for non-compliant meal periods, and failure to record meal periods; (d) failure to authorize and permit rest periods, pay premium wages for non-

compliant rest periods, or the failure to separately pay premiums for rest periods under the commission pay plan; (e) failure to reimburse necessary business expenses; (f) failure to timely pay all wages due upon separation of employment or failure to timely pay wages when due; (g) failure to issue accurate, itemized wage statements; and (h) failure to provide paid sick leave or to pay for sick leave (collectively, “PAGA Released Claims”).

- D. The time period for the release of the PAGA Released Claims shall be the same time period as the PAGA Period.
- E. In light of the Class Representative Service Awards, Plaintiffs agree to release, in addition to the Released Class Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. Notwithstanding the foregoing, Plaintiffs understand that this release includes unknown claims, which includes waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

- F. Notwithstanding the above, nor anything else in this Settlement, the waiver and release in this Settlement by Plaintiffs does not apply to (i) those rights that as a matter of law cannot be waived, including, but not limited to, workers’ compensation claims, pending or otherwise and/or benefits to be received by Plaintiffs in workers’ compensation pursuant to the jurisdiction of workers’ compensation; and (ii) rights or claims arising out of this Settlement.
- G. The releases identified herein will only be effective upon the date that Defendant fully funds the Gross Settlement Amount and any required employer-side taxes.

4. **Gross Settlement Amount.** As consideration, Defendant agrees to pay a “Gross Settlement Amount” of Nine Hundred Thousand Dollars and Zero Cents (\$900,000.00) (unless such Gross Settlement Amount is increased pursuant to Paragraph 4.H. below) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Class Action Administration Solutions as the “Settlement Administrator” to administer this Settlement. All administrative costs due and owing to the Settlement Administrator shall be paid from the Gross Settlement Amount.
- B. With the exception of the Settlement Administrator’s fees, if required by the Settlement Administrator, the Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and PAGA Employees.

Defendant agrees to deposit the Gross Settlement Amount with the Settlement Administrator in twenty-four (24) equal monthly installments of Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00). The first Settlement Installment shall be paid by no later than June 6, 2023, and will be deposited with the Settlement Administrator in an escrow account set up by it. The second through twenty-fourth Settlement Installment payments shall be due no later than the 6th day of each month thereafter. The employer's share of payroll taxes and any increase to the Gross Settlement Amount due pursuant to the Escalator Clause, if applicable, shall be deposited with the Settlement Administrator along with the twenty-fourth and final Settlement Installment.

- C. The Settlement Administrator shall hold all portions of the Gross Settlement Amount in an interest-bearing account for benefit of the Settlement Class until the time for disbursement. In the event that the Gross Settlement amount is not paid as required under Paragraph 4.B. of this Agreement, after Defendant's counsel receives written notice of the default, and given ten (10) days to cure, then at Plaintiffs' option, the Settlement, Final Approval Order, and Judgment may be enforced by remedies available and Defendant agrees to the payment of reasonable attorneys' fees and costs necessary in enforcing the Agreement. The Parties agree that unless otherwise ordered by the Court, there shall be no disbursements of the Gross Settlement Amount unless and until the Court has issued final approval of the Settlement, and the Gross Settlement Amount and employer-side taxes have been fully funded. If for any reason the Court denies approval with prejudice of the Settlement, any portion of the Gross Settlement Amount deposited by Defendant with the Administrator as of that date of denial shall be returned to Defendant in full.
- D. This Settlement shall become effective on the latter of: (a) the Court's final approval of the settlement if no objections by or on behalf of Settlement Class members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed (hereinafter, "Effective Date").
- E. The Parties agree that this Settlement is conditioned upon Plaintiffs' counsel's review of a Defendant declaration to be provided by Defendant which attests to and confirms that Defendant's financial condition is consistent with the representations made by Defendant at the mediation. To the extent the declaration is not consistent with the representations made at mediation, Plaintiffs have the sole right to withdraw from this Settlement. Following the execution of this Settlement, the Parties agree to meet and confer regarding Defendant providing a declaration under oath confirming the various data points and information discussed during mediation. Defendant agrees to cooperate and provide any declarations and/or necessary information regarding the payment plan in support of preliminary approval and/or final approval should the Court request additional information regarding the payment plan.
- F. This is a non-reversionary settlement. The Gross Settlement Amount includes:

- (1) All payments (including interest) to the Settlement Class members;
 - (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Five Thousand Seven Hundred Fifty Dollars and Zero Cents (\$5,750.00);
 - (3) Up to Ten Thousand Dollars and Zero Cents (\$10,000.00) for each of the three Plaintiffs' Class Representative Service Awards (for a total of up to \$30,000.00), in recognition of their contributions to the Action, and their service to the Settlement Class. Even in the event that the Court reduces or does not approve the requested Class Representative Service Awards, Plaintiffs shall not have the right to revoke this Settlement Agreement, and this Settlement shall remain binding;
 - (4) Up to one-third of the Gross Settlement Amount in Class Counsel's attorneys' fees [estimated to be Three Hundred Thousand Dollars and Zero Cents (\$300,000.00), unless the Gross Settlement Amount is increased pursuant to Paragraph 4.H. below], plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Thirty Thousand Dollars and Zero Cents (\$30,000.00). In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees and/or costs, Class Counsel shall not have the right to revoke this Settlement Agreement, and it will remain binding; and
 - (5) Thirty Thousand Dollars and Zero Cents (\$30,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Twenty-Two Thousand Five Hundred Dollars and Zero Cents (\$22,500.00) will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining twenty-five percent (25%), or Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), will be payable to the PAGA Employees as the "PAGA Amount," as described below.
- G. Defendant's share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount. These taxes will not be deducted from the Gross Settlement Amount.
- H. **Unexpected Workweeks/Escalator Clause.** Defendant represents that there are an estimated 14,814 workweeks worked by Settlement Class members during the Class Period. If the number of workweeks worked by Settlement Class members during the Class Period is more than 10% greater than this figure (*i.e.*, if there are 16,296 or more workweeks) worked by the Settlement Class members, Defendant agrees to increase the Gross Settlement Amount on a *pro rata* basis above the 10% (*i.e.*, if there was 11% increase in the number workweeks during

the Class Period, Defendant would agree to increase the Gross Settlement Amount by 1%).

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

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, Plaintiffs’ Class Representative Service Awards, the Settlement Administrator’s fees and expenses for administration, and the amount designated as PAGA civil penalties payable to the LWDA. The remaining amount shall be known as the “Net Settlement Amount.”
- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member’s Settlement Award based on the following formula:
 - i. The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked as a Delivery Driver during the Class Period, the numerator of which is the Settlement Class member’s total workweeks worked as a Delivery Driver during the Class Period, and the denominator of which is the total workweeks worked as Delivery Drivers by all Settlement Class members (who do not opt out) who worked during the Class Period.
- C. PAGA Amount: Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) of the Gross Settlement Amount has been designated as the “PAGA Amount” as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during this PAGA Period which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee’s number of pay periods worked as a non-exempt employee during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees. The payments to PAGA Employees shall be reported as penalties on a Form 1099.
- D. Within ten (10) calendar days following Defendant’s deposit of the final Settlement Installment of Gross Settlement Amount and all employer-side taxes with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for the Parties for review and approval. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards to participating Settlement Class members.

- E. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: twenty percent (20%) as wages; and eighty percent (80%) as penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed “wages” and IRS Forms 1099 for the amounts allocated as penalties and interest. Each Settlement Class member who receives a Settlement Award will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- F. Each member of the Settlement Class who receives a Settlement Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing will escheat to the California Secretary of State- Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class member. Any uncashed funds from the PAGA Amount shall be handled in the same manner.

6. **Attorneys’ Fees and Costs.** Defendant will not object to Class Counsel’s request for a total award of attorneys’ fees of one-third of the Gross Settlement Amount, which is currently estimated to be Three Hundred Thousand Dollars and Zero Cent (\$300,000.00), unless the Gross Settlement Amount is increased pursuant to Paragraph 4.H. above, in which case the attorneys’ fees shall increase accordingly. Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00) from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed, and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court’s approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. The attorneys’ fees awarded by the Court shall be allocated between Class Counsel as follows: 50% to Blumenthal Nordrehaug Bhowmik De Blouw LLP and 50% to Haines Law Group, APC and Lidman Law, APC, collectively. The award of litigation costs and expenses shall be allocated based upon the expense incurred by each firm as documents in their declarations. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award and cost award allowed by the Court.

7. **Class Representative Service Awards.** Defendant will not object to a request for a Class Representative Service Awards of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to each of the Plaintiffs (for a total of \$30,000.00) for their time and risk in prosecuting this case, their service to the Settlement Class, and their execution of a general release. This award will be in addition to Plaintiffs’ Settlement Award as a Settlement Class member and shall be reported on an IRS Form 1099 issued by the Settlement Administrator. Even in the event that the Court reduces or does not approve the requested Class Representative Service Awards, Plaintiffs shall not have the right to revoke this Settlement, and it will remain binding.

8. **Settlement Administrator.** Defendant will not object the appointment of Phoenix Class Action Administration Solutions as Settlement Administrator. Defendant will not object to Plaintiffs' seeking permission to pay up to Five Thousand Seven Hundred Fifty Dollars and Zero Cents (\$5,750.00) for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Awards and preparing all checks and mailings, calculating Defendant's share of taxes payable on the wages, which shall be paid by Defendant separate and apart from the Gross Settlement Amount, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Settlement Awards have been mailed to all participating Settlement Class members.

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

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines of Haines Law Group, APC, Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC, and Norman B. Blumenthal, Kyle R. Nordrehaug and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel;
- C. Appointing Julio Garcia, Ahdy Mikhael and Willie Marquez as Class Representatives for the Settlement Class;
- D. Approving Phoenix Class Action Administration Solutions as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Notice of Pendency of Class Action and Settlement and Notice of Settlement Award, drafts of which are attached collectively hereto as **Exhibit C**), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

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

- A. Within fifteen (15) calendar days after entry of an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, the number of weeks worked during the Class Period, number pay periods worked during the PAGA Period (or information allowing the Settlement Administrator to calculate same) for each Settlement Class member while employed during the Class Period

and PAGA Period (the “Class Data”). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.

- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”). The Response Deadline shall be extended by fourteen (14) days in the event of a re-mailing of a Notice Packet.
 - i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Class Member’s telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.
 - ii. Plaintiffs agree that they shall not request to be excluded from the Settlement.
 - iii. The Parties agree there is no statutory or other right for any Settlement Class member to opt out or otherwise exclude himself or herself from the PAGA portion of the Settlement. A Settlement Class member who submits a valid and timely Request for Exclusion shall still receive his or her proportionate share of the PAGA Amount.

- D. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by mailing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel) postmarked by the Response Deadline. Class Counsel shall file any objections with the Court. Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any written objection must: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence, if any; and (4) be postmarked no later than the Response Deadline. Members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing in person or virtually irrespective of whether they submitted any written objections.
- E. Notice of Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Settlement Award as well the Settlement Class member's number of pay periods worked as a non-exempt employee during the Class Period and PAGA Period. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. If a resolution cannot be reached by and among the Parties and the Settlement Administrator, the Court will render all final decisions on disputes.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within three (3) business days of receiving the returned Notice Packet. If an updated mailing address is identified before the Response Deadline, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have their Response Deadline extended by

fourteen (14) calendar days to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once before the Response Deadline, the Settlement Administrator shall continue to make reasonable efforts to obtain an updated mailing address. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant's Counsel to provide notice of the proposed settlement.

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

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiffs' and Class Counsel's application for attorneys' fees and costs, Class Representative Service Award, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769 and posting notice of the judgment on a static website created and maintained by the Settlement Administrator.

12. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. In particular, but without limiting the generality of the foregoing, nothing about this Settlement Agreement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever on the part of Defendant and/or the Released Parties, and it shall not be construed as or deemed to be evidence of, or an admission or concession that the any Settling Class member has suffered any damage. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

13. **Non-disclosure and Non-publication.** Prior to the filing of the Motion for Preliminary Approval, Plaintiffs and Class Counsel agree not to disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. Thereafter, however, the Parties will agree to make no comments to the media or otherwise publicize the terms of the settlement; provided, however, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel. Class Counsel may also include a general description of

the Settlement on their respective websites but may not include the name(s) of any of the Parties, or the case name or case number of the Action.

14. **Legal Developments.** The Parties agree that Plaintiffs will submit to the Court a motion for preliminary approval of this Settlement containing all of the terms and conditions contained herein notwithstanding any new legal developments regarding the Released Class Claims.

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

16. **Enforcement Action:** The Parties agree that this Settlement is enforceable pursuant to the provisions of Code of Civil Procedure §664.6. Further, in the event of any dispute arising out of the interpretation, performance, or breach of any provision of this Settlement Agreement, the prevailing party in such dispute(s) shall be entitled to recover their, his and/or its reasonable attorneys' fees and costs, including any expert witness fees, incurred arising from such dispute.

17. **Staying of Action and Five-Year Rule:** The Parties agree that upon full execution of this Settlement, the Action shall be stayed for all purposes except with respect to seeking approval of the Settlement and/or enforcing the terms thereof. The Parties further stipulate that the time within which to bring the Action to trial under C.C.P. Section 583.310 shall be extended for a period of not less than one (1) year starting from the date of the signing of this Settlement by all Parties until the entry of the final approval order and judgment or if not entered the date this Agreement shall no longer be of any force or effect.

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

if to Defendant: Stella Park and Yalan Zheng, Park & Zheng, 6 Venture, Suite 265, Irvine, California 92618; spark@parkandzheng.com and yzheng@parkandzheng.com

Hekmat (Matt) Kordab, Kordab Law Offices, 300 S. Harbor Blvd., Suite 820, Anaheim, California 92805; matt@kordablalaw.com

if to Plaintiffs: Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC, 2155 Campus Drive, Suite 150, El Segundo, California 90245; slidman@lidmanlaw.com; enguyen@lidmanlaw.com and mmoore@lidmanlaw.com

Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245; phaines@haineslawgroup.com

Norman B. Blumenthal, Kyle R. Nordrehaug and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP, 2255 Calle Clara, La Jolla, California 92037; norm@bamlawca.com; kyle@bamlawca.com and aj@bamlawca.com

19. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

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

21. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts by facsimile, electronic signature, or email which for purposes of this Agreement shall be accepted as an original, and such signatures may be delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

DATED: 4-17-2023

DEFENDANT ACCURATE DELIVERY
SYSTEMS, INC.

By: 

Its: PRESIDENT

DATED:

PLAINTIFF JULIO GARCIA

By: _____

Plaintiff and Settlement Class Representative

DATED: Apr 11, 2023

PLAINTIFF WILLIE MARQUEZ

By: Willie Marquez
Willie Marquez (Apr 11, 2023 13:42 PDT)

Plaintiff and Settlement Class Representative

Norman B. Blumenthal, Kyle R. Nordrehaug and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP, 2255 Calle Clara, La Jolla, California 92037; norm@bamlawca.com; kyle@bamlawca.com and aj@bamlawca.com

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DATED: 4-17-2023

DEFENDANT ACCURATE DELIVERY
SYSTEMS, INC.

By: 

Its: PRESIDENT

DATED:

PLAINTIFF JULIO GARCIA

By: _____

Plaintiff and Settlement Class Representative

DATED: Apr 11, 2023

PLAINTIFF WILLIE MARQUEZ

By: Willie Marquez
Willie Marquez (Apr 11, 2023 13:42 PDT)

Plaintiff and Settlement Class Representative

Norman B. Blumenthal, Kyle R. Nordrehaug and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP, 2255 Calle Clara, La Jolla, California 92037; norm@bamlawca.com; kyle@bamlawca.com and aj@bamlawca.com

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21. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts by facsimile, electronic signature, or email which for purposes of this Agreement shall be accepted as an original, and such signatures may be delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

DATED:

DEFENDANT ACCURATE DELIVERY
SYSTEMS, INC.

By: _____

Its: _____

DATED: Apr 11, 2023

PLAINTIFF JULIO GARCIA

By:  _____
Julio Garcia (Apr 11, 2023 11:39 PDT)

Plaintiff and Settlement Class Representative

DATED:

PLAINTIFF WILLIE MARQUEZ

By: _____

Plaintiff and Settlement Class Representative

DATED: Apr 11, 2023

PLAINTIFF AHDY MIKHAEL

By: 
Ahdy Mikhael (Apr 11, 2023 19:24 PDT)

Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: April 20, 2023

KORDAB LAW OFFICES.

By: 
Hekmat (Matt) Kordab
Attorneys for Defendant Accurate Delivery
Services, Inc.

DATED:

PARK & ZHENG

By: _____
Stella Park
Attorneys for Defendant Accurate Delivery
Services, Inc.

DATED: April 11, 2023

HAINES LAW GROUP, APC

By:  _____
Paul K. Haines
Attorneys for Plaintiff Julio Garcia

DATED: April 11, 2023

LIDMAN LAW, APC

By:  _____
Scott M. Lidman
Attorneys for Plaintiff Julio Garcia

DATED:

BLUMENTHAL NORDREHAUG BHOWMIK DE
DE BLOUW LLP

By: _____
Kyle Nordrehaug
Attorneys for Plaintiffs Willie Marquez and
Ahdy Mikhael

DATED: *April 17, 2023*

PARK & ZHENG

By: 

Stella Park
Attorneys for Defendant Accurate Delivery
Services, Inc.

DATED:

HAINES LAW GROUP, APC

By: _____

Paul K. Haines
Attorneys for Plaintiff Julio Garcia

DATED:

LIDMAN LAW, APC

By: _____

Scott M. Lidman
Attorneys for Plaintiff Julio Garcia

DATED: April 12, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE
DE BLOUW LLP

By: 

Kyle Nordrehaug
Attorneys for Plaintiffs Willie Marquez and
Ahdy Mikhael

EXHIBIT A

EXHIBIT A

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

**2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037**

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

Bvb WRITERS E-MAIL:

Nick@bamlawca.com

**WRITER
S EXT:
1004**

May 28, 2021
CA2271

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency Accurate Delivery Systems, Inc.
Online Filing Certified Mail #70200640000213198216
Mamoud Maraach
173 W. Resource Drive
Bloomington, CA 92316

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Accurate Delivery Systems, Inc. in California as Delivery Drivers and other similar job titles. “Aggrieved Employees” also refers to all individuals who are or previously were employed by Defendant in California and classified as non-exempt employees during the time period of May 28, 2020 until a date as determined by the Court. Our offices represent Plaintiff Willie Marquez (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Accurate Delivery Systems, Inc. (“Defendant”). Plaintiff was employed by Defendant in California as a non-exempt employee in the position of a Delivery Driver from April of 2018 to September 2020 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiffs and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and

Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Plaintiff and Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to Plaintiff and other Aggrieved Employees failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

3 Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

4 La Jolla, CA 92037

Telephone: (858)551-1223

5 Facsimile: (858) 551-1232

Website: www.bamlawca.com

6 Attorneys for Plaintiffs

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

9
10 WILLIE MARQUEZ and AHDY MIKHAEL,
on behalf of themselves and on behalf of all
11 persons similarly situated,

12
13 Plaintiffs,

14 vs.

15 ACCURATE DELIVERY SYSTEMS, INC.,
a California Corporation; and DOES 1
16 through 50, inclusive,

17
18 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

1 Plaintiff Willie Marquez and Ahdy Mikhael (“PLAINTIFFS”) individuals, on behalf of
2 themselves and all other similarly situated current and former employees allege on information
3 and belief, except for their own acts and knowledge which are based on personal knowledge,
4 the following:

5
6 **THE PARTIES**

7 1. Defendant Accurate Delivery Systems, Inc. (“DEFENDANT”) is a California
8 corporation that at all relevant times mentioned herein conducted and continues to conduct
9 substantial business in the state of California.

10 2. DEFENDANT is the premier Hotshot delivery service of all goods, perishable and
11 in demand.

12 3. Plaintiff Marquez was employed by DEFENDANT from April of 2018 to
13 September of 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
14 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
15 of minimum and overtime wages due for all time worked.

16 4. Plaintiff Mikhael was employed by DEFENDANT from November of 2019 to
17 March of 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
18 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
19 of minimum and overtime wages due for all time worked.

20 5. PLAINTIFFS bring this Class Action on behalf of themselves and a California
21 class, defined as all individuals who are or previously were employed by DEFENDANT as
22 Delivery Drivers and other similar job titles. PLAINTIFFS also bring this class action on behalf
23 of all individuals who are or previously were employed by DEFENDANT in California and
24 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
25 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
26 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
27 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
28 (\$5,000,000.00).

1 6. PLAINTIFFS bring this Class Action on behalf of themselves and a
2 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
3 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and
4 practice which failed to lawfully compensate these employees. DEFENDANT's policy and
5 practice alleged herein is an unlawful, unfair and deceptive business practice whereby
6 DEFENDANT retained and continues to retain wages due PLAINTIFFS and the other members
7 of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the CALIFORNIA
8 CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the
9 named PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been
10 economically injured by DEFENDANT's past and current unlawful conduct, and all other
11 appropriate legal and equitable relief.

12 7. The true names and capacities, whether individual, corporate, subsidiary,
13 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
14 unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names
15 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
16 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
17 ascertained. PLAINTIFFS are informed and believe, and based upon that information and
18 belief allege, that the Defendants named in this Complaint, including DOES 1 through 50,
19 inclusive, are responsible in some manner for one or more of the events and happenings that
20 proximately caused the injuries and damages hereinafter alleged.

21 8. The agents, servants and/or employees of the Defendants and each of them acting
22 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
23 agent, servant and/or employee of the Defendants, and personally participated in the conduct
24 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
25 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
26 all Defendants are jointly and severally liable to PLAINTIFFS and the other members of the
27 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
28 Defendants' agents, servants and/or employees.

THE CONDUCT

9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFFS and CALIFORNIA CLASS Members to work from time to time while they were clocked out for what was supposed to be their off duty meal break. DEFENDANT required PLAINTIFFS and the CALIFORNIA CLASS Members to work off the clock without paying them for all the time they performed duties while on their meal break, specifically by failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFFS and CALIFORNIA CLASS Members to complete on a daily and/or weekly basis. Further, PLAINTIFFS and other members of the CALIFORNIA CLASS from time to time were not paid wages for all time worked, including overtime wages, such that in the aggregate employees were underpaid wages as a result of DEFENDANT's pattern and practice of unevenly rounding time worked by its employees. PLAINTIFFS and other CALIFORNIA CLASS Members were from time to time only paid a piece rate for deliveries made during specific pay periods. In these pay periods DEFENDANT failed to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all their non-driving work tasks that included but were not limited to, completing mandatory paperwork, loading and unloading the truck with goods, waiting for goods to be ready for transport, cleaning the trucks and other non-driving related work tasks. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by from time to time working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business records.

10. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members were also from time to time unable to take off duty meal

1 breaks and were not fully relieved of duty for meal periods. PLAINTIFFS and other
2 CALIFORNIA CLASS Members were from time to time required to perform work as ordered
3 by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
4 break. Further, DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA CLASS
5 Members with a second off-duty meal period from time to time in which these employees were
6 required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFFS and
7 the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
8 compensation and in accordance with DEFENDANT's corporate policy and practice. Industrial
9 Welfare Commission Wage Order 4-2001 provides: "Every employer shall pay to each
10 employee, on the established payday for the period involved, not less than the applicable
11 minimum wage for all hours worked in the payroll period, whether the remuneration is
12 measured by time, piece, commission, or otherwise." "Hours worked" is defined in the Wage
13 Order as "the time during which an employee is subject to the control of an employer, and
14 includes all the time the employee is suffered or permitted to work, whether or not required to
15 do so." Here, PLAINTIFFS and CALIFORNIA CLASS Members are entitled to separate
16 hourly compensation for time spent performing other non-driving tasks directed by
17 DEFENDANT during their work shifts.

18 11. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
19 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
20 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
21 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
22 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
23 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
24 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
25 or more from time to time. PLAINTIFFS and other CALIFORNIA CLASS Members were also
26 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
27 PLAINTIFFS and other CALIFORNIA CLASS Members were from time to time denied their
28 proper rest periods by DEFENDANT and DEFENDANT's managers. In addition, because of

1 DEFENDANT's commission/piece rate pay plan described herein, DEFENDANT failed to
2 compensate PLAINTIFFS and CALIFORNIA CLASS Members for their rest periods as
3 required by the applicable Wage Order and Labor Code, and more specifically Cal. Lab. Code
4 Section 226.2. DEFENDANT did not have a policy or practice which paid for off-duty rest
5 periods to PLAINTIFFS and the other CALIFORNIA CLASS Members. As a result,
6 DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA CLASS Members with
7 all the legally required paid rest periods is evidenced by DEFENDANT's business records.

8 12. State law provides that employees must be paid overtime at one-and-one-half
9 times their "regular rate of pay." PLAINTIFFS and other CALIFORNIA CLASS Members
10 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
11 employee's performance.

12 13. The second component of PLAINTIFFS's and other CALIFORNIA CLASS
13 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
14 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
15 performance for DEFENDANT. The non-discretionary incentive program provided all
16 employees paid on an hourly basis with incentive compensation when the employees met the
17 various performance goals set by DEFENDANT. However, when calculating the regular rate
18 of pay in order to pay overtime to PLAINTIFFS and other CALIFORNIA CLASS Members,
19 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
20 rate of pay" for purposes of calculating overtime pay. Management and supervisors described
21 the incentive program to potential and new employees as part of the compensation package. As
22 a matter of law, the incentive compensation received by PLAINTIFFS and other CALIFORNIA
23 CLASS Members must be included in the "regular rate of pay." The failure to do so has
24 resulted in an underpayment of overtime compensation to PLAINTIFFS and other
25 CALIFORNIA CLASS Members by DEFENDANT.

26 14. DEFENDANT also failed to provide PLAINTIFFS and the other members of the
27 CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
28 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that

1 every employer shall furnish each of his or her employees with an accurate itemized wage
2 statement in writing showing, among other things, gross wages earned and all applicable hourly
3 rates in effect during the pay period and the corresponding amount of time worked at each
4 hourly rate. Specifically, DEFENDANT violated Cal. Lab. Code Section 226(a)(2) by failing
5 to list the total hours worked. Aside, from the violations listed above, DEFENDANT failed to
6 issue to PLAINTIFFS an itemized wage statement that lists all the requirements under
7 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided
8 PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements
9 which violated Cal. Lab. Code § 226.

10 15. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
11 employment are due and payable twice during each calendar month, on days designated in
12 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(a) expressly
13 requires employers to pay employees all wages owed within eleven (11) days of the close of the
14 payroll period. DEFENDANT from time to time failed to pay PLAINTIFFS and other
15 CALIFORNIA CLASS Members all wages owed to them within eleven (11) days of the close
16 of the payroll period.

17 16. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
18 to collect or receive from an employee any part of wages theretofore paid by said employer to
19 said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFFS and other
20 CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from compensation
21 payable to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members, failed to disclose
22 all aspects of the deductions from compensation payable to PLAINTIFFS and CALIFORNIA
23 LABOR SUB-CLASS Members, and thereby failed to pay these employees all wages due at
24 each applicable pay period and upon termination. PLAINTIFFS and members of the
25 CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal deductions from wages
26 according to proof, related penalties, interest, attorney fees and costs.

27 17. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other
28 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay.

1 Specifically, PLAINTIFFS and other non-exempt employees earn non-discretionary
2 remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick
3 pay to PLAINTIFFS and other CALIFORNIA CLASS Members at their base rates of pay.

4 18. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
5 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
6 incurred by PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of
7 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
8 2802, employers are required to indemnify employees for all expenses incurred in the course
9 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
10 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
11 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
12 directions of the employer, even though unlawful, unless the employee, at the time of obeying
13 the directions, believed them to be unlawful."

14 19. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
15 Members as a business expense, were required by DEFENDANT to use their own personal
16 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
17 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the
18 cost associated with the use of their personal cellular phones and personal vehicles for
19 DEFENDANT's benefit. Specifically, PLAINTIFFS and other CALIFORNIA CLASS
20 Members were required by DEFENDANT to use their personal cellular phones to respond to
21 managers while off the clock (which also results in minimum wage and overtime violations).
22 As a result, in the course of their employment with DEFENDANT, PLAINTIFFS and other
23 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which
24 included, but were not limited to, costs related to the use of their personal cellular phones all
25 on behalf of and for the benefit of DEFENDANT.

26 20. In violation of the applicable sections of the California Labor Code and the
27 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
28 a matter of company policy, practice and procedure, intentionally and knowingly failed to

1 compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS for missed
2 meal and rest periods. This policy and practice of DEFENDANT is intended to purposefully
3 avoid the payment for all time worked as required by California law which allows
4 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
5 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
6 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
7 accordingly.

8 21. By reason of this conduct applicable to PLAINTIFFS and all CALIFORNIA
9 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the
10 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the “UCL”), by
11 engaging in a company-wide policy and procedure which fails to accurately calculate and record
12 all missed meal and rest periods and failed to pay all minimum and overtime wages due to
13 PLAINTIFFS and other CALIFORNIA CLASS Members. The proper recording of these
14 employees’ missed meal and rest breaks is the DEFENDANT’s burden. As a result of
15 DEFENDANT’s intentional disregard of the obligation to meet this burden, DEFENDANT fails
16 to properly calculate and/or pay all required compensation for work performed by the members
17 of the CALIFORNIA CLASS and violated the California Labor Code and regulations
18 promulgated thereunder as herein alleged.

19 22. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the legally
20 required off-duty meal and rest breaks to PLAINTIFFS as required by the applicable Wage
21 Order and Labor Code and failed to pay PLAINTIFFS all minimum and overtime wages due
22 to PLAINTIFFS. DEFENDANT did not have a policy or practice which provided timely off-
23 duty meal and rest breaks to PLAINTIFFS and also failed to compensate PLAINTIFFS for
24 PLAINTIFFS’s missed meal and rest breaks. The nature of the work performed by the
25 PLAINTIFFS did not prevent PLAINTIFFS from being relieved of all of PLAINTIFFS’ duties
26 for the legally required off-duty meal periods. As a result, DEFENDANT’s failure to provide
27 PLAINTIFFS with the legally required meal periods is evidenced by DEFENDANT’s business
28 records. DEFENDANT also required PLAINTIFFS to work off the clock without paying

1 PLAINTIFFS for all the time PLAINTIFFS were working for DEFENDANT, specifically by
2 failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT
3 expected PLAINTIFFS to complete on a daily and/or weekly basis. The amount in controversy
4 for PLAINTIFFS individually do not exceed the sum or value of \$75,000. To date,
5 DEFENDANT has not fully paid PLAINTIFFS for all PLAINTIFFS' wages still owed to
6 PLAINTIFFS or any penalties owed to PLAINTIFFS under California Labor Code § 203.

7 8 **JURISDICTION AND VENUE**

9 23. This Court has jurisdiction over this Action pursuant to California Code of Civil
10 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
11 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees
12 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

13 24. Venue is proper in this Court pursuant to California Code of Civil Procedure,
14 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT, reside
15 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
16 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
17 committed the wrongful conduct herein alleged in this County against members of the
18 CALIFORNIA CLASS.

19 20 **THE CALIFORNIA CLASS**

21 25. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
22 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
23 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
24 all individuals who are or previously were employed by DEFENDANT as Delivery Drivers and
25 other similar job titles. PLAINTIFFS also bring this class action on behalf of all individuals
26 who are or previously were employed by DEFENDANT in California and classified as non-
27 exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four
28 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court

1 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim
2 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

3 26. To the extent equitable tolling operates to toll claims by the CALIFORNIA
4 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
5 accordingly.

6 27. DEFENDANT, as a matter of company policy, practice and procedure, and in
7 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
8 requirements, and the applicable provisions of California law, intentionally, knowingly, and
9 wilfully, engages in a practice whereby DEFENDANT fails to record all meal and rest breaks
10 missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though
11 DEFENDANT enjoys the benefit of this work, requires employees to perform this work and
12 permits or suffers to permit this work.

13 28. DEFENDANT has the legal burden to establish that each and every
14 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
15 required by California laws. The DEFENDANT, however, as a matter of policy and procedure
16 failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in
17 place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid
18 as required by law. This common business practice is applicable to each and every
19 CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair,
20 and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as
21 causation, damages, and reliance are not elements of this claim.

22 29. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
23 CLASS Members is impracticable.

24 30. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
25 law by:

- 26 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
27 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
28 deceptively having in place company policies, practices and procedures

1 that failed to record and pay PLAINTIFFS and the other members of the
2 CALIFORNIA CLASS for all time worked minimum wages owed and
3 overtime wages owed for work performed by these employees;

4 (b) Committing an act of unfair competition in violation of the UCL, by
5 failing to provide the PLAINTIFFS and the other members of the
6 CALIFORNIA CLASS with the legally required meal and rest periods;
7 and,

8 (c) Committing an act of unfair competition in violation of the California
9 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
10 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and
11 the CALIFORNIA CLASS members with necessary expenses incurred in
12 the discharge of their job duties.

13 31. This Class Action meets the statutory prerequisites for the maintenance of a Class
14 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

15 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
16 that the joinder of all such persons is impracticable and the disposition of
17 their claims as a class will benefit the parties and the Court;

18 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
19 that are raised in this Complaint are common to the CALIFORNIA
20 CLASS will apply to every member of the CALIFORNIA CLASS;

21 (c) The claims of the representative PLAINTIFFS are typical of the claims of
22 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the
23 other members of the CALIFORNIA CLASS, is classified as a non-
24 exempt employee paid on an hourly basis who has been subjected to the
25 DEFENDANT's deceptive practice and policy which failed to provide the
26 legally required meal and rest periods to the CALIFORNIA CLASS and
27 thereby underpaid compensation to PLAINTIFFS and CALIFORNIA
28 CLASS. PLAINTIFFS sustained economic injury as a result of

1 DEFENDANT's employment practices. PLAINTIFFS and the members
2 of the CALIFORNIA CLASS were and are similarly or identically harmed
3 by the same unlawful, deceptive and unfair misconduct engaged in by
4 DEFENDANT; and,

- 5 (d) The representative PLAINTIFFS will fairly and adequately represent and
6 protect the interest of the CALIFORNIA CLASS, and has retained
7 counsel who are competent and experienced in Class Action litigation.
8 There are no material conflicts between the claims of the representative
9 PLAINTIFFS and the members of the CALIFORNIA CLASS that would
10 make class certification inappropriate. Counsel for the CALIFORNIA
11 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
12 Members.

