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13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF EL DORADO

16 LEONIDES TREJO, on behalf of himself and all
17 "aggrieved employees" pursuant to Labor Code §
2698 et seq.,

18 Plaintiffs,

19 v.

20 RESCUE ELECTRIC CORPORATION, a
21 California corporation; and DOES 1 through 10,
inclusive,

22 Defendants.
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26
27
28

Case No. 21CV0106

**JOINT STIPULATION FOR CLASS AND
PAGA REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE**

Complaint Filed: 11/4/2021
First Amended Complaint Filed: 8/1/2022

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

This Joint Stipulation of Class and PAGA Representative Action Settlement and Release (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Leonides Trejo (“Plaintiff” or “Class Representative”), as an individual and on behalf of all others similarly situated, and allegedly aggrieved employees, and Defendant Rescue Electric Corporation (“Defendant”).

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means *Leonides Trejo v. Rescue Electric Corporation*, El Dorado County Superior Court of California, Case No. 21CV0106.

2. “Attorneys’ Fees and Costs” means attorneys’ fees approved by the Court for Class Counsel’s litigation and resolution of the Action, and all Court approved costs incurred and to be incurred by Class Counsel in the Action, including but not limited to, costs associated with documenting the Settlement, providing any notices to governmental agencies required as part of the Settlement or Court Order, securing the Court’s approval of the Settlement, administering the Settlement, obtaining entry of a Judgment terminating the Action, and expenses for any experts. Class Counsel will request attorneys’ fees not in excess of Thirty-Five percent (35%) of the Gross Fund, or \$484,750.00. Class Counsel will request costs not in excess of \$15,000.00. Attorneys’ Fees and Costs shall be paid from the Gross Fund.

- 1 3. “Class Counsel” means Gaines & Gaines, APLC.
- 2 4. “Class List” means a complete list of all Class Members that Defendant will diligently
3 and in good faith compile from Defendant’s records and provide to the Settlement Administrator
4 within twenty (20) calendar days after Preliminary Approval of this Settlement. The Class List will
5 be formatted in Microsoft Office Excel and will include each Class Member’s full name, most recent
6 mailing address, social security number, number of workweeks that each Class Member worked during
7 the Class Period and the PAGA Period, and any other relevant information needed to calculate
8 settlement payments.
- 9 5. “Class Member(s)” or “Settlement Class” means all California employees who were
10 employed by Defendant during the Class Period.
- 11 6. “Class Period” means the period from November 4, 2017, through the earlier of the
12 date of Preliminary Approval of the Settlement Agreement or August 11, 2023.
- 13 7. “Class/PAGA Representative Enhancement Payment” means the amount to be paid to
14 Plaintiff in the Action in recognition of his effort and work in prosecuting the Action on behalf of
15 Class Members, and for Plaintiff’s general release of claims. Subject to the Court granting final
16 approval of this Settlement Agreement and subject to the exhaustion of any and all appeals, Plaintiff
17 will request Court approval of a Class/PAGA Representative Enhancement Payment of \$15,000.00.
- 18 8. “Court” means the California Superior Court for the County of El Dorado.
- 19 9. “Defendant” means Rescue Electric Corporation.
- 20 10. “Effective Date” means the latter of (1) last date after the final judgment by which a
21 notice of appeal of the order granting final approval or the final judgment may be timely filed, and
22 none is filed (i.e., 60 days after the date of entry of the order granting final approval); or (2) if a notice
23 of appeal from the order granting final approval or the final judgment is filed, the date on which the
24 Superior Court’s order granting final approval or final judgment is finally affirmed or upheld without
25 any further right of appeal by any party or third party and following the expiration of any such period
26 for such further appeal that may be available. The Effective Date is a condition of performance of the
27 obligations under this Settlement.
- 28 11. “Exempt Employee Subclass” means all exempt California employees who were

1 employed by Defendant during the Class Period.

2 12. "Gross Fund" means the agreed amount of \$1,385,000.00, to be paid by Defendant in
3 full satisfaction of all Released Claims by Non-Exempt Employee Subclass and Released Claims by
4 Exempt Employees Subclass arising from the Action, which includes all Individual Settlement
5 Payments to Class Members, Attorneys' Fees and Costs to Class Counsel, the Class/PAGA
6 Representative Enhancement Payment to Plaintiff, the Labor and Workforce Development Agency
7 ("LWDA") Payment, and Settlement Administration Costs to the Settlement Administrator. This
8 Gross Fund has been agreed to by Plaintiff and Defendant based on the aggregation of the agreed-
9 upon settlement value of individual claims in the Action. In no event will Defendant be liable for
10 more than the Gross Fund. The Gross Fund includes employee payroll taxes. Defendant will be
11 separately responsible for any employer payroll taxes required by law, which shall be paid by
12 Defendant in addition to the Gross Fund. There will be no reversion of the Gross Fund to Defendant.

13 13. "Individual Settlement Payment" means each Participating Class Member's respective
14 share of the Net Class Settlement Amount and Net PAGA Settlement Amount.