13 32. In addition to meeting the statutory prerequisites to a Class Action, this action is
14 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 15 (a) Without class certification and determination of declaratory, injunctive,
16 statutory and other legal questions within the class format, prosecution of
17 separate actions by individual members of the CALIFORNIA CLASS will
18 create the risk of:

- 19 1) Inconsistent or varying adjudications with respect to individual
20 members of the CALIFORNIA CLASS which would establish
21 incompatible standards of conduct for the parties opposing the
22 CALIFORNIA CLASS; and/or,
23 2) Adjudication with respect to individual members of the
24 CALIFORNIA CLASS which would as a practical matter be
25 dispositive of interests of the other members not party to the
26 adjudication or substantially impair or impede their ability to
27 protect their interests.

- 28 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to

1 act on grounds generally applicable to the CALIFORNIA CLASS, making
2 appropriate class-wide relief with respect to the CALIFORNIA CLASS
3 as a whole in that DEFENDANT failed to pay all wages due to members
4 of the CALIFORNIA CLASS as required by law;

5 1) With respect to the First Cause of Action, the final relief on behalf
6 of the CALIFORNIA CLASS sought does not relate exclusively to
7 restitution because through this claim PLAINTIFFS seeks
8 declaratory relief holding that the DEFENDANT's policy and
9 practices constitute unfair competition, along with declaratory
10 relief, injunctive relief, and incidental equitable relief as may be
11 necessary to prevent and remedy the conduct declared to constitute
12 unfair competition;

13 (c) Common questions of law and fact exist as to the members of the
14 CALIFORNIA CLASS, with respect to the practices and violations of
15 California law as listed above, and predominate over any question
16 affecting only individual CALIFORNIA CLASS Members, and a Class
17 Action is superior to other available methods for the fair and efficient
18 adjudication of the controversy, including consideration of:

19 1) The interests of the members of the CALIFORNIA CLASS in
20 individually controlling the prosecution or defense of separate
21 actions in that the substantial expense of individual actions will be
22 avoided to recover the relatively small amount of economic losses
23 sustained by the individual CALIFORNIA CLASS Members when
24 compared to the substantial expense and burden of individual
25 prosecution of this litigation;

26 2) Class certification will obviate the need for unduly duplicative
27 litigation that would create the risk of:

28 A. Inconsistent or varying adjudications with respect to

individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

33. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

(a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial

1 number of individual CALIFORNIA CLASS Members will avoid
2 asserting their rights individually out of fear of retaliation or adverse
3 impact on their employment;

4 (c) The members of the CALIFORNIA CLASS are so numerous that it is
5 impractical to bring all members of the CALIFORNIA CLASS before the
6 Court;

7 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be
8 able to obtain effective and economic legal redress unless the action is
9 maintained as a Class Action;

10 (e) There is a community of interest in obtaining appropriate legal and
11 equitable relief for the acts of unfair competition, statutory violations and
12 other improprieties, and in obtaining adequate compensation for the
13 damages and injuries which DEFENDANT's actions have inflicted upon
14 the CALIFORNIA CLASS;

15 (f) There is a community of interest in ensuring that the combined assets of
16 DEFENDANT are sufficient to adequately compensate the members of
17 the CALIFORNIA CLASS for the injuries sustained;

18 (g) DEFENDANT has acted or refused to act on grounds generally applicable
19 to the CALIFORNIA CLASS, thereby making final class-wide relief
20 appropriate with respect to the CALIFORNIA CLASS as a whole;

21 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
22 the business records of DEFENDANT; and,

23 (i) Class treatment provides manageable judicial treatment calculated to bring
24 a efficient and rapid conclusion to all litigation of all wage and hour
25 related claims arising out of the conduct of DEFENDANT as to the
26 members of the CALIFORNIA CLASS.

27 34. DEFENDANT maintains records from which the Court can ascertain and identify
28 by job title each of DEFENDANT's employees who have been intentionally subjected to

1 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFFS
2 will seek leave to amend the Complaint to include any additional job titles of similarly situated
3 employees when they have been identified.

4
5 **THE CALIFORNIA LABOR SUB-CLASS**

6 35. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh and
7 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
8 CALIFORNIA CLASS who are or previously were employed by DEFENDANT as Delivery
9 Drivers and other similar job titles. PLAINTIFFS also bring this class action on behalf of all
10 individuals who are or previously were employed by DEFENDANT in California and classified
11 as non-exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any time during the
12 period three (3) years prior to the filing of the complaint and ending on the date as determined
13 by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of
14 Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR
15 SUB-CLASS Members is under five million dollars (\$5,000,000.00).

16 36. DEFENDANT, as a matter of company policy, practice and procedure, and in
17 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
18 requirements, and the applicable provisions of California law, intentionally, knowingly, and
19 wilfully, engages in a practice whereby DEFENDANT fails to correctly calculate compensation
20 for the time worked by PLAINTIFFS and the other members of the CALIFORNIA LABOR
21 SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT
22 enjoys the benefit of this work, requires employees to perform this work and permits or suffers
23 to permit this work. DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS
24 Members wages to which these employees are entitled in order to unfairly cheat the competition
25 and unlawfully profit. To the extent equitable tolling operates to toll claims by the
26 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR
27 SUB-CLASS PERIOD should be adjusted accordingly.

28 37. DEFENDANT maintains records from which the Court can ascertain and identify

1 by name and job title, each of DEFENDANT's employees who have been intentionally
2 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
3 PLAINTIFFS will seek leave to amend the complaint to include any additional job titles of
4 similarly situated employees when they have been identified.

5 38. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
6 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

7 39. Common questions of law and fact exist as to members of the CALIFORNIA
8 LABOR SUB-CLASS, including, but not limited, to the following:

- 9 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
10 compensation due to members of the CALIFORNIA LABOR SUB-
11 CLASS for missed meal and rest breaks in violation of the California
12 Labor Code and California regulations and the applicable California Wage
13 Order;
- 14 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other
15 members of the CALIFORNIA LABOR SUB-CLASS with accurate
16 itemized wage statements;
- 17 (c) Whether DEFENDANT has engaged in unfair competition by the
18 above-listed conduct;
- 19 (d) The proper measure of damages and penalties owed to the members of the
20 CALIFORNIA LABOR SUB-CLASS; and,
- 21 (e) Whether DEFENDANT's conduct was willful.

22 40. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
23 under California law by:

- 24 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
25 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
26 CLASS all wages due for overtime worked, for which DEFENDANT is
27 liable pursuant to Cal. Lab. Code § 1194;
- 28 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to

1 accurately pay PLAINTIFFS and the members of the CALIFORNIA
2 LABOR SUB-CLASS the correct minimum wage pay for which
3 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

4 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
5 the members of the CALIFORNIA LABOR SUB-CLASS with an
6 accurate itemized statement in writing showing the corresponding correct
7 amount of wages earned by the employee; and,

8 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
9 PLAINTIFFS and the other members of the CALIFORNIA LABOR
10 SUB-CLASS with all legally required off-duty, uninterrupted thirty (30)
11 minute meal breaks and the legally required off-duty rest breaks;

12 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS
13 and the CALIFORNIA LABOR SUB-CLASS members with necessary
14 expenses incurred in the discharge of their job duties.

15 41. This Class Action meets the statutory prerequisites for the maintenance of a Class
16 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

17 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
18 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
19 Members is impracticable and the disposition of their claims as a class
20 will benefit the parties and the Court;

21 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
22 that are raised in this Complaint are common to the CALIFORNIA
23 LABOR SUB-CLASS and will apply to every member of the
24 CALIFORNIA LABOR SUB-CLASS;

25 (c) The claims of the representative PLAINTIFFS are typical of the claims of
26 each member of the CALIFORNIA LABOR SUB-CLASS.
27 PLAINTIFFS, like all the other members of the CALIFORNIA LABOR
28 SUB-CLASS, is a non-exempt employee paid on an hourly basis who has

1 been subjected to the DEFENDANT's practice and policy which fails to
2 pay the correct amount of wages due to the CALIFORNIA LABOR SUB-
3 CLASS. PLAINTIFFS sustained economic injury as a result of
4 DEFENDANT's employment practices. PLAINTIFFS and the members
5 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
6 identically harmed by the same unlawful, deceptive and unfair misconduct
7 engaged in by DEFENDANT; and,

- 8 (d) The representative PLAINTIFFS will fairly and adequately represent and
9 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
10 retained counsel who are competent and experienced in Class Action
11 litigation. There are no material conflicts between the claims of the
12 representative PLAINTIFFS and the members of the CALIFORNIA
13 LABOR SUB-CLASS that would make class certification inappropriate.
14 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
15 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

16 42. In addition to meeting the statutory prerequisites to a Class Action, this action is
17 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 18 (a) Without class certification and determination of declaratory, injunctive,
19 statutory and other legal questions within the class format, prosecution of
20 separate actions by individual members of the CALIFORNIA LABOR
21 SUB-CLASS will create the risk of:

- 22 1) Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA LABOR SUB-CLASS which
24 would establish incompatible standards of conduct for the parties
25 opposing the CALIFORNIA LABOR SUB-CLASS; or,
26 2) Adjudication with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS which would as a practical
28 matter be dispositive of interests of the other members not party to

1 the adjudication or substantially impair or impede their ability to
2 protect their interests.

3 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
4 or refused to act on grounds generally applicable to the CALIFORNIA
5 LABOR SUB-CLASS, making appropriate class-wide relief with respect
6 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
7 DEFENDANT fails to pay all wages due. Including the correct wages for
8 all time worked by the members of the CALIFORNIA LABOR SUB-
9 CLASS as required by law;

10 (c) Common questions of law and fact predominate as to the members of the
11 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
12 violations of California Law as listed above, and predominate over any
13 question affecting only individual CALIFORNIA LABOR SUB-CLASS
14 Members, and a Class Action is superior to other available methods for
15 the fair and efficient adjudication of the controversy, including
16 consideration of:

17 1) The interests of the members of the CALIFORNIA LABOR SUB-
18 CLASS in individually controlling the prosecution or defense of
19 separate actions in that the substantial expense of individual
20 actions will be avoided to recover the relatively small amount of
21 economic losses sustained by the individual CALIFORNIA
22 LABOR SUB-CLASS Members when compared to the substantial
23 expense and burden of individual prosecution of this litigation;

24 2) Class certification will obviate the need for unduly duplicative
25 litigation that would create the risk of:

26 A. Inconsistent or varying adjudications with respect to
27 individual members of the CALIFORNIA LABOR SUB-
28 CLASS, which would establish incompatible standards of

conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

43. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

(a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of

1 retaliation or adverse impact on their employment;

2 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
3 numerous that it is impractical to bring all members of the CALIFORNIA
4 LABOR SUB-CLASS before the Court;

5 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS
6 Members, will not be able to obtain effective and economic legal redress
7 unless the action is maintained as a Class Action;

8 (e) There is a community of interest in obtaining appropriate legal and
9 equitable relief for the acts of unfair competition, statutory violations and
10 other improprieties, and in obtaining adequate compensation for the
11 damages and injuries which DEFENDANT's actions have inflicted upon
12 the CALIFORNIA LABOR SUB-CLASS;

13 (f) There is a community of interest in ensuring that the combined assets of
14 DEFENDANT are sufficient to adequately compensate the members of
15 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

16 (g) DEFENDANT has acted or refused to act on grounds generally applicable
17 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
18 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
19 CLASS as a whole;

20 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
21 ascertainable from the business records of DEFENDANT. The
22 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
23 CLASS Members who worked for DEFENDANT in California at any
24 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

25 (i) Class treatment provides manageable judicial treatment calculated to bring
26 a efficient and rapid conclusion to all litigation of all wage and hour
27 related claims arising out of the conduct of DEFENDANT as to the
28 members of the CALIFORNIA LABOR SUB-CLASS.

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

3 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

4 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

5 44. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 45. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
9 Code § 17021.

10 46. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
12 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
13 competition as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair
15 competition may be enjoined in any court of competent jurisdiction. The court
16 may make such orders or judgments, including the appointment of a receiver, as
17 may be necessary to prevent the use or employment by any person of any practice
which constitutes unfair competition, as defined in this chapter, or as may be
necessary to restore to any person in interest any money or property, real or
personal, which may have been acquired by means of such unfair competition.

18 Cal. Bus. & Prof. Code § 17203.

19 47. By the conduct alleged herein, DEFENDANT has engaged and continues to
20 engage in a business practice which violates California law, including but not limited to, the
21 applicable Industrial Wage Order(s), the California Code of Regulations and the California
22 Labor Code including Sections 204, 210, 221, 226.7, 246, 248.5, 510, 512, 1194, 1197, 1197.1,
23 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder,
24 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.
25 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
26 unfair competition, including restitution of wages wrongfully withheld.

27 48. By the conduct alleged herein, DEFENDANT’s practices are unlawful and unfair
28 in that these practices violate public policy, are immoral, unethical, oppressive, unscrupulous

1 or substantially injurious to employees, and are without valid justification or utility for which
2 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the
3 California Business & Professions Code, including restitution of wages wrongfully withheld.

4 49. By the conduct alleged herein, DEFENDANT's practices are deceptive and
5 fraudulent in that DEFENDANT's policy and practice fails to provide the legally mandated
6 meal and rest periods, and the required amount of compensation for missed meal and rest
7 periods, reporting time pay, and overtime and minimum wages owed, and Fair Labor Standards
8 Act overtime wages due for overtime worked as a result of failing to include non-discretionary
9 incentive compensation into their regular rate for purposes of computing the proper overtime
10 pay, due to a business practice that cannot be justified, pursuant to the applicable Cal. Lab.
11 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
12 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
13 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

14 50. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
15 and deceptive in that DEFENDANT's employment practices cause PLAINTIFFS and the other
16 members of the CALIFORNIA CLASS to be underpaid during their employment with
17 DEFENDANT.

18 51. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
19 and deceptive in that DEFENDANT's policies, practices and procedures fail to provide all
20 legally required meal breaks to PLAINTIFFS and the other members of the CALIFORNIA
21 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

22 52. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
23 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
24 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
25 for each workday in which a second off-duty meal period was not timely provided for each ten
26 (10) hours of work.

27 53. PLAINTIFFS further demand on behalf of themselves and each member of the
28 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off

1 duty paid rest period was not timely provided as required by law.

2 54. By and through the unlawful and unfair business practices described herein,
3 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the
4 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
5 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
6 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
7 to unfairly compete against competitors who comply with the law.

8 55. All the acts described herein as violations of, among other things, the Industrial
9 Welfare Commission Wage Orders, the California Code of Regulations, and the California
10 Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive
11 and unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business
12 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

13 56. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
14 to, and do, seek such relief as may be necessary to restore to them the money and property
15 which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
16 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
17 unfair business practices, including earned but unpaid wages for all time worked.

18 57. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
19 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
20 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
21 engaging in any unlawful and unfair business practices in the future.

22 58. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
23 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
24 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
25 As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and
26 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer
27 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
28 engage in these unlawful and unfair business practices.

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1 implementing a policy and practice that denies accurate compensation to PLAINTIFFS and the
2 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

3 66. In committing these violations of the California Labor Code, DEFENDANT
4 inaccurately calculates the correct time worked and consequently underpays the actual time
5 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.
6 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
7 benefits in violation of the California Labor Code, the Industrial Welfare Commission
8 requirements and other applicable laws and regulations.

9 67. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
10 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS do not
11 receive the correct reporting time pay and minimum wage compensation for their time worked
12 for DEFENDANT.

13 68. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
14 the other members of the CALIFORNIA LABOR SUB-CLASS are paid less for time worked
15 that they are entitled to, constituting a failure to pay all earned wages. DEFENDANT fails to
16 accurately pay the PLAINTIFFS and members of the CALIFORNIA LABOR SUB-CLASS the
17 wages for the time they work in accordance with 1197 & 1197.1, even though the PLAINTIFFS
18 and the other members of the CALIFORNIA LABOR SUB-CLASS are regularly required,
19 permitted or suffered to work, and do in fact work, off the clock time as to which
20 DEFENDANT fails to accurately record and pay as evidenced by DEFENDANT's business
21 records and witnessed by employees.

22 69. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
23 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
24 CLASS for the true time they work, PLAINTIFFS and the other members of the CALIFORNIA
25 LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts
26 which are presently unknown to them and which will be ascertained according to proof at trial.

27 70. DEFENDANT knew or should have known that PLAINTIFFS and the other
28 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time

1 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
2 to not pay employees for their labor as a matter of company policy, practice and procedure, and
3 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
4 of the CALIFORNIA LABOR SUB-CLASS the correct reporting time pay and minimum wages
5 for their time worked.

6 71. In performing the acts and practices herein alleged in violation of California labor
7 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
8 all time worked and provide them with the requisite compensation, DEFENDANT acted and
9 continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other
10 members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for
11 their legal rights, or the consequences to them, and with the despicable intent of depriving them
12 of their property and legal rights, and otherwise causing them injury in order to increase
13 company profits at the expense of these employees.

14 72. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
15 CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory
16 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
17 provided by the California Labor Code and/or other applicable statutes. DEFENDANT's
18 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS
19 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
20 statutory costs.

21
22 **THIRD CAUSE OF ACTION**

23 **For Failure To Pay Overtime Compensation**

24 **[Cal. Lab. Code §§ 510, *et seq.*]**

25 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
26 **Defendants)**

27 73. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
28 CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior

1 paragraphs of this Complaint.

2 74. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
3 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
4 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
5 to pay these employees for all overtime worked, including, work performed in excess of eight
6 (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
7 workweek.

8 75. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
9 public policy, an employer must timely pay its employees for all hours worked.

10 76. Cal. Lab. Code § 510 further provides that employees in California shall not be
11 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
12 unless they receive additional compensation beyond their regular wages in amounts specified
13 by law.

14 77. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
15 including reporting time pay and minimum wage and overtime compensation and interest
16 thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the
17 employment of an employee for longer hours than those fixed by the Industrial Welfare
18 Commission is unlawful.

19 78. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
20 CALIFORNIA LABOR SUB-CLASS Members are required, permitted or suffered by
21 DEFENDANT to work for DEFENDANT and are not paid for all the time they work, including
22 overtime work.

23 79. DEFENDANT's pattern of unlawful wage and hour practices manifested, without
24 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
25 implementing a policy and practice that failed to accurately record overtime work by
26 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
27 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
28 CLASS for overtime work, including, the overtime work performed in excess of eight (8) hours

1 in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

2 80. In committing these violations of the California Labor Code, DEFENDANT
3 inaccurately records overtime worked and consequently underpays the overtime worked by
4 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
5 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
6 of the California Labor Code, the Industrial Welfare Commission requirements and other
7 applicable laws and regulations.

8 82. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
9 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
10 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked
11 including overtime work.

12 83. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
13 the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS are not
14 receiving full compensation for overtime worked.

15 84. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
16 from the overtime requirements of the law. None of these exemptions are applicable to the
17 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
18 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS are not
19 subject to a valid collective bargaining agreement that would preclude the causes of action
20 contained herein this Complaint. Rather, PLAINTIFFS brings this Action on behalf of
21 themselves and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
22 of non-negotiable, non-waiveable rights provided by the State of California.

23 85. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
24 the other members of the CALIFORNIA LABOR SUB-CLASS are paid less for overtime
25 worked that they are entitled to, constituting a failure to pay all earned wages.

26 86. DEFENDANT fails to accurately pay the PLAINTIFFS and the other members
27 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
28 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,

1 1194 & 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR
2 SUB-CLASS are required to work, and did in fact work, overtime as to which DEFENDANT
3 fails to accurately record and pay as evidenced by DEFENDANT's business records and
4 witnessed by employees.

5 87. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
6 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
7 CLASS for the true amount of time they worked, PLAINTIFFS and the other members of the
8 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
9 injury in amounts which are presently unknown to them and which will be ascertained
10 according to proof at trial.

11 88. DEFENDANT knew or should have known that PLAINTIFFS and the other
12 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for all overtime
13 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
14 to not pay employees for their labor as a matter of company policy, practice and procedure, and
15 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
16 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

17 89. In performing the acts and practices herein alleged in violation of California labor
18 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
19 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
20 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and
21 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
22 disregard for their legal rights, or the consequences to them, and with the despicable intent of
23 depriving them of their property and legal rights, and otherwise causing them injury in order
24 to increase company profits at the expense of these employees.

25 90. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
26 CLASS therefore request recovery of all overtime wages, according to proof, interest, statutory
27 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
28 provided by the California Labor Code and/or other applicable statutes. DEFENDANT's

1 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS
2 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
3 statutory costs.

4
5 **FOURTH CAUSE OF ACTION**

6 **For Failure to Provide Required Meal Periods**

7 **[Cal. Lab. Code §§ 226.7 & 512]**

8 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

9 91. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
10 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
11 paragraphs of this Complaint.

12 92. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to provide all
13 the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA LABOR
14 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
15 of the work performed by PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS MEMBERS
16 does not prevent these employees from being relieved of all of their duties for the legally
17 required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFFS and
18 other CALIFORNIA LABOR SUB-CLASS Members are from time to time not fully relieved
19 of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to
20 provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members with legally
21 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's
22 business records. Further, DEFENDANT fails to provide PLAINTIFFS and CALIFORNIA
23 CLASS Members with a second off-duty meal period in some workdays in which these
24 employees were required by DEFENDANT to work ten (10) hours of work. As a result,
25 PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeit
26 meal breaks without additional compensation and in accordance with DEFENDANT's strict
27 corporate policy and practice.

28 93. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable

1 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-
2 CLASS Members who are not provided a meal period, in accordance with the applicable Wage
3 Order, one additional hour of compensation at each employee's regular rate of pay for each
4 workday that a meal period was not provided.

5 94. As a proximate result of the aforementioned violations, PLAINTIFFS and
6 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
7 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
8 suit.

9
10 **FIFTH CAUSE OF ACTION**

11 **For Failure to Provide Required Rest Periods**

12 **[Cal. Lab. Code §§ 226.7 & 512]**

13 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
14 **Defendants)**

15 95. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
16 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
17 paragraphs of this Complaint.

18 96. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are
19 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
20 Further, these employees were denied their first rest periods of at least ten (10) minutes for
21 some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least
22 ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
23 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
24 or more. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are also not
25 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
26 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are periodically denied
27 their proper rest periods by DEFENDANT and DEFENDANT's managers.

28 97. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable

1 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-
2 CLASS Members who are not provided a rest period, in accordance with the applicable Wage
3 Order, one additional hour of compensation at each employee's regular rate of pay for each
4 workday that rest period was not provided.

5 98. As a proximate result of the aforementioned violations, PLAINTIFFS and
6 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
7 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
8 suit.

9
10 **SIXTH CAUSE OF ACTION**

11 **For Failure to Provide Accurate Itemized Statements**

12 **[Cal. Lab. Code § 226]**

13 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
14 **Defendants)**

15 99. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
16 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
17 paragraphs of this Complaint.

18 100. Cal. Labor Code § 226 provides that an employer must furnish employees with
19 an "accurate itemized" statement in writing showing:

20 (1) gross wages earned,

21 (2) total hours worked by the employee, except for any employee whose compensation
22 is solely based on a salary and who is exempt from payment of overtime under
23 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
24 Commission,

25 (3) the number of piecerate units earned and any applicable piece rate if the employee
26 is paid on a piece-rate basis,

27 (4) all deductions, provided that all deductions made on written orders of the employee
28 may be aggregated and shown as one item,

1 (5) net wages earned,
2 (6) the inclusive dates of the period for which the employee is paid,
3 (7) the name of the employee and his or her social security number, except that by
4 January 1, 2008, only the last four digits of his or her social security number or an
5 employee identification number other than a social security number may be shown on
6 the itemized statement,
7 (8) the name and address of the legal entity that is the employer, and
8 (9) all applicable hourly rates in effect during the pay period and the corresponding
9 number of hours worked at each hourly rate by the employee.

10 101. DEFENDANT also fails to provide PLAINTIFFS and the other members of the
11 CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed
12 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
13 provides that every employer shall furnish each of his or her employees with an accurate
14 itemized wage statement in writing showing, among other things, gross wages earned and all
15 applicable hourly rates in effect during the pay period and the corresponding amount of time
16 worked at each hourly rate. Aside, from the violations listed above, DEFENDANT failed to
17 issue to PLAINTIFFS an itemized wage statement that lists all the requirements under
18 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided
19 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with wage
20 statements which violated Cal. Lab. Code § 226.

21 102. DEFENDANT knowingly and intentionally fails to comply with Cal. Lab. Code
22 § 226, causing injury and damages to PLAINTIFFS and the other members of the
23 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
24 expended calculating the correct wages for all missed meal and rest breaks and the amount of
25 employment taxes which were not properly paid to state and federal tax authorities. These
26 damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of the
27 CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars
28 (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars

1 (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in
2 an amount according to proof at the time of trial (but in no event more than four thousand
3 dollars (\$4,000.00) for PLAINTIFFS and each respective member of the CALIFORNIA
4 LABOR SUB-CLASS herein).

5
6 **SEVENTH CAUSE OF ACTION**

7 **For Failure to Reimburse Employees for Required Expenses**

8 **[Cal. Lab. Code § 2802]**

9 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
10 **Defendants)**

11 103. PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members
12 reallege and incorporate by this reference, as though fully set forth herein, the prior
13 paragraphs of this Complaint.

14 104. Cal. Lab. Code § 2802 provides, in relevant part, that:

15 An employer shall indemnify his or her employee for all necessary
16 expenditures or losses incurred by the employee in direct consequence of the
17 discharge of his or her duties, or of his or her obedience to the directions of
the employer, even though unlawful, unless the employee, at the time of
obeying the directions, believed them to be unlawful.

18 105. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
19 by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
20 CLASS members for required expenses incurred in the discharge of their job duties for
21 DEFENDANT's benefit. DEFENDANT fails to reimburse PLAINTIFFS and the
22 CALIFORNIA LABOR SUB-CLASS members for expenses which include, but are not
23 limited to, costs related to using their personal cellular phones all on behalf of and for the
24 benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA LABOR
25 SUB-CLASS Members are required by DEFENDANT to use their personal cell phones to
26 respond to work related issues. DEFENDANT's policy, practice and procedure is to not
27 reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for
28

1 expenses resulting from using their personal cellular phones for DEFENDANT within the
2 course and scope of their employment for DEFENDANT. These expenses are necessary to
3 complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct
4 to assert any waiver of this expectation. Although these expenses are necessary expenses
5 incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members,
6 DEFENDANT fails to indemnify and reimburse PLAINTIFFS and the CALIFORNIA
7 LABOR SUB-CLASS members for these expenses as an employer is required to do under
8 the laws and regulations of California.

9 106. PLAINTIFFS therefore demand reimbursement for expenditures or losses
10 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
11 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
12 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

13 **EIGHTH CAUSE OF ACTION**

14 **For Failure to Pay Wages When Due**

15 **[Cal. Lab. Code §§ 201, 202, 203]**

16 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

17 **and Against All Defendants)**

18 107. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
19 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
20 paragraphs of this Complaint.

21 108. Cal. Lab. Code § 200 provides, in relevant part, that:

22 As used in this article:

- 23 (a) "Wages" includes all amounts for labor performed by employees of
24 every description, whether the amount is fixed or ascertained by the
25 standard of time, task, piece, Commission basis, or other method of calculation.
26 (b) "Labor" includes labor, work, or service whether rendered or
27 performed under contract, subcontract, partnership, station plan, or other
28 agreement if the labor to be paid for is performed personally by the person
demanding payment.

109. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer
discharges an employee, the wages earned and unpaid at the time of discharge are due and

1 payable immediately.”

2 110. Cal. Lab. Code § 202 provides, in relevant part, that:

3 If an employee not having a written contract for a definite period quits his
4 or her employment, his or her wages shall become due and payable not
5 later than 72 hours thereafter, unless the employee has given 72 hours
6 previous notice of his or her intention to quit, in which case the employee
7 is entitled to his or her wages at the time of quitting. Notwithstanding any
8 other provision of law, an employee who quits without providing a 72-
9 hour notice shall be entitled to receive payment by mail if he or she so
10 requests and designates a mailing address. The date of the mailing shall
11 constitute the date of payment for purposes of the requirement to provide
12 payment within 72 hours of the notice of quitting.

13 111. There was no definite term in PLAINTIFFS’s or any CALIFORNIA LABOR
14 SUB-CLASS Members’ employment contract.

15 112. Cal. Lab. Code § 203 provides, in relevant part, that:

16 If an employer willfully fails to pay, without abatement or reduction, in
17 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
18 employee who is discharged or who quits, the wages of the employee shall
19 continue as a penalty from the due date thereof at the same rate until paid
20 or until an action therefor is commenced; but the wages shall not continue
21 for more than 30 days.

22 113. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-
23 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
24 owed as required by law.

25 114. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and
26 the members of the CALIFORNIA LABOR SUB-CLASS whose employment has
27 terminated and who have not been fully paid their wages due to them, PLAINTIFFS
28 demands thirty days of pay as penalty for not paying all wages due at time of termination for
all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
PERIOD and demands an accounting and payment of all wages due, plus interest and
statutory costs as allowed by law.

29 **PRAYER FOR RELIEF**

30 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
31 severally, as follows:

- 1 1. On behalf of the CALIFORNIA CLASS:
- 2 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
- 3 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 4 B) An order temporarily, preliminarily and permanently enjoining and restraining
- 5 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 6 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
- 7 withheld from compensation due to PLAINTIFFS and the other members of the
- 8 CALIFORNIA CLASS; and,
- 9 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
- 10 for restitution of the sums incidental to DEFENDANT's violations due to
- 11 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.
- 12 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 13 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
- 14 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
- 15 action pursuant to Cal. Code of Civ. Proc. § 382;
- 16 B) Compensatory damages, according to proof at trial, including compensatory
- 17 damages for minimum and overtime compensation due PLAINTIFFS and the
- 18 other members of the CALIFORNIA LABOR SUB-CLASS, during the
- 19 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
- 20 at the statutory rate;
- 21 C) Meal and rest period compensation pursuant to California Labor Code Section
- 22 226.7 and the applicable IWC Wage Order;
- 23 D) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 24 E) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
- 25 in which a violation occurs and one hundred dollars (\$100) per each member of
- 26 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
- 27 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
- 28 an award of costs for violation of Cal. Lab. Code § 226;

1 F) The amount of the expenses PLAINTIFFS and each member of the
2 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
3 plus interest, and costs of suit; and,

4 G) The wages of all terminated employees in the CALIFORNIA LABOR
5 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
6 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

7 3. On all claims:

8 A) An award of interest, including prejudgment interest at the legal rate;

9 B) Such other and further relief as the Court deems just and equitable; and,

10 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
11 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
12 §2802.

13
14 Dated: May 19, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
15
16

17 By: _____
18 Norman B. Blumenthal
19 Attorneys for PLAINTIFFS
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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: May 19, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for PLAINTIFFS

EXHIBIT B

EXHIBIT B

August 18, 2021

VIA LWDA WEBSITE

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

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Accurate Delivery Systems, Inc.
c/o Mahmoud Maraach, Registered Agent for Service of Process:
173 W Resource Drive
Bloomington, CA 92316

Re: *Julio Garcia v. Accurate Delivery Systems, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Julio Garcia in claims arising from his employment with Accurate Delivery Systems, Inc., a California corporation (“Defendant”). Mr. Garcia is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Mr. Garcia intends to pursue a lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all current and former employees who worked as delivery drivers (and other similar job positions/titles) in California who worked, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Mr. Garcia was employed by Defendant as a delivery driver from on or about 2018 through approximately September 23, 2020, at which time Mr. Garcia’s employment with Defendant was separated. During his employment, Mr. Garcia worked out of Defendant’s facility in Bloomington, California. Mr. Garcia’s primary job responsibilities, included without limitation, loading and unloading his transportation vehicle and making deliveries to Defendant’s customers throughout California, including to San Diego, Santa Barbara, and Bakersfield.

During his employment with Defendant, Mr. Garcia generally would be scheduled to work from approximately 8:00 a.m. until approximately 4:00 p.m., five days per week. Mr. Garcia and other Aggrieved Employees were not required to keep track of their work

time, and Defendant did not otherwise track the time worked by Mr. Garcia or other Aggrieved Employees.

During his employment, Mr. Garcia and other Aggrieved Employees were compensated through a commission structure that paid them a certain percentage for each delivery. Mr. Garcia and other Aggrieved Employees were not otherwise compensated by Defendant, and were not paid based on their time worked, including not being paid an hourly rate. Indeed, Defendant did not track the time worked by Mr. Garcia or other Aggrieved Employees and did not require Mr. Garcia and other Aggrieved Employees to keep track of their time worked.

Defendant required Mr. Garcia and other Aggrieved Employees to complete a number of tasks unrelated to their deliveries. Such tasks included, without limitation, waiting around for customers, fueling his delivery van, washing his delivery van, completing paperwork, conducting a pre- and post-shift inspection on their van at the beginning and end of their shift, and loading and unloading the delivery vehicle. Due to the fact that Defendant compensated Mr. Garcia and other Aggrieved Employees solely by commissions per delivery, all of these tasks unrelated to their deliveries were non-productive and Defendant did not compensate them for the time completing these tasks. As a result, Defendant failed to pay Mr. Garcia and other Aggrieved Employees all required minimum and overtime wages.

Throughout his employment, Mr. Garcia and other Aggrieved Employees were not provided all required meal periods due to Defendant's meal period policies and practices which fail to provide uninterrupted, duty-free 30-minute meal periods when employees work in excess of 5.0 hours in a day. Specifically, Mr. Garcia and other Aggrieved Employees were often unable to take a legally compliant meal period because of the heavy work demands imposed by Defendant which prevented them from taking legally compliant meal periods. Further, Defendant did not track any meal periods for Mr. Garcia and other Aggrieved Employees and did not require any tracking of meal periods purportedly taken.

Although Mr. Garcia and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Mr. Garcia and other Aggrieved Employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion of the relevant time period, Defendant maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Mr. Garcia and other Aggrieved Employees.

In addition, throughout Mr. Garcia's employment with Defendant, Mr. Garcia and other Aggrieved Employees were not authorized and permitted to take legally required rest periods due to Defendant's unlawful rest period policies and practices. Defendant's rest period policies and practices fail to authorize and permit paid rest periods for every four hours worked, or major fraction thereof. Specifically, as a result of the work demands

imposed by Defendant, Mr. Garcia and other Aggrieved Employees were often not authorized and permitted to take their rest periods. Additionally, while working on a commission-only basis, Mr. Garcia and other Aggrieved Employees worked shifts in excess of 3.5 hours, but were never authorized and permitted to take a paid rest period for every 4-hour period worked, or major fraction thereof, because Defendant's commission compensation plan failed to separately compensate Mr. Garcia and other Aggrieved Employees for required rest periods. See *Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98 (2017). As a result, Mr. Garcia and other Aggrieved Employees were not authorized and permitted to take compensated rest periods as required by Industrial Welfare Commission Wage Order 9 § 12(A). Further, upon information and belief during at least a portion of the relevant time period, Defendant maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not authorized and permitted to their delivery drivers.

Throughout Mr. Garcia's employment with Defendant, Mr. Garcia and other Aggrieved Employees were required to use their personal cellular phone to discharge their duties. Specifically, Defendant would regularly contact Mr. Garcia and other Aggrieved Employees through their personal cellular phone for a variety of required work activities, including, but not limited to, checking the status of their assigned tasks. Defendant knew or should have known that Mr. Garcia and other Aggrieved Employees were necessarily incurring expenses due to the use of their personal cellular phone in the direct discharge of their duties. Yet, despite the necessity of Mr. Garcia and other Aggrieved Employees using their cellular phone for work activities and Defendant knowing or should have knowing about same, Mr. Garcia and other Aggrieved Employees were never reimbursed for a reasonable portion of their cellular phone expenses by Defendant, as mandated by *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.

As a result of Defendant's failure to pay all minimum and overtime wages, and meal and rest period premium wages, Defendant failed to pay all wages owed to Mr. Garcia and other Aggrieved Employees upon their separation of employment from Defendant.

As a result of Defendant's failure to pay all minimum and overtime wages, and meal and rest period premium wages, Defendant failed to provide Mr. Garcia and other Aggrieved Employees with accurate, itemized wage statements. In addition, Defendant failed to include the total hours worked during the pay period on Mr. Garcia's and other Aggrieved Employees' wage statements, in further violation of Labor Code section 226.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 9 ("Wage Order 9"):

Overtime Violations

Defendant was required to pay Mr. Garcia and other Aggrieved Employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. See Labor Code §§ 1194(a) and 1198; the Wage Order 9, § 3.

According to Labor Code § 510(a), “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” This Section further provides, “Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked. As explained above, Defendant had a policy/practice of not keeping track of and compensating Mr. Garcia and other Aggrieved Employees for all of their time worked, including without limitation, compensable “non-productive” time. Further, Mr. Garcia and other Aggrieved Employees routinely worked in excess of eight hours per workday and/or more than forty hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. As a result of these policies/practices, Mr. Garcia and other Aggrieved Employees were not compensated for all overtime wages on occasions when they worked over eight hours in a workday and/or 40 hours in a workweek.

Minimum Wage Violations

Defendant was required to pay Mr. Garcia and other Aggrieved Employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 9, § 4. Mr. Garcia and other Aggrieved Employees were not paid for all hours worked due to Defendant’s timekeeping and compensation practices. As alleged above, Defendant caused Mr. Garcia and other Aggrieved Employees to work hours in a workweek but did not properly compensate Mr. Garcia and other Aggrieved Employees at least minimum wages for all such hours, due to Defendant’s unlawful timekeeping practices and/or commission-based compensation plans. This practice by Defendant resulted in Defendant not paying Mr. Garcia and other Aggrieved Employees for all wages owed for the work they performed, including failing to pay all required minimum wages.

Meal Period Violations

As alleged above, Defendant failed to provide Mr. Garcia and other Aggrieved Employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 9, § 11. Throughout Mr. Garcia’s employment with Defendant, Mr. Garcia and other Aggrieved Employees were not provided all required meal periods due to Defendant’s meal period policies/practices which fail to provide uninterrupted, duty-free and timely 30-minute meal periods when employees work in excess of 5.0 hours in a day. Specifically, due to the job duties imposed on Mr. Garcia and other Aggrieved Employees, they were often prevented from taking meal periods that commenced before the end of the 5th hour of work and/or which were at least 30 minutes in length. As a result, Mr. Garcia and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery

period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Mr. Garcia and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Mr. Garcia and other Aggrieved Employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Mr. Garcia and other Aggrieved Employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 9, § 12. Due to work demands, Mr. Garcia and other Aggrieved Employees were not authorized and permitted to take rest periods regardless of whether they were actually paid. Defendant's commission-based compensation plan failed to separately compensate Mr. Garcia and other Aggrieved Employees for required rest periods. As a result, Garcia and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Garcia and other Aggrieved Employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, and total meal and rest period premium wages, in violation of Labor Code § 226 *et seq.* Defendant's failure to furnish Mr. Garcia and other Aggrieved Employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, and meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendant failed to timely pay Mr. Garcia and other Aggrieved Employees all of their final wages at the time of separation, which included, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, Defendant's failure to pay all final wages due to Mr. Garcia and other Aggrieved Employees was willful and, consequently, entitles Mr. Garcia and other Aggrieved Employees to wages from the due date thereof at

the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

Failure to Reimburse Business Expenses

Defendant failed to reimburse Mr. Garcia and other Aggrieved Employees for necessary work expenses, including, but not limited to, expenses related to use of their personal cellular phone to discharge their duties. Defendant's policy of not providing reimbursement for necessary work-related expenses is in violation of Wage Order 9 § 9, and Labor Code § 2802 ("An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.") Mr. Garcia and other aggrieved employees are therefore entitled to reimbursement of such unpaid work expenses with interest.

As an "aggrieved employee," Mr. Garcia will initiate a civil action on behalf of himself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Garcia's own investigation, and on information and belief, Defendant committed the following Labor Code violations:

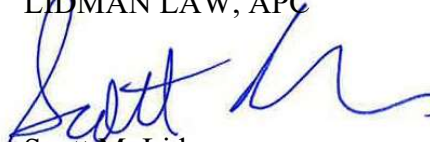
- a) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Garcia and other Aggrieved Employees all overtime compensation earned;
- b) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Garcia and other Aggrieved Employees the statutory minimum wage for all hours worked;
- c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Garcia and other Aggrieved Employees;
- d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Garcia and other Aggrieved Employees;
- e) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Garcia and other Aggrieved Employees;
- f) Defendant violated Labor Code § 226 by failing to furnish Mr. Garcia and other Aggrieved Employees with accurate and compliant itemized wage statements;

- g) Defendant violated Labor Code § 204 by failing to pay Mr. Garcia and other Aggrieved Employees all earned wages at least twice during each calendar month;
- h) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Garcia and other Aggrieved Employees; and
- i) Defendant violated Labor Code §§ 2802 by failing to reimburse Mr. Garcia and other Aggrieved Employees for all necessary expenditures incurred.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

LIDMAN LAW, APC



Scott M. Lidman

EXHIBIT C

EXHIBIT C

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

WILLIE MARQUEZ and AHDY MIKHAEL, on
behalf of themselves and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

ACCURATE DELIVERY SYSTEMS, INC., a
California Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CIVSB2125337

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

To: All current and former Delivery Drivers of Defendant Accurate Delivery Systems, Inc. who worked at any time in California during the time period between August 18, 2017 and the earlier of the date of preliminary approval or June 7, 2023. Collectively, these employees will be referred to as “Settlement Class Members.”

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. In exchange for the settlement payment, you will release claims against the Defendant as detailed below. Your estimated Settlement Award is explained in the accompanying Notice of Settlement Award. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, you must notify the Settlement Administrator as explained below.
Exclude Yourself	To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. However, if you are an PAGA Employee who requests exclusion, you will still receive a small amount as your share of the PAGA civil penalties described below. Instructions are set forth below.
Object	Write to the Court about why you do not agree with the Settlement, and/or appear at the Final Approval Hearing to make an oral objection. Directions are provided below.

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the “Settlement”) entitled *Willie*

Marquez and Ahdy Mikhael, on behalf of themselves and on behalf of all persons similarly situated,

v. Accurate Delivery Systems, Inc., San Bernardino Superior Court Case No. CIVSB2125337 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Defendant Accurate Delivery System, Inc.’s (“Defendant”) records show that you were employed by Defendant as a Delivery Driver in California at some time between August 18, 2017 and the earlier of the date of preliminary approval or June 7, 2023 (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiffs Willie Marquez, Ahdy Mikhael, and Julio Garcia (“Plaintiffs”) brought this Lawsuit against Defendant, seeking to assert claims on behalf of a class of current and former Delivery Drivers who worked for Defendant in California at any time on or after August 18, 2017. Plaintiffs are known as the “Class Representatives,” and their attorneys, who also represent the interests of all Settlement Class members, are known as “Class Counsel.”

The Lawsuit alleges that Defendant failed to provide Settlement Class members all minimum and/or overtime wages, failed to provide all legally required meal periods, failed to authorize and permit all legally required rest periods, and failed to reimburse necessary business expenses. As a result of the foregoing alleged violations, Plaintiffs also allege that Defendant failed to provide accurate, itemized wages statements, failed to pay all wages upon termination, engaged in unfair business practices and is liable for civil penalties under the Labor Code Private Attorney General Act (“PAGA”).

Defendant denies that it has done anything wrong. Defendant further denies that it owes Settlement Class members any wages, restitution, penalties, or other damages. No Court has made any determination as to the factual allegations in the Lawsuit. Rather, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendant, and it expressly denies all liability.

The Court has not ruled that Defendant violated any laws or whether Plaintiffs or any other person is entitled to damages or other relief. However, to avoid additional expense, inconvenience, and interference with their business operations, Defendant has concluded that it is in their best interests and the interests of Settlement Class members to settle the Lawsuit on the terms summarized in this Notice. After Defendant provided relevant information to Class Counsel, the Settlement was reached after mediation and arm’s-length negotiations between the Parties.

The Class Representatives and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

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

Who are the Attorneys?

Attorneys for the Plaintiffs / Settlement Class Members:	Attorneys for Defendant Accurate Delivery Systems, Inc.
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BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP Norman B. Blumenthal Kyle R. Nordrehaug 2255 Calle Clara La Jolla, CA 92037 Telephone: (858) 551-1223 Facsimile: (858) 551-1232 Email: kyle@bamlawca.com Website: www.bamlawca.com LIDMAN LAW, APC Scott M. Lidman slidman@lidmanlaw.com Elizabeth Nguyen enguyen@lidmanlaw.com Milan Moore mmoore@lidmanlaw.com 2155 Campus Drive, Suite 150 El Segundo, California 90245 Tel: (424) 322-4772 Fax: (424) 322-4775 www.lidmanlaw.com HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com 155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 www.haineslawgroup.com	KORDAB LAW OFFICES Hekmat (Matt) Kordab, Esq. Yadira De La Rosa, Esq. 300 S. Harbor Blvd. Suite 820 Anaheim, California 92805 Telephone: (714) 881-0581 Facsimile: (714) 881-0582 PARK & ZHENG Stella Park, Esq. Yalan Zheng, Esq. 6 Venture, Suite 265 Irvine, CA 92618 Telephone: (949) 679-3372 Facsimile: 949-258-9808
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What are the terms of the Settlement?

On **[INSERT DATE OF PRELIMINARY APPROVAL]**, the Court preliminarily certified a class, for settlement purposes only, of all current and former Delivery Drivers of Defendant Accurate Delivery Systems, Inc. who worked at any time in California during the time period between August 18, 2017 **and the earlier of the date of preliminary approval or June 7, 2023**. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Defendant as described below.

Defendant has agreed to pay \$900,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, which includes payments to Settlement Class members, attorneys’ fees and expenses, payment to the Labor Workforce Development Agency (“LWDA”), settlement administration costs, and the Class Representatives’ Service Awards.

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

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside an amount not to exceed \$5,750.00 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as

attorneys' fees, which will be paid from the Gross Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount, which is estimated to be \$300,000.00, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement in an amount not to exceed \$30,000.00 for verified costs Class Counsel incurred in connection with the Lawsuit.

Service Awards to Class Representatives. Class Counsel will ask the Court to award the Class Representatives a service award in the amount not to exceed \$10,000.00 each or a total of \$30,000.00, to compensate them for their services and extra work provided on behalf of the Settlement Class members.

LWDA Payment. Class Counsel will ask the Court to approve a payment in the total amount of \$30,000.00 as and for alleged civil penalties, payable pursuant to the California Labor Code Private Attorney General Act ("PAGA"). Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Twenty-Two Thousand Five Hundred Dollars and Zero Cents (\$22,500.00) will be payable to the LWDA, and the remaining twenty-five percent (25%), or Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), will be payable to certain Settlement Class members as the "PAGA Amount," as described below.

Calculation of Individual Settlement Class Members' Settlement Award. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount ("NSA"), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The NSA is estimated at approximately \$<< >>, to be shared among an up to << >> estimated Settlement Class members. The NSA will be divided as follows:

- (i) The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked as a Delivery Driver during the Class Period, the numerator of which is the Settlement Class member's total workweeks worked as a Delivery Driver during the Class Period, and the denominator of which is the total workweeks worked as Delivery Drivers by all Settlement Class members (who do not opt out) who worked during the Class Period.

PAGA Amount. In addition, Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during this PAGA Period which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of pay periods worked as a non-exempt employee during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees. The payments to PAGA Employees shall be reported as penalties on a Form 1099.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Settlement Awards will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion.

If you submit a Request for Exclusion, you will still receive a proportionate share of the PAGA Amount regardless of whether you exclude yourself from the Settlement if you are a PAGA Employee.

Each member of the Settlement Class who receives a Settlement Award must cash the check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class Members whose checks were not cashed within 180 days after mailing will be transferred to the California State Controller's Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class Member. Funds can be claimed by such individuals by submitting a claim at www.claimit.ca.gov.

Payment by Defendant of Gross Settlement Amount. The Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and PAGA Employees. Defendant agrees to deposit the Gross Settlement Amount with the Settlement Administrator in twenty-four (24) equal installments of Thirty-Seven Thousand Five Hundred Dollars and Zero Cents

(\$37,500.00). The first Settlement Installment shall be paid by no later than June 6, 2023, and will be deposited with the Settlement Administrator in an escrow account set up by it. The second through twenty-fourth Settlement Installment payments shall be due every thirty (30) days thereafter.

Within ten (10) calendar days following Defendant's deposit of the final Settlement Installment of Gross Settlement Amount and all employer-side taxes with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for the Parties for review and approval. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards to participating Settlement Class members. Settlement Awards are expected to be disbursed in [insert estimated month and year].

Allocation and Taxes. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: twenty percent (20%) as wages; and eighty percent (80%) as penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Each Settlement Class member who receives a Settlement Award will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. The Settlement Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, the Settlement Class, and each Settlement Class member who has not submitted a timely and valid Request for Exclusion, will fully and forever completely release and discharge Defendant, its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys (collectively the "Released Parties"), from all claims, demands, rights, liabilities and causes of action that were pled or could have been pled based upon the facts alleged in the operative First Amended Complaint in the Action, that arose during the Class Period defined above with respect to the following claims: (a) failure to pay all overtime wages owed, including without limitation resulting from unlawful/improper rounding, miscalculating the regular rate of pay, and failing to pay for non-productive time under the commission pay plan; (b) failure to pay all minimum wages owed, including without limitation resulting from unlawful/improper rounding, and failing to pay for non-productive time under the commission pay plan; (c) failure to provide meal periods, pay premium wages for non-compliant meal periods, and failure to record meal periods; (d) failure to authorize and permit rest periods, pay premium wages for non-compliant rest periods, or the failure to separately pay premiums for rest periods under the commission pay plan; (e) failure to reimburse necessary business expenses; (f) failure to timely pay all wages due upon separation of employment or failure to timely pay wages when due; (g) failure to issue accurate, itemized wage statements; (h) failure to provide paid sick leave or to pay for sick leave; and (i) all claims for unfair business practices that reasonably could have been premised on the facts, claims, causes of action or legal theories described above (collectively, the "Released Class Claims"). The Class Members do not release any claims other than those set forth above, including without limitation claims for vested benefits, wrongful termination, violations of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

The time period of the Released Claims shall be the same time period as the Class Period.

PAGA Release and PAGA Employees. If the Court approves the Settlement, all PAGA Employees, including Plaintiffs (and also including those who opt-out from the Class portion of the Settlement), will release and forever discharge the Released Parties from all claims, demands, rights, liabilities and causes of action for civil penalties under California Labor Code Private Attorneys General Act of 2004 which were pled in the letters to the Labor & Workforce Development Agency ("LWDA") dated May 28, 2021 and August 18, 2021 (**Exhibits A-B**) and the operative First Amended Complaint in the Action, or which could have been pled based upon the facts alleged in the operative First Amended Complaint in the Action that arose during the PAGA Period predicated on the following alleged violations: (a) failure to pay all overtime wages owed, including without limitation resulting from unlawful/improper rounding, miscalculating the regular rate of pay, and failing to pay for non-productive time under the commission pay plan; (b) failure to pay all minimum wages owed, including without limitation resulting from unlawful/improper rounding, and failing to pay for non-productive time under the commission pay plan; (c) failure to provide meal periods, pay premium wages for non-compliant meal periods, and failure to record meal periods; (d) failure to authorize and permit rest

periods, pay premium wages for non-compliant rest periods, or the failure to separately pay premiums for rest periods under the commission pay plan; (e) failure to reimburse necessary business expenses; (f) failure to timely pay all wages due upon separation of employment or failure to timely pay wages when due ; (g) failure to issue accurate, itemized wage statements; and (h) failure to provide paid sick leave or to pay for sick leave (collectively, “PAGA Released Claims”).

The time period of the PAGA Released Claim is August 18, 2020 and the earlier of the date of preliminary approval or June 7, 2023 (“PAGA Period”).

The Parties acknowledge that under the release, the right of the LWDA to investigate the PAGA Released claim is not released, but the PAGA Released Claim does include any claims for penalties by a PAGA Employee as a result of any such LWDA investigation, and PAGA Employees are barred from their right to act as a private attorney general as to the PAGA Released Claims.

You cannot submit a Request for Exclusion from the PAGA Release.

The releases are null and void if Defendant fail to fully fund the Settlement. The releases identified herein shall become effective on the date on which Defendant fully funds the Settlement (“Effective Date of the Release”). Upon the Effective Date of the Release, all Class Members shall be deemed to have, and by operation of Judgment shall have, released, waived and relinquished the Released Claims.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of workweeks you worked during the Class Period (as explained above), and as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

If your address is incorrect or has changed, you must notify the Settlement Administrator. It is your responsibility to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment. The Settlement Administrator is: _____ (800) _____.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of pay periods you worked during the Class Period, and whether you have worked between August 18, 2017 and the earlier of the date of preliminary approval or June 7, 2023. The information contained in Defendant’s records regarding all of these factors, along with your estimated Settlement Award, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. Send disputes directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>.

DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator’s decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written “Request for Exclusion from the Class Action Settlement” letter or

card postmarked no later than <<RESPONSE DEADLINE>>, with your name, address, telephone number, last four digits of your social security number, your signature, and a statement indicating that you would like to be excluded from the Class Action Settlement. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE MARQUEZ V. ACCURATE DELIVERY LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who files a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement.

If you submit a Request for Exclusion, you will only be excluded from the Released Claims. You cannot submit a Request for Exclusion from the PAGA Release. You will receive a proportionate share of the PAGA Payment regardless of whether you exclude yourself from the Settlement if you were employed between August 18, 2020 and the earlier of the date of preliminary approval or June 7, 2023.

Do not submit both a Dispute and a Request for Exclusion. If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator. Your written objection must include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Written objections must be postmarked on or before <<RESPONSE DEADLINE>>. Send written objections directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>.

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department S-26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415. You have the right to appear either remotely, in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case (*Willie Marquez and Ahdy Mikhael v. Accurate Delivery Systems, Inc.* San Bernardino County Superior Court, Case No. CIVSB2125337).

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

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

Any changes to date, time, or location of the Final Approval Hearing will be posted on the Settlement Administrator’s website (<http://.com>). The Court’s final judgment will also be posted on the Settlement Administrator’s website.

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415. You may get more details by examining the Court's file on the Court Access website for the California Superior Court for the County of San Bernardino (<https://cap.sb-court.org/login>) and entering the Case No. CIVSB2125337. You may also contact Class Counsel using the contact information listed above for more information.

**PLEASE DO NOT CALL OR WRITE THE COURT, DEFENDANT OR ITS ATTORNEYS FOR INFORMATION
ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS**

REMINDER AS TO TIME LIMITS

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

BY ORDER OF THE COURT ENTERED ON <<PRELIM APPROVAL DATE>>.

NOTICE OF SETTLEMENT AWARD

Willie Marquez and Ahdy Mikhael , on behalf of themselves and on behalf of all persons similarly situated,

v. Accurate Delivery Systems, Inc.

SAN BERNARDINO COUNTY SUPERIOR COURT CASE NO. CIVSB2125337

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

(I) Please type or print your name:

(First, Middle, Last)

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

Former Names (if any)

New Street Address

City

State

Zip Code

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

According to the records of Accurate Delivery System, Inc. ("Defendant"):

- (a) You were employed by Defendant and worked a total of _____ workweeks between August 18, 2017 and the earlier of the date of preliminary approval or June 7, 2023.
- (b) You were employed by Defendant and worked a total of _____ pay periods between August 18, 2020 and the earlier of the date of preliminary approval or June 7, 2023.
- (c) _____

Based on the above, your Individual Settlement Award is estimated to be \$ _____.

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

If you dispute the above information from Defendant's records, Defendant's records will control unless you are able to provide documentation that establishes that Defendant's records are mistaken. If there is a dispute about whether Defendant's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Pendency of Class Action and Proposed Settlement" that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>**

EXHIBIT 2

EXHIBIT 2

From: [DIR PAGA Unit](#)
To: [Dana Joudi](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Friday, April 28, 2023 11:55:42 AM

04/28/2023 11:54:40 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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



Private Attorneys General Act (PAGA) – Filing

Proposed Settlement of PAGA case

PAGA Number (LWDA-CM-) : *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".

[Search for PAGA Case number](#)

The timing of the deposit of settlement checks is governed by the provisions of the State Administrative Manual. This ministerial, administrative act of depositing a settlement check mandated by state procedures should not be construed as nor does it constitute an unconditional, voluntary and/or absolute acceptance of settlement proceeds or approval of the terms of any settlement agreement or judgment related to that check.

Your Information (Person Who is Filing)

Your First Name *

Scott

Your Last Name *

Lidman

Your Email Address *

djoudi@lidmanlaw.com

Your Street Name, Number and Suite/Apt *

2155 Campus Drive, Suite

Your Mobile Phone Number

Your City *

El Segundo

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

90245

Court and Hearing Information

Court *

San Bernardino Superior C

Court Case Number *

CIVSB2125337

Hearing Date (if any)

7/13/23

Hearing Time

10:00 a.m.

Hearing Location

Dept. S-26, 247 W 3rd Str

Number of aggrieved employees *

56

Gross settlement amount *

900000

Gross penalty amount *

30000

Penalties to LWDA *

22500

Date of proposed settlement *

04/27/2023

Proposed Settlement and Other Documents

Proposed Settlement *

2023-04-20 ...mpressed.pdf

Other Attachment (if any)

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

From: [DIR PAGA Unit](#)
To: [Dana Joudi](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Friday, April 28, 2023 11:57:05 AM

04/28/2023 11:56:46 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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



Private Attorneys General Act (PAGA) – Filing

Proposed Settlement of PAGA case

PAGA Number (LWDA-CM-) : *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".

[Search for PAGA Case number](#)

The timing of the deposit of settlement checks is governed by the provisions of the State Administrative Manual. This ministerial, administrative act of depositing a settlement check mandated by state procedures should not be construed as nor does it constitute an unconditional, voluntary and/or absolute acceptance of settlement proceeds or approval of the terms of any settlement agreement or judgment related to that check.

Your Information (Person Who is Filing)

Your First Name *

Scott

Your Last Name *

Lidman

Your Email Address *

djoudi@lidmanlaw.com

Your Street Name, Number and Suite/Apt *

2155 Campus Drive, Suite

Your Mobile Phone Number

Your City *

El Segundo

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

90245

Court and Hearing Information

Court *

San Bernardino Superior C

Court Case Number *

CIVSB2125337

Hearing Date (if any)

7/13/23

Hearing Time

10:00 a.m.

Hearing Location

Dept. S-26, 247 W 3rd Str

Number of aggrieved employees *

56

Gross settlement amount *

900000

Gross penalty amount *

30000

Penalties to LWDA *

22500

Date of proposed settlement *

04/27/2023

Proposed Settlement and Other Documents

Proposed Settlement *

Choose File 2023-04-20 ...mpressed.pdf

Other Attachment (if any)

Choose File No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Previous Page

Submit

EXHIBIT B

EXHIBIT B

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (SBN 068687)

Kyle R. Nordrehaug (SBN 205975)

Aparajit Bhowmik (SBN 248066)

Victoria B. Rivapalacio (SBN 275115)

Andrew G. Ronan (SBN 312316)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858) 551-1223

Facsimile: (858) 551-1232

Attorneys for Plaintiffs

WILLIE MARQUEZ and ANDY MIKHAEL

[Additional counsel listed on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

WILLIE MARQUEZ and ANDY MIKHAEL,
on behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

ACCURATE DELIVERY SYSTEMS, INC., a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. CIVSB2125337

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

**DECLARATION OF ELIZABETH
NGUYEN IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: July 13, 2023

Time: 10:00 a.m.

Department: S-26

Complaint Filed: August 31, 2020

1 **LIDMAN LAW, APC**

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12 Attorneys for Plaintiff,

13 JULIO GARCIA

14 **HAINES LAW GROUP, APC**

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18 El Segundo, CA 90245

19 Tel: (424) 292-2350

20 Fax: (424) 292-2355

21 Attorneys for Plaintiff,

22 JULIO GARCIA

1 I, ELIZABETH NGUYEN, declare as follows:

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

7 2. I am a 2005 graduate of Loyola Law School. During law school, I worked as an extern for
8 the Honorable Erithe A. Smith, U.S. Bankruptcy Court for the Central District of California. During law
9 school, I also worked as a law clerk in the Enforcement Unit of the Office of the Chief Trial Counsel for
10 the State Bar of California.

11 3. Since graduating from law school, my practice has focused almost exclusively on
12 employment litigation. In October 2007, I began working as an associate attorney at the international law
13 firm of Littler Mendelson P.C., at its Los Angeles office, which according to its website is the “largest
14 law firm in the world exclusively devoted to representing management in employment, employee benefits
15 and labor law matters.”

16 4. In June 2012, I left Littler Mendelson to work at the Los Angeles office of Reed Smith
17 LLP. During my employment at Reed Smith, I worked exclusively in the labor and employment practice
18 group. In June 2013, I returned to Littler Mendelson as an associate attorney, was promoted to Shareholder
19 in 2015, and was elevated to participating Shareholder in 2017. Since October 2007, my practice has been
20 and continues to be exclusively labor and employment law, with a strong emphasis on wage and hour
21 class actions venued in both state and federal courts. During this time period and my legal career in
22 general, I also worked on a number of single and multi-plaintiff wage and hour matters as well. During
23 my employment at Littler Mendelson, I was a member of its Class Action Practice Group.

24 5. During my employment at Littler Mendelson, I played a significant role in the class actions
25 that I was staffed on, and was primarily responsible for managing the litigation both in my role as a Senior
26 Associate and as a Shareholder. In particular, I received a wide-array of wage and hour class action
27 experience performing the following types of tasks: drafting demurrers, motions to strike and/or dismiss;
28 removing actions from state court to federal court; drafting and responding to written discovery; drafting

1 and opposing discovery related motions; arguing discovery related motions; drafting motions to
2 consolidate related matters; interviewing putative class members and obtaining declarations in connection
3 with class certification; drafting oppositions to motions for class certification; conducting exposure
4 analyses to assess the strengths and weaknesses of asserted claims, the likelihood of prevailing at class
5 certification and potential damages resulting from such claims; drafting mediation briefs; serving as the
6 primary contact to in-house counsel; deposing named plaintiffs and putative class members; deposing
7 retained expert witnesses; and defending the depositions of corporate witnesses. I also was involved in
8 the negotiations and settlements of many large wage and hour class actions. In short, I played an integral
9 role in all aspects of litigation from the inception of a matter through and beyond class certification. I also
10 supervised the work of several associate attorneys who were staffed on the same wage and hour class
11 actions.

12 6. Although not exhaustive, below is a list of many of the wage and hour class and PAGA
13 actions that I performed substantial work on while I was an Associate and/or Shareholder at Littler
14 Mendelson:

- 15 ► *Branch v. PM Realty Group, Inc.* Case No. BC575759, Los Angeles Superior
16 Court, County of Los Angeles, Honorable Ann Jones, presiding.
- 17 ► *Herrera v. Pharmavite, LLC*, Case No. BC599201, Los Angeles Superior Court,
18 County of Los Angeles, Honorable Judge Carolyn Kuhl, presiding.
- 19 ► *Dugan v. Stoneledge Furniture, LLC*, Case No. 16-cv-01125-PA-FFMx, United
20 States District Court, Central District of California, Honorable Judge Percy
21 Anderson, presiding.
- 22 ► *Klune v. Stoneledge Furniture, LLC*, Case No. 14-cv-03986-PA-FFMx, United
23 States District Court, Central District of California, Honorable Judge Percy
24 Anderson, presiding.
- 25 ► *Diaz v. ABM Industries, Inc.; Ampco Parking*, Case No. BC362932, California
26 Superior Court, County of Los Angeles, Honorable Judge Jane Johnson, presiding.¹

27
28 ¹ This matter was consolidated and litigated collectively with Case Nos. BC380923, BC 381523 and BC 406663.

- 1 ▶ *Adams v. Luxottica Retail North America, Inc.*, Case No. 07CC01346, California
2 Superior Court, County of Orange, Honorable Judge Thierry Patrick Colaw,
3 presiding.
- 4 ▶ *Page v. Luxottica Retail North America, Inc.*, Case No. FCS041512, California
5 Superior Court, County of Solano, Honorable Judge Paul Berman, presiding.
- 6 ▶ *Parker v. FedEx National LTL, Inc.*, Case No. 11-CV-006380-DSF-FFM, United
7 States District Court, Central District of California, Honorable Judge Dale Fischer,
8 presiding.
- 9 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
10 States District Court, Central District of California, Honorable Judge Margaret
11 Morrow, presiding.
- 12 ▶ *Bernal v. Comerica Bank, et al.*, Case No. 11-cv-01298-JAH-BGS, United States
13 District Court, Central District of California, Honorable Judge Margaret Morrow,
14 presiding.
- 15 ▶ *Granata v. Comerica Bank, et al.*, Case No. 37-2011-00086316-CU-OE-CTL,
16 California Superior Court, County of San Diego, Honorable Judge Jeffrey B.
17 Barton, presiding.
- 18 ▶ *Mathews v. Comerica Bank, et al.*, Case No. 111CV194781, California Superior
19 Court, County of Santa Clara.
- 20 ▶ *Gallegos v. Comerica Bank, et al.*, Case No. BC455515, California Superior Court,
21 County of Los Angeles, Honorable Judge Terry Green, presiding.
- 22 ▶ *Rumohr v. Comerica Bank, et al.*, Case No. CGC-11-508433, California Superior
23 Court, County of San Francisco.
- 24 ▶ *Robertson v. FedEx National LTL, Inc.*, Case No. 09-CV-05016-DSF-FFM, United
25 States District Court, Central District of California, Honorable Judge Dale Fischer,
26 presiding.

1 ► *Wittman v. FedEx National LTL, Inc.*, Case No. 09-CV-03663-DSF-FFM, United
2 States District Court, Central District of California, Honorable Judge Dale Fischer,
3 presiding.

4 7. In January 2018, I voluntarily resigned from Littler Mendelson in order to start a law firm
5 with another former Littler Mendelson Shareholder, Scott M. Lidman, to represent employees with work-
6 related claims, including primarily wage and hour claims and almost exclusively on a class-action basis.
7 I am currently a Shareholder of Lidman Law, APC. Currently, over ninety percent (90%) of my practice
8 is dedicated exclusively to the prosecution of wage and hour class actions, and I am currently responsible
9 for prosecuting over sixty-five (65) wage and hour class actions filed in State courts throughout
10 California, with several of them having been removed to Federal courts. I believe that my professional
11 experience renders me more than qualified to serve as class counsel in this lawsuit involving claims of
12 underpaid overtime and minimum wages, meal and rest period violations, and derivative penalty claims.
13 Not only have I litigated dozens of wage and hour cases throughout my career involving similar claims,
14 including the wage and hour class actions identified above, I have litigated similar claims from both
15 plaintiff and defense perspectives. As a result, I am able to realistically assess and evaluate the facts and
16 legal arguments that can be made in pursuit and defense of similar wage and hour claims, as well as those
17 facts and arguments in support and in opposition to class certification. Consequently, I am able to
18 appreciate the significant risks, uncertainties, and delay involved in wage and hour class action litigation.

19 8. I have been appointed Class Counsel in: *Guardado v. Wesley Allen, Inc.*, Case No.
20 BC683027, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl
21 presiding; *Rodriguez v. Satco, Inc.*, Case No. BC682137, California Superior Court, County of Los
22 Angeles, Honorable Judge Ann I. Jones presiding; *Ong v. Howard's Appliances, Inc.*, Case No. 30-2017-
23 00964213-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Cluster
24 presiding; *Hanke v. C&W Facility Services, Inc.*, Case No. CIVDS1814412, California Superior Court,
25 County of San Bernardino, Honorable Judge David Cohn presiding; *Molina v. Mader News, Inc.*, Case
26 No. BC685960, California Superior Court, County of Los Angeles, Honorable Judge Yvette M.
27 Palazuelos presiding; *Alvarez v. Salamander Fire Protection, Inc.*, Case No. BC688326, California
28 Superior Court, County of Los Angeles, Honorable Judge William F. Highberger presiding; *Rodriguez*

1 v. *H.F. Cox, Inc.*, Case No. BC653164, California Superior Court, County of Los Angeles, Honorable
2 Judge Carolyn B. Kuhl presiding; *Fregoso v. Amerigas Propane, Inc.*, Case No. BC697973, California
3 Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Teran v.*
4 *Western Plastics, Inc.*, Case No. RIC1722619, California Superior Court, County of Riverside,
5 Honorable Judge Sunshine Sykes presiding; *Villegas de Torres v. El Monte Superstore Inc.*, Case No.
6 BC688477, California Superior Court, County of Los Angeles, Honorable Judge Daniel J. Buckley
7 presiding; *Huynh v. Polypeptide Laboratories, Inc.*, Case No. BC680872, California Superior Court,
8 County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Guzman v. Century Blinds*, Case
9 No. RIC1723654, California Superior Court, County of Riverside, Honorable Judge Sunshine S. Sykes
10 presiding; *George v. Convergence Marketing*, Case No. CIVDS1901039, California Superior Court,
11 County of San Bernardino, Honorable Judge David S. Cohn presiding; *Coffee, et al. v. Flyers*
12 *Transportation Energy, LLC*, Case No. 34-2017-00222084, California Superior Court, County of
13 Sacramento, Honorable Judge Alan G. Perkins presiding; *Romero v. Fillmore Hospitality, LLC*, Case
14 No. BC705667, California Superior Court, County of Los Angeles, Honorable Judge Maren E. Nelson
15 presiding; *Wennerstrom, et al. v. Giant Inland Empire R.V. Center*, Case No. CIVDS1617291, California
16 Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Contreras, et al.*
17 *v. Letter Ride, LLC*, Case No. 37-2018-00020841-CU-OE-CTL, California Superior Court, County of
18 San Diego, Honorable Judge Eddie C. Sturgeon presiding; *Davis v. WeDriveU*, Case No. 18CV322578,
19 California Superior Court, County of Santa Clara, Honorable Judge Brian C. Walsh presiding; *Acuna v.*
20 *Canton Food Co., Inc.*, Case No. BC685001, California Superior Court, County of Los Angeles,
21 Honorable Judge David S. Cunningham presiding; and *Contreras v. Worldwide Flight Services, Inc.*,
22 Case No. 2:18-cv-06036-PSG-SS, United States District Court for the Central District of California, the
23 Honorable Judge Philip S. Gutierrez presiding.