15 14. "Labor and Workforce Development Agency Payment" means the amount that the
16 Parties have agreed to pay to the LWDA in connection with the Labor Code Private Attorneys General
17 Act of 2004 (Cal. Lab. Code §§ 2698 *et seq.*) ("PAGA") out of the PAGA Settlement Amount. The
18 Parties have agreed that \$50,000.00 of the Gross Fund will constitute the PAGA Settlement Amount
19 and be remitted in consideration for the resolution of Class Members' claims arising under PAGA
20 during the PAGA Period. Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Settlement
21 Amount, or \$37,500.00, will constitute the Labor and Workforce Development Agency Payment and
22 Twenty-Five Percent (25%) of the PAGA Settlement Amount, or \$12,500.00, will constitute the Net
23 PAGA Settlement Amount to be paid to Class Members employed by Defendant during the PAGA
24 Period ("Aggrieved Employees").

25 15. "Net Settlement Amount" means the portion of the Gross Fund remaining after
26 deducting the Attorneys' Fees and Costs, the Class/PAGA Representative Enhancement Payment, the
27 Labor and Workforce Development Agency Payment, and Settlement Administration Costs. There
28 will be no reversion of the Net Settlement Amount to Defendant if any funds cannot be distributed.

1 16. “Net Class Settlement Amount” means the portion of the Net Settlement Amount that
2 will be automatically distributed to Participating Class Members (i.e., Class Members who do not opt-
3 out of the Settlement). There will be no reversion of the Net Class Settlement Amount to Defendant
4 if any funds cannot be distributed.

5 17. “Net PAGA Settlement Amount” refers to the 25% portion of the PAGA Settlement
6 Amount available for distribution to Aggrieved Employees. The Net PAGA Settlement Amount will
7 be automatically distributed to all Aggrieved Employees, even if they opt out of the class portion of
8 the Settlement. There will be no reversion of the Net PAGA Settlement Amount to Defendant if any
9 funds cannot be distributed.

10 18. “Non-Exempt Employee Subclass” means all non-exempt California employees who
11 were employed by Defendant during the Class Period.

12 19. “Notice of Objection” means a Class Member’s valid and timely written objection to
13 the Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the objector’s
14 full name, signature, address, and telephone number, (ii) a written statement of all grounds for the
15 objection accompanied by any legal support for such objection, and (iii) copies of any papers, briefs,
16 or other documents upon which the objection is based, if any documents are a basis of the objection.

17 20. “Notice Packet” or “Class Notice” means the Notice of Class Action Settlement,
18 substantially in the format attached as **Exhibit A**.

19 21. “PAGA Claims” means the claims for the imposition of civil penalties pursuant to the
20 PAGA arising out of alleged violations of the California Labor Code and/or wage orders as outlined
21 in the Released Claims by Aggrieved Employees.

22 22. “PAGA Settlement Amount” means the amount the Parties have agreed to allocate to
23 the resolution of PAGA Claims during the PAGA Period. The Parties have agreed that \$50,000.00 of
24 the Gross Fund will constitute the PAGA Settlement Amount. In the event that the Court requires
25 additional amounts allocated to the resolution of PAGA Claims during the PAGA Period, the Parties
26 have agreed to allocate up to \$100,000.00 of the Gross Fund to constitute the PAGA Settlement
27 Amount.

28 23. “PAGA Settlement Period” or “PAGA Period” means the period of time from August

1 16, 2020, through the earlier of the date of Preliminary Approval of the Settlement Agreement or
2 August 11, 2023.

3 24. “Parties” means Plaintiff and Defendant, collectively.

4 25. “Participating Class Members” means all Class Members who do not submit timely
5 and valid Requests for Exclusion and are thus entitled to a share of the Net Class Settlement Amount.

6 26. “Plaintiff” means Leonides Trejo.

7 27. “Preliminary Approval” means the Court order granting preliminary approval of the
8 Settlement Agreement.

9 28. “Released Class Claims by Non-Exempt Employee Subclass” means all claims, rights,
10 demands, liabilities, and causes of action, arising from or related to unpaid wages, minimum wage,
11 overtime, meal and rest breaks (and related premiums), failure to maintain records, inaccurate wage
12 statements, sick pay, waiting time penalties, expense reimbursements, and unfair business practices
13 related to these claims, as well as any claims that were alleged in the complaints and the LWDA letters
14 or that could have been alleged based on the facts asserted in the complaints (including the Second
15 Amended Complaint and LWDA letters) related to these issues, for all periods of employment in
16 California in a non-exempt position during the Class Period. The claims released include but are not
17 limited to those under Labor Code sections 90.5, 200-204, 210, 218.5, 226, 226.3, 226.7, 233, 246,
18 256, 510, 512, 558, 1174, 1174.5, 1182.12 *et seq.*, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1198.5,
19 1199, and 2802, and the applicable California wage orders, Bus. & Prof. Code sections 17200 *et seq.*

20 29. “Released Class Claims by Exempt Employee Subclass” means all claims, rights,
21 demands, liabilities, and causes of action arising from or related to inaccurate wage statements,
22 expense reimbursements, and unfair business practices related to these claims, as well as any claims
23 that were alleged in the complaints and the LWDA letters or that could have been alleged based on
24 the facts asserted in the complaints (including the Second Amended Complaint and LWDA letters)
25 related to these claims, for all periods of employment in California in an exempt position during the
26 Class Period. The claims released include but are not limited to those under Labor Code sections 226,
27 226.3, and 2802, and Bus. & Prof. Code sections 17200 *et seq.*, and the applicable California wage
28 orders.