24 9. As co-counsel for Plaintiff Garcia and the proposed Settlement Class, I have been
25 intimately involved in every aspect of this case from its inception through the present, and I believe that
26 the proposed Settlement is a favorable result for the Settlement Class under the circumstances presented.

27 10. The details of the work completed by my firm and/or my co-counsel are set forth in the
28 declaration of Scott M. Lidman filed concurrently herewith.

1
2 I declare under penalty of perjury under the laws of the State of California that the foregoing is
3 true and correct.

4 Executed on April 28, 2023 at El Segundo, California.

5
6 
7 Elizabeth Nguyen

EXHIBIT C

EXHIBIT C

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Kyle R. Nordrehaug (SBN 205975)

Aparajit Bhowmik (SBN 248066)

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Attorneys for Plaintiffs

WILLIE MARQUEZ and ANDY MIKHAEL

[Additional counsel listed on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

WILLIE MARQUEZ and ANDY MIKHAEL,
on behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

ACCURATE DELIVERY SYSTEMS, INC., a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. CIVSB2125337

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

**DECLARATION OF MILAN MOORE IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: July 13, 2023

Time: 10:00 a.m.

Division: S-26

Complaint Filed: August 31, 2020

LIDMAN LAW, APC

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Fax: (424) 292-2355

Attorneys for Plaintiff,
JULIO GARCIA

1 I, MILAN MOORE, declare as follows:

2 1. I am an Associate with Lidman Law, APC and counsel for one of the named Plaintiffs Julio
3 Garcia ("Plaintiff") and the proposed Settlement Class in the above-captioned matter. I am a member in
4 good standing of the bar of the State of California and am admitted to practice in this Court. I have
5 personal knowledge of the facts stated in this declaration and could testify competently to them if called
6 upon to do so.

7 2. I am a 2015 graduate of UConn School of Law. I was admitted to the California State Bar
8 in December 2015 after passing the bar exam on my first attempt. Since that time, I have practiced
9 exclusively in the area of employment litigation. Prior to joining Lidman Law, APC, I worked for an
10 employment litigation boutique, where I successfully represented employees in discrimination,
11 harassment, retaliation and wrongful termination cases in both state and federal court. While non-
12 exhaustive, the type of work I performed included: conducting client intakes, performing pre-filing
13 research and analysis, drafting complaints, attending court hearings, corresponding with opposing counsel,
14 drafting and responding to written discovery, preparing for and taking and defending depositions, drafting
15 and opposing motions for remand, demurrers and motions to strike, motions to compel, drafting mediation
16 briefs, and attending mediations.

17 3. Since June 11, 2018, I have worked as an associate at my current firm, Lidman Law, APC.
18 I am currently staffed on approximately seventy (70) active wage and hour class action lawsuits in both
19 state and federal court.

20 4. I have been appointed Class Counsel in *Hanke v. C&W Facility Services, Inc.*, Case No.
21 CIVDS1814412, California Superior Court, County of San Bernardino, Honorable Judge David Cohn
22 presiding; *Molina v. Mader News, Inc.*, Case No. BC685960, California Superior Court, County of Los
23 Angeles, Honorable Judge Yvette M. Palazuelos presiding; *Alvarez v. Salamander Fire Protection, Inc.*,
24 Case No. BC688326, California Superior Court, County of Los Angeles, Honorable Judge William F.
25 Highberger presiding; *Fregoso v. Amerigas Propane, Inc.*, Case No. BC697973, California Superior
26 Court, County of Los Angeles, Honorable Rafael A. Ongkeko presiding; *Teran v. Western Plastics, Inc.*,
27 Case No. RIC1722619, California Superior Court, County of Riverside, Honorable Judge Sunshine Sykes
28 presiding; *Villegas de Torres v. El Monte Superstore Inc.*, Case No. BC688477, California Superior Court,

County of Los Angeles, Honorable Judge Daniel J. Buckley presiding; *Guzman v. Century Blinds*, Case No. RIC1723654, California Superior Court, County of Riverside, Honorable Judge Sunshine S. Sykes presiding; *George v. Convergence Marketing*, Case No. CIVDS1901039, California Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Romero v. Fillmore Hospitality, LLC*, Case No. BC705667, California Superior Court, County of Los Angeles, Honorable Judge Maren E. Nelson presiding; *Davis v. WeDriveU*, Case No. 18CV322578, California Superior Court, County of Santa Clara, Honorable Judge Brian C. Walsh presiding; *Acuna v. Canton Food Co., Inc.*, Case No. BC685001, California Superior Court, County of Los Angeles, Honorable Judge David S. Cunningham presiding; and *Contreras v. Worldwide Flight Services, Inc.*, Case No. 2:18-cv-06036-PSG-SS, United States District Court for the Central District of California, the Honorable Judge Philip S. Gutierrez presiding.

5. The declaration of my co-counsel, Scott M. Lidman filed concurrently herewith, sets forth the of the work completed in this case by attorneys in our co-counsel's firm and/or other attorneys in my firm.

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

Executed on April 28, 2023 at El Segundo, California.

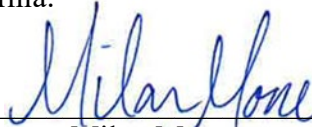

Milan Moore

EXHIBIT D

EXHIBIT D

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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Attorneys for Plaintiffs

WILLIE MARQUEZ and ANDY MIKHAEL

[Additional counsel listed on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

WILLIE MARQUEZ and ANDY MIKHAEL,
on behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

ACCURATE DELIVERY SYSTEMS, INC., a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. CIVSB2125337

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

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

Date: July 13, 2023

Time: 10:00 a.m.

Division: S-26

Complaint Filed: August 31, 2020

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

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

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

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

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

1 members; deposing retained expert witnesses; and defending the depositions of corporate witnesses. In
2 short, I played an integral role in all aspects of litigation from the inception of a matter through and
3 beyond class certification. I also supervised the work of several junior attorneys who were staffed on the
4 same wage and hour class actions.

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

14 6. In July 2012, I transitioned into litigating wage and hour class actions from the Plaintiff’s
15 side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since February 2016, as a
16 Shareholder of the Haines Law Group, APC. Currently, over ninety percent (90%) of my practice is
17 dedicated exclusively to the prosecution of wage and hour class actions, and I am currently responsible
18 for prosecuting over thirty (30) wage and hour class actions filed in both State and Federal courts
19 throughout California. Below are some of the matters in which I have been appointed as Class Counsel,
20 all of which have been granted final approval: *Hilberger v. Eisenhower Medical Center*, Case No.
21 INC1204915, California Superior Court, County of Riverside, Honorable Judge John G. Evans,
22 presiding, (in which I was approved for an hourly rate of \$500 for work performed in 2012 and 2013);
23 *Lopez v. Cornucopia Tools and Plastics, Inc.*, Case No. CV138049, California Superior Court, County
24 of San Luis Obispo, Honorable Judge Martin J. Tangeman, presiding, (in which I was approved for an
25 hourly rate of \$425 for work performed in 2013 and 2014); *Tacker v. Compass Health, Inc.*, Case No.
26 CV13-02261 BRO (JCG), United States District Court, Central District of California, Honorable Judge
27 Beverly Reid O’Connell, presiding, (in which I was approved for an hourly rate of \$500 for work
28 performed in 2013 and 2014); *Noell v. American Professional Ambulance Corporation, Inc.*, Case No.

1 BC499345, California Superior Court, County of Los Angeles, Honorable Judge Kenneth R. Freeman,
2 presiding, (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014);
3 *Bautista v. Harvest Management Sub LLC*, Case No. CV12-10004 FMO (CWx), United States District
4 Court, Central District of California, Honorable Judge Fernando M. Olguin, presiding (in which I was
5 approved for an hourly rate of \$500 for work performed in 2012, 2013 and 2014); *Davila v. OCB*
6 *Restaurant Co.*, Case No. CV13-5403 PA (JCG), United States District Court, Central District of
7 California, Honorable Judge Percy Anderson, presiding (in which I was approved for an hourly rate of
8 \$500 for work performed in 2013 and 2014); *Abad v. Waste Connections, Inc.*, Case No. CV12-06708
9 DDP (PJWx), United States District Court, Central District of California, Honorable Judge Dean D.
10 Pregerson, presiding (in which I was approved for an hourly rate of \$500 for work performed in 2013
11 and 2014); *Plantillas v. Snap-On Incorporated*, Case No. CV13-05153 DDP (VBKx), United States
12 District Court, Central District of California, Honorable Judge Dean D. Pregerson, presiding (in which I
13 was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Theodore v. Keyes*
14 *European, LLC*, Case No. BC521395, California Superior Court, County of Los Angeles, Honorable
15 Judge Elihu Berle, presiding (in which I was approved for an hourly rate of \$500 for work performed in
16 2013 and 2014); *Morales v. Sunset Tower Hotel LLC*, Case No. BC511924, California Superior Court,
17 County of Los Angeles, Honorable Judge John Shepard Wiley Jr., presiding (in which I was approved
18 for an hourly rate of \$500 for work performed in 2013 and 2014); *Gonzalez v. Universal Alloy Corp.*,
19 Case No. SACV13-00807 JVS (MRWx), United States District Court, Central District of California,
20 Honorable Judge James V. Selna, presiding (in which I was approved for an hourly rate of \$500 for work
21 performed in 2013 and 2014); *Morawski v. Milt Guggia Enterprises, Inc.*, Case No. CV13-2349 ABC
22 (RZx), United States District Court, Central District of California, Honorable Judge Andre Birotte, Jr.,
23 presiding (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014);
24 *Thorp v. Alcal Industries, Inc., et al.*, Case No. CV13-02289 YGR, United States District Court, Northern
25 District of California, Honorable Judge Yvonne Gonzalez Rogers, presiding (in which I was approved
26 for an hourly rate of \$500 for work performed in 2013 and 2014); *Myles v. College Hospital*, Case No.
27 BC487206, California Superior Court, County of Los Angeles, Honorable Judge John Shepard Wiley,
28 Jr., presiding (in which I was approved for an hourly rate of \$500 for work performed in 2013, 2014 and

2015); *Sarinana v. DS Waters of America, Inc.*, Case No. C13-0905 EMC, United States District Court,
Northern District of California, Honorable Edward M. Chen, presiding (in which I was approved for an
hourly rate of \$550 for work performed in 2014 and 2015); *Julio v. Anthony, Inc.*, Case No. CV14-03172
AB (SHx), United States District Court, Central District of California, Honorable Judge Andre Birotte
Jr., presiding (in which I was approved for an hourly rate of \$550 for work performed in 2014 and 2015);
Litt v. Western Stone & Metal Corp., Case No. 3:14-cv-02804-PJH, United States District Court,
Northern District of California, Honorable Judge Phyllis J. Hamilton, presiding (in which I was approved
for an hourly rate of \$550 for work performed in 2014 and 2015); *Rubalcava v. United Towing and
Transport Burbank, et al.*, Case No. BC518468, California Superior Court, County of Los Angeles,
Honorable Judge Kenneth Freeman, presiding (in which I was approved for an hourly rate of \$550 for
work performed in 2013, 2014 and 2015); *Sanchez v. Res-Care, Inc.*, Case No. BC526175, California
Superior Court, County of Los Angeles, Honorable John S. Wiley, presiding (in which I was approved
for an hourly rate of \$550 for work performed in 2013, 2014 and 2015); *Prado v. Warehouse Demo
Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of
California, Honorable Judge John F. Walter, presiding (in which I was approved for an hourly rate of
\$550 for work performed in 2014 and 2015); *Rivera Regalado v. Jaguar Farm Labor Contracting*, Case
No. CV 130569, California Superior Court, County of San Luis Obispo, Honorable Martin J. Tangeman,
presiding (in which I was approved for an hourly rate of \$550 for work performed in 2014 and 2015);
Rodas v. Gateways Hospital and Mental Health Center, Case No. BC503179, California Superior Court,
County of Los Angeles, Honorable Judge Amy D. Hogue, presiding (in which I was approved for an
hourly rate of \$550 for work performed in 2014 and 2015); *Escobar v. Century West, LLC*, Case No
BC564873, California Superior Court, County of Los Angeles, Honorable Judge Jane L. Johnson,
presiding (in which I was approved for an hourly rate of \$550 for work performed in 2014 and 2015 and
2016); *Shaw v. Conant Auto Retail, San Diego*, Case No. 37-2014-00044052-CU-OE-CTL, California
Superior Court, County of San Diego, Honorable Judge Joan M. Lewis, presiding (approving an hourly
rate of \$575 for work performed in 2014, 2015, and 2016); *Tirado v. Ricon Corp.*, Case No. BC537042,
California Superior Court, County of Los Angeles, Honorable John S. Wiley, presiding (approving an
hourly rate of \$575 for work performed in 2014, 2015, and 2016); and *Horta v. Searles Valley Minerals*,

1 *Inc.*, Case No. CIVDS 1507615, California Superior Court, County of San Bernardino, Honorable Donald
2 Alvarez presiding (approving an hourly rate of \$575 for work performed in 2015 and 2016); *Cristobal v.*
3 *Koos Manufacturing, Inc.*, Case No. BC591484, California Superior Court, County of Los Angeles, Hon.
4 William F. Highberger presiding (approving an hourly rate of \$575 for work performed in 2015 and
5 2016); *Rodriguez v. Spartan, Inc.*, Case No. BCV-15-100007-DRL, California Superior Court, County
6 of Kern, Honorable David R. Lampe presiding (approving hourly rate of \$575 for work performed in
7 2015, 2016, and 2017); *Kostyuk, et al. v. Golden State Overnight Delivery Service, Inc.*, Case No.
8 RG14727191, California Superior Court, Alameda County, Honorable Winifred Y. Smith presiding
9 (approving an hourly rate of \$575 for work performed in 2015, 2016, and 2017); *Nunez v. CompuCom*
10 *Systems, Inc.*, Case No. BC618385, California Superior Court, County of Los Angeles, Honorable Judge
11 John Shepard Wiley, Jr., presiding (approved at an hourly rate of \$600 for work performed in 2016 and
12 2017); *Mansilla v. Haeco Americas Line Services, LLC, et al.*, Case No. BC615310, Superior Court of
13 California, County of Los Angeles, Honorable Judge Elihu M. Berle presiding (approved at an hourly
14 rate of \$600 for work performed in 2016 and 2017); *Morales v. Caremeridian, LLC, et al.*, Case No.
15 BC593191, California Superior Court, County of Los Angeles, Judge William F. Highberger presiding
16 (granting final approval of settlement on behalf of direct support professionals involving claims for
17 unpaid wages, meal and rest period violations, wage statement violations, and other claims).

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

- 20 • *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC,
21 California Superior Court, County of Orange, Honorable Judge Gail A. Andler, presiding
22 (certifying a class of employees who were misclassified as independent contractors);
- 23 • *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States
24 District Court, Central District of California, Honorable Judge Beverly Reid O'Connell, presiding
25 (conditionally certifying an unpaid FLSA overtime wage class);
- 26 • *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District
27 Court, Central District of California, Honorable Judge John F. Walter, presiding (certifying a rest
28 period violation class and conditionally certifying an FLSA unpaid overtime wage class);

- 1 • *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court, Northern
2 District of California, Honorable Judge Haywood S. Gilliam, Jr., presiding (conditionally
3 certifying an unpaid FLSA overtime wage class);
- 4 • *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States District
5 Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding (conditionally
6 certifying an unpaid FLSA overtime wage class);
- 7 • *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California
8 Superior Court, County of Orange, Honorable Judge William Claster, presiding (certifying unpaid
9 overtime wage class and waiting time penalty class); and
- 10 • *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United States
11 District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six
12 classes of employees for rest period violations, wage statement violations, meal period violations,
13 and overtime and double-time violations);
- 14 • *Vazquez, et al v. Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United States
15 District Court, Southern District of California, Honorable William Q. Hayes presiding (certifying
16 six classes of employees for unpaid wages, meal period violations, wage statement violations, and
17 waiting time penalties); and
- 18 • *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA, United
19 States District Court, Northern District of California, Honorable William H. Alsup presiding
20 (certifying three classes of employees for unlawful wage deduction violations, wage statement
21 violations, and waiting time violations).

22 8. In 2015, 2016 and 2017, Thomson Reuters and Los Angeles Magazine recognized me as
23 a Top Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyer. This
24 is an honor awarded to no more than two and a half percent of attorneys under the age of forty in Southern
25 California each year. In 2018 and 2019 Thomson Reuters recognized me as a “Super Lawyer” in the
26 annual Super Lawyer magazine, an honor awarded to no more than five percent of all attorneys in
27 Southern California each year.

1 9. As co-lead counsel for Plaintiff Garcia and the proposed Settlement Class, I have been
2 intimately involved in every aspect of this case from its inception through the present, and I believe that
3 the proposed Settlement is a favorable result for the Settlement Class Members under the circumstances
4 presented.

5 10. The details of the work completed by my firm and/or my co-counsel are set forth in the
6 declaration of Scott M. Lidman filed concurrently herewith.

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

9 Executed on April 28, 2023 at El Segundo, California.

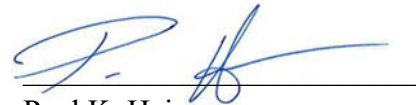
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11 
12 Paul K. Haines

EXHIBIT E

EXHIBIT E

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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Kyle R. Nordrehaug (SBN 205975)

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WILLIE MARQUEZ and ANDY MIKHAEL

[Additional counsel listed on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

WILLIE MARQUEZ and ANDY MIKHAEL, on
behalf of themselves and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

ACCURATE DELIVERY SYSTEMS, INC., a
California Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CIVSB2125337

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

**DECLARATION OF PLAINTIFF JULIO
GARCIA IN SUPPORT OF MOTION FOR
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: July 13, 2023

Time: 10:00 a.m.

Division: S-26

Complaint Filed: August 31, 2020

1
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22 Attorneys for Plaintiff,
23 JULIO GARCIA

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I, JULIO GARCIA, declare as follows:

1. I am an individual over the age of 18 and one of the named plaintiffs in this matter. This declaration is submitted in support of approval of the proposed class action settlement (“Settlement”) in this case. I have personal knowledge of the facts stated in this declaration and could testify to them if called upon to do so.

2. I was employed by Defendant Accurate Delivery Systems, Inc. (hereinafter referred to as “Accurate Delivery” or “Defendant”) as a Delivery Driver from approximately 2018 through approximately September 23, 2020. During my employment Accurate Delivery, I, along with the other Delivery Drivers, were required to follow Accurate Delivery’s wage and hour policies and practices.

3. I am informed and believe, and on that basis state, that throughout my employment with Accurate Delivery, I was not paid for all of my time worked. Specifically, because Accurate Delivery pays me a percentage for every delivery, I was not paid for the tasks unrelated to deliveries, including, but not limited to, waiting for customers, fueling my delivery van, washing my delivery van, completing paperwork, performing pre- and post-shift inspections, and unloading/loading my delivery van.

4. I also did not get all of my required meal and rest breaks. Specifically, due to the work imposed by Accurate Delivery and the nature of my work, it is my understanding my meal breaks were often late, short, and/or missed in violation of California law. I also did not get paid rest breaks because of how I was paid at Accurate Delivery. I also had to use my cellular phone to check on the status of my assigned tasks, but Accurate Delivery did not reimburse me for these business expenses.

5. As a result, and because my wage statements did not include the total hours worked, it is my understanding that Accurate Delivery did not provide me with accurate, itemized wage statements and that it pay me for all wages owed upon my separation of employment with Accurate Delivery.

6. I have worked closely with my lawyers on this case. I answered all of their questions on my employment and made myself available to speak and meet with my lawyers whenever I was available, including the entire day of the mediation on March 7, 2023 and throughout the settlement process.

1 7. At the time of filing this lawsuit, I understood that this lawsuit had the chance to benefit
2 my former co-workers and current employees of Accurate Delivery by helping them recover penalties
3 owed to them. As the named Plaintiff, I knew that I would be taking on certain risks that the other
4 employees would not have to take on. I also knew that there was a risk that I could be liable for Accurate
5 Delivery's costs if we lost the case. I was also scared that it would be difficult for me to get a similar
6 job in the future because other companies might not want to hire me if they knew I had filed a lawsuit
7 against my former employer. Even though I understood that joining a lawsuit is a public record and
8 could stigmatize me and may affect my future employability, I accepted that burden for the benefit of
9 other employees of Accurate Delivery because I wanted Accurate Delivery to pay its current and former
10 Delivery Drivers for wages and penalties owed according to the law and face consequences for not
11 doing so.

12 8. I have been actively involved in this case since joining this lawsuit. Without revealing
13 and/or waiving attorney-client privileged communications, I have communicated with my attorneys on
14 numerous occasions. I estimate that I have spent approximately 8 hours meeting with my lawyers
15 concerning the case and my responsibilities as a class representative, which included, among other
16 things, gathering various employment and non-employment related documents for use in the lawsuit,
17 reviewing documents with my lawyers and answering their questions, answering follow up questions
18 and providing guidance regarding Accurate Delivery's policies and practices and compensation pay
19 plan. Also, I routinely checked in with my attorneys and their staff to make sure I did not miss any
20 important updates in this case. In connection with the settlement in this case, I spent over 2 hours
21 reviewing the settlement agreement and discussing it with my attorneys. I made sure to ask my lawyers
22 any questions I had about the terms of the settlement agreement because I wanted to understand
23 everything before I signed it.

24 9. As part of the proposed Settlement, I have also agreed to a full general release of claims
25 related to my employment with Accurate Delivery that extends beyond the release of claims applicable
26 to members of the Class as defined in the Settlement. I understand that this includes all claims, whether
27 known or unknown, under federal, state, or local law against Accurate Delivery.
28

1 10. I believe my claims are typical of the members of the Class because they were required
2 to follow the same policies and procedures I was required to follow when I worked for Accurate
3 Delivery. I believe Accurate Delivery's policies and procedures were the same for all Delivery Drivers
4 in California. Since the same policies and procedures applies to myself and the other Delivery Drivers,
5 I believe they were not paid for all time worked, did not receive all of their meal and rest breaks, was
6 not reimbursed for using their personal cellular phones, did not receive accurate wage statements, and
7 were not paid all wages owed upon their separation of employment.

8 11. As far as I am aware, I have no conflicts with any of the other hourly, non-exempt
9 employees. I understand that as the proposed class representative, I am responsible for representing
10 the interests of all members of the class in litigation to recover money damages for the Class and I
11 consider the interests of the Class and put the interests of the Class before my own interests.

12 12. I understand that my attorneys will request that the Court award me Service Award of
13 \$10,000.00 for my service and efforts on the case. This proposed \$10,000.00 Service Award is not
14 contingent upon me supporting the proposed Settlement.

15 I have reviewed this written statement and fully understand all of its contents. I declare under
16 penalty of perjury under the laws of the State of California that the foregoing is true and correct.

17 Executed on April 11, 2023 at Riverside, California.

18
19  Julio Garcia
20

JULIO GARCIA

EXHIBIT F

EXHIBIT F

**BLUMENTHAL NORDREHAUG BHOWMIK
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Attorneys for Plaintiffs

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

WILLIE MARQUEZ and AHDY
MIKHAEL, on behalf of themselves and
on behalf of all persons similarly situated,

Plaintiffs,

v.

ACCURATE DELIVERY SYSTEMS,
INC., a California Corporation; and DOES
1 through 50, inclusive,

Defendants.

CASE NO. **CIVSB2125337**

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

**DECLARATION OF KYLE NORDREHAUG
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: July 13, 2023
Time: 10:00 a.m.
Dept.: 26

Complaint Filed: August 31, 2020
Trial Date: None Set

DECLARATION OF KYLE NORDREHAUG IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS
SETTLEMENT

I, Kyle Nordrehaug, declare:

1. I am a partner of the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP ("BNBD"), counsel for Plaintiffs Willie Marquez and Ahdy Mikhael. As such, I am fully familiar with the facts, pleadings and history of this matter. The following facts are within my own personal knowledge, and if called as a witness, I could testify competently to the matters stated herein.

2. This declaration is being submitted in support of Plaintiffs' Motion for Preliminary Approval of Class Settlement. The settlement reached between Plaintiffs Willie Marquez, Andy Mikhael, and Julio Garcia (collectively, "Plaintiffs"), individually and on behalf of all members of the Class, on the one hand, and Defendant Accurate Delivery Systems, Inc. ("Defendant" or "Accurate Delivery"), on the other hand, is set forth in the Stipulation of Class Action and PAGA Settlement ("Settlement") is attached to the Declaration of Scott M. Lidman as Exhibit 1 submitted with this motion.

Experience of BNBD

3. Over the course of the litigation, my firm has worked actively on this matter. The firm credentials are reflected in the BNBD Resume, a true and correct copy of which is attached hereto as Exhibit #1. Some of the major cases our firm has undertaken are also set forth therein. BNBD has represented hundreds of thousands of employees in hundreds of legal matters, including PAGA lawsuits and hundreds of employment class actions. BNBD's practice is devoted almost entirely to the prosecution of wage and hour class action and PAGA action matters. The attorneys at BNBD have been appointed lead counsel in hundreds of contested motions for class certification including many consolidated wage and hour matters. The

attorneys at my firm have extensive experience in cases involving labor code violations and overtime claims. BNBD has litigated similar overtime cases against other employers on behalf of employees, including cases against Cigna, HealthNet, Securitas, Okta, See's Candies, Walt Disney Resorts, El Pollo Loco, Panda Express, Universal Protection, Mattress Firm, Total Renal, Liberty Mutual, Union Bank, Apple, Coventry Health Care, Qualxserv, Union Bank, Marriott, Kaiser / Permanente, Walgreens, and California State Automobile Association. My firm has been approved as class counsel by state and federal courts in California in contested class certification motions, including approvals in this Court. It is this level of experience which enabled the firm to undertake the instant matter and to successfully combat the resources of the defendants and their capable and experienced counsel. On account of the concerted and dedicated effort this case demanded in order to properly handle and prosecute, BNBD was precluded from taking other cases, and in fact, had to turn away other potential fee generating cases.

4. Blumenthal Nordrehaug Bhowmik De Blouw LLP was responsible for handling the briefing and argument that resulted in the landmark ruling of *Sakkab v. Luxottica Retail N. Am., Inc.*, 803 F.3d 425 (9th Cir. 2015). There, Blumenthal Nordrehaug Bhowmik De Blouw LLP overcame opposition by Littler Mendelson and amici Curiae briefs submitted by Mayer Brown LLP to persuade the Ninth Circuit of the importance of the substantive rights of the State of California under the California Private Attorney General Act of 2004 ("PAGA"). BNBD took the lead on this case where the ruling was the reaffirmation of the PAGA statute and the *Iskanian* rule. BNBD also has recently engaged in noted appellate work on the subject of class actions in the California Court of Appeals resulting in the opinions handed down in *Securitas Sec. Services USA, Inc. v. Superior Court*, 234 Cal. App. 4th 1109, 184 Cal. Rptr. 3d 568 (2015) (class or representative action waiver in an employment-related arbitration agreement was unenforceable); *Altman v. Solarcity Corp.*, No. D067582, 2016 Cal. App. Unpub. LEXIS 3536 (Ct. App. May 13, 2016) (same). In 2015, Blumenthal Nordrehaug Bhowmik De Blouw LLP

received an award from the Daily Journal for Top Appellate Reversal, and I received an award from the Daily Journal as Top Labor & Employment Attorney in 2016.

5. District Judge Irma Gonzales in a consolidated class action representing hundreds of armed forces officers held that Blumenthal Nordrehaug Bhowmik De Blouw LLP was "qualified counsel with extensive experience in class action litigation." *McPhail v. First Command Fin. Planning, Inc.*, 247 F.R.D. 598, 611 (S.D. Cal. 2007). Examples of other contested actions where class certification was granted Blumenthal Nordrehaug Bhowmik De Blouw LLP and was appointed lead class counsel in wage and hour class actions in Federal Court include *Schulz v. Qualxserv, LLC*, 2012 U.S. Dist. LEXIS 58561 (S.D. Cal. 2012); *Dobrosky v. Arthur J. Gallagher Serv. Co., LLC*, No. EDCV 13-0646 JGB (SPx), 2014 U.S. Dist. LEXIS 106345 (C.D. Cal. July 30, 2014); *Culley v. Lincare Inc.*, No. 2:15-cv-00081-MCE-CMK, 2016 U.S. Dist. LEXIS 105704 (E.D. Cal. Aug. 10, 2016); *Nelson v. Avon Prods.*, No. 13-cv-02276-BLF, 2015 U.S. Dist. LEXIS 51104 (N.D. Cal. Apr. 17, 2015); *Orozco v. Illinois Tool Works*, U.S.D.C. Case No. 14-cv-02113-MCE, 2016 U.S. Dist. LEXIS 158115 (E.D. Cal. February 17, 2017); *Metrow v. Liberty Mutual*, U.S.D.C. Case No. EDCV 16-1133 JGB (C.D. Cal. May 1, 2017). Some examples of heavily contested State Court wage and hour class actions where class certification was obtained and BNBD was appointed lead class counsel include *El Pollo Loco Wage and Hour Cases*, Orange County Superior Court, JCCP Case No. 4957 (July 30, 2018); *Torrento v. Lucile Packard Children's Hospital*, Santa Clara County Superior Court Case No. 2016-1-CV-291035 (July 17, 2018); *Salem v. Alliance*, San Bernardino Superior Court, Case No. CIVRS1401129 (March 8, 2016); *Rivers v. Veolia*, Sonoma County Superior Court Case No. SCV 255350 (March 9, 2016); *Mathies v. Union Bank*, San Francisco Superior Court Case No. CGC-10-498077 (Sept. 11, 2013); *Jefferson v. Bottling Co, LLC*, Orange County Superior Court Case No. 30-2009-00180102-CU-OE-CXC (Sept. 7, 2010); *Rangel v. Balboa Ambulance Co.*, 37-2008-00095700-CU-BT-CTL (Fe. 11, 2010); *Tan v. CSAA*, Orange County Superior Court, Case No. 30-2008-00231219 (Nov. 23, 2009).

1
2 The Settlement Is Fair, Reasonable and Adequate:

3 6. On May 28, 2021, Plaintiffs Willie Marquez and Ahdy Mikhael sent a letter to
4 the California Labor & Workforce Development Agency exhausting their administrative
5 remedies before filing a civil claim under the PAGA against Defendant. The LWDA took no
6 action in response to that letter. Attached hereto as Exhibit #2 is a true and correct copy of that
7 notice.

8 7. On August 31, 2021, Plaintiff Willie Marquez filed a representative PAGA action
9 against Defendant, entitled *Willie Marquez. v. Accurate Delivery Services, Inc.*, in the San
10 Bernardino County Superior Court (Case No. CIVSB 2125174), before Hon. David Cohn of
11 Dept. S-26. In June 2022, pursuant to a request by Plaintiff Willie Marquez, the San Bernardino
12 County Superior Court dismissed his action without prejudice.

13 8, On August 31, 2021, Plaintiffs Willie Marquez and Ahdy Mikhael filed a class
14 action against Defendant, entitled *Willie Marquez, et al. v. Accurate Delivery Systems, Inc.*, in
15 the San Bernardino County Superior Court (Case No. CIVSB 2125337), before Hon. David Cohn
16 of Dept. S-26 (hereinafter, the “Action”). On January 11, 2022, a First Amended Complaint was
17 filed in the Action on behalf of Plaintiffs alleging the following claims: (1) all claims for unfair
18 business practices that could have been premised on the facts, claims, causes of action or legal
19 theories described above; (2) failure to pay all minimum wages owed, including without
20 limitation resulting from unlawful/improper rounding, and failing to pay for non-productive time
21 under the commission pay plan; (3) failure to pay all overtime wages owed, including without
22 limitation resulting from unlawful/improper rounding, miscalculating the regular rate of pay, and
23 failing to pay for non-productive time under the commission pay plan; (4) failure to provide meal
24 periods, pay premium wages for non-compliant meal periods, and failure to record meal periods;
25 (5) failure to authorize and permit rest periods, pay premium wages for non-compliant rest
26 periods, or the failure to separately pay premiums for rest periods under the commission pay
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1 plan; (6) failure to issue accurate, itemized wage statements (7) failure to timely pay all wages
2 due upon separation of employment; (8) failure to reimburse necessary business expenses; and
3 (9) violations of the California Labor Code Private Attorney General Act of 2004 (“PAGA”)
4 seeking civil penalties premised on the facts, claims, causes of action and legal theories described
5 above.

6 9. On March 7, 2023, the Parties participated in an all-day mediation presided over
7 by Lynn Frank, a respected mediator of wage and hour representative and class actions.
8 Following the mediation, each Party, represented by its respective counsel, was able to agree to
9 settle the Action. In the weeks that followed, the parties finalized the terms of settlement and
10 executed the Stipulation of Class Action and PAGA Settlement (“Settlement”).

11 10. In this case, the Settlement reached in the total non-reversionary amount of Nine
12 Hundred Thousand Dollars and Zero Cents (\$900,000.00) as the Gross Settlement Amount is the
13 product of substantial effort by the Parties and counsel should be approved as fair, reasonable
14 and adequate. The Settlement was the result of arms-length negotiations during mediation and
15 extensive follow up thereafter between experienced counsel. The Settlement was only reached
16 after extensive factual and legal investigation and research, careful evaluation of the respective
17 parties' strengths and weaknesses, and diligent negotiation efforts. The Settlement amount is a
18 negotiated compromise which took into account risks related to liability, damages, and all the
19 defenses asserted by Defendant. The risk that class certification would not be granted was an
20 extremely important consideration, as the denial of class certification would mean that the class
21 would receive nothing. The fear of retaliation and blacklisting makes it unlikely that absent class
22 certification, individuals would come forward to assert their rights individually. Although I am
23 of the opinion that a class can be certified, I also believe in the fairness of the settlement that is
24 based on factoring in the uncertainty and risks to Plaintiffs involved in not prevailing on one or
25 more of the causes of action or theories alleged, the possibility of non-certification and potential
26 for appeals. Based on the foregoing data and our own independent investigation and evaluation,
27
28

1 I am of the opinion that the settlement with the Defendant for the consideration and on the terms
2 set forth in the Settlement is fair, reasonable, and adequate and is in the best interest of the class
3 in light of all known facts and circumstances, including the risk of significant delay, the defenses
4 asserted by Defendant, and numerous potential appellate issues.

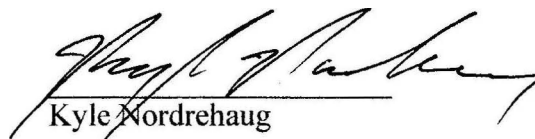
5 12. From the inception of the case, Class Counsel has zealously represented the
6 interests of the Class. The settlement was obtained for the benefit of the Class, as opposed to the
7 individual Class Representatives. Class Counsel have been approved as class counsel in a
8 number of prior cases, have litigated numerous other class action cases, and are competent to
9 represent the Class.

10 13. Plaintiffs and Plaintiffs' counsel are adequate representatives in that they have no
11 conflicts with the class and will adequately represent the Class.

12 14. I am unaware of any other related cases pending against Defendant which would
13 be impacted by this settlement.
14

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

18 Executed this 27th day of April, 2023, at San Diego, California.

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22 Kyle Nordrehaug
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Blumenthal Nordrehaug Bhowmik De Blouw LLP

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FIRM RESUME

Areas of Practice: Employee, Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation, Business Litigation.

ATTORNEY BIOGRAPHIES

Norman B. Blumenthal

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Action, Civil Litigation, Wage and Hour Class Actions, Transactional Law

Admitted: 1973, Illinois; 1976, California

Biography: Law Clerk to Justice Thomas J. Moran, Illinois Supreme Court, 1973-1975, while on Illinois Court of Appeals. Instructor, Oil and Gas Law: California Western School of Law, 1981; University of San Diego School of Law, 1983. Sole Practitioner 1976-1987. Partner, Blumenthal & Ostroff, 1988-1995. Partner, Blumenthal, Ostroff & Markham, 1995-2001. Partner, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2018. Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP, 2018 - present.

Member: San Diego County, Illinois State and American Bar Associations; State Bar of California.

Educated: University of Wisconsin (B.A., 1970); Loyola University of Chicago (J.D., 1973);

Summer Intern (1971) with Harvard Voluntary Defenders

Kyle R. Nordrehaug

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation

Admitted: 1999, California

Biography: Associate, Blumenthal, Ostroff & Markham, 1999-2001. Associate, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Member: State Bar of California, Ninth Circuit Court of Appeals, Third Circuit Court of Appeals

Educated: University of California at Berkeley (B.A., 1994); University of San Diego School of Law (J.D. 1999)

Awards: Top Labor & Employment Attorney 2016; Top Appellate Reversal - Daily Journal 2015; Super Lawyer 2015-2018

Aparajit Bhowmik

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2006, California

Educated: University of California at San Diego (B.A., 2002); University of San Diego School of Law (J.D. 2006)

Biography: Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Awards: Rising Star 2015

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Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: Wayne State University (B.A. 2008); California Western School of Law (J.D. 2011)

Piya Mukherjee

Associate Attorney

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2010, California

Educated: University of California, San Diego (B.S. 2006); University of Southern California, Gould School of Law (J.D. 2010)

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Associate Attorney

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: University of California at San Diego (B.A., 2003); George Washington University Law School (J.D. 2010)

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Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2018, California; 2004, Nevada

Educated: University of California, San Diego (B.A. 1998); Loyola Law School (J.D. 2001)

Jeffrey S. Herman

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2011, California; 2016 Arizona

Educated: University of Michigan (B.A. 2008); California Western School of Law (J.D. 2011)

Charlotte James

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2016, California

Educated: San Diego State University; California Western School of Law

Christine Levu

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2012, California

Educated: University of California, Irvine; California Western School of Law

Andrew Ronan

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2016, California

Educated: Arizona State University; University of San Diego School of Law

Scott Blumenthal

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2020, New Mexico

Educated: University of Southern California; California Western School of Law

REPORTED CASES

Sakkab v. Luxottica Retail N. Am., Inc., 803 F.3d 425 (9th Cir. 2015) (The panel reversed the district court's order granting Luxottica Retail North America, Inc.'s motion to compel arbitration of claims and dismissing plaintiff's first amended complaint, in a putative class action raising class employment-related claims and a non-class representative claim for civil penalties under the Private Attorney General Act.);

Securitas Security Services USA, Inc. v. Superior Court, 234 Cal. App. 4th 1109 (Cal. Feb. 27, 2015) (Court of Appeal concluded the trial court correctly ruled that *Iskanian* rendered the PAGA waiver within the parties' dispute resolution agreement unenforceable. However, the Court of Appeal then ruled the trial court erred by failing to invalidate the non-severable class action waiver from the agreement and remanded the entire complaint, including class action and PAGA claims, be litigated in the Superior Court);

Sussex v. United States Dist. Court for the Dist. of Nev., 781 F.3d 1065 (9th Cir. 2015) (The panel determined that the district court clearly erred in holding that its decision to intervene mid-arbitration was justified under *Aerojet-General*. Specifically, the panel held that the district court erred in predicting that an award issued by the arbitrator would likely be vacated because of his "evident partiality" under 9 U.S.C. § 10(a)(2).);

Provost v. YourMechanic, Inc., 2020 Cal. App. Lexis 955 (Oct. 15, 2020) (Court of Appeals affirmed denial of arbitration of PAGA claim, and held in a case of first impression, that there was no additional standing rules for PAGA claim brought by independent contractor);

In re Tobacco Cases II, 41 Cal. 4th 1257 (2007); Washington Mutual Bank v. Superior Court, 24 Cal. 4th 906 (2001); Rocker v. KPMG LLP, 148 P.3d 703; 122 Nev. 1185 (2006); PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP, 150 Cal. App. 4th 384 (2007); Hall v. County of Los Angeles, 148 Cal. App. 4th 318 (2007); Coshov v. City of Escondido, 132 Cal. App. 4th 687 (2005); Daniels v. Philip Morris, 18 F.Supp 2d 1110 (S.D. Cal.1998); Gibson v. World Savings & Loan Asso., 103 Cal. App. 4th 1291 (2003); Jordan v. Department of Motor Vehicles, 75 Cal. App. 4th 445 (1999); Jordan v. Department of Motor Vehicles, 100 Cal.App. 4th 431 (2002); Norwest Mortgage, Inc. v. Superior Court, 72 Cal.App.4th 214 (1999); Hildago v. Diversified Transp. Sya, 1998 U.S. App. LEXIS 3207 (9th Cir. 1998); Kensington Capital Mgal. v. Oakley, Inc., 1999 U.S. Dist LEXIS 385; Fed.Sec.L.Rep. (CCH) P90, 411 (1999 C.D. Cal.); Lister v. Oakley, Inc., 1999 U.S. Dist. LEXIS 384; Fed. Sec. L. Rep. (CCH) P90,409 (C.D Cal. 1999); Olszewski v. Scripps Health, 30 Cal. 4th 798 (2003); Steroid Hormone Product Cases, 181 Cal. App. 4th 145 (2010); Owen v. Macy's, Inc., 175 Cal. App. 4th 462 (2009); Taiheiyo Cement Corp. v. Superior Court, 117 Cal. App. 4th 380 (2004); Taiheiyo Cement Corp. v. Superior Court, 105 Cal.App. 4th 398 (2003); McMeans v. Scripps Health, Inc., 100 Cal. App. 4th 507 (2002); Ramos v. Countrywide Home Loans, 82 Cal.App. 4th 615 (2000); Tevssier v. City of San Diego, 81 Cal.App. 4th 685 (2000); Washington Mutual Bank v. Superior Court, 70 Cal. App. 4th 299 (1999); Silvas v. E*Trade Mortg. Corp., 514 F.3d 1001 (9th Cir. 2008); Silvas v. E*Trade Mortg. Corp., 421 F. Supp. 2d 1315 (S.D. Cal. 2006); McPhail v. First Command Fin. Planning, Inc., 2009 U.S. Dist. LEXIS 26544 (S.D. Cal. 2009); McPhail v. First Command Fin. Planning, Inc., 251 F.R.D. 514 (S.D. Cal. 2008); McPhail v. First Command Fin. Planning, Inc., 247 F.R.D. 598 (S.D. Cal. 2007); Barcia v. Contain-A-Way, Inc., 2009 U.S. Dist. LEXIS 17118 (S.D. Cal. 2009); Barcia v. Contain-A-Way, Inc., 2008 U.S. Dist. LEXIS 27365 (S.D. Cal. 2008); Wise v. Cubic Def. Applications, Inc., 2009 U.S. Dist. LEXIS 11225 (S.D. Cal. 2009); Gabisan v. Pelican Prods., 2009 U.S. Dist. LEXIS 1391

(S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 630 F. Supp. 2d 1222 (S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 2008 U.S. Dist. LEXIS 102380 (S.D. Cal. 2008); Louie v. Kaiser Found. Health Plan, Inc., 2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008); Weltman v. Ortho Mattress, Inc., 2010 U.S. Dist. LEXIS 20521 (S.D. Cal. 2010); Weltman v. Ortho Mattress, Inc., 2008 U.S. Dist. LEXIS 60344 (S.D. Cal. 2008); Curry v. CTB McGraw-Hill, LLC, 2006 U.S. Dist. LEXIS 5920; 97 A.F.T.R.2d (RIA) 1888; 37 Employee Benefits Cas. (BNA) 2390 (N.D. Cal. 2006); Reynov v. ADP Claims Servs. Group, 2006 U.S. Dist. LEXIS 94332 (N.D. Cal. 2006); Kennedy v. Natural Balance Pet Foods, Inc., 2010 U.S. App. LEXIS 248 (9th Cir. 2010); Kennedy v. Natural Balance Pet Foods, Inc., 2008 U.S. Dist. LEXIS 38889 (S.D. Cal. 2008); Kennedy v. Natural Balance Pet Foods, Inc., 2007 U.S. Dist. LEXIS 57766 (S.D. Cal. 2007); Sussex v. Turnberry/MGM Grand Towers, LLC, 2009 U.S. Dist. LEXIS 29503 (D. Nev. 2009); Picus v. Wal-Mart Stores, Inc., 256 F.R.D. 651 (D. Nev. 2009); Tull v. Stewart Title of Cal., Inc., 2009 U.S. Dist. LEXIS 14171 (S.D. Cal. 2009); Keshishzadeh v. Gallagher, 2010 U.S. Dist. LEXIS 46805 (S.D. Cal. 2010); Keshishzadeh v. Arthur J. Gallagher Serv. Co., 2010 U.S. Dist. Lexis 116380 (S.D. Cal. 2010); In re Pet Food Prods. Liab. Litig., MDL Docket No. 1850 (All Cases), 2008 U.S. Dist. LEXIS 94603 (D.N.J. 2008); In re Pet Food Prods. Liab. Litig., 629 F.3d 333 (3rd Cir. 2010); Puentes v. Wells Fargo Home Mortgage, Inc., 160 Cal. App. 4th 638 (2008); Rezec v. Sony Pictures Entertainment, Inc., 116 Cal. App. 4th 135 (2004); Badillo v. Am. Tobacco Co., 202 F.R.D. 261 (D. Nev. 2001); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin., 2010 U.S. App. Lexis 23025 (9th Cir. 2010); Dirienzo v. Dunbar Armored, Inc., 2011 U.S. Dist. Lexis 36650 (S.D. Cal. 2011); Rix v. Lockheed Martin Corp., 2011 U.S. Dist Lexis 25422 (S.D. Cal. 2011); Weitzke v. Costar Realty Info., Inc., 2011 U.S. Dist Lexis 20605 (S.D. Cal. 2011); Goodman v. Platinum Condo. Dev., LLC, 2011 U.S. Dist. LEXIS 36044 (D. Nev. 2011); Sussex v. Turnberry/MGM Grand Towers, LLC, 2011 U.S. Dist. LEXIS 14502 (D. Nev. 2011); Smith v. Kaiser Foundation Hospitals, Inc., 2010 U.S. Dist. Lexis 117869 (S.D. Cal. 2010); Dobrosky v. Arthur J. Gallagher Serv. Co., LLC, No. EDCV 13-0646 JGB (SPx), 2014 U.S. Dist. LEXIS 106345 (C.D. Cal. July 30, 2014); Metrow v. Liberty Mut. Managed Care LLC - Class Certification Granted, Metrow v. Liberty Mut. Managed Care LLC, No. EDCV 16-1133 JGB (KKx), 2017 U.S. Dist. LEXIS 73656 (C.D. Cal. May 1, 2017); Nelson v. Avon Products, Inc., Class Certification Granted, U.S. District Court for The Northern District of California, Case No. 13-cv-02276-BLF, 2015 U.S. Dist. LEXIS 51104 (N.D. Cal. Apr. 17, 2015); Orozco v. Illinois Tool Works Inc., Class Certification Granted, 2017 U.S. Dist. LEXIS 23179 (E.D. Cal. Feb. 16, 2017); Rieve v. Coventry Health Care, Summary Judgment *Sua Sponte* Granted for Plaintiff, Rieve v. Coventry Health Care, Inc., 870 F. Supp. 2d 856 (C.D. Cal. 2012)

CLASS ACTION & REPRESENTATIVE CASES

4G Wireless Wage Cases, Orange County Superior Court, JCCP No. 4736; Classic Party Rentals Wage & Hour Cases, Los Angeles Superior Court, Case No. JCCP No. 4672; Abu-Arafeh v. Norco Delivery Service, Inc., San Francisco County Superior Court, Case No. CGC-14-540601; Aburto v. Verizon, U.S. District Court, Southern District California, Case No. 11-cv-0088; Adkins v. Washington Mutual Bank, Class Certification Granted, San Diego County Superior Court, Case No. GIC819546; Agah v. CompUSA, U.S. District Court, Central District of California, Case No. SA CV05-1087 DOC (Anx); Akers v. The San Diego Union Tribune, San Diego County Superior Court, Case No 37-2010-00088571; Altman v. SolarCity Corporation, San Diego County Superior Court, Case No. 37-2014-00023450-CU-OE-CTL; Aquino v. Macy's West Stores, Orange County Superior Court, Case No. 30-2010-00395420; Baker v. Advanced Disability Management, Inc., Sacramento County Superior Court, Case No. 34-2014-00160711; Barcia v. Contain-A-Way, U.S. District Court, Southern District California, Case No. 07 cv 0938; Bates v. Verengo, Inc., Orange County Superior Court, Case No. 30-2012-00619985-CU-OE-CXC; Battle v. Charming Charlie Inc., San Diego

County Superior Court, Case No. 37-2014-00005608; Behar v. Union Bank, Orange County Superior Court, Case No. 30-2009-00317275; Bell v. John Stewart Company, Alameda County Superior Court, Case No. RG14728792; Bennett v. Custom Built Personal Training, Monterey County Superior Court, Case No. M127596; Bermant v. Bank of America, Investment Services, Inc., Los Angeles Superior Court, Civil Action No. BC342505; Bethley v. Raytheon Company, United States District Court, Central District of California, Case No. SACV10-01741; Betorina v. Randstad US, L.P., U.S. District Court Northern District of California, Case No. 3:15-cv-03646-MEJ; Beverage v. Edcoa Inc., Sacramento County Superior Court, Case No. 2013-00138279; Bova v. Washington Mutual Bank / JP Morgan Chase, U.S. District Court, Southern District California, Case No. 07-cv-2410; Bowden v. Sunset Parking Services, LLC & LAZ Parking California, LLC - Settled San Diego County Superior Court, Case No. 37-2012-00101751-CU-OE-CTL; Briseno v. American Savings Bank, Class Certification Granted, Orange County Superior Court, Case No. 774773; Brueske v. Welk Resorts, San Diego Superior Court, Case No 37-2010-00086460; Bueche v. Fidelity National Management Services, U.S. District Court, Eastern District of California, Case No. 13-cv-01114; Bunch v. Pinnacle Travel Services, LLC, Los Angeles County Superior Court, Case No. BC552048; Butler v. Stericycle, Inc & Appletree Answering Services of California, Inc., Sacramento County Superior Court, Case No. 34-2015-00180282; Cabral v. Creative Communication Tech., Class Certification Granted, Los Angeles Superior Court, Case No. BC402239; Cardoza v. Wal-Mart Associates, Inc., U.S. District Court Northern District of California, Case No. 4:15-cv-01634-DMR; Castro v. Vivint Solar, Inc., San Diego County Superior Court, Case No. 37-2014-00031385-CU-OE-CTL; Cavazos v. Heartland Automotive Services, Inc., Riverside County Superior Court, Case No. PSC 1401759; Cohen v. Bosch Tool, San Diego Superior Court, Case No. GIC 853562; Comstock v. Washington Mutual Bank - Class Certification Granted, San Diego County Superior Court, Case No. GIC820803; Conley v. Norwest, San Diego County Superior Court, Case No. N73741; Connell v. Sun Microsystems, Alameda Superior Court, Case No. RG06252310; Corrente v. Luxe Valet, Inc., San Francisco County Superior Court, Case No. CGC-15-545961; Cruz v. Redfin Corporation, U.S. District Court Northern District of California, Case No. 3:14-cv-05234-THE; Culley v. Lincare Inc. & Alpha Respiratory Inc., U.S. District Court eastern District of California, Case No. 2:15-cv-00081-GEB-CMK; Cunningham v. Leslie's Poolmart, Inc., U.S. District Court, Central District of California, Case No. 13-cv-02122-CAS; Curry v. California Testing Bureau/McGraw Hill, U.S. District Court, Northern District of California, Case No. C-05-4003 JW; Daniels, et al. v. Philip Morris,(In Re Tobacco Cases II) – Class Certification Granted, San Diego Superior Court, Case No. JCCP 4042; Davis v. Genex Holdings Inc., Santa Clara County Superior Court, Case No. 1-13-cv-240830; Davis v. Clear Connection, LLC, San Diego County Superior Court, Case No. 37-2014-00035173-CU-OE-CTL; Day v. WDC Exploration, Orange County Superior Court, Case No. 30-2010-00433770; Dedrick v. Hollandia Dairy, San Diego County Superior Court, Case No. 37-2014-00004311-Cu-OE-CTL; Delmare v. Sungard Higher Education - Settled U.S. District Court, Southern District of California, Case No. 07-cv-1801; Del Rio v. Tumi Stores, Inc., San Diego County Superior Court, Case No. 37-2015-00022008-CU-OE-CTL; Dewane v. Prudential, U.S. District Court, Central District of California, Case No. SA CV 05-1031; Diesel v. Wells Fargo Bank, Orange County Superior Court, Case No. 30-2011-00441368; Dirienzo v. Dunbar Armored, U.S. District Court, Southern District of California, Case No. 09-cv-2745; Dobrosky v. Arthur J. Gallagher Service Company, LLC, Class certification Granted, No. EDCV 13-0646 JGB (Spx); Dodds v. Zaven Tootikian, Los Angeles County Superior Court, Case No. BC494402; Drumheller v. Radioshack Corporation, United States District Court, Central District of California, Case No. SACV11-355; Enger v. Kaiser Foundation Health Plan, U.S. District Court, Southern District of California, Case No. 09-cv-1670; Escobar v. Silicon Valley Security & Patrol, Inc., Santa Clara County Superior Court, Case No. 1-14-cv272514; Fierro v. Chase Manhattan - Class Certification Granted, Settled San Diego Superior Court, Case No. GIN033490; Figueroa v. Circle K Stores, Inc., San Diego County Superior Court, Case No. 37-2012-00101193-CU-OE-CTL; Finch v. Lamps Plus, (Lamps Plus Credit Transaction Cases), San Diego Superior Court, Case No. JCCP 4532; Fletcher v. Verizon, U.S. District Court, Southern

District of California, Case No. 09-cv-1736; Francisco v. Diebold, U.S. District Court, Southern District of California, Case No. 09-cv-1889; Friend v. Wellpoint, Los Angeles Superior Court, Case No. BC345147; Frudakis v. Merck Sharp & Dohme, U.S. District Court, Central District California, Case No. SACV 11-00146; Fulcher v. Olan Mills, Inc., U.S. District Court, Northern District of California, Case No. 11-cv-1821; Gabisan v. Pelican Products, U.S. District Court, Southern District California, Case No. 08 cv 1361; Galindo v. Sunrun Installation Services Inc., San Diego County Superior Court, Case No. 37-2015-00008350-CU-OE-CTL; Gallagher v. Legacy Partners Commercial, Santa Clara County Superior Court, Case No. 112-cv-221688; Ghattas v. Footlocker Retail, Inc., U.S. District Court Central District of California, Case No. CV 13-0001678 PA; Gibson v. World Savings, Orange County Superior Court, Case No. 762321; Goerzen v. Interstate Realty Management, Co., Stanislaus County Superior Court, Case No. 679545; Gomez v. Enterprise Rent-A-Car, U.S. District Court, Southern District of California, Case No. 3:10-cv-02373; Gordon v. Wells Fargo Bank, U.S. District Court, Southern District of California, Case No. 3:11-cv-00090; Grabowski v. CH Robinson, U.S. District Court, Southern District of California, Case No. 10-cv-1658; Gross v. ACS Compiq Corporation, Orange County Superior Court, Case No. 30-2012-00587846-CU-OE-CXC; Gripenstraw v. Buffalo Wild Wings, U.S. District Court, Eastern District of California, Case No. 12-CV-00233; Gruender v. First American Title, Orange County Superior Court, Case No. 06 CC 00197; Guillen v. Univision Television Group, Inc. & Univision Management Co., San Francisco County Superior Court, Case No. CGC-12-526445; Gujjar v. Consultancy Services Limited, Orange County Superior Court, Case No. 30-2010-00365905; Gutierrez v. Five Guys Operations, LLC, San Diego County Superior Court, Case No. 37-2012-00086185-CU-OE-CTL; Handler v. Oppenheimer, Los Angeles Superior Court, Civil Action No. BC343542; Harley v. Tavistock Freebirds, LLC, Sacramento County Superior Court, Case No. 34-2014-00173010; Harrington v. Corinthian Colleges – Class Certification Granted, Orange Superior Court; United States Bankruptcy Court District of Delaware; Harvey v. PQ Operations, Inc., Los Angeles County Superior Court, Case No. BC497964; Henshaw v. Home Depot U.S.A., United States District Court, Central District of California, Case No. SACV10-01392; Heithold v. United Education Institute, Orange County Superior Court, Case No. 30-2013-00623416-CU-OE-CXC; Hibler v. Coca Cola Bottling, Settled U.S. District Court, Southern District of California, Case No. 11cv0298; Hildebrandt v. TWC Administration LLC & Time Warner NY Cable, LLC, U.S. District Court, Central District of California, Case No. ED-cv-13-02276-JGB; Hopkins v. BCI Coca-Cola Bottling Company of Los Angeles, United states District Court, Central District of California; U.S. Court of Appeals 9th Circuit; Howard v. Southern California Permanente Medical Group, Los Angeles Superior Court, Case No. BC586369; Hughes v. Parexel International, Los Angeles County Superior Court, Case No. BC485950; Hurley v. Comcast of California/Colorado/Texas/Washington, Inc., Sonoma County Superior Court, Case No. SCV-253801; Irving v. Solarcity Corporation, San Mateo County Superior Court, Case No. CIV525975; Jacobs v. Nu Horizons - Settled Santa Clara County Superior Court, Case No. 111cv194797; Jefferson v. Bottling Group LLC (Pepsi) - Class Certification Granted, Orange County Superior Court, Case No. 30-2009-0018010; Jones v. E*Trade Mortgage, U.S. District Court, Southern District California Case No. 02-CV-1123 L (JAH); Kennedy v. Natural Balance - Dismissal Reversed on Appeal, San Diego Superior Court, Case No. 37-2007-00066201; Keshishzadeh v. Arthur J. Gallagher Service Co., U.S. District Court, Southern District of California, Case No. 09-cv-0168; Kinney v. AIG Domestic Claims / Chartis, U.S. District Court, Central District of California, Case No. 8:10-cv-00399; Kizer v. Tristar Risk Management, Orange County Superior Court, Case No. 30-2014-00707394-CU-OE-CXC; Kleinberg v. Reeve Trucking Company, Inc., San Diego County Superior Court, Case No. 37-2015-00001601-CU-OE-CTL; Kove v. Old Republic Title, Alameda County Superior Court, Case No. RG09477437; Krellcom v. Medley Communications, Inc., San Diego County Superior Court, Case No. 37-2013-00050245-CU-OE-CTL; Ladd v. Extreme Recovery, LP, Contra Costa County Superior Court, Case No. MSC11-02790; Langille v. EMC, U.S. District Court, Southern District of California, Case No. 09-cv-0168; Lawson v. Marquee Staffing, Los Angeles County Superior Court, Case No. 37-2012-00103717-

CU-OE-CTL; Lazar v. Kaiser Foundation Health Plan, Inc., Santa Clara County Superior Court, Case No. 1-14-cv-273289; Lemmons v. Kaiser Foundation Hospitals, Inc., Sacramento County Superior Court, Case No. 34-2012-00125488; Levine v. Groeniger, Alameda County Superior Court, Case No. RG09476193; Linder v. OCWEN (In re Ocwen Federal Bank FSB Servicing Litig.) U.S. District Court, Central District California, Case No. 07cv501, U.S. District Court, Northern Dist. Illinois, Case No. MDL 1604; Litton v. Diebold, Incorporated, San Mateo County Superior Court, Case No. CIV524776; Lohn v. Sodexo, Inc. & SDH Services West, LLC, U.S. District Court Central District of California, Case No. 2:15-CV-05409; Lopez v. K-Mart, Ventura County Superior Court, Case No. BC351983; Louie / Stringer v. Kaiser, U.S. District Court, Southern District California, Case No. 08-cv-0795; Lucero v. Sears, U.S. District Court Southern District of California, Case No. 3:14-cv-01620-AJB; Lucero v. Kaiser Foundation Hospitals, Inc., San Diego County Superior Court, Case No. 37-2013-00075933-CU-OE-CTL; Magallanes v. TSA Stores, Inc., Santa Clara County Superior Court, Case No. 1-15-cv-283586; Magana v. El Pollo Loco, Inc., Orange County Superior Court, Case No. 30-2012-00613901-CU-OE-CXC; Maitland v. Marriott, U.S. District Court, Central District California, Case No. SACV 10-00374; Mann v. NEC Electronics America, Santa Clara County Superior Court, Case No. 109CV132089; Martinez v. Hydro-Scape Products, Inc., San Diego County Superior Court, Case No. 37-2014-00029157-CU-OE-CTL; Mathies v. Union Bank - Class Certification Granted, San Francisco County Superior Court, Case No. CGC-10-498077; McDermott v. Catalina Restaurant Group Inc., Orange County Superior Court, Case No. 30-2012-00574113-CU-OE-CXC; McPhail v. First Command, United States District Court for the Southern District of California, Case No. 05CV0179 IEG (JMA); Medina v. Universal Protection Service, LP, Santa Clara County Superior Court, Case No. BC572848; Meierdiercks v. 8x8, Inc., Santa Clara County Superior Court, Case No. 110CV162413; Metrow v. Liberty Mut. Managed Care LLC - Class Certification Granted, U.S. District Court Eastern District of California, Case No. 16-1133 JGB (Kkx); Meyer v. Thinktank Learning, Inc., Santa Clara County Superior Court, Case No. 1-15-cv-282698; Morales v. Wells Fargo Insurance Services USA, Inc., U.S. District Court Northern District of California, Case No. 3:13-cv-03867-EDL; Morse v. Marie Callender Pie Shop, U.S. District Court, Southern District California, Case No. 09-cv-1305; Moynihan v. Escalante Golf, Inc. & Troon Golf, LLC, San Diego County Superior Court, Case No. 37-2012-00083250-CU-OE-CTL; Muntz v. Lowe's HIW, San Diego County Superior Court, Case No. GIC880932; Najarian v. Macy's West Stores, Orange County Superior Court, Case No. 30-2010-00418401; Nelson v. Avon Products, Inc., Class Certification Granted, U.S. District Court for The Northern District of California, Case No. 13-cv-02276-BLF; Nguyen v. Wells Fargo Home Mortgage, Orange County Superior Court, Case No. 05 CC 00116; Ochoa v. Eisai, Inc., U.S. District Court, Northern District California, Case No. 3:11-cv-01349; Ogans v. Nationwide Credit, Inc., Sacramento County Superior Court, Case No. 34-2012-00121054; Ohayon v. Hertz, United States District Court, Northern District of California, Case No. 11-1662; Olvera v. El Pollo Loco, Inc., Orange County Superior Court, Case No. 30-2014-00707367-CU-OE-CXC; Orozco v. Illinois Tool Works Inc., Class Certification Granted, U.S. District Court, Eastern District of California, Case No. 14-cv-02113-MCE; Ortega v. Prime Healthcare Paradise Valley, LLC, San Diego County Superior Court, Case No. 37-2014-00011240-CU-OE-CTL; Patel v. Nike Retail Services, Inc., U.S. District Court Northern District of California, Case No. 3:14-cv-04781-RS; Patelski v. The Boeing Company, United States District Court, Southern District of New York; transferred to United States District Court, Eastern District of Missouri; Pearlman v. Bank of America, San Diego Superior Court; Perry v. AT&T, U.S. District Court, Northern District California, Case No. 11-cv 01488; Picus v. Wal-Mart Stores, U.S. District Court, District of Nevada, Case No. 2:07-CV-00682; Pittard v. Salus Homecare, U.S. District Court, Southern District California, Case No. 08 cv 1398; Port v. Southern California Permanente Medical Group, San Diego County Superior Court, Case No. 37-2007-00067538; Postema v. Lawyers Title Ins. Corp., Orange County Superior Court, Case No. 30-2010-00418901; Pratt v. Verizon, Orange County Superior Court, Case No. 30-2010-00430447; Proctor v. Ameriquest, Orange County Superior Court, Case No. 06CC00108; Ramirez v. Estenson Logistics, LLC, Orange County Superior Court, Case No. 30-2015-00803197-CU-OE-CXC; Ray

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CIV-05707; Garcia v. Gallagher Basset Services – San Bernardino Superior Court, Case No. CIVDS2004140; Callow v. Adventist Health System/West – Placer County Superior Court, Case No. SCV0043607; Dominguez v. Kimco Facility Services, LLC – Los Angeles County Superior Court, Case No. 19STCV37592; Searles v. Robert Heath Trucking, Inc. – Los Angeles County Superior Court, Case No. 19STCY30808; Rangel v. Pioneer Hi-Bred international, Inc. – Yolo County Superior Court, Case No. CV-19-1797; Ivon v. Sinclair Television of California, Humboldt County Superior Court, Case No. DR190699; Williams v. Henkels & McCoy, Inc. – San Bernardino County Superior Court, Case No. CIVDS2003888; Cano v. Larry Green Chrysler Jeep Dodge, Inc. – Riverside County Superior Court, Case No. BLC1900184; Lopez v. Cepheid – Santa Clara County Superior Court, Case No. 19CV358827; Hernandez v. Quick Dispense, Inc. – Los Angeles County Superior Court, Case No. 19STCV29405; Lopez v. Lacoste USA, Inc. – San Bernardino County Superior Court, Case No. CIVDS1914626; Duhe v. Hospital Couriers Nevada, LLC – Contra Costa County Superior Court, Case No. MSC19-01377; Law v. Sequoia Equities, Incorporated – Contra Costa Superior Court, Case No. C19-01925; Dvorak v. Rockwell Collins, Inc. – San Diego County Superior Court, Case No. 37-2019-00064397-CU-OE-CTL; Noguera v. Metal Container Corporation – Riverside County Superior Court, Case No. RIC2003235; Leon v. Miller Event Management, Inc. – San Luis Obispo Superior Court, Case No. 19CV-0435; Leon v. Miller Event Management, Inc. – San Luis Obispo County Superior Court, Case No. 19CV-0435, Camacho-Bias v. Serve U Brands Inc. – Butte County Superior Court, Case No. 20CV00603; La Pietra v. Entertainment Partners Services, LLC – Los Angeles County Superior Court, Case No. 19STCV39529; Celis v. Theatre Box - San Diego, LLC – San Diego County Superior Court, Case No. ____; Ignacio v. Laboratory Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-06079-AB-RAO; Kovnas v. Cahill Contractors LLC – Alameda County Superior Court, Case No. RG19037852; Hersh v. Mrs. Gooch's Natural Food – Los Angeles County Superior Court, Case No. 19STCV10444; Miller v. The Permanente Medical Group – Alameda County Superior Court, Case No. RG19045904; Vasquez v. Autoalert, LLC – Orange County Superior Court, Case No. 30-2019-01114549-CU-OE-CXC; Cavanaugh v. Morton Golf, LLC – Sacramento County Superior Court, Case No. 34-2019-00270176; Coley v. Monroe Operations, LLC – Alameda County Superior Court, Case No. RG20063188; Ramirez v. Sierra Aluminum Company – U.S. District Court, California Central District Court, Case No. 5:20-cv-00417-JGB-KK; Marrero v. Stat Med, P.C. – Alameda County Superior Court, Case No. HG19043214; Enriquez v. Solari Enterprises, Inc. – Los Angeles County Superior Court, Case No. 20STCV11129; Craig v. Hometown Heart – San Francisco County Superior Court, Case No. CGC-20-582454; Lopez v. Hy0Lang Electric California, Inc. – San Diego County Superior Court, Case No. 37-2020-00012543-CU-OE-CTL; Heuklom v. Clara Medical Group, P.C. – San Francisco County Superior Court, Case No. CGC-20-585918; Dominguez v. Lifesafer of Northern California – Monterey County Superior Court, Case No. 20CV002586; Kiseleva v. Totalmed Staffing Inc. – U.S. District Court, California Northern District, Case No. 5:19-cv-06480; Vires v. Sweetgreen, Inc. – Santa Clara County Superior Court, Case No. 20CV365918; Kim v. Wireless Vision, LLC – San Bernardino County Superior Court, Case No. CIVDS2000074; Senoren v. Air Canada Corporation – Los Angeles County Superior Court, Case No. 20STCV13942; Clark v. Quest Diagnostics Incorporated – San Bernardino County Superior Court, Case No. CIVDS2018707; Green v. Shipt, Inc. – Los Angeles County Superior Court, Case No. 20STCV01001; Respass v. The Scion Group LLC – Sacramento County Superior Court, Case No. 34-2020-00285265; Jackson v. Decathlon USA LLC – Alameda County Superior Court, Case No. RG2003024; Avacena v. FTG Aerospace Inc. – Los Angeles County Superior Court, Case No. 20STCV28767; Perez v. Butler America, LLC – Los Angeles County Superior Court, Case No. 20STCV20218; Christensen v. Carter's Retail, Inc. – Orange County Superior Court, Case No. 30-2020-01138792-CU-OE-CXC; Astudillo v. Torrance Health Association, Inc. – Los Angeles County Superior Court, Case No. 20STCV18424; Hansen v. Holiday AI Management Sub LLC – Contra Costa County Superior Court, Case No. CIVMSC20-00779; Almahdi v. Vitamin Shoppe Industries Inc – Santa Clara County Superior Court, Case No. 20CV365150; Krisinda v. Loyal Source Government Services LLC – U.S. District Court, California

Southern District, Case No. 3:20-cv-879-LAB-NLS; Ettedgui v. WB Studio Enterprises Inc – U.S. District Court, California Central District, Case No. 2:20-CV-08053-MCS (MAAx); Fernandez v. Nuvision Federal Credit Union – Orange County Superior Court, Case No. 30-2020-01161691-CU-OE-CJC; Aviles v. UPS Supply Chain Solutions, Inc. – Riverside County Superior Court, Case No. RIC2000727; Alcocer v. DSV Solutions, LLC – San Bernardino Superior Court, Case No. CIVDS2010345; Wilson v. Wholesome Harvest Baking, LLC – U.S. District Court, California Northern District, Case No. 4:20-cv-05186-YGR; Gregory v. Verio Healthcare, Inc. – Los Angeles County Superior Court, Case No. 20STCV37254; Rose v. Impact Group, LLC – Orange County Superior Court, Case No. 30-2020-01141107-CU-OE-CXC; Monasterio v. Citibank, N.A. – San Mateo County Superior Court, Case No. 20-CIV-03650; Martinez-Lopez v. Medamerica, Inc. – San Diego County Superior Court, Case No. 37-2020-00034393-CU-OE-CTL; Cox v. PRB Management, LLC – Solano County Superior Court, Case No. FCS055514; Nash v. K. Hovnanian Companies, LLC – Riverside County Superior Court, Case No. RIC2003319; Kyler v. Harbor Freight Tools USA, Inc. – San Diego County Superior Court, Case No. 37-2020-00015828-CU-OE-CTL; Roberts v. Solantic Corporation – Los Angeles County Superior Court, Case No. 20STCV41117; Price v. Mistras Group, Inc. – Los Angeles County Superior Court, Case No. 20STCV22485; Macias v. ABM Electrical & Lighting Solutions, Inc. – San Diego County Superior Court, Case No. 37-2020-00024997-CU-OE-CTL; Basu-Kesselman v. Garuda Labs, Inc. – San Francisco County Superior Court, Case No. CGC-20-585229; Armstrong v. Prometric LLC – Los Angeles County Superior Court, Case No. 20STCV29967; Ashlock v. Advantis Medical Staffing, LLC – San Diego County Superior Court, Case No. 37-2020-00022305-CU-OE-CTL; Wilson v. WXI Global Solutions, LLC – Los Angeles County Superior Court, Case No. 20STCV25007; Gandhale v. Select Rehabilitation, LLC – Monterey County Superior Court, Case No. 20CV002240; Starvoice v. G4S Secure Solutions (USA) Inc. – San Diego County Superior Court, Case No. 37-2020-00029421-CU-OE-CTL; Mbise v. Axlehire, Inc. – Alameda County Superior Court, Case No. RG20067350; Points v. C&J Services, Inc. – Kern County Superior Court, Case No. BCV-20-102483; Marshall v. PHI Air Medical, LLC – Lassen County Superior Court, Case No. 62973; Jauregui v. Cytotec Engineered Materials, Inc. – Orange County Superior Court, Case No. 30-2020-01164932-CU-OE-CXC

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WRITER
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1004

May 28, 2021
CA2271

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency Accurate Delivery Systems, Inc.
Online Filing Certified Mail #70200640000213198216
Mamoud Maraach
173 W. Resource Drive
Bloomington, CA 92316

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Accurate Delivery Systems, Inc. in California as Delivery Drivers and other similar job titles. “Aggrieved Employees” also refers to all individuals who are or previously were employed by Defendant in California and classified as non-exempt employees during the time period of May 28, 2020 until a date as determined by the Court. Our offices represent Plaintiff Willie Marquez (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Accurate Delivery Systems, Inc. (“Defendant”). Plaintiff was employed by Defendant in California as a non-exempt employee in the position of a Delivery Driver from April of 2018 to September 2020 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiffs and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and

Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Plaintiff and Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to Plaintiff and other Aggrieved Employees failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

EXHIBIT G

EXHIBIT G

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

WILLIE MARQUEZ and AHDY MIKHAEL,
on behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

v.