1 30. “Released PAGA Claims by Non-Exempt Aggrieved Employees” means all claims for
2 PAGA civil penalties related in any way to unpaid wages, minimum wage, overtime, meal and rest
3 breaks (and related premiums), failure to maintain records, inaccurate wage statements, sick pay,
4 waiting time penalties, and expense reimbursements, as well as any claims that were alleged in the
5 complaints and the LWDA letters or that could have been alleged based on the facts asserted in the
6 complaints (including the Second Amended Complaint and LWDA letters) related to these issues, for
7 all periods of employment in California in a non-exempt position during the PAGA Period.

8 31. “Released PAGA Claims by Exempt Aggrieved Employees” means all claims for
9 PAGA civil penalties related in any way to inaccurate wage statements and expense reimbursements,
10 as well as any claims that were alleged in the complaints and the LWDA letters or that could have
11 been alleged based on the facts asserted in the complaints (including the Second Amended Complaint
12 and LWDA letters) related to these issues, for all periods of employment in California in an exempt
13 position during the PAGA Period.

14 32. “Released Parties” means Defendant and its respective former and present parents,
15 subsidiaries, divisions, and affiliated corporations and entities and each of their respective former and
16 present officers, directors, employees, partners, shareholders, principals, agents, attorneys, insurers,
17 and any other assigns or legal representatives.

18 33. “Request for Exclusion” means a timely letter submitted by a Class Member indicating
19 a request to be excluded from the non-PAGA portion of the Settlement. The Request for Exclusion
20 must: (i) set forth the name, address, telephone number, and last four digits of the social security
21 number of the Class Member requesting exclusion; (ii) be signed by the Class Member; (iii) be
22 returned to the Settlement Administrator; (iv) clearly state that the Class Member does not wish to be
23 included in the Settlement; and (v) be faxed or postmarked on or before the Response Deadline.

24 34. “Response Deadline” means the deadline by which Class Members must postmark or
25 fax to the Settlement Administrator Requests for Exclusion, Notices of Objection or workweek
26 disputes. The Response Deadline will be forty-five (45) calendar days from the initial mailing of the
27 Notice Packet by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a
28 Sunday or State holiday, in which case the Response Deadline will be extended to the next day on

1 which the U.S. Postal Service is open.

2 35. "Second Amended Complaint" means the proposed Second Amended Complaint
3 attached hereto as **Exhibit B**.

4 36. "Settlement Administration Costs" means the costs payable from the Gross Fund to the
5 Settlement Administrator for administering the Settlement, including, but not limited to, printing,
6 distributing, and tracking documents for the Settlement, tax reporting, distributing the Gross Fund,
7 and providing necessary reports and declarations, as requested by the Parties. The Settlement
8 Administration Costs will be paid from the Gross Fund.

9 37. "Settlement Administrator" or "Administrator" means the third-party class action
10 settlement administrator agreed to by the Parties and approved by the Court for the purposes of
11 administering the Settlement. The Parties each represent that they do not have any financial interest
12 in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator
13 that could create a conflict of interest.

14 38. "Workweeks" means the number of weeks that each Class Member worked for
15 Defendant during the Class Period or the PAGA Period. All Class Members will be credited with at
16 least one workweek.

17 **TERMS OF AGREEMENT**

18 Plaintiff, on behalf of himself and the Settlement Class, and Defendant agree as follows:

19 39. Amended Complaint. Plaintiff shall file a Second Amended Complaint to the existing
20 putative class and PAGA representative action amending the first cause of action to include alleged
21 claims for unpaid wages, unpaid minimum wages, and any related damages or penalties to the first
22 cause of action pursuant to Labor Code sections 210, 218.5, 558, 1182.12 *et seq.*, 1194, 1194.2, 1194.3,
23 1197, 1197.1, and 1199. A true and correct copy of the Second Amended Complaint is attached as
24 **Exhibit B**.

25 40. Funding of the Gross Fund. Defendant will issue payment in the amount of the Gross
26 Fund of \$1,385,000.00 to the Settlement Administrator, which will be deposited into a Qualified
27 Settlement Account to be established by the Settlement Administrator. Defendant will pay employer's
28 share of payroll taxes separately. After the Effective Date, the Gross Fund will be used for: (i)

1 Individual Settlement Payments; (ii) the Labor and Workforce Development Agency Payment; (iii)
2 the Class/PAGA Representative Enhancement Payment; (iv) Attorneys' Fees and Costs; and (v)
3 Settlement Administration Costs. Defendant will issue payment in the amount of the Gross Fund
4 within fifteen (15) calendar days of the Effective Date. Defendant shall submit any additional payroll
5 taxes within ten (10) calendar days after Defendant receives the necessary calculations from the
6 Settlement Administrator.

7 41. Attorneys' Fees and Costs. Class Counsel will file a motion for Attorneys' Fees and
8 Costs of not more than Thirty-Five percent (35%) of the Gross Fund (projected to be \$484,750.00),
9 plus the reimbursement of costs and expenses associated with Class Counsel's litigation and settlement
10 of the Action, not to exceed \$15,000.00, both of which will be paid from the Gross Fund. These
11 amounts satisfy all of the claims for attorneys' fees and costs in the Action. A reduction in these
12 amounts by the Court is not grounds to void the Agreement. Defendant agrees not to oppose any
13 application or motion consistent with this paragraph.

14 42. Class/PAGA Representative Enhancement Payment. In exchange for a general and
15 complete release, and in recognition of Plaintiff's effort and work in prosecuting the Action on behalf
16 of Class Members, Defendant agrees not to oppose any application or motion for a Class/PAGA
17 Representative Enhancement Payment of \$15,000.00. A reduction in this amount by the Court is not
18 grounds to void the Settlement. The Class/PAGA Representative Enhancement Payment will be paid
19 from the Gross Fund and will be in addition to any Individual Settlement Payment Plaintiff may be
20 entitled to pursuant to the Settlement. Plaintiff will be solely and legally responsible to pay any and
21 all applicable taxes on the Class/PAGA Representative Enhancement Payment.

22 43. Settlement Administration Costs. The Settlement Administrator will be paid for the
23 reasonable costs of administration of the Settlement and distribution of payments from the Gross Fund,
24 which shall not exceed \$20,000. These costs, which will be paid from the Gross Fund, will include,
25 *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing of 1099 and
26 W-2 IRS Forms, distributing Notice Packets, calculating and distributing the Gross Fund, establishing
27 and maintaining a settlement website in the manner described below and providing necessary reports
28 and declarations.

1 44. PAGA Settlement Amount and Distribution. Subject to Court approval, the Parties
2 agree that the amount of \$50,000.00 from the Gross Fund will be designated for satisfaction of civil
3 penalties arising out of the PAGA Claims during the PAGA Period. Pursuant to PAGA, Seventy-Five
4 Percent (75%), or \$37,500.00, of this sum will be paid to the LWDA and Twenty-Five Percent (25%),
5 or \$12,500.00, will constitute the Net PAGA Settlement Amount and will be paid to Aggrieved
6 Employees (regardless of whether they object to or are excluded from the non-PAGA portion of the
7 Settlement) as part of their Individual Settlement Payment as follows:

8 (a) The Settlement Administrator will calculate the total number of
9 Workweeks worked by each non-exempt Aggrieved Employee during the PAGA Period, the total
10 number of Workweeks worked by each exempt Aggrieved Employee during the PAGA Period, and
11 the aggregate total number of Workweeks worked by all Aggrieved Employees during the PAGA
12 Period.

13 (b) To determine each non-exempt and exempt Aggrieved Employee's
14 share of the Net PAGA Settlement Amount, the Settlement Administrator will use the following
15 formula: The Net PAGA Settlement Amount will be divided by the aggregate total number of
16 Workweeks worked by all non-exempt and exempt Aggrieved Employees during the PAGA Period,
17 resulting in the "PAGA Workweek Value".

18 (c) Each non-exempt and exempt Aggrieved Employee's share of the Net
19 PAGA Settlement Amount will be calculated by multiplying each non-exempt and exempt Aggrieved
20 Employee's total number of Workweeks during the PAGA Period by the PAGA Workweek Value.

21 45. Net Class Settlement Amount. The entire Net Class Settlement Amount will be
22 distributed to Participating Class Members as set forth below. No portion of the Net Class Settlement
23 Amount will revert or be retained by Defendant.

24 46. Net Class Settlement Amount Distribution. The Net Class Settlement Amount of each
25 Participating Class Members' Individual Settlement Payments will be based on the number of
26 Workweeks a Participating Class Member worked during the Class Period. Four (4) percent of the
27 Net Class Settlement Amount will be set aside for the Net *Exempt Employee Subclass* Settlement
28 Amount, with the remainder (96%) going to the Net *Non-Exempt Employee Subclass* Settlement

Amount. Specific calculations of Individual Settlement Payments will be made as follows:

46.1 Non-Exempt Employee Subclass:

(a) The Settlement Administrator will calculate the total number of Workweeks worked by each Participating Non-Exempt Employee Subclass Class Member during the Class Period and the aggregate total number of Workweeks worked by all Participating non-exempt Class Members during the Class Period.

(b) To determine each Participating Non-Exempt Employee Subclass Member's share of the Net *Non-Exempt* Employee Class Settlement Amount, the Settlement Administrator will use the following formula: The Net *Non-Exempt* Employee Subclass Settlement Amount will be divided by the aggregate total number of Workweeks worked by all Participating Non-Exempt Employee Subclass Members during the Class Period, resulting in the "*Non-Exempt* Class Workweek Value".

(c) Each Participating Non-Exempt Employee Subclass Member's share of the Net *Non-Exempt* Employee Subclass Settlement Amount will be calculated by multiplying each individual Participating Non-Exempt Employee Subclass Member's total number of Workweeks during the Class Period by the *Non-Exempt* Class Workweek Value. The Individual Settlement Payment will be reduced by any required deductions for each Participating Non-Exempt Employee Subclass Member as specifically set forth herein, including employee-side tax withholdings or deductions.

46.2 Exempt Employee Subclass:

(a) The Settlement Administrator will calculate the total number of Workweeks worked by each Participating Exempt Employee Subclass Class Member during the Class Period and the aggregate total number of Workweeks worked by all Participating Exempt Employee Subclass Members during the Class Period.