ACCURATE DELIVERY SYSTEMS, INC., a
California Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CIVSB2125337

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

**DECLARATION OF WILLIE
MARQUEZ IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: July 13, 2023

Time: 10:00 a.m.

Dept.: S-26

Complaint Filed: August 31, 2021

Trial Date: None Set

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Attorneys for Plaintiffs

1 I, Willie Marquez, declare as follows:

2 1. I am over the age of eighteen, a Plaintiff and a proposed Class Representative in the
3 above-entitled matter. I submit this declaration in support of the Motion for Preliminary
4 Approval of Class Action Settlement and in support of my application for a Class Representative
5 Service Award.
6

7 2. I have personal knowledge of all the facts stated herein. I could and would competently
8 testify under oath to these facts in court if requested to do so.

9 3. I worked as a delivery driver for Defendant Accurate Delivery Systems, Inc. ("Accurate
10 Delivery Systems") in California from April of 2018 to September of 2020. I was classified by
11 Accurate Delivery Systems as a non-exempt employee during that time period.
12

13 4. I retained my attorneys who are experienced in both class action and PAGA
14 representative action litigation and claims against employers for violations of the California
15 Labor Code. I have no personal relationship or family ties to my attorneys or any officer of the
16 Court. I am not aware of having any actual or potential conflicts of interest with another class
17 member in this case nor am I aware of having any actual or potential conflicts of interest with
18 Phoenix Class Action Administration Solutions, the settlement administrator. I am not aware of
19 any other pending matter or action asserting claims that will be extinguished or adversely
20 affected by this settlement.
21

22 5. I decided to file this class action lawsuit and be a plaintiff/class representative because
23 I felt that my legal rights as an employee and others like me were violated. For example,
24 Accurate Delivery Systems failed to compensate me for all the time I worked, such as the time I
25 spent waiting for customers, fueling the delivery vans, washing the delivery vans, completing
26 paperwork and conducting pre- and post-shift inspections on the vans at the beginning and end of
27

1 shifts. Also, my meal periods were often late, short or missed entirely and I did not receive the
2 meal period premium payments I should have received for these violations. I also had to use my
3 personal cell phone for work-related purposes such as communicating with dispatch, customers
4 and supervisors. Accurate Delivery Systems, however, did not reimburse me for reasonable
5 cellular phone expenses I incurred for the benefit of the company.
6

7 6. This class action case was filed on August 31, 2021. Before the complaint was filed I
8 spoke to my attorneys several times and discussed how Accurate Delivery Systems implemented
9 its company policies and procedures. I also assisted my attorneys in their investigation into my
10 claims by providing them documents and answering their questions. I reviewed the complaint
11 before it was filed and after it was filed I was given access to an electronic file sharing program
12 that alerted me via email when important documents were filed so that I could review them and
13 keep up with the developments in the case which I understood was one of my duties as a class
14 representative. I would also contact my attorneys from time to time if I had any questions about
15 the case.
16

17 7. Even though this action is in the process of settling, I was and remain prepared to
18 perform all the duties of a class representative. I understand that as a class representative I have
19 assumed a fiduciary responsibility to prosecute this class action on behalf of the absent class
20 members. I have understood that as a fiduciary, I have a duty to prosecute this action for the
21 benefit of the class members and surrender any right to compromise the group action for an
22 individual gain.
23

24 8. I understood that being a plaintiff/class representative in this case meant that I
25 was seeking damages not only for myself but also other current and/or former delivery drivers
26 working for Accurate Delivery Systems in California. I felt that these individuals were not
27

1 aware of their labor law rights and even if they were they would probably be apprehensive about
2 speaking up or even simply because of the time, effort and risk involved in filing a class action
3 lawsuit.

4 9. I understood that being a part of this lawsuit involved risks. For example, my
5 attorneys explained to me that if the case went to trial and we lost, I could be held responsible to
6 pay for all or part of the attorney fees and costs paid by Accurate Delivery Systems to defend this
7 lawsuit. Also, I knew there was a risk that future employers, if they ever found out about this
8 lawsuit, could hold it against me or downgrade me as a potential hire. As a named Plaintiff in
9 this case it would not be difficult for a future employer to become aware that I sued a former
10 employer for labor law violations. Ultimately I decided these risks were worth it and decided to
11 fight for my rights and the rights of others regardless of the risks, time and effort I spent on this
12 case.
13

14 10. During the lawsuit I stayed in touch with my attorneys by phone and email. I also
15 kept up to date on important developments by reviewing court filings that were made available to
16 me electronically as I described above.
17

18 11. A mediation took place on March 7, 2023 with Lynn Frank, a well-respected and
19 experienced mediator of wage and hour class actions. Following the all-day mediation session,
20 the parties agreed to settle the action. I communicated with my attorneys regarding the terms of
21 the settlement which was reached between the parties and understood that I was representing
22 absent class members and therefore wanted the best possible result to be obtained for the class
23 members and I believe a very positive result was in fact achieved via settlement. I reviewed and
24 signed the Memorandum of Understanding on March 9, 2023 and when the final settlement
25 papers were ready, I closely reviewed the Settlement Agreement which I signed on April 11,
26

1 2023.

2 12. I have been actively involved with this class action lawsuit performing the duties
3 described above. Although I did not keep time records, I was in regular contact with my
4 attorneys, reviewed court filings, and spent a significant amount of time on the issues presented
5 during the lawsuit and in the settlement process. I estimate that I spent approximately 40-50
6 hours working on this case up until this point. I believe I have been diligent and have done what
7 is expected of a named plaintiff and a proposed class representative to date, and will continue to
8 do so. I have and always will maintain the best interest of the class members.
9

10 13. My attorneys explained to me that the settlement process involves a two-step
11 review by the Court to determine whether the settlement is fair before approving the settlement.
12 I know this process also involves notifying all class members of the settlement terms and of their
13 rights to make a claim for their settlement share, to opt out of the settlement or to object to the
14 settlement.
15

16 14. I believe I did the right thing by filing this case on behalf of the class members who,
17 subject to court approval, are in line to receive monetary payments as a result of this case and
18 settlement. This is money they may never have ever gotten if I did not pursue this action on their
19 behalf. I feel significant personal satisfaction to know that I played a role in the class members
20 being entitled to monetary payments as a result of the filing of this lawsuit. I also believe that
21 the requested Class Representative Service Award of \$10,000 from the settlement is fair
22 compensation for the work I performed and the risks I undertook.
23

24 15. As part of the settlement it was necessary for me to sign a general release of all
25 claims I may have against Accurate Delivery Systems. I believe the Class Representative
26 Service Award I have requested provides me with some compensation for this agreed release.
27

16. I have not entered into any undisclosed agreements nor have I received any undisclosed compensation in this case. The only compensation I will receive is whatever amount the Court approves as a service award, as well as my share as a class member of the settlement fund.

17. In light of all the time and effort I have spent on this case, the risk I undertook by suing a former employer, the exposure to being responsible for paying Accurate Delivery Systems' costs in the event we did not win the case, the reputational risk that future employers may hold this lawsuit against me, the general release, and in light of the size of the settlement, I believe the request for \$10,000 as a Class Representative service award is fair and reasonable.

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

Executed on Apr 26, 2023, at Corona, CA.
(city, state)

Willie Marquez

Willie Marquez (Apr 26, 2023 18:00 PDT)

Willie Marquez

EXHIBIT H

EXHIBIT H

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (SBN 068687)

Kyle R. Nordrehaug (SBN 205975)

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Attorneys for Plaintiffs

[Additional Counsel Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

WILLIE MARQUEZ and AHDY MIKHAEL,
on behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

v.

ACCURATE DELIVERY SYSTEMS, INC., a
California Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CIVSB2125337

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

**DECLARATION OF AHDY
MIKHAEL IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: July 13, 2023

Time: 10:00 a.m.

Dept.: S-26

Complaint Filed: August 31, 2021

Trial Date: None Set

LIDMAN LAW, APC

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Elizabeth Nguyen(SBN 238571)

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HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)

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El Segundo, CA 90245

Tel: (424) 292-2350

Fax: (424) 292-2355

Attorneys for Plaintiffs

1 I, Ahdy Mikhael declare as follows:

2 1. I am over the age of eighteen, a Plaintiff and a proposed Class Representative in the
3 above-entitled matter. I submit this declaration in support of the Motion for Preliminary
4 Approval of Class Action Settlement and in support of my application for a Class Representative
5 Service Award.
6

7 2. I have personal knowledge of all the facts stated herein. I could and would competently
8 testify under oath to these facts in court if requested to do so.

9 3. I worked as a delivery driver for Defendant Accurate Delivery Systems, Inc. ("Accurate
10 Delivery Systems") in California from November of 2019 to March of 2020. I was classified by
11 Accurate Delivery Systems as a non-exempt employee during that time period.
12

13 4. I retained my attorneys who are experienced in both class action and PAGA
14 representative action litigation and claims against employers for violations of the California
15 Labor Code. I have no personal relationship or family ties to my attorneys or any officer of the
16 Court. I am not aware of having any actual or potential conflicts of interest with another class
17 member in this case nor am I aware of having any actual or potential conflicts of interest with
18 Phoenix Class Action Administration Solutions, the settlement administrator. I am not aware of
19 any other pending matter or action asserting claims that will be extinguished or adversely
20 affected by this settlement.
21

22 5. I decided to file this class action lawsuit and be a plaintiff/class representative because
23 I felt that my legal rights as an employee and others like me were violated. For example,
24 Accurate Delivery Systems failed to compensate me for all the time I worked, such as the time I
25 spent waiting for customers, fueling the delivery vans, washing the delivery vans, completing
26 paperwork and conducting pre- and post-shift inspections on the vans at the beginning and end of
27

1 shifts. Also, my meal periods were often late, short or missed entirely and I did not receive the
2 meal period premium payments I should have received for these violations. I also had to use my
3 personal cell phone for work-related purposes such as communicating with dispatch, customers
4 and supervisors. Accurate Delivery Systems, however, did not reimburse me for reasonable
5 cellular phone expenses I incurred for the benefit of the company.
6

7 6. This class action case was filed on August 31, 2021. Before the complaint was filed I
8 spoke to my attorneys several times and discussed how Accurate Delivery Systems implemented
9 its company policies and procedures. I also assisted my attorneys in their investigation into my
10 claims by providing them documents and answering their questions. I reviewed the complaint
11 before it was filed and after it was filed I was given access to an electronic file sharing program
12 that alerted me via email when important documents were filed so that I could review them and
13 keep up with the developments in the case which I understood was one of my duties as a class
14 representative. I would also contact my attorneys from time to time if I had any questions about
15 the case.
16

17 7. Even though this action is in the process of settling, I was and remain prepared to
18 perform all the duties of a class representative. I understand that as a class representative I have
19 assumed a fiduciary responsibility to prosecute this class action on behalf of the absent class
20 members. I have understood that as a fiduciary, I have a duty to prosecute this action for the
21 benefit of the class members and surrender any right to compromise the group action for an
22 individual gain.
23

24 8. I understood that being a plaintiff/class representative in this case meant that I
25 was seeking damages not only for myself but also other current and/or former delivery drivers
26 working for Accurate Delivery Systems in California. I felt that these individuals were not
27

aware of their labor law rights and even if they were they would probably be apprehensive about speaking up or even simply because of the time, effort and risk involved in filing a class action lawsuit.

9. I understood that being a part of this lawsuit involved risks. For example, my attorneys explained to me that if the case went to trial and we lost, I could be held responsible to pay for all or part of the attorney fees and costs paid by Accurate Delivery Systems to defend this lawsuit. Also, I knew there was a risk that future employers, if they ever found out about this lawsuit, could hold it against me or downgrade me as a potential hire. As a named Plaintiff in this case it would not be difficult for a future employer to become aware that I sued a former employer for labor law violations. Ultimately I decided these risks were worth it and decided to fight for my rights and the rights of others regardless of the risks, time and effort I spent on this case.

10. During the lawsuit I stayed in touch with my attorneys by phone and email. I also kept up to date on important developments by reviewing court filings that were made available to me electronically as I described above.

11. A mediation took place on March 7, 2023 with Lynn Frank, a well-respected and experienced mediator of wage and hour class actions. Following the all-day mediation session, the parties agreed to settle the action. I communicated with my attorneys regarding the terms of the settlement which was reached between the parties and understood that I was representing absent class members and therefore wanted the best possible result to be obtained for the class members and I believe a very positive result was in fact achieved via settlement. I reviewed and signed the Memorandum of Understanding on March 13, 2023 and when the final settlement papers were ready, I closely reviewed the Settlement Agreement which I signed on April 11,

1 2023.

2 12. I have been actively involved with this class action lawsuit performing the duties
3 described above. Although I did not keep time records, I was in regular contact with my
4 attorneys, reviewed court filings, and spent a significant amount of time on the issues presented
5 during the lawsuit and in the settlement process. I estimate that I spent approximately 40-50
6 hours working on this case up until this point. I believe I have been diligent and have done what
7 is expected of a named plaintiff and a proposed class representative to date, and will continue to
8 do so. I have and always will maintain the best interest of the class members.
9

10 13. My attorneys explained to me that the settlement process involves a two-step
11 review by the Court to determine whether the settlement is fair before approving the settlement.
12 I know this process also involves notifying all class members of the settlement terms and of their
13 rights to make a claim for their settlement share, to opt out of the settlement or to object to the
14 settlement.
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16 14. I believe I did the right thing by filing this case on behalf of the class members who,
17 subject to court approval, are in line to receive monetary payments as a result of this case and
18 settlement. This is money they may never have ever gotten if I did not pursue this action on their
19 behalf. I feel significant personal satisfaction to know that I played a role in the class members
20 being entitled to monetary payments as a result of the filing of this lawsuit. I also believe that
21 the requested Class Representative Service Award of \$10,000 from the settlement is fair
22 compensation for the work I performed and the risks I undertook.
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24 15. As part of the settlement it was necessary for me to sign a general release of all
25 claims I may have against Accurate Delivery Systems. I believe the Class Representative
26 Service Award I have requested provides me with some compensation for this agreed release.
27

16. I have not entered into any undisclosed agreements nor have I received any undisclosed compensation in this case. The only compensation I will receive is whatever amount the Court approves as a service award, as well as my share as a class member of the settlement fund.

17. In light of all the time and effort I have spent on this case, the risk I undertook by suing a former employer, the exposure to being responsible for paying Accurate Delivery Systems' costs in the event we did not win the case, the reputational risk that future employers may hold this lawsuit against me, the general release, and in light of the size of the settlement, I believe the request for \$10,000 as a Class Representative service award is fair and reasonable.

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

Executed on Apr 27, 2023, at Corona, cal.
(city, state)


Ahdy Mikhael (Apr 27, 2023 15:43 PDT)

EXHIBIT I

EXHIBIT I

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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Kyle R. Nordrehaug (SBN 205975)

Aparajit Bhowmik (SBN 248066)

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Attorneys for Plaintiffs

WILLIE MARQUEZ and ANDY MIKHAEL

[Additional counsel listed on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

WILLIE MARQUEZ and ANDY MIKHAEL,
on behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

ACCURATE DELIVERY SYSTEMS, INC., a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. CIVSB2125337

*[Assigned for All Purposes to Hon. David
Cohn, Dept. S-26]*

**DECLARATION OF JODEY LAWRENCE
OF PHOENIX SETTLEMENT
ADMINISTRATORS IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: July 13, 2023

Time: 10:00 a.m.

Division: S-26

Complaint Filed: August 31, 2020

1 **LIDMAN LAW, APC**

2 Scott M. Lidman (SBN 199433)

3 slidman@lidmanlaw.com

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9 El Segundo, CA 90245

10 Tel: 424-322-4772

11 Fax: 424-322-4775

12 Attorneys for Plaintiff,

13 JULIO GARCIA

14 **HAINES LAW GROUP, APC**

15 Paul K. Haines (SBN 248226)

16 phaines@haineslawgroup.com

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18 El Segundo, CA 90245

19 Tel: (424) 292-2350

20 Fax: (424) 292-2355

21 Attorneys for Plaintiff,

22 JULIO GARCIA

DECLARATION OF JODEY LAWRENCE

I, JODEY LAWRENCE, declare as follows:

1. I have personal knowledge of the facts set forth herein and if called upon to testify, I could and would do so competently under oath.

2. I am employed by Phoenix Settlement Administrators (“PSA”), as Vice President of Business Development.

3. I personally have over eleven years of experience in claims management and administration of class and collective action matters.

4. PSA has never had any financial interests in nor affiliation with the parties or counsel in the *Willie Marquez and Ahdy Mikhael et al v. Accurate Delivery Systems, Inc.* matter.

5. PSA has extensive experience administering class action matters. PSA has administered complex wage and hour, labor and employment, consumer/ product liability, TCPA, FLSA, FACTA, ERISA and PAGA class action matters, thru final approval and distribution. PSA has developed a system of quality assurance measures, to ensure the highest quality service is provided in our cases and to class members.

6. PSA’s Claims Management Group has extensive experiences in all aspects of Notification and Identification of Class Members, Claims Processing, Formulation and Calculation Methodologies, Award Distribution and Taxation, Accounting and Reconciliation.

7. PSA has extensive experience in and are experts at all aspects of complex class action matters including; (i) preparing, printing, mailing and tracking privacy notices; (ii) operation of a 24/7/365 multi-lingual call center; (iii) establishing settlement websites; (iv) claims management; (v) USPS processes and systems, third party tracing, including the use of reverse telephone directory services; (v) database management, programming and security protocols; (vii) calculating and issuing settlement payments; (viii) tax management, filings, and account reconciliation; and (ix) final approval.

8. As part of Settlement Notice procedures, PSA will run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members. If a Class Notice from the initial notice mailing

1 is returned as undeliverable, the Settlement Administrator will attempt to obtain a current address
2 for the Settlement Class Member to whom the returned Class Notice had been mailed by
3 undertaking skip tracing. If the Settlement Administrator is successful in obtaining a new address,
4 it will promptly re-mail the Class Notice to the Settlement Class Member. Further, any Class
5 Notices that are returned to the Settlement Administrator with a forwarding address before the
6 Response Deadline shall be promptly remailed to the forwarding address affixed thereto.

7 9. PSA has been appointed as a Claims Administrator in both State and Federal
8 Courts.

9 10. A true and correct copy of PSA's Curriculum Vitae is attached hereto as **Exhibit**
10 **A**.

11 11. PSA's Technology and Banking groups are directly involved with Management
12 on all issues of Information Security and Settlement Fund transfer, as it pertains to the continuance
13 of business processes, and all risk, vulnerability, security and assessments as it pertains to
14 information. The group, along with internal systems in place, monitor and communicate with
15 Management on a Preventative and comprehensive level, in order to prevent potential Strategic
16 or Compliance Risks. All processing of confidential and personal information is handled and
17 maintained within the organization and therefore all data received is kept within a strict chain of
18 custody internally. All informational assets are classified and assigned based on initial case
19 assessment, client and procedural requirements. The Technology Group handles all higher-level
20 ownership of information and physical peripherals, as well as ownership of direct / indirect assets
21 associated with technology and the continuance of business, Specific Users, Groups or Entities
22 are assigned Shared Ownership or Management Capability based on procedural needs, and
23 security level granted. PSA's Phoenix Settlement Administrators Data Center Policies and
24 Procedures is attached hereto as **Exhibit B** and Phoenix Server, Facility and Maintenance Security
25 Protocols and Review is attached hereto as **Exhibit C**.

26 12. In addition to high levels of Data Center Policies/Procedures and
27 Facility/Maintenance Security Protocols, PSA's conducts semiannual training to maintain
28 additional safeguards such as:

- a. Phoenix Settlement Administration Business Continuity Policy;
- b. Phoenix Settlement Administration Disaster Recovery Plan;
- c. Phoenix Settlement Administration Incident Response Plan;
- d. Phoenix Settlement Administration Personal Computer Security Policy;
- e. Phoenix Settlement Administration Phoenix Data Archiving and Retention Policy;
- f. Phoenix Settlement Administration Phoenix Personnel Security Policy;
- g. Phoenix Settlement Administration Risk Assessment;
- h. Phoenix Settlement Administration Service Provider Risk Assessment;
- i. Phoenix Settlement Administrator Classification and Access Rights Policy;
- j. Phoenix Settlement Administrator Password Policy;
- k. Phoenix Settlement Administrators Certification of Destruction; and
- l. Phoenix Settlement Administrators Security Awareness Training Program

A true and correct copy of the materials described above are attached hereto as **Exhibit D**.

13. PSA only employs a certified and/or qualified translator to translate Court approved Notices for postings on PSA's website.

14. PSA currently maintains an errors and omissions insurance policy, which includes a data breach provision. A true and correct copy of PSA's current policy is attached hereto as **Exhibit E**.

15. PSA's costs are reasonable and competitive when compared to the industry.

16. PSA is aware of the payment plan in this matter. Specifically, Defendant agrees to deposit the Gross Settlement Amount with the Settlement Administrator in twenty-four (24) equal installments of Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00). The first Settlement Installment shall be paid by no later than June 6, 2023, and will be deposited with the Settlement Administrator in an escrow account set up by it. The second through twenty-fourth Settlement Installment payments shall be due every thirty (30) days thereafter. The employer's share of payroll taxes and any increase to the Gross Settlement Amount due pursuant to the

1 Escalator Clause, if applicable, shall be deposited with the Settlement Administrator along with
2 the twenty-fourth and final Settlement Installment.

3 17. This Administration project has a fixed rate of \$5,750.00, which includes costs
4 associated with mailing the Class Notice in English and Spanish, creating a static website, and
5 maintaining a Qualified Settlement Fund. A detailed breakdown of PSA's cost is attached hereto
6 as **Exhibit F**.

7 I declare under penalty of perjury under the laws of the United States and state of
8 California that the foregoing is true and correct.

9 Executed on April 19, 2023 at Orange, California.

10
11 
12 Jodey Lawrence

EXHIBIT A



CLASS ACTION SETTLEMENT SOLUTIONS

1411 N. Batavia, Suite 105 Orange, CA 92867

800-523-5773

www.phoenixclassaction.com

CURRICULUM VITAE

Phoenix Settlement Administrators. PSA Overview

Phoenix Settlement Administrators, PSA, is an emerging, National, Class Action Notification and Claims Administration firm, located in San Diego and Newport Beach California. PSA's core competencies ensure delivery of the highest quality and accuracy to its Clients and Class members. With a combined 28 years of expert experience, PSA's Managing Partners, Case Supervisors, Managers and Associates, Data Programming, and Certified Secure Strategic Partners, possess all the qualities that our Clients expect throughout the Noticing and Administration process, to Final Approval. It is our Value Pricing, Efficiency, Experience, Consultative Expertise and Delivery, that has perpetuated PSA, as an emerging leader in Class Action Settlement Administration. Expert PSA staff members are currently managing, Consumer and Product Liability, TCPA, Complex Labor & Employment, FLSA, ERISA and PAGA cases.

PSA has over 100 Attorney & Law Firm Clients, which have entrusted us with the management of their claim's administration, because of the "Boutique" attention every case receives. PSA is value driven on all size cases. large or small, cases receive expert management, secure data custody, neutral communication and a dedicated team. This seamless process maintains superior case continuity to ensure our clients receive timely final approval and conclusion to their actions. Phoenix Settlement Administrators implements its successful C.A.S.E. solutions on all our class action matters.

With 10's of Millions of dollars in award distributions currently under management since our inception, PSA has the ability and strengths to manage all levels of Complex Cases. PSA's Staff "Synergy" is our greatest attribute. It allows our people to work closely together and solve our client's case issues. PSA prides itself as a true "Third Party Administrator" and holds Neutrality as a mantra. Because of this approach, both Defense and Plaintiff Clients, experience fairness, trust and confidence in us, and allows for continued business from both parties. PSA has been appointed Third Party Administrator in State and Federal Courts.

We look forward to working with you on your next Class Action Noticing Campaign or Claims Administration. Let us design a C.A.S.E. solution, which will allow us to showcase the difference you'll experience. Superior Service, Class Savings Value Pricing and Timely Outcomes is why our clients come back to PSA.



PHOENIX
SETTLEMENT ADMINISTRATORS

CLASS ACTION SETTLEMENT SOLUTIONS

Expert Core Services

Initial Planning and Consultative Service on Class Action Cases and Noticing Plans.

State/Nationwide Noticing Expertise: Privacy, Media, Publication, Internet & Email Campaigns.

Attorney General(s) CAFA Notification

Claims Programming, Administration, Processing and Reporting.

24/7/365 Multi-Lingual Call Center Support and Claims Processing

Secure Data Management Environment, Individual Firewalls, Encrypted Data and Storage

Settlement Fund Calculations, Solutions, Award Distribution, Award Reconciliation

Tax Filings: State, Federal, EDD, ETT, FUTA, PAGA Payments

Partial PSA Client List, Defense and Plaintiff

**Fisher & Phillips
Gordon & Rees
Paul Plevin Sullivan & Connaughton
Call & Jensen
Drinker Biddle
McKenna Long & Aldridge
Greenberg Traurig
Manning & Kass
Littler Mendelson
Kring & Chung
Orrick Herrington & Sutcliffe
Ogletree Deakins Nash Smoak & Stewart
Perkins Coie
Ross Wersching & Wolcott
Winston & Strawn
Sheppard Mullins
Lewis Brisbois Bisgaard & Smith
Morgan Lewis & Bockius
Paul Hastings
Park & Zheng
Sidley Austin
Higgs Fletcher & Mack
Jackson Lewis
Norton Rose Fulbright**

**Law Offices of Jonathan Ricasa
Dente Law Firm
Mahoney Law Group
Law Office of Thomas Rutledge
Law Office of Briana Kim
Dychter Law Firm
Garay Law Firm
Olsen Law Offices
Gould & Associates
Cohelan, Khoury & Singer
Ridout, Lyon & Ottoson
Carter Law Firm
Law Office of Justian Jusuf
The Phelps Law Group
The Emilio Law Group
Zeldes, Haeggquist & Eck
Markham Law Firm
Arias Ozzello & Gignac
David Yeremian & Associates
Aegis Law Firm
Rukin Hyland Doria & Tindall
Malk Law Firm
Spiro Law Corp
Levine Law Group, APC**

Phoenix Settlement Administrators 411 N. Batavia, Suite 105 Orange, CA 92867

Phone: 800-784-2174 **Fax:** 619.338.0308

www.psaaction.com

EXHIBIT B



Phoenix Settlement Administrators Data Center Policies and Procedures

I. Overview:

Phoenix Settlement Administrators data center policies and procedures are put in place to protect all equipment located within the data center. These steps are put in place by senior Phoenix directors. Phoenix Settlement Administrators main intent and highest level of importance is to keep data safe and secure while behind our doors. Employees and customers working outside of the set policies and procedures are subject to termination, legal action, or sever reprimand.

II. Base Guidelines

The Data Center is a restricted area within the Phoenix Settlement Administrators building. The Data Center mandates a much greater level of security. Only those individuals who are expressly authorized to do so by Senior Management may enter this area. Access privileges will only be granted to individuals who have a legitimate business need to be in the data center. All Phoenix Settlement Administrators staff working in the Data Center are required to familiarize themselves thoroughly with this document. The only exception allowed to the Data Center Security Policies and Practices is temporary suspension of these rules if it becomes necessary to provide emergency access to medical, fire and/or police officials.

III. Levels of Access to the Data Center

There are three “Levels of Access” to the Data Center - Controlling Access, Escorted Access, and Unescorted Access.

a. Controlling Access is given to people who have free access authority into the Data Center. Controlling Access is granted to Phoenix Core staff whose job responsibilities require that they have access to the area. These individuals also have the authority to grant temporary access to the Data Center and to enable others to enter and leave the Data Center. People with Controlling Access are responsible for the security of the area, and for any individuals that they allow into the Data Center. If a person with Controlling Access allows Escorted Access to an individual, the person granting access is responsible for escorting the individual granted access and seeing to it they sign in and out. If needed, these duties can be handed-off to one of the Phoenix Operators on duty in the Data Center.



b. Escorted Access is closely monitored access given to people who have a legitimate business need for infrequent access to the Data Center. “Infrequent access” is generally defined as access required for less than 15 days per year. Individuals with Escorted Access will not be issued keys or be granted access via key code combination. A person given Escorted Access to the area must sign in and out under the direct supervision of a person with Controlling Access, must provide positive identification upon demand, and must leave the area when requested to do so. Individuals allowed Escorted Access will be placed on the Phoenix Operations Authorized Access List. A person with Escorted Access to the area must not allow any other person to enter or leave the area.

c. Unescorted Access is granted to a person who does not qualify for Controlling Access but has a legitimate business reason for unsupervised access to the Data Center. Individuals with Unescorted Access to the Data Center will be granted access to the area through a Phoenix core employee with controlling access. Unescorted Access personnel cannot authorize others to be granted unsupervised access to the Data Center. Customers who are given Unescorted Access may NOT escort anyone into the Data Center without approval from personnel with Controlling Access authority. ALL visitors must sign in when entering and sign out when leaving the Data Center.

d. Data Center Doors

All doors to the Data Center must remain locked at all times and may only be temporarily opened for periods not to exceed that minimally necessary in order to:

- Allow officially approved and logged entrance and exit of authorized individuals;
- Permit the transfer of supplies/equipment as directly supervised by a person with Controlling Access to the area;

e. Security System and Keys

It is the policy of Senior Management not to issue keys to the Data Center for routine access purposes. Requests for exceptions to this policy will be considered on a discretionary, case-by-case basis. If Senior Management issues a key to an individual, the individual may not share, loan or copy the key. All keys are marked “Do Not Duplicate” preventing a legal copy from being made. Only those granted Controlling Access can request and be issued keys. Under no circumstances may an individual attempt to bypass the Locking system to gain access for them or permit access to another individual.



f. Periodic Review and Termination/Revocation of Access

Periodic (at least annual) reviews will be performed of those with any level of access to the Data Center. Senior Management will perform these reviews. If an individual no longer requires Data Center access, it will be revoked. The Joint Management Team will also perform periodic (at least annual) reviews of those with keys to the Data Center. If an individual's needs no longer justify a key, it will be collected. Procedures for terminating or revoking Data Center access include:

- Changing Key
- Collecting Key

g. Access Control Log

The Data Center Access Control Log must be properly maintained at all times. The Log is maintained by Operations staff. All individuals with Controlling Access to the Data Center are responsible for maintaining this log. The following procedures must be followed:

- Each time an individual with Escorted Access to the Data Center is admitted to the area, he must properly log in on the Access Control Log at the time of entrance. The person admitting the visitor must countersign and fill out the appropriate section of the form.
- Each time an individual with Escorted Access leaves the area, he must properly log out on the Access Control Log at the time he leaves (even if only for a short time). The person with Controlling Access to the area who allows the visitor to leave must fill out the "Log Out" section of the Access Control Log.

h. Exception Reporting

All infractions of the Data Center Physical Security Policies and Procedures shall be reported to the Joint Management Team. If warranted (e.g.: emergency, imminent danger, etc.) the police will be notified immediately. If an unauthorized individual is found in the Data Center it is be reported immediately to Senior Management. They will determine if the police should be contacted. The unauthorized individual should be escorted from the Data Center and a full written report should be immediately submitted to Senior Management. Any attempt to forcibly or improperly enter of the Data Center should be immediately reported to the police, who should deal with the situation. The person present with controlling access will report the incident in writing to Senior Management. Individuals with Controlling Access to the area are to monitor the area and remove any individual who appears to be compromising either the security of the area or its activities, or who is disrupting operation.



i. Escalation

Senior Management has overall responsibility for the administration of these policies and procedures. Issues that Senior Management is unable to resolve will be escalated to the Phoenix Settlement Administrators executives.

IV. General Data Center Operations Policies

a. General Safety Policy

All individuals in the Data Center must conduct their work in observance with all applicable (ie: state, federal) policies related to safety.

b. General Cleanliness Policy

The Data Center must be kept extremely clean. All individuals in the Data Center are expected to maintain cleanliness. Tools must be replaced to their rightful place. Food and drink are not allowed in the Data Center.

c. Policies for Data Center Equipment Deliveries/Pick-Up

A log is maintained by Phoenix that identifies and verifies all equipment that is brought into or removed from the Data Center. The Phoenix Operations manager will be responsible for logging all equipment that is scheduled to arrive or be picked up from the Data Center. Any customer that is planning to have equipment delivered to or picked up from the Data Center should contact Phoenix Operations and provide details to Phoenix Operations in advance of delivery/pick-up. Please provide Operations with the following information for the equipment log:

For the delivery of equipment:

- Expected day of delivery;
- Vendor name and description of the equipment;
- Person to be contacted when the equipment arrives For the pick-up of equipment;
- Expected day the equipment will be picked up;
- Vendor name and the description and location of the equipment to be picked up;



V. Rules:

Those granted data center access must abide by the following rules:

- Access must not be used to allow any unauthorized person into the data center.
- Individual that has access MUST formally log in and out ALL visitors that are accompanying them into the data center.
- Individuals with access privilege must abide by all policies and procedures as described in the Phoenix Settlement Administrators Data Center Access Policies and Procedures document.
- Violating these rules may result in the revoking of access to the Data Center. The Operations Manager will facilitate the Data Center standards and procedures review process for all prospective data center tenants.

EXHIBIT C



PHOENIX
SETTLEMENT ADMINISTRATORS

CLASS ACTION SETTLEMENT SOLUTIONS
1411 N. Batavia Street, Suite 105, Orange, Ca. 92867 Telephone (800) 523-5773

Phoenix Server, Facility and Maintenance Security Protocols and Review

Phoenix, Settlement Administrators, Inc. Data Security and Server Annual Review

Overview:

As a matter of security enhancement and maintenance, Phoenix, Inc. performs a periodic audit of all data servers integral in maintaining security, systems efficiencies, safety, redundancy, and equipment capacity. The following document details all checks done to ensure proper attention in each area.

Server Room and Facility Security:

Trilogy Key Code Combination Locks (3 Locks in Facility “DC1 / DC2 / LBY1”)

- code changed, quarterly (Yes)
 - internal battery replaced, yearly (Yes)
 - manual override key secured in office safe (Yes)
- (Internal Maintenance, Operations Director Julie Keller)

Axis Security Camera Network (4 Cameras in Facility “Lobby / Outside Server Room / Inside Server Room / Rear & Front Door”)

- change password on main camera server, quarterly (Yes)
 - check each camera video display, daily (Yes)
 - check camera server for 45 day retention of video, quarterly (Yes)
 - check cameras for proper motion detection, weekly (Yes)
 - clean outdoor camera lenses, bi-yearly (Yes)
- (External Maintenance, Secure View, Robby Caldwell)

Securitron External Door Locking System (Lock System for Facility “Doors”)

- code changed, bi-yearly (Yes)
 - internal backup battery replaced, yearly (Yes)
 - locking door magnets checked for proper locking (Yes)
- (Internal Maintenance, Production Manager – David Voyer)

Server Room Alarm System

- individual combination for each authorized employee (Yes)
 - codes changes, bi-yearly (Yes)
 - door sensors check, monthly (Yes)
 - motion detector check, quarterly (Yes)
 - audible alarm check, bi-yearly (Yes)
 - backup battery replaced, yearly (Yes)
- (Internal Maintenance, Production Manager –David Voyer)

Data Center Log

- cross reference visitor log entry with video surveillance, monthly (Yes)
 - cross reference equipment removal forms with video surveillance, monthly (Yes)
- (Internal Maintenance, Operations Director – Julie Keller)

Questions? Please contact us at (800) 523-5773



PHOENIX
SETTLEMENT ADMINISTRATORS

CLASS ACTION SETTLEMENT SOLUTIONS
1411 N. Batavia Street, Suite 105, Orange, Ca. 92867 Telephone (800) 784-2174

Data Center Network Security:

Microtik Edge Router

- quarterly password change
 - firmware upgrade performed as released
- (Internal Maintenance, Senior Engineer – Mill Systems)

Intrusion Detection System

- firmware upgrade performed as released
- (Internal Maintenance, Senior Engineer – Mill Systems)

Policies and Procedures

- staff review, bi-yearly
 - educational review, bi-yearly
 - Terminal and Log-In passwords changed, quarterly
 - Updated Records of Required Password & Log-In required Changes, quarterly
- (Internal Maintenance, VP Operations – Melissa Meade & Michelle Reynolds, Esq)

Server Room Infrastructure Maintenance:

Powerware 80KVA UPS

- preventative maintenance PM check, annual (Yes)
 - monthly battery test (Yes)
 - visual inspection (Yes)
- (Contracted Maintenance)

Kohler 15REOZK 0-100KW Generator Set

- 30 minute operation/inspection every 30 days (Yes)
 - emergency power transfer drill, annual (Yes)
 - fluid check every 30 days (Yes)
 - annual inspection and complete fluid change (Yes)
- (Contracted Maintenance, Tier 4 Generators, Tustin- Ron Aglio)

Building Fire Suppression System

- annual inspection (Yes)
 - control panel visual inspection (Yes)
- (Contracted Maintenance, Jon Rash)

Handheld Halon Bottles in Data Center

- annual inspection and pressure test (Yes)
- (Contracted Maintenance, Hendricks Fire)

HVAC Building Cooling Systems

- inspection of all units, annual (Yes)
- filter replacement, quarterly (Yes)

EXHIBIT D

PHOENIX BUSINESS CONTINUITY POLICY

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1 Purpose - Business Continuity Management

In accordance with industry 'best practices' and to comply with numerous compliance regulations, Phoenix has implemented various Information Security policies and procedures in order to protect the confidentiality, integrity and availability (CIA) of their critical client data, their computing resources, and their business interests. This document provides describes the Business Continuity Management procedures to be performed by the IT staff at Phoenix.

2 Policy Statement

2.1 Business Impact Analysis

Before a Disaster Recovery Plan (DRP) or Business Continuity Plan (BCP) is created, a Business Impact Analysis (BIA) must be performed on each business unit's systems and processes. Guidelines for this can be found in the, "Phoenix's Risk Assessment Planning Guide for Information Technology Systems".

Things to consider:

- A determination the maximum time of not having the service(s) provided by the system that can be tolerated.

An identification of all of the threats to the system such as:

- Program or Data Failure.
- Hardware Failure.
- Electrical Power Failure.
- Fire.
- Natural disasters

2.2 Risk mitigation

Following the BIA, appropriate controls should be considered for implementation in order to decrease the risk to an acceptable level.

The business process owner should discuss all risk mitigation options with Management before the strategy is developed.

2.3 Business continuity strategy

Business process owner and Management should then develop a business continuity strategy consistent with business objectives. Emphasis should be on restoring services within the acceptable time.

- BCP recovery strategies should include input from all relevant business units. This ensures that there is ownership of the BCP strategy by the business units.
- Assess all the risks associated with the strategy you have adopted.
- Business owners must weigh their tolerance for downtime when selecting a recovery strategy.
- Once the strategy is determined, develop the BCP.

2.4 Business Continuity Plan

All COMPANY locations must create high-level BCP's (often non-IT system specific, business recovery). BCP's should include manual processes where possible and should be developed in conjunction with Business Process Owners, not IT personnel. Individuals must be assigned to execute each component of the plan.

2.5 Disaster Recovery Plan

DRP can be included with the BCP and will often involve IT specific recovery. Business Process owners and IT personnel must work together to create the DRP. All IT systems should be considered during the development of the plan. Individuals must be assigned to execute each component of the plan.

For example, the following areas should be included in the plan :

- Data backup – media/content must be sent offsite.
- Documentation backup – all hard copies and soft copies
- Archived data – may include removable and internal media
- Facilities backup – for example: backup generator, UPS.
- Business resumption team training – during disaster
- Critical applications
- Alternate processing procedures – for example manual procedures.

2.6 DR Document

Your DR Plan must include a DR document. This is what you will use during an actual disaster and auditors will require it.

This is how the document should be structured:

Mitigation

- *Identify Recovery Components (the scope of the plan)*
- *Perform an Operational Analysis – to ensure current operational flaws are not replicated in emergency mode so you must review the current strategy*
- *Perform a Disaster Risk Analysis*

Examples to look for are:

- *Electronic security*
- *Viruses*
- *Hardware failure*
- *Fire*
- *Power outages*
- *Physical security*

Preparation Mode

Focus on documenting existing systems, network configurations, hardware, applications and assigned personnel.

This answers the question of WHAT needs to be recovered, WHEN (prioritized), HOW and by WHOM.

- *Document Systems and Applications*
- *Perform a (Risk) Tolerance Analysis*
- *Prioritize Recovery*
- *Create Organizational Chart*
- *Create a Contact List (print and distribute)*
- *Put in place a DR Team*
- *Assign Roles and Responsibilities*
- *Review the Plan*
- *Make necessary policy changes to align with the plan*
- *Test the Plan*
- *Implement the Plan*
- *Perform routine Plan Maintenance*

Response Mode

- *Conduct the appropriate actions in the Event of an Emergency – evaluate the problem before engaging Recovery Mode.*

Recovery Mode

- *Execute the plan*

2.7 Testing

Must be tested at least annually where possible.

2.8 Updating your BCP and DRP

Must review annually and updated if.

Disaster Recovery Plan

Millennium Systems

Last reviewed & tested - 24/07/2018

Introductions

Plan scope

Service RPO and RTO targets

Backup strategy

Testing schedule

Plan review

Revision history

Roles and responsibilities

Internal contacts

External contacts

Incident response

DR procedures

Introduction

This document details the policies and procedures of Phoenix Settlement Administration in the event of a disruption to critical IT services or damage to IT equipment or data. These processes will ensure that those assets are recoverable to the right level and within the right timeframe to deliver a return to normal operations, with minimal impact on the business.

Plan scope

- Local facility
- Data center

Service RPO and RTO targets

IT service	Scenario	RPO	RTO	Priority
Shared Files	Server failure	24 hours	4 hours	High
Email	Server failure	24 hours	8 hours	High
RDS	Server failure	24 hours	8 hours	High
VPN	Router failure	24 hours	8 hours	High

Backup strategy

IT service	Backup location	Backup frequency
Offsite backup	Offsite	Daily
Local Backup	Data Center	Daily

Testing schedule

- The DR plan will be tested in its entirety once every 3 months
- Recovery process for IT service will be tested once every 3 months

Plan review

- The DR plan itself will be formally reviewed once every 3 months and in response to regular testing

Revision history

Version	Date	Revision details
1.0	1/17/2018	
1.1	7/24/2018	Added DR Procedures

Roles and responsibilities

The following individuals are to assume responsibility for restoring IT services when the DR plan is activated:

Internal contacts

Name	Job role	Contact details	DR process owned
Melissa Meade	VP of Operations	(949) 331-0865	None

External contacts

Name	Organisation	Contact details	DR process owned
Millennium Systems	Millennium Systems	(949) 252-8772	Disaster recovery

Incident response

The DR plan is to be activated when one or more of the following criteria are met:

- Loss of data, connectivity, and hardware failure.

The person discovering the incident must notify the following DR stakeholders, who collectively assume responsibility for deciding which - if any - aspects of the DR plan should be implemented, and for establishing communication with employees, management, partners and customers.

- Melissa Meade
- Millennium Systems

DR procedures

Depending on the incident, and on the number and nature of the IT services affected, one or more of the following DR procedures may be activated by the DR team:

DR plan for loss of data

Scenario	Lost data discovered on the server
Possible causes	Data corruption, hardware failure
IT services and data at risk	Shared files
Impact	Lost data

Plan of action	• Identify issue, coordinate initial response (Melissa Meade) • Evaluate damage (Melissa Meade) • Contact Millennium Systems (Melissa Meade) • Establish data recovery targets and timeframes (Millennium Systems) • Recover data from local or offsite backup (Millennium Systems) • Verify restored data (Melissa Meade)
Key contacts	• Melissa Meade (VP of Operation) • Millennium Systems

DR plan for scenario loss of connectivity

Scenario	Connectivity is lost to the servers
Possible causes	Internet connectivity issues or router issues
IT services and data at risk	Shared Files, RDS, Email, VPN
Impact	Lost productivity

Plan of action	• Identify issue, coordinate initial response (Melissa Meade) • Evaluate damage (Melissa Meade) • Contact Millennium Systems (Melissa Meade) • Contact Internet service provider for Internet connectivity issues. (Millennium Systems) • Replace or resolve router issues (Millennium Systems)
Key contacts	• Melissa Meade (VP of Operation) • Millennium Systems

DR plan for scenario hardware failure

Scenario	Hardware has failed
Possible causes	Hardware failure on the servers
IT services and data at risk	Shared Files, RDS, Email
Impact	Lost productivity

Plan of action	• Identify issue, coordinate initial response (Melissa Meade) • Evaluate damage (Melissa Meade) • Contact Millennium Systems (Melissa Meade) • Replace hardware and restore data (Millennium Systems)
Key contacts	• Melissa Meade (VP of Operation) • Millennium Systems

Incident Response Plan

Prepare

In preparing for security incidents several items need to be addressed.

- Incident handling team should include security officers, system analysts and human resources personnel
- End users and analysts should be trained at an appropriate level. Login banner and warning messages should be posted.
- Contact information is included as an appendix to this document and should be available in hard copy for:
 - personnel that might assist in handling an incident
 - key partners who may need to be notified
 - business owners to make key business decisions
 - outside support analysts with security expertise
- Backups should be taken and tested!
- Supplies to assist the team in the event of an incident (sometimes referred to a jump bag)
 - An empty notebook (Thorough documentation should be done throughout an incident to include hand written notes in a fresh notebook.)
 - Boot CDs to analyze hard drives and recover passwords

Identify

Awareness that a security incident has occurred can originate from different sources such as technical people, end users or even clients.

Best practices suggests to declare that an incident has occurred when security officers' sense that an adverse risk to the company exists and then assemble the team and implement the plan. It is also suggested to early on have multiple people involved, to save all key system files or records such as log files and start detailed documentation as soon as possible.

Ultimately business owners need to be involved in many security incidents to decide what are the goals in handling a particular incident, such as immediate business recovery or forensic examination.

Contain

Following basic procedures can contain many incidents. Specific procedures will frequently depend on the nature of the incident, as well as the direction of the business owner. Remember that a compromised machine might not present valid data! Basic steps to consider include:

- Obtain and analyze as much system information as possible including key files and possibly a backup of the compromised machine for later forensic analysis.
- Powering off a machine might lose data and evidence. Preferably disconnecting the LAN cable facilitates containment and forensic activity. (Putting the computer on a separate network with a network analyzer might help analyzing network activity)

- If one machine has been exploited others might be vulnerable. Actions that might need to be taken on a large scale might include:
 - Download security patches from vendors
 - Update antivirus signatures
 - Close firewall ports
 - Disable compromised accounts
 - Run vulnerability analyzers to see where other vulnerable hosts are
 - Change passwords as appropriate

Eradicate

To eradicate the problem specific procedures will frequently depend on the nature of the incident as well as the direction of the business owner. Key considerations include:

- Boot CDs should be used to access data on compromised machines. (Rootkits installed on compromised machines might affect basic system level utilities and discourage use of a compromised host)
- If machines OS has been compromised it needs to be rebuilt using hardened machines on appropriate platforms
- Test any backups prior to restore and monitor for a new incident.
- Document everything.

Recover

The recovery phase's goal is to return safely to production. Once again specific actions might depend on the nature of the incident as well as the direction of the business owner. Key considerations include:

- Retest the system preferably with a variety of end users.
- Consider timing of the return to production.
- Discuss customer notification and their concerns
- Continue to monitor for security incidents

Review

This phase is to allow Phoenix to better handle future security incidents. A final report should be written describing the incident and how it was handled using the Incident reporting form. Suggestions for handling future incidents and reworking this document should be included in this report.

Contact information

1. Personnel that might assist in handling an incident:
Melissa A. Meade
Vice President of Operations
Direct: 949.331.0865
Email: melissa@phoenixclassaction.com
2. Key partners who may need to be notified:
Michael E. Moore
President and Managing Partner
Direct: 949.331.0131
Email: mike@phoenixclassaction.com
3. Business owners to make key business decisions
Michael E. Moore
President and Managing Partner
Direct: 949.331.0131
Email: mike@phoenixclassaction.com
4. Outside support analysts with security expertise
Eric Dee: IT

Additional service provider contacts

PERSONAL COMPUTER SECURITY POLICY

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PURPOSE

This policy defines the information security instructions applicable to all workers who use Phoenix personal computers, including Macintoshes, workstations, portable computers, handheld computers, personal digital assistants, and similar computers dedicated to a single user's activity.

SCOPE

This policy applies to all Phoenix computer systems and facilities, including those managed for Phoenix customers. This policy applies to all employees, partners and third-parties with access to Phoenix information assets.

POLICY

Business Use of Systems

Business Use Only - In general, Phoenix computer and communication systems are intended to be used for business purposes only. Incidental personal use is nonetheless permissible if the use does not consume more than a trivial amount of resources that could otherwise be used for business purposes, does not interfere with worker productivity, does not preempt any business activity, and does not cause distress, legal problems, or morale problems for other workers.

Offensive Content - Offensive material that might cast Phoenix in a bad light, including sexist, racist, violent, or other content, is strictly forbidden from all Phoenix personal computers.

Configuration Control

Approved Software Only - Phoenix has a standard list of permissible software packages that users can run on their personal computers [a link to an intranet-posted personal computer configuration standard could be provided here]. Workers must not install other software packages on personal computers without obtaining advance permission from the Information Systems department. Unapproved software may be removed without advance notice to the involved worker.

Prohibited Software Installation - Workers must not permit automatic software installation routines to be run on Phoenix personal computers unless these routines have been approved by the Information Systems Department.

Changes To Operating System Configurations - Workers must not change operating system configurations, upgrade existing operating systems, or install new operating systems on any Company X-supplied computer hardware.

Changes To Hardware - Computer equipment supplied by Phoenix must not be altered or added to in any way without the prior knowledge of and authorization from the Information Systems department.

Access Control

Access Control Package - All Phoenix personal computers must run an access control package approved by the Information Security department. Typically these packages require a fixed password at the time a personal computer is booted and again after a certain period of no activity.

Unattended Active Sessions - Users must not leave their personal computer, workstation, or terminal unattended without logging out or invoking a password-protected screen saver.

Session Timeout - Users must set the time frame for this period of no activity, at which point the contents of the screen are obscured, to 15 minutes or less. If sensitive information resides on a personal computer, the screen must immediately be protected with this access control package, or the machine turned off, whenever a worker leaves the location where the personal computer is in use.

Choice Of Passwords - The user-chosen passwords employed by access control software packages, and the keys employed by encryption packages, must be at least eight (8) characters in length and conform to the existing Phoenix password construction standards. (Example: These passwords and keys must be difficult to guess. Words in a dictionary, derivatives of user IDs, and common character sequences such as “123456” must not be employed. Personal details such as spouse’s name, license plate, social security number, and birthday must not be used unless accompanied by additional unrelated characters. User-chosen passwords and keys must not be any part of speech including, proper names, geographical locations, common acronyms, and slang.)

Storage Of Passwords - Workers must maintain exclusive control of their personal passwords. They must not share them with others at any time. Passwords must not be stored in readable form in batch files, automatic logon scripts, software macros, terminal function keys, in computers without access controls, or in any other locations where unauthorized persons might discover them.

Viruses

Virus Program Installed - All personal computers must continuously run the current version of virus detection package approved by the Information Security department. The current version of this virus package must be automatically downloaded to each personal computer when the machine is connected to the Phoenix internal network.

External Storage Checking - Externally-supplied CD-ROMs, and other removable storage media must not be used unless they have been checked for viruses.

Eradicating Viruses - Workers must not attempt to eradicate a virus without expert assistance. If workers suspect infection by a virus, they must immediately stop using the involved computer, physically disconnect from all networks, and call the Information Systems department Help Desk.

Information Backup

Archival Copies - All personal computer software that is not standard Phoenix software must be copied prior to its initial usage, and such copies must be stored in a safe and secure location. These master copies, perhaps the media issued by the vendor, must not be used for ordinary business activities, but must be reserved for recovery from virus infections, hard disk crashes, and other computer problems.

License Documentation - Documentation about the licenses for such software must be retained to get technical support, qualify for upgrade discounts, and verify the legal validity of the licenses.

Periodic Backup - All sensitive, valuable, or critical information resident on Phoenix computer systems must be periodically backed up. Such backup processes must be performed at least weekly. Department managers must verify that proper backups are being made on all personal computers used for production business activities.

Manual Backups - Unless automatic backup systems are known to be operational, all end users are responsible for making at least one current backup copy of sensitive, critical, or valuable files stored on local disk. These separate backup copies should be made each time that a significant number of changes are saved.

Backup Storage - User-generated backups must be periodically stored off-site in a physically secure location. Selected files from backups must be periodically restored to demonstrate the effectiveness of every backup process.

Copyright Protection - Making unauthorized copies of licensed and copyrighted software, even if for “evaluation” purposes, is forbidden. Phoenix permits reproduction of copyrighted materials only to the extent legally considered fair use or with the permission of the author or Owner. If workers have any questions about the relevance of copyright laws, they must contact corporate legal counsel. Unless they receive information to the contrary, workers must assume that software and other materials are copyrighted.

Networking and Connectivity

Modems - Modems inside or attached to Phoenix office desktop personal computers are not permitted.

Inbound Internet - Inbound Internet connections to Phoenix personal computers are forbidden unless these connections employ an approved virtual private network (VPN) software package approved by the Information Security department. These VPN systems must employ both user authentication features with at least fixed passwords and data interception prevention features, such as encryption.

Downloading Sensitive Information - Sensitive Phoenix information may be downloaded from a multi-user system to a personal computer only if a clear business need exists, adequate controls to protect the information are currently installed on the involved personal computer, and advance

permission from the information Owner has been obtained. This policy is not intended to cover electronic mail or memos, but does apply to databases, master files, and other information stored on mainframes, minicomputers, servers, and other multi-user machines.

Establishing Networks - Workers must not establish electronic bulletin boards, local area networks, modem connections to existing internal networks, Internet commerce systems, or other multi-user systems for communicating information without the specific approval of the Information Security department.

Automatic Device Synchronization - Systems that automatically exchange data between devices, such as a personal digital assistant and a personal computer, must not be enabled unless the systems have been evaluated and approved by the Information Security department.

Physical Security

Positioning Display Screens - The display screens for all personal computers used to handle sensitive or valuable data must be positioned such that the information cannot be readily viewed through a window, by persons walking in a hallway, or by persons waiting in reception and related areas. Care must also be taken to position keyboards so that unauthorized persons cannot readily see workers enter passwords, encryption keys, and other security-related parameters.

Locking Sensitive Information - When not being used by authorized workers, or when not clearly visible in an area where authorized persons are working, all hardcopy sensitive information must be locked in file cabinets, desks, safes, or other furniture. When not being used, or when not in a clearly visible and attended area, all computer storage media containing sensitive information must be locked in similar enclosures.

Preventing Equipment Theft - All office desktop personal computers except portables must be physically secured to desks with approved devices such as locking wires or plates that bolt the equipment to furniture.

Equipment Identification - All personal computer equipment must be marked with visible identification information that clearly indicates it is Phoenix property. Periodic physical inventories must be completed to track the movement of personal computers and related equipment.

Custodians For Equipment - The primary user of a personal computer is considered a Custodian for the equipment. If the equipment has been damaged, lost, stolen, borrowed, or is otherwise unavailable for normal business activities, a Custodian must promptly inform the involved department manager. With the exception of portable machines, personal computer equipment must not be moved or relocated without the knowledge and approval of the involved department manager.

Use Of Personal Equipment - Workers must not bring their own computers, computer peripherals, or computer software into Phoenix facilities without prior authorization from their department head. Workers must not use their own personal computers for production Phoenix business unless these systems have been evaluated and approved by the Information Security department.

Property Pass - Personal computers, portable computers and related information systems equipment must not leave Phoenix offices unless accompanied by a property pass signed by a department manager.

Environmental Considerations - All personal computers in Phoenix offices must use surge suppressors. Those personal computers running production applications must also have uninterruptible power systems approved by the Information Security department.

Management

Browsing - Workers must not browse through Phoenix computer systems or networks. Steps taken by workers to legitimately locate information needed to perform their job are not considered browsing. Use of the Phoenix intranet is not considered browsing.

Tools To Compromise Systems Security - Unless specifically authorized by the Information Security department, Phoenix workers must not acquire, possess, trade, or use hardware or software tools that could be employed to evaluate or compromise information systems security. Examples of such tools include those that defeat software copy protection, discover secret passwords, identify security vulnerabilities, or decrypt encrypted files.

Reporting Problems - Users must promptly report all information security alerts, warnings, and suspected vulnerabilities to the Information Systems Help Desk. Users must not use Phoenix systems to forward such information to other users, whether the other users are internal or external to Company X.

VIOLATIONS

Any violation of this policy may result in disciplinary action, up to and including termination of employment. Phoenix reserves the right to notify the appropriate law enforcement authorities of any unlawful activity and to cooperate in any investigation of such activity. Phoenix does not consider conduct in violation of this policy to be within an employee's or partner's course and scope of employment, or the direct consequence of the discharge of the employee's or partner's duties. Accordingly, to the extent permitted by law, Phoenix reserves the right not to defend or pay any damages awarded against employees or partners that result from violation of this policy.

Any employee or partner who is requested to undertake an activity which he or she believes is in violation of this policy, must provide a written or verbal complaint to his or her manager, any other manager or the Human Resources Department as soon as possible.

DEFINITIONS

Confidential Information (Sensitive Information) – Any Phoenix information that is not publicly known and includes tangible and intangible information in all forms, such as information that is observed or orally delivered, or is in electronic form, or is written or in other tangible form. Confidential Information may include, but is not limited to, source code, product designs and plans, beta and benchmarking results, patent applications, production methods, product roadmaps, customer lists and information, prospect lists and information, promotional plans, competitive information, names, salaries, skills, positions, pre-public financial results, product costs, and pricing, and employee information and lists including organizational charts. Confidential Information also includes any confidential information received by Phoenix from a third party under a non-disclosure agreement.

Electronic Messaging System – Any device or application that will provide the capability of exchanging digital communication between two or more parties. Examples are electronic messaging, instant messaging, and text messaging.

Information Asset – Any Phoenix data in any form, and the equipment used to manage, process, or store Phoenix data, that is used in the course of executing business. This includes, but is not limited to, corporate, customer, and partner data.

Objectionable Information or Material – Anything that is considered offensive, defamatory, obscene, or harassing, including, but not limited to, sexual images, jokes and comments, racial or gender-specific slurs, comments, images or jokes, or any other comments, jokes, or images that would be expected to offend someone based on their physical or mental disability, age, religion, marital status, sexual orientation, political beliefs, veteran status, national origin, or ancestry, or any other category protected by national or international, federal, regional, provincial, state, or local laws.

Partner – Any non-employee of Phoenix who is contractually bound to provide some form of service to Company X.

Password – An arbitrary string of characters chosen by a user that is used to authenticate the user when he attempts to log on, in order to prevent unauthorized access to his account.

User - Any Phoenix employee or partner who has been authorized to access any Phoenix electronic information resource.

PHOENIX DATA ARCHIVING AND RETENTION POLICY

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1 Purpose

In accordance with industry ‘best practices’ and to comply with numerous compliance regulations, Phoenix has implemented various Information Security policies and procedures in order to protect the confidentiality, integrity and availability (CIA) of their critical client data, their computing resources, and their business interests. This document provides describes the data archiving and retention policies and procedures to be performed by the IT staff at Phoenix.

2 Policy Statement

2.1 General Policy

Any data deemed a “*business record*” shall be archived and retained for a specified period of time. A business record is any print or electronic document created and maintained in the ordinary course of business. However, not every data constitutes a business record that must be kept. Data and any of its attachments should be retained if it documents business activities that have evidentiary or reference value, or it is the sole copy of the information. This includes, for example, job offers, contract negotiations where final pricing is set, or a policy memo. It does not include, for example, in-progress drafts, discussions, or negotiations; received copies of policy memos where an original already exists; or non-business correspondence.

Any data that is required by law to be stored for legal reviews and/or audits will also be archived and retained for as long as the law demands. These messages will also be disposed of in accordance with any regulations governing Phoenix and the industry in which it resides.

2.2 Phoenix Management’s responsibilities

The procedures for archiving and retaining electronic data must be compliant with the local, federal, and industry laws, regulations, and directives governing the country, state or municipality where each Phoenix office is located.

Phoenix Management is responsible for being aware of, listing and describing the local, federal, and industry laws, regulations, and directives that may affect this E-mail Archiving and Retention Policy.

2.3 Phoenix IT's responsibilities

Phoenix IT Department is responsible for implementing and supporting an appropriate data archiving solution and supporting software.

Any and all archived data will be tagged with metadata in order to make data headers, content, attachments, and text fully searchable. In addition, Phoenix IT Department will deploy and maintain software applications that support the archiving and search ability of stored data.

2.4 Data classification

The following is a list of types and categories which should be used to classify data. Any data which would not fall under any of these categories must be assessed by Phoenix Management and Phoenix IT Department to determine its retention guidelines :

2.4.1 Administrative Correspondence

- Phoenix Administrative Correspondence includes clarification of established company policy, including holidays, time card information, dress code, work place behavior and any legal issues such as intellectual property violations. All email with information sent to or from the Phoenix Management Staff shall also be treated as Administrative Correspondence.

2.4.2 Fiscal Correspondence

- Phoenix Fiscal Correspondence is all information related to revenue and expense for Phoenix. It especially includes any financial reporting related correspondence.

2.4.3 General Correspondence

- Phoenix General Correspondence covers information that relates to customer interaction and the operational decisions of the business. The individual employee is responsible for data retention of General Correspondence.

2.4.4 Ephemeral Correspondence

- Phoenix Ephemeral Correspondence is by far the largest category and includes personal email, requests for recommendations or review, email related to product development, updates and status reports.

2.4.5 Customer Sensitive or Confidential Information

- See Data Classification Policy for description.
- Data should be destroyed upon completion of related projects as agreed to with customers.
- Data that changes in classification to public based on its age, should be destroyed according to need for computing, backup, and storage resources.

2.5 Record Retention Schedule

The Phoenix Management is responsible for creating and maintaining a list (called “***Record Retention Schedule***”) of all data categories and types created and maintained by Phoenix that qualify as business records or messages that must be archived under the law.

The Phoenix IT Department will assist Phoenix Management in maintaining this schedule.

For each data type, a mandatory retention schedule and method of disposal must be stipulated, in addition to storage locations.

2.6 Policy Suspension

In some instances, this E-Mail Archiving and Retention Policy may be temporarily suspended, specifically if an investigation, litigation, or audit is anticipated. In some instances, this policy’s disposal schedule may conflict with the need to produce data relevant to the aforementioned legal or regulatory procedures. If this is the case, then the need to comply fully with the law and/or regulation will override this policy, causing this policy to be temporarily suspended until the matter in question is satisfactorily resolved. Suspension of this policy will take the form of no data being disposed of whatsoever for a period of time, until lifted.

2.7 Policy Non-Compliance

It is in violation of this policy to dispose of any data types named in the Retention Schedule above.

PHOENIX PERSONNEL SECURITY POLICY

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1 Purpose

In accordance with industry ‘best practices’ and to comply with numerous compliance regulations, Phoenix has prepared various Information Security policies and procedures which are intended to protect the confidentiality, integrity and availability (CIA) of their critical client data and their computing resources. This document describes personal security policy at Phoenix in defining and administering these policy and procedures.

2 Policy Statement

Personnel at all levels are required to contribute to maintaining a high level of information security. As stated in the Corporate Security Policy, *‘security is a business objective where staff members are to be active agents and is an integral part of everybody’s job profile and objectives.’*

This document lays out Phoenix’s Information Security Policies relating to Phoenix’s employees, and other users of Phoenix’s information systems. It includes security in job definitions, user training, and responding to security incidents and malfunctions.

2.1 Security In Job Definitions

2.1.1 Including Security In Job Responsibilities

- 2.1.1.1 All job roles and responsibilities must be documented and should include general as well as specific responsibilities for implementing or maintaining security within Phoenix.
- 2.1.1.2 All employees of Phoenix must understand their job roles and responsibilities.

2.1.2 Personnel Screening

- 2.1.2.1 Periodic background checks should be performed on all personnel who work in sensitive or critical job roles.
- 2.1.2.2 All supervisory roles are responsible for the performance and conduct of the staff personnel reporting to them. Managers/supervisors are required to monitor performance and conduct of each of their staff. Information owners and business process owners must assess the impact on the security of the information resources to which the staff has access.