(b) To determine each Participating Exempt Employee Subclass Member's share of the Net *Exempt* Employee Class Settlement Amount, the Settlement Administrator will use the following formula: The Net *Exempt* Employee Subclass Settlement Amount will be divided by the aggregate total number of Workweeks worked by all Participating Exempt Subclass Members

1 during the Class Period, resulting in the “*Exempt Class Workweek Value*”.

2 (c) Each Participating Exempt Employee Subclass Member’s share of the
3 Net *Exempt* Employee Class Settlement Amount will be calculated by multiplying each individual
4 Participating Exempt Employee Subclass Member’s total number of Workweeks during the Class
5 Period by the *Exempt Class Workweek Value*. The Individual Settlement Payment will be reduced by
6 any required deductions for each Participating Exempt Employee Subclass Member as specifically set
7 forth herein, including employee-side tax withholdings or deductions.

8 46.3 The entire Net Class Settlement Amount will be disbursed to Participating Non-
9 Exempt Employee Subclass and Exempt Employee Subclass Members as set forth above.

10 47. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
11 Participating Class Members under this Settlement, as well as any other payments made pursuant to
12 this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to
13 which any Class Members may be eligible. It is the Parties’ intention that this Settlement will not
14 affect any rights, contributions, or amounts to which any Class Members may be entitled under any
15 benefit plans.

16 48. Administration Process. The Parties agree to cooperate in the administration of the
17 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred
18 in administration of the Settlement.

19 49. Delivery of the Class List. Within twenty (20) calendar days of Preliminary Approval,
20 Defendant will provide the Class List to the Settlement Administrator.

21 50. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class
22 List from Defendant, the Settlement Administrator will mail a Notice Packet to all Class Members via
23 regular First-Class U.S. Mail, using the most current, known mailing address identified in the Class
24 List as updated by the process in Paragraph 49 below.

25 51. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement
26 Administrator will perform a search based on the National Change of Address Database for
27 information to update and correct for any known or identifiable address changes. Any Notice Packets
28 returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will

1 be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the
2 Settlement Administrator will indicate the date of such re-mailing on the Notice Packet. If no
3 forwarding address is provided, the Settlement Administrator will promptly attempt to determine the
4 correct address using a skip-trace, or other search using the name, address, and/or social security
5 number of the Class Member involved and will then perform a single re-mailing. Those Class
6 Members who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have
7 between the later of (i) an additional fifteen (15) calendar days or (ii) the Response Deadline to submit
8 a Request for Exclusion or an objection to the Settlement.

9 52. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice
10 Packet will provide: (i) information regarding the nature of the Action; (ii) a summary of the
11 Settlement's principal terms; (iii) the Settlement Class definition; (iv) the total number of Workweeks
12 the Class Member worked for Defendant during the Class Period and PAGA Period; (v) each Class
13 Member's estimated Individual Settlement Payment and the formulas for calculating Individual
14 Settlement Payments; (vi) the dates which comprise the Class Period and PAGA Period; (vii)
15 instructions on how to submit Requests for Exclusion, Notices of Objection or Workweek disputes;
16 (viii) the deadlines by which the Class Member must postmark or fax Request for Exclusions, Notices
17 of Objection or Workweek disputes; and (ix) the claims to be released

18 53. Disputed Information on Notice Packets. Class Members will have an opportunity to
19 dispute the Workweek information provided in their Notice Packets. To the extent Class Members
20 dispute their employment dates or the number of Workweeks on record, Class Members may produce
21 evidence to the Settlement Administrator showing that such information is inaccurate. The Settlement
22 Administrator will decide the dispute. Defendant's records will be presumed correct, but the
23 Settlement Administrator will evaluate the evidence submitted by the Class Member and will make
24 the final decision as to the merits of the dispute. All disputes will be decided within five (5) business
25 days of the Response Deadline.

26 54. Defective Submissions. If a Class Member's Request for Exclusion is defective as to
27 the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s).
28 The Settlement Administrator will mail the Class Member a cure letter within three (3) business days

1 of receiving the defective submission to advise the Class Member that his or her submission is
2 defective and that the defect must be cured to render the Request for Exclusion valid. The Class
3 Member will have until the later of (i) Response Deadline or (ii) fifteen (15) calendar days from the
4 date of the cure letter, which ever date is later, to postmark or fax a revised Request for Exclusion. If
5 the revised Request for Exclusion is not postmarked or received within that period, it will be deemed
6 untimely.

7 55. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
8 Class portion of the Settlement Agreement (i.e., to not waive individual claims for relief encompassed
9 by the Released Class Claims by Non-Exempt Employee Subclass and Released Class Claims by
10 Exempt Employees Subclass and not receive a portion of the Net Class Settlement Amount) must sign
11 and facsimile or postmark written Request for Exclusion to the Settlement Administrator within the
12 Response Deadline. In the case of Requests for Exclusion that are mailed to the Settlement
13 Administrator, the postmark date will be the exclusive means to determine whether a Request for
14 Exclusion has been timely submitted. Any Class Member who requests to be excluded from the class
15 settlement will not be entitled to any portion of the Net Class Settlement Amount and will not be bound
16 by the terms of the class settlement or have any right to object, appeal, or comment thereon, although
17 the PAGA settlement and release provisions applicable to the PAGA Period will still apply to each
18 such individual, and each such individual shall be entitled to his or her pro rata share of the Net PAGA
19 Settlement Amount.

20 56. Class Size. The Gross Fund was calculated based on the understanding that as of March
21 31, 2023, there were approximately 1,767 employees with 137,303 workweeks, with a breakdown of
22 1,729 non-exempt employees with 132,407 workweeks and 38 exempt employees with 4,896
23 workweeks. In the event the final class list or total workweeks through the conclusion of the Class
24 Period is more than 10% larger than these numbers combined, at the option of Defendant, the Gross
25 Fund shall increase pro rata with a 10% grace margin (i.e., if the aggregate workweek numbers
26 increase by 12%, the Gross Fund shall increase by 2%), or the date for determining the class
27 membership (“Class Cut-Off”) shall be adjusted as to limit the class size to a maximum of no more
28 than 110% of the estimated combined workweeks or class members identified above.

1 57. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member
2 who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid
3 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released
4 Class Claims by Non-Exempt Employees Subclass, the Released PAGA Claims by Non-Exempt
5 Aggrieved Employees, the Released Class Claims by Exempt Employees Subclass and the Released
6 PAGA Claims by Exempt Aggrieved Employees, as well as any Judgment that may be entered by the
7 Court if it grants final approval to the Settlement.

8 58. Objection Procedures. To object to the Settlement Agreement, a Class Member must
9 fax or postmark a valid Notice of Objection to the Settlement Administrator on or before the Response
10 Deadline. The Notice of Objection must be signed by the Class Member and contain all information
11 required by this Settlement Agreement. At no time will any of the Parties or their counsel seek to
12 solicit or otherwise encourage Class Members to submit written objections to the Settlement
13 Agreement or appeal from the Order and/or Judgment. Class Counsel will not represent Class
14 Members with respect to any such objections to this Settlement. If a Class Member submits both a
15 valid Request for Exclusion and a Notice of Objection, the Notice of Objection shall be void and the
16 Class Member will be deemed to have opted out of membership as a Participating Class Member.

17 59. Certification Reports Regarding Individual Settlement Payment Calculations. The
18 Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly report that
19 certifies the number of Class Members who have submitted valid Requests for Exclusion, objections
20 to the Settlement, and whether any Class Member has submitted a challenge to any information
21 contained in their Notice Packet. Additionally, the Settlement Administrator will provide to counsel
22 for both Parties any updated reports regarding the administration of the Settlement Agreement as
23 needed or requested.

24 60. Distribution Timing of Settlement Payments. Within twenty (20) calendar days of the
25 Effective Date, the Settlement Administrator will issue payments to: (i) Individual Settlement
26 Payments from the Net Class Settlement Amount to Participating Class Members, (ii) the Labor and
27 Workforce Development Agency, (iii) Individual Settlement Payments from the Net PAGA
28 Settlement Amount to Aggrieved Employees, (iv) Class/PAGA Representative Enhancement Payment

1 to Plaintiff, and (v) Class Counsel. The Settlement Administrator will also issue a payment to itself
2 for Court-approved services performed in connection with the Settlement.

3 61. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payments
4 returned as undeliverable and/or remaining un-cashed for more than one hundred eighty (180) calendar
5 days after issuance will be tendered to Court Appointed Special Advocates for Children of El Dorado
6 County, Child Advocates of El Dorado County | Advocates for abused, neglected and at-risk children
7 (casaeldorado.org).

8 62. Certification of Completion. Upon completion of administration of the Settlement, the
9 Settlement Administrator will provide a written declaration under oath to certify such completion to
10 the Court and counsel for all Parties. The Settlement Administrator will be solely responsible for
11 preparation of the declaration, and the Settlement Administrator's failure to comply with this
12 requirement will not affect the Settlement's validity.

13 63. Treatment of Individual Settlement Payments. All Individual Settlement Payments will
14 be allocated as follows: (i) one-third (1/3) of each class portion of the Individual Settlement Payments
15 will be allocated as wages for which IRS Forms W-2 will be issued and (ii) two-thirds (2/3) will be
16 allocated as non-wages (for interest and penalties) for which IRS Forms 1099-MISC will be issued.
17 Each Aggrieved Employee's PAGA payment will be allocated as non-wages (for alleged interest and
18 penalties) for which IRS Forms 1099-MISC will be issued.

19 64. Administration of Taxes by the Settlement Administrator. The Settlement
20 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, Class Members
21 receiving PAGA payments, and Class Counsel any W-2, 1099, or other tax forms as may be required
22 by law for all amounts paid pursuant to this Settlement. The Settlement Administrator will also be
23 responsible for forwarding all payroll taxes and penalties to the appropriate government authorities.

24 65. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect
25 of the payments called for hereunder, and Plaintiff and Participating Class Members are not relying
26 on any statement, representation, or calculation by Defendant or by the Settlement Administrator in
27 this regard.

28 66. Circular 230 Disclaimer. Each party to this agreement (for purposes of this section, the

1 “acknowledging party” and each party to this agreement other than the acknowledging party, an “other
2 party”) acknowledges and agrees that (1) no provision of this agreement, and no written
3 communication or disclosure between or among the parties or their attorneys and other advisers, is or
4 was intended to be, nor will any such communication or disclosure constitute or be construed or be
5 relied upon as tax advice within the meaning of the United States Treasury Department circular 230
6 (31 CFR part 10, as amended), (2) the acknowledging party (a) has relied exclusively upon his, her,
7 or its own, independent legal and tax counsel for advice (including tax advice) in connection with this
8 agreement, (b) has not entered into this agreement based upon the recommendation of any other party
9 or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication
10 or disclosure by any attorney or advisor to any other party to avoid any tax penalty that may be imposed
11 on the acknowledging party, and (3) no attorney or advisor to any other party has imposed any
12 limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless
13 of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax
14 treatment or tax structure of any transaction, including any transaction contemplated by this
15 agreement.

16 67. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
17 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
18 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause
19 of action or right herein released and discharged.

20 68. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally
21 approve the Settlement as provided herein, or (ii) the Settlement does not become final for any other
22 reason, then this Settlement, and any documents generated to bring it into effect, will be null and void.
23 Any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise
24 be treated as void from the beginning. Furthermore, in the event that 4% or more of the Class Members
25 opt-out of the Settlement, or Class Members who represent more than 4% of the aggregate Workweeks
26 opt-out of the Settlement, then Defendant has in its sole discretion the option to nullify the Settlement
27 which shall thereafter be null and void. The amount of the Gross Fund is deemed a material term and
28 Defendant may revoke the agreement if the Court insists on a change that increases the obligation of

1 Defendant to pay an amount in excess of the Gross Fund. In the event that Defendant exercises its
2 right to nullify the Settlement, Defendant shall be responsible for any and all costs incurred by the
3 Settlement Administrator to date. Changes requested by the Court to the allocation of funds between
4 PAGA and the remaining class claims, or changes in the amount of attorneys' fees and costs or
5 enhancement award to Plaintiff, or changes to the procedures accompanying the administration of the
6 Settlement will not form the basis for any party in the action to revoke this Settlement.

7 69. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
8 request the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval Order
9 for: (i) conditional certification of the Settlement Class for settlement purposes only; (ii) preliminary
10 approval of the proposed Settlement Agreement; (iii) setting a date for a Final Approval/Settlement
11 Fairness Hearing. The Preliminary Approval Order will provide for the Notice Packet to be sent to all
12 Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff
13 will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include
14 the proposed Notice Packet, which will include both the proposed Notice of Class Action Settlement
15 Document, attached as **Exhibit A**. Class Counsel will be responsible for drafting all documents
16 necessary to obtain preliminary approval, but Defendant will have the right to review the drafts prior
17 to filing.

18 70. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
19 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the
20 Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to determine the
21 Final Approval of the Settlement Agreement along with the amounts properly payable for: (i)
22 Attorneys' Fees and Costs; (ii) the Class Representative Enhancement Payment; (iii) Individual
23 Settlement Payments; (iv) the Labor and Workforce Development Agency Payment; and (v) all
24 Settlement Administration Costs. The Final Approval/Settlement Fairness Hearing will not be held
25 earlier than fifteen (15) calendar days after the Response Deadline. Class Counsel will be responsible
26 for drafting all documents necessary to obtain final approval. Class Counsel will also be responsible
27 for drafting the attorneys' fees and costs application to be heard at the final approval hearing, but
28 Defendant's counsel will have the right to review the drafts.

1 71. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
2 Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the Judgment
3 to the Court for its approval. After entry of the Judgment, the Court will have continuing jurisdiction
4 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement;
5 (ii) Settlement administration matters; and (iii) such post-Judgment matters as may be appropriate
6 under court rules or as set forth in this Settlement Agreement.

7 72. Release by Plaintiff. Upon the Effective Date, and subject to Defendant's full payment
8 of the Gross Fund and all employer side payroll taxes due hereunder, in addition to the claims being
9 released by all Participating Class Members and Aggrieved Employees, Plaintiff will release and
10 forever discharge the Released Parties, to the fullest extent permitted by law, of and from any and all
11 claims, known and unknown, asserted and not asserted, which Plaintiff has or may have against the
12 Released Parties as of the date of his execution of this Settlement Agreement, including Plaintiff's
13 individual PAGA claims. To the extent the foregoing release is a release to which Section 1542 of the
14 California Civil Code or similar provisions of other applicable law may apply, Plaintiff expressly waives
15 and all rights and benefits conferred by the provisions of Section 1542 of the California Civil Code or
16 similar provisions of applicable law which are as follows: A general release does not extend to claims
17 that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of
18 executing the release, and that, if known by him or her would have materially affected his or her
19 settlement with the debtor or released party.

20 73. Release by Participating Non-Exempt Employee Subclass Members. Upon the
21 Effective Date, and subject to Defendant's full payment of the Gross Fund and all employer side
22 payroll taxes due hereunder, the Participating Non-Exempt Employee Subclass Members shall release
23 the Released Parties from all Released Class Claims by Non-Exempt Employee Subclass.

24 74. Release by Participating Exempt Employee Subclass Members. Upon the Effective
25 Date, and subject to Defendant's full payment of the Gross Fund and all employer side payroll taxes
26 due hereunder, the Participating Exempt Employee Subclass Members shall release the Released
27 Parties from all Released Class Claims by Exempt Employees Subclass.

28 75. Release by Aggrieved Employees. In light of the binding nature of a PAGA judgment

1 on non-party employees pursuant to *Arias v. Superior Court of San Joaquin County (Dairy)*, 46 Cal.4th
2 969 (2009), and *Cardenas v. McLane Foodservice, Inc.*, 2011 WL 379413 at *3 (C.D. Cal. Jan. 31,
3 2011), subject to the occurrence of the Effective Date and Defendant's full payment of the Gross Fund
4 and all employer side payroll taxes due hereunder, all non-exempt Aggrieved Employees, including
5 those who exclude themselves from the Class, shall release the Released Parties from the Released
6 PAGA Claims by Non-Exempt Aggrieved Employees, and all Exempt Aggrieved Employees,
7 including those who exclude themselves from the Class, shall release the Released Parties from the
8 Released PAGA Claims by Exempt Aggrieved Employees.

9 76. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include
10 the terms set forth in any attached exhibits, which are incorporated by this reference as though fully
11 set forth herein. Any exhibits to this Settlement Agreement are an integral part of the Settlement.

12 77. Entire Agreement. This Settlement Agreement and any attached exhibits constitute the
13 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
14 may be deemed binding on the Parties, and no Party is relying on any representation not contained in
15 agreement.

16 78. Amendment or Modification. No amendment, change, or modification to this
17 Settlement Agreement will be valid unless in writing and signed, either by the Parties or their counsel.

18 79. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
19 represent they are expressly authorized by Parties whom they represent to negotiate this Settlement
20 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
21 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
22 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with
23 each other and use their best efforts to effect the implementation of the Settlement. If the Parties are
24 unable to reach agreement on the form or content of any document needed to implement the
25 Settlement, or any supplemental provisions that may become necessary to effectuate the terms of this
26 Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

27 80. Binding on Successors and Assigns. This Settlement Agreement will be binding upon
28 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

1 81. California Law Governs. All substantive terms of this Settlement Agreement and
2 exhibits hereto will be governed by and interpreted according to the laws of the State of California,
3 except to the extent Federal law applies.

4 82. Execution and Counterparts. This Settlement Agreement is subject only to the
5 execution of all Parties. However, the Settlement Agreement may be executed in one or more
6 counterparts. All executed counterparts and each of them , including electronic (e.g., DocuSign),
7 facsimile, and scanned copies of the signature page, will be deemed to be one and the same instrument.

8 83. Acknowledgement the Settlement Is Fair and Reasonable. The Parties believe this
9 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at
10 this Settlement after arm's length negotiations with the assistance of an experience wage/hour
11 mediator and in the context of adversarial litigation, taking into account all relevant factors, present
12 and potential. The Parties further acknowledge that they are each represented by competent counsel
13 and that they have had an opportunity to consult with their counsel regarding the fairness and
14 reasonableness of this Settlement.

15 84. Invalidity of Any Provision. Before declaring any provision of this Settlement
16 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
17 possible consistent with applicable precedents so as to define all provisions of this Settlement
18 Agreement as valid and enforceable.

19 85. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
20 certification for purposes of this Settlement only; except, however, that Plaintiff or Class Counsel may
21 appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court,
22 and either party may file an appeal or cross-appeal as to any court order that materially alters the
23 Settlement Agreement's terms.

24 86. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate
25 to class action certification for purposes of the Settlement only. If, for any reason, the Settlement is
26 not approved, the stipulation to certification will be void. The Parties further agree that certification
27 for purposes of the Settlement is not an admission that class action certification is proper under the
28 standards applied to contested certification motions and that this Settlement Agreement will not be

1 admissible in this or any other proceeding as evidence that either (i) a class action should be certified,
2 or (ii) Defendant is liable to Plaintiff or any Class Member or any other person or entity, other than
3 according to the Settlement's terms.

4 87. Non-Admission of Liability. The Parties enter into this Settlement to resolve the
5 dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation.
6 In entering into this Settlement, Defendant does not admit, and specifically denies, that Defendant
7 violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant
8 to any statute or any other applicable laws, regulations or legal requirements; breached any contract;
9 violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other
10 unlawful conduct with respect to its employees or anyone else. Neither this Settlement Agreement,
11 nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as
12 an admission or concession by Defendant of any such violations or failures to comply with any
13 applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement, this
14 Settlement Agreement and its terms and provisions will not be offered or received as evidence in any
15 action or proceeding to establish any liability or admission on the part of Defendant or to establish the
16 existence of any condition constituting a violation of, or a non-compliance with, federal, state, local
17 or other applicable law.

18 88. Injunction Against Duplicative Claims. Upon Preliminary Approval of the Settlement
19 Agreement, all Participating Class Members shall be enjoined from filing, joining, or becoming a
20 party, member or representative in any actions, claims, complaints, or proceedings in any state or
21 federal court on an individual, representative, collective or class action basis, or with the California
22 Department of Industrial Relations' Division of Labor Standards Enforcement ("DLSE") or the United
23 States Department of Labor ("DOL"), or from initiating any other proceedings, regarding any of the
24 Released Claims by Non-Exempt Employees Subclass