2.1.3 Non Disclosure Agreements

- 2.1.3.1 All users of Phoenix’s information assets will be required to accept non-disclosure obligations. Users are required not to disclose company or customer information derived as a result of their access to Phoenix’s information systems to unauthorized parties.
- 2.1.3.2 All users will be required to periodically re-affirm their non-disclosure obligations by signing non-disclosure and/or confidentiality agreements.

2.1.4 Terms And Conditions Of Employment

- 2.1.4.1 Phoenix’s employment policies must contain reference to:
 - The employee’s legal and security related responsibilities,
 - The extent and duration of the responsibilities

- An indication of management action in case the terms of employment are violated.

2.1.4.2 All employees of Phoenix must sign a statement indicating they read and accept the terms of the Acceptable use policy.

2.2 User Training

2.2.1 Information Security Awareness and Training

2.2.1.1 Each employee, with access to sensitive information, must be educated with regards to information security and security awareness. Additionally, those who are involved with technical security responsibilities are required to learn additional security skills that correspond to their specific job role.

2.2.1.2 Details of training and certificates (if any) issued during the training must be documented and maintained in each personnel's profile.

2.3 Responding To Security Incidents And Malfunctions

2.3.1 Reporting Security Incidents, Weaknesses and Malfunctions

2.3.1.1 All Phoenix employees and business partners are responsible for reporting of any security breaches, security weaknesses, or software malfunctioning, to the Phoenix IT department, or the legal department, as quickly as possible using the Incident Report Form, or e-mail, or and direct contact.

2.3.2 Learning From Incidents

2.3.2.1 Phoenix requires that processes be developed to analyze security incidents and identify proactive measures to be undertaken to avoid similar incidents in future.

Phoenix Settlement Administration Office Risk Assessment

Management Unit:	Phoenix Settlement Administration	Location: (Site/ Building/ Room)	
Assessment Date:		Review Date:	
Assessors Name:		Job Title:	
Task: Risk assessment for the activities associated with work in an office environment.			

What are the hazards? (See list of sample hazards)	Who might be harmed? (e.g. Staff, students, visitors)	What are the risks	Are the following control measures in place to eliminate or reduce the risks?	Yes/ No	Corrective actions required	Risk Evaluation			Risk Rating Low, Medium or High
						Consequence (1 – 3)	Likelihood (1 – 3)	Overall risk (C x L)	
Slips, trips and falls		Could suffer injury e.g. sprains and fractures if they trip and fall as a result of: - Obstructions, trailing cables, spillages, worn or raised floor coverings etc on walkways. - Poor office layout and storage arrangements resulting in insufficient circulation space.	- Work areas should be kept clear of obstructions. - Any spillages should be cleaned up immediately. - All areas should be well lit, especially stairs. - Any hazards such as torn carpets, trailing cables, defects to floor coverings, faulty lighting etc. should be reported immediately to the line manager or local person responsible for safety.						
Manual Handling		Could suffer from back pain and work related upper body disorder (WRULD) due to: Using incorrect handling techniques when handling office items (deliveries, boxes, filing etc).	- A risk assessment must be completed for lifting heavy and bulky loads that present a risk of injury e.g. stretching, stooping, twisting). - A trolley should be used to transport boxes of paper or other heavy items. - Using low shelves for storing heavy items and only using						

What are the hazards? (See list of sample hazards)	Who might be harmed? (e.g. Staff, students, visitors)	What are the risks	Are the following control measures in place to eliminate or reduce the risks?	Yes/ No	Corrective actions required	Risk Evaluation			Risk Rating Low, Medium or High
						Consequence (1 – 3)	Likelihood (1 – 3)	Overall risk (C x L)	
		- Poor workstation layout and insufficient working space resulting in poor posture. - Individuals with health conditions, previous back injuries etc affecting ability to safely handle items - New and expectant mothers may be more susceptible to injury.	high shelves for light items only. 4. Training in lifting techniques should be provided for anyone who undertakes lifting of heavy loads.						
Computer workstation use		WRULD could develop as a result of - Inappropriate layout or lack of awareness resulting in poor posture being adopted when using Display Screen Equipment (DSE) - Working for prolonged periods without change of posture or sufficient break.	1. Where desktops, laptops and notebooks are used as a significant part of day-to-day work, a Computer Equipment assessment must be carried out. 2. Work should be planned to include regular breaks from the computer. 3. HSE leaflet "Are you keying safely" may be issued to DSE users.						
Data loss		Removed data in a result of - Accidental deletion - Software and/or hardware failure	1. Proper access rights are set in place to prevent deletion of critical data. 2. Regular local and offsite backups are in place and monitored.						

What are the hazards? (See list of sample hazards)	Who might be harmed? (e.g. Staff, students, visitors)	What are the risks	Are the following control measures in place to eliminate or reduce the risks?	Yes/ No	Corrective actions required	Risk Evaluation			Risk Rating Low, Medium or High
						Consequence (1 – 3)	Likelihood (1 – 3)	Overall risk (C x L)	
			3. Proper training of the staffs on using computers and how data are handled.						
Electrical safety		Could suffer electrical shock or burns if using	1. All portable electrical equipment must be tested for electrical safety at correct intervals and labelled with the date of the test.						
		Damaged portable electrical appliances, their cables, plugs e.g. lamps, fans, photocopier, extension leads, PC etc.	2. Electrical cables and plugs should be regularly visually inspected by the user for damage.						
			3. Any defective equipment should be reported immediately to the responsible person e.g. line manager or local safety coordinator, then suitably labelled and taken out of use until the repair has been carried out.						
			4. Electrical equipment must always be operated in accordance with manufacturers' instructions.						
Fire		Could suffer from smoke inhalation or burns if trapped in office.	1. The storage of empty cardboard boxes should be kept to an absolute minimum.						
		Combustible materials coming into contact with or in close proximity to heat sources.	2. Equipment should be switched off when not in use for long periods.						
			3. All portable electrical equipment must be tested for						

What are the hazards? (See list of sample hazards)	Who might be harmed? (e.g. Staff, students, visitors)	What are the risks	Are the following control measures in place to eliminate or reduce the risks?	Yes/ No	Corrective actions required	Risk Evaluation			Risk Rating Low, Medium or High
						Consequence (1 – 3)	Likelihood (1 – 3)	Overall risk (C x L)	
		- Portable heaters in unsafe condition and/or inappropriately located. - Over accumulation of rubbish. - Over loading of electrical sockets. - Inappropriate action in the event of discovering a fire or hearing the fire alarm.	electrical safety at appropriate intervals. 4. The fire alarm system is installed, maintained and tested. 5. Fire risk assessments for each building should be carried out periodically. 6. Everyone must be acquainted with the Emergency evacuation procedure for their area. 7. Area Fire Officers and depute must be appointed to cover offices and general areas.						
Lone working and Out of Hours work (LOOH)		Staff unable to promptly summon emergency assistance in the event of serious injury, sudden illness or personal threat.	1. LOOH work should be minimised or avoided where feasible. 2. If unavoidable, conduct a generic LOOH Risk Assessment 3. Specific LOOH Risk Assessment may be required in circumstances where any potential risks are increased (e.g. expectant mothers, persons with mobility issues or medical conditions).						
Falling from height		- Falling when retrieving items stored at height - Dropping items onto others when stored at height	1. Chairs or desks must not be used for reaching heights; step stools should be used instead. 2. If a stepladder is used, staff/students should read an appropriate risk assessment						

What are the hazards? (See list of sample hazards)	Who might be harmed? (e.g. Staff, students, visitors)	What are the risks	Are the following control measures in place to eliminate or reduce the risks?	Yes/ No	Corrective actions required	Risk Evaluation			Risk Rating Low, Medium or High
						Consequence (1 – 3)	Likelihood (1 – 3)	Overall risk (C x L)	
			and be shown how to use it safely. 3. To prevent injuries heavy items must not be stored on upper shelves. They should be stored at waist height.						
Working environment		- May feel too hot/cold or suffer other general discomfort - Contact with furniture if insufficient space to move around. - May suffer eyestrain if lighting is insufficient or of the wrong type	1. Is the temperature of the office normally kept within a comfortable range? 2. Is the office adequately ventilated? 3. Is the space provided sufficient to enable free movement around the office, and for carrying out general tasks? 4. Are the lighting levels adequate for the tasks undertaken? 5. Are window blinds fitted where necessary to adjust lighting levels? 6. Are desk lamps provided if additional task lighting is required?						
Inadequate hygiene and welfare facilities		General discomfort or stress.	1. Are toilets supplied with hot/cold water, soap and towels, and deficiencies reported to the cleaning staff? 2. Is an area available for refreshment with drinking water available? 3. Is the 'No smoking' policy implemented?						

What are the hazards? (See list of sample hazards)	Who might be harmed? (e.g. Staff, students, visitors)	What are the risks	Are the following control measures in place to eliminate or reduce the risks?	Yes/ No	Corrective actions required	Risk Evaluation			Risk Rating Low, Medium or High
						Consequence (1 – 3)	Likelihood (1 – 3)	Overall risk (C x L)	
Chemical risks		Generally the risk will be very low within an office environment.	If any hazardous substances e.g. solvents or solvent-based glues are used within the office area then a COSHH risk assessment must be completed and a safe system of work issued to the users.						
Filing Cabinets		• Could topple over if loading is unbalanced. • Cabinet drawers that have been left open could be a trip hazard	1. Filing cabinets should be loaded from the bottom up to maintain stability. 2. Where filing cabinets are of the type that allows more than one drawer to be opened at a time, they must be labelled with a warning of a tipping risk. 3. Drawers should be closed immediately after use.						
Office equipment		Coming into contact with moving, cutting or other dangerous parts, clothing, long hair etc becoming entangled. e.g. shredders, guillotines	1. Equipment used in accordance with manufacturer's instructions 2. Those using the equipment have been made aware of how to use it safely e.g. verbal instruction, signage etc. 3. Equipment periodically checked for safe condition and taken out of use if any damage found.						

What are the hazards? (See list of sample hazards)	Who might be harmed? (e.g. Staff, students, visitors)	What are the risks	Are the following control measures in place to eliminate or reduce the risks?	Yes/ No	Corrective actions required	Risk Evaluation			Risk Rating Low, Medium or High
						Consequence (1 – 3)	Likelihood (1 – 3)	Overall risk (C x L)	
			4. Loose clothing (e.g. ties) and long hair kept away from any moving parts.						
Any other hazards identified?									

1. EXAMPLE HAZARDS THAT MAY BE APPLICABLE TO THE JOB or WORK ACTIVITY					
Working at Height	Noise	Hand tools	Vibration		
Falling objects	Extreme Heat / cold	Confined spaces	Repetitive hand/ arm movement		
Slippery/ uneven/ worn floors	Radiation	Poor housekeeping / cleaning	Machine operation		
Obstructions/ projections	Lighting	Vehicle movement	Electro Magnet		
Manual handling	Compressed air	Fire / explosion	Pressurised systems		
Mechanical Lifting	Substances / materials	Electricity	Other (<i>specify on assessment</i>)		
2. RISK MATRIX		Potential consequence of harm			
Likelihood of harm		1 – Minor Injury (e.g. hazard can cause illness, injury or equipment damage but the results would not be expected to be serious)	2 – Significant Injury (e.g. hazard can result in serious injury and/or illness, over 3 day absence)	3 – Major Injury (e.g. hazard capable of causing death or serious and life threatening injuries)	
	1 – Unlikely (injury rare, though possible)	1 – Low	2 – Low	3 – Medium	
	2 – Possible (injury could occur occasionally)	2 – Low	4 – Medium	6 – High	
	3 – Probable (injury likely to occur, can be expected)	3 – Medium	6 – High	9 – Extreme	

3. RISK EVALUATION

This is calculated by multiplying the likelihood against the consequence e.g. taking a likelihood of 1, which is classified as Unlikely and multiplying this against a Potential Consequence of 2, which is classified as Significant Injury, would give you and overall Risk Rating of 2, which would result in an overall evaluation as a low risk.

1 to 2 = Low risk

Low risks are largely acceptable, monitor periodically to determine situation changes which may affect the risk, or after significant changes

3 to 4 = Medium risk

Medium risks at the upper end of this band should only be tolerated for the short-term and then only whilst further control measures to mitigate the risk are being planned and introduced, within a defined time period. Risks on the lower end should be reduced if practicable.

6 = High risk

High risks activities should cease immediately until further control measures to mitigate the risk are introduced. The continued effectiveness of control measures must be monitored periodically.

9 = Extreme Risk

Work should not be started or continued until the risk has been mitigated. Immediate action is required to reduce exposure. A detailed mitigation plan must be developed, implemented and monitored by senior management to reduce the risk before work is allowed to commence.

PHOENIX'S SERVICE PROVIDER RISK ASSESSMENT

1. **Understand the depth of the relationships your firm has established.**

Understanding of who your outsourced providers are, what services/functions they provide and what level of access they have to your firm's data/systems.

Here is a quick list of possible third parties:

- IT infrastructure/cloud provider/managed security service
- Legal consultant(s)
- Auditing/tax firm/accounting
- Outsource Printing
- Outside contractors: Equipment Repair

2. **Calculate potential risks and vulnerabilities.**

Assessing provider access to data, systems, financials or other proprietary data.

Completing a provider risk assessment for each third-party engagement, provide insight into the level of access each provider has and hence, any potential vulnerabilities that may arise.

3. **Conduct thorough due diligence before the relationship commences.**

Conduct initial vetting, sending requests for proposals, assessment of documentation and gathering as much information as possible.

4. **Continue conducting proper due diligence throughout the course of the relationship.**

Continuously evaluated and monitored to ensure both parties are achieving their end goals and meeting expectations. General monitoring of service provider practices and performance. Engaging with compliance consultants and auditing firms to conduct independent service provider evaluations and assessments.

5. **Employ contingency plans for terminating vendor contracts.**

Review for any contractual loopholes and operational practices that may affect migration plans or your firm's security standing.

Information Classification and Access Control Policy

Dated: 4/27/2022
Reviewed: Annually
Domains: Asset Classification and Control
Communications and Operations Management
Physical and Environmental Security
Information Security Incident Management

POLICY STATEMENT

1. Millennium Systems (MS) Responsibility—All MS employees who come into contact with sensitive *Phoenix Settlement Administration* internal information are expected to familiarize themselves with this data classification policy and to consistently use these same ideas in their daily *Phoenix Settlement Administration* business activities. Sensitive information is either Confidential or Restricted information, and both are defined later in this document. Although this policy provides overall guidance, to achieve consistent information protection, MS employees are expected to apply and extend these concepts to fit the needs of day-to-day operations. This document provides a conceptual model for MS for classifying information based on its sensitivity, and an overview of the required approaches to protect information based on these same sensitivity classifications.

2. Addresses Major Risks - The MS data classification system, as defined in this document, is based on the concept of need to know. This term means that information is not disclosed to any person who does not have a legitimate and demonstrable business need to receive the information. This concept, when combined with the policies defined in this document, will protect *Phoenix Settlement Administration* information from unauthorized disclosure, use, modification, and deletion.

3. Applicable Information - This data classification policy is applicable to all electronic information for which MS is the custodian.

PROCEDURES

1. Access Control

1.1 Need to Know—Each of the policy requirements set forth in this document are based on the concept of need to know. If an MS employee is unclear how the requirements set forth in this policy should be applied to any particular circumstance, he or she must conservatively apply the need to know concept. That is to say that information must be disclosed only to those people who have a legitimate business need for the information.

1.2 System Access Controls—The proper controls shall be in place to authenticate the identity of users and to validate each user's authorization before allowing the user to access information or services on the system. Data used for authentication shall be protected from unauthorized access. Controls shall be in place to ensure that only personnel with the proper authorization and a need to know are granted access to *Phoenix Settlement Administration* systems and their resources. Remote access shall be controlled through identification and authentication mechanisms.

1.3 Access Granting Decisions—Access to *Phoenix Settlement Administration* sensitive information must be provided only after the written authorization of the Data Owner has been obtained. Access requests will be presented to the data owner using the Access Request template. Custodians of the involved information must refer all requests for access to the relevant Owners or their delegates.

Information Classification and Access Control Policy

Special needs for other access privileges will be dealt with on a request-by-request basis. The list of individuals with access to Confidential or Restricted data must be reviewed for accuracy by the

relevant Data Owner in accordance with a system review schedule approved by the VP, Director of Information Services and the AVP, Director of Risk Management.

2. Information Classification

2.1 Owners and Production Information—All electronic information managed by MS must have a designated Owner. Production information is information routinely used to accomplish business objectives. Owners should be at the VP level or above. Owners are responsible for assigning appropriate sensitivity classifications as defined below. Owners do not legally own the information entrusted to their care. They are instead designated members of the *Phoenix Settlement Administration* management team who act as stewards, and who supervise the ways in which certain types of information are used and protected.

2.2 RESTRICTED—This classification applies to the most sensitive business information that is intended for use strictly within *Phoenix Settlement Administration*. Its unauthorized disclosure could seriously and adversely impact *Phoenix Settlement Administration*, its customers, its business partners, and its suppliers.

2.3 CONFIDENTIAL—This classification applies to less-sensitive business information that is intended for use within *Phoenix Settlement Administration*. Its unauthorized disclosure could adversely impact *Phoenix Settlement Administration* or its customers, suppliers, business partners, or employees.

2.4 PUBLIC—This classification applies to information that has been approved by *Phoenix Settlement Administration* management for release to the public. By definition, there is no such thing as unauthorized disclosure of this information and it may be disseminated without potential harm.

2.5 Owners and Access Decisions—Data Owners must make decisions about who will be permitted to gain access to information, and the uses to which this information will be put. MS must take steps to ensure that appropriate controls are utilized in the storage, handling, distribution, and regular usage of electronic information.

3. Object Reuse and Disposal

Storage media containing sensitive (i.e. restricted or confidential) information shall be completely empty before reassigning that medium to a different user or disposing of it when no longer used. Simply deleting the data from the media is not sufficient. A method must be used that completely erases all data. When disposing of media containing data that cannot be completely erased it must be destroyed in a manner approved by the Director of MS Security.

4. Physical Security

4.1 Data Center Access—Access to the data center must be physically restricted in a reasonable and appropriate manner.

Information Classification and Access Control Policy

4.2 Facility Access—All network equipment (routers, switches, etc.) and servers located in the corporate office and in all facilities must be secured when no *Phoenix Settlement Administration* personnel, or authorized contractors, are present. Physically secured is defined as locked in a location that denies access to unauthorized personnel.

4.3 Removal of Access- Access rights will be immediately disabled or removed when the user is terminated or ceases to have a legitimate reason to access *Phoenix Settlement Administration* systems.

4.4 User Verification- A verification of the user's identity must be performed by the Operations Director before granting a new password.

4.5 Annual Review- Existing user accounts and access rights will be reviewed at least annually to detect dormant accounts and accounts with excessive privileges. Examples of accounts with excessive privileges include:

4.5.1. An active account assigned to employees that no longer work for the Institution.

4.5.2. An active account with access rights for which the user's role and responsibilities do not require access.

6.8.3. System administrative rights or permissions (including permissions to change the security settings or performance settings of a system) granted to a user who is not an administrator.

5. Special Considerations for Restricted Information

If Restricted information is going to be stored on a personal computer, portable computer, personal digital assistant, or any other single-user system, the system must conform to data access control safeguards approved by MS and Corporate senior management. When these users are not currently accessing or otherwise actively using the restricted information on such a machine, they must not leave the machine without logging off, invoking a password protected screen saver, or otherwise restricting access to the restricted information.

5.1 Data Encryption Software—*Phoenix Settlement Administration* employees and vendors must not install encryption software to encrypt files or folders without the express written consent of MS Security.

6. Information Transfer

6.1 Transmission Over Networks—If *Phoenix Settlement Administration* Restricted data is to be transmitted over any external communication network, it must be sent only in encrypted form. Such networks include electronic mail systems, the Internet, etc. All such transmissions must use a virtual public network or similar software as approved by the Information Security Team.

6.2 Transfer to Another Computer—Before any Restricted information may be transferred from one computer to another, the person making the transfer must ensure that access controls on the destination computer are commensurate with access controls on the originating computer. If comparable security cannot be provided with the destination system's access controls, then the information must not be transferred.

6.3 Accuracy of data- responsibility belong solely to the transferring entity.

Information Classification and Access Control Policy

7. Software Security

7.1 Secure Storage of object and source code—Object and source code for system software shall be securely stored when not in use by the developer. Developers must not have access to modify program files that actually run in production. Changes made by developers must be implemented into production by Technical Operations. Unless access is routed through an application interface, no developer shall have more than read access to production data. Further, any changes to production applications must follow the change management process.

7.2 Testing—Developers must at least perform unit testing. Final testing must be performed by the Quality Assurance team or the target user population.

7.3 Backups—Sensitive data shall be backed up regularly, and the backup media shall be stored in a secure environment.

8. Key Management

8.1 Protection of Keys—Public and private keys shall be protected against unauthorized modification and substitution.

8.2 Procedures—Procedures shall be in place to ensure proper generation, handling, and disposal of keys as well as the destruction of outdated keying material.

8.3 Safeguarding of Keys—Procedures shall be in place to safeguard all cryptographic material, including certificates. MS Security must be given copies of keys for safekeeping.

9. Phoenix Settlement Administration Employees and Vendors—All above policies apply to all employees of both PSA and any third-party service providers who can access the data provided to PSA.

Phoenix Settlement Administrator

Password Policy

1.0 Overview

Passwords are an important aspect of computer security. They are the front line of protection for user accounts. A poorly chosen password may result in the compromise of Phoenix Settlement Administrator's (PSA) entire network. As such, all PSA employees are responsible for taking the appropriate steps, as outlined below, to select and secure their passwords.

2.0 Purpose

The purpose of this policy is to establish a standard for creation of strong passwords, the protection of those passwords, and the frequency of change.

3.0 Scope

The scope of this policy includes all personnel who have or are responsible for an account (or any form of access that supports or requires a password) on any system that resides at any PSA facility, has access to the PSA network, or stores any non-public PSA information.

4.0 Policy

4.1 General

- All system-level passwords must be changed every 90 days.
- All user-level passwords (e.g., email, web, desktop computer, etc.) must be changed every 90 days
- User accounts that have system-level privileges granted through group memberships must have a unique password from all other accounts held by that user.
- Passwords must not be inserted into email messages or other forms of electronic communication.
- All user-level and system-level passwords must conform to the guidelines described below.

4.2 Guidelines

A. General Password Construction Guidelines

Passwords are used for various purposes at PSA. Some of the more common uses include: user level accounts, web accounts, email accounts, screen saver protection, voicemail password, and local router logins. Everyone should be aware of how to select strong passwords.

Poor, weak passwords have the following characteristics:

- The password contains less than sixteen characters
- The password is a common usage word such as: Names of family, pets, friends, co-workers, fantasy characters, etc.

- Computer terms and names, commands, sites, companies, hardware, software.
- The words "PSA", "Class Action" or any derivation.
- Birthdays and other personal information such as addresses and phone numbers.
- Word or number patterns like aaabbb, qwerty, zyxxvuts, 12321, etc.
- Any of the above spelled backwards.
- Any of the above preceded or followed by a digit (e.g., secret1, 1secret)

Strong passwords have the following characteristics:

- Contain both upper and lower case characters (e.g., a-z, A-Z)
- Have digits and punctuation characters as well as letters e.g., 0-9
.,!@#%\$%^&*()_+|- =\`{}[]:;'<>?,./)
- Are at least sixteen alphanumeric characters long.
- Are not based on personal information, names of family, etc.

Passwords should never be written down or stored on-line. Try to create passwords that can be easily remembered. One way to do this is create a password based on a song title, affirmation, or other phrase.

B. Password Protection Standards

Do not use the same password for PSA accounts as for other non-PSA access (e.g., personal ISP account, option trading, benefits, etc.). Where possible, don't use the same password for various PSA access needs. Do not share PSA passwords with anyone, including administrative assistants or secretaries.

All passwords are to be treated as sensitive, confidential PSA information.

Here is a list of "don't's":

- Don't reveal a password over the phone to ANYONE
- Don't reveal a password in an email message
- Don't reveal a password to your supervisor
- Don't talk about a password in front of others
- Don't hint at the format of a password (e.g., "my family name")
- Don't reveal a password on questionnaires or security forms
- Don't share a password with family members
- Don't reveal a password to co-workers while on vacation

If someone demands a password, refer them to this document or have them call someone in the management.

Do not use the "Remember Password" feature of applications (e.g., Outlook, Internet Explorer, Instant Messenger).

Again, do not write passwords down and store them anywhere in your office. Do not store passwords in a file on ANY computer system without encryption.

Change passwords at least once every 90 days.

If an account or password is suspected to have been compromised, report the incident to the management and change all passwords.

C. Remote Access

Access to the PSA Networks via remote access is controlled using Virtual Private Networking (VPN). VPN can be setup by notifying the management and the Technology Group (Millennium Systems)

D. Passwords at Account Creation

When a request for a username is requested, the management will determine the type and privileges required. The password will be set to be pre-expired so the user will be required to change their password when they first successfully logon to the system. The lifetime of the password will be set according to the guidelines set in section 4.1 of this document.

E. Forgotten Passwords

Users will occasionally forget their password. A characteristic of password files is that passwords cannot be looked up. If a user forgets their password, the password can be changed by Millennium Systems.

5.0 Enforcement

Any employee found to have violated this policy may be subject to disciplinary action, up to and including termination of employment.

Certificate of Data Destruction

Phoenix Settlement Administration.

The requested data is destroyed using the one or more of the following method(s):

Data Destruction Procedure:

- ☐ 1-Pass partial wipe: The data was removed from the server and software was used to overwrite empty section of the storage and indexing locations with zeros (0x00) once and then verified
- ☐ 1-Pass full wipe: Software was used to overwrite all addressable storage hardware and indexing locations with zeros (0x00) once and then verified
- ☐ 3-Pass full wipe: Software was used to overwrite all addressable storage hardware and indexing locations on the drive three times with zeros (0x00), complement (0xFF) and random characters and then verified.
- ☐ Shred: Shredded according to the National Institute of Standards and Technology's (NIST) Special Publication 800-88 Guidelines for Media Sanitization.
- ☐ Crushed: Hard drives were placed inside a specialized machine and a conical punch inside the unit delivered 12,000 pounds of hydraulic force to the drive, causing catastrophic trauma to the hard drive's chassis, destroying its internal platter, and then shredded according to the National Institute of Standards and Technology's (NIST) Special Publication 800-88 Guidelines for Media Sanitization.

Company Name:

Date:

SECURITY AWARENESS TRAINING PROGRAM

Table of Contents

- 1. General**
 - A. Introduction to Computer Security**
 - B. Beware of Scams**
 - C. Protect Information when using the Internet and email**
 - D. Protect Passwords**
 - E. Mobile Devices and Wireless**

- 2. Working with Different Types of Data**
 - A. Categories of Data**
 - B. More About Restricted Data**
 - C. Protecting Restricted Data**
 - D. Report a Security Incident**

- 3. Other Essential Security Measures**
 - A. Install Operating System and Software Updates**
 - B. Don't Download Unknown or Unsolicited Programs or Files**
 - C. Lock your computer screen**
 - D. Physical Security**
 - E. Protect Your Passwords**
 - F. Travel Securely**
 - G. Back Up Important Files**

EXHIBIT E



**PROFESSIONAL LIABILITY POLICY DECLARATIONS
(Claims-Made and Reported Form)**

Landmark American Insurance Company

(A New Hampshire Stock Co.)
(hereinafter called "the Company")

EXECUTIVE OFFICES: 945 East Paces Ferry Road, Suite 1800, Atlanta, GA 30326-1160

Policy Number: LHR848125

RENEWAL OF: LHR845161 00

Named Insured and Mailing Address:

Producer Name:

PHOENIX SETTLEMENT ADMINISTRATORS INC
1411 N. BATAVIA ST, STE 211
ORANGE, CA 92867

Policy Period: From: 1/19/2023 To: 1/19/2024 at 12:01 A.M. Standard Time at the Named Insured address as stated herein.

IN CONSIDERATION OF THE PAYMENT OF THE PREMIUM, IN RELIANCE UPON THE STATEMENTS HEREIN OR ATTACHED HERETO, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, THE COMPANY AGREES WITH THE NAMED INSURED AS FOLLOWS:

1. **NAMED INSURED'S PROFESSIONAL SERVICES:** ADMINISTRATIVE SUPPORT TO LAW FIRMS
2. **LIMITS OF LIABILITY:**
\$ 2,000,000 **Each Claim**
\$ 2,000,000 **Aggregate Limit**
3. **DEDUCTIBLE:** \$ 2,500 **Each Claim**
4. **RETROACTIVE DATE:** 1/19/2021
5. **PREMIUM:** \$ 6,545.00 Not Subject to Audit

Premium:	\$ 6,545.00
CA Stamping fee:	\$ 16.36
CA State tax:	\$ 196.35

6. FORMS AND ENDORSEMENTS ATTACHED AT INCEPTION:

See attached forms list.

THESE DECLARATIONS TOGETHER WITH A SIGNED COPY OF THE NAME INSURED'S APPLICATION FOR THIS POLICY, COVERAGE FORM(S), FORMS AND ENDORSEMENTS, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

NOTICE: THIS IS A CLAIMS-MADE AND REPORTED POLICY. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE AFFORDED BY THE POLICY WITH YOUR INSURANCE AGENT OR BROKER.

March 06, 2023

Date

By:

Authorized Representative

SubIdID#: 261151

BinderID#

Created By: KAR

This insurance is issued pursuant to the California Insurance Code, Sections 1760 through 1780, and is placed in an insurer or insurers not holding a Certificate of Authority from or regulated by the California Insurance Commissioner

RSG 50004 0714

Timothy Eugene Chaix, 0F91995

DECLARATIONS

COMMERCIAL CYBER INSURANCE POLICY

THIS INSURANCE POLICY PROVIDES COVERAGE ON A CLAIMS-MADE AND REPORTED BASIS AND APPLIES ONLY TO CLAIMS FIRST MADE AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY APPLICABLE EXTENDED PERIOD.

DEFENSE EXPENSES, WHERE APPLICABLE, ARE INCLUDED IN THE LIMITS OF INSURANCE, AND PAYMENT THEREOF WILL ERODE, AND MAY EXHAUST THE LIMITS OF INSURANCE.

PLEASE READ YOUR POLICY CAREFULLY.

The words "You" and "Your" refer to the Named Insured shown in the Declarations. The words "We", "Us" and "Our" refer to the Company providing this insurance.

In return for the payment of premium, and subject to all the terms and conditions of this Policy, We agree with You to provide the insurance as stated in this Policy.

Company Name:	Spinnaker Insurance Company, a stock company														
Producer Name:	Cowbell Insurance Agency LLC 6800 Koll Center Pkwy, Suite 250 Pleasanton, CA 94566														
Named Insured:	<i>Phoenix Settlement Administrators</i>														
Policy Number:	<i>FLY-CB-5X9EPA9YD</i>														
Mailing Address:	<i>1411 N Batavia St Ste 105 Orange, CA 92867-3526</i>														
Policy Period:	From: <i>Jan 19, 2023</i> To: <i>Jan 19, 2024</i> 12:01 AM standard time at the Insured's mailing address shown above														
Web Site Address(es):	<i>www.phoenixclassaction.com</i>														
Type Of Business Organization (Check appropriate box):	<table><tr><td>☒</td><td>Private</td><td>☐</td><td>Public</td></tr><tr><td>☐</td><td>Investment Fund</td><td>☐</td><td>Not for Profit</td></tr><tr><td>☐</td><td>Government</td><td></td><td></td></tr></table>			☒	Private	☐	Public	☐	Investment Fund	☐	Not for Profit	☐	Government		
☒	Private	☐	Public												
☐	Investment Fund	☐	Not for Profit												
☐	Government														

This insurance is issued pursuant to the California Insurance Code, Sections 1760 through 1780, and is placed in an insurer or insurers not holding a Certificate of Authority from or regulated by the California Insurance Commissioner

Timothy Eugene Chaix, 0F91995

EXHIBIT F



CASE ASSUMPTIONS

Class Members	90
Opt Out Rate	1%
Opt Outs Received	1
Total Class Claimants	89
Subtotal Admin Only	\$5,750.00

Not-to-Exceed Total \$5,750.00

For 90 Members

Pricing Good for Scope of Estimate Only

March 20, 2023

Case: Marquis v. Accurate Delivery System Opt-Out Admin wLanguage

Phoenix Contact: Jodey Lawrence

Contact Number: 949.566.1455

Email: Jodey@phoenixclassaction.com

Requesting Attorney: Stella K. Park, Esq.

Firm: PARK & ZHENG

Contact Number: 949-679-3372

Email: spark@parkandzheng.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **90** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	2	\$200.00
Programming Database & Setup	\$100.00	2	\$200.00
Toll Free Setup*	\$85.00	1	\$85.00
Call Center & Long Distance	\$2.00	16	\$32.00
NCOA (USPS)	\$48.36	1	\$48.36
Total			\$565.36

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Reporting

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Data Merge & Duplication Scrub	\$0.50	90	\$45.00
Notice Packet & Opt-Out Form	\$1.50	90	\$135.00
Estimated Postage (up to 2 oz.)*	\$0.84	90	\$75.60
Static Website	\$200.00	1	\$200.00
Language Translation	\$750.00	1	\$750.00
Total			\$1,405.60

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



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CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	2	\$110.00
Skip Tracing Undeliverables	\$2.50	23	\$56.25
Remail Notice Packets	\$1.50	20	\$29.25
Estimated Postage	\$0.84	20	\$16.38
Programming Undeliverables	\$50.00	2	\$100.00
Total			\$311.88

Database Programming / Processing Opt-Outs, Deficiencies or Disputes			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$135.00	2	\$270.00
Non Opt-Out Processing	\$200.00	1	\$200.00
Case Associate	\$55.00	2	\$110.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	3	\$30.00
Case Manager	\$85.00	2	\$170.00
Total			\$780.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$125.00	1	\$125.00
Disbursement Review	\$125.00	1	\$125.00
Programming Manager	\$95.00	1	\$95.00
QSF Bank Account & EIN	\$125.00	2	\$250.00
Check Run Setup & Printing	\$125.00	2	\$250.00
Mail Class Checks *	\$1.50	89	\$133.50
Estimated Postage	\$0.64	89	\$56.96
Total			\$1,035.46

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$100.00	2	\$200.00
Remail Undeliverable Checks (Postage Included)	\$1.50	18	\$26.70
Case Associate	\$55.00	1	\$55.00
Reconcile Uncashed Checks	\$85.00	2	\$170.00
Conclusion Reports	\$100.00	2	\$200.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$115.00	2	\$230.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$600.00	1	\$600.00
Total			\$1,651.70
* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.			
Estimate Total:			\$5,750.00



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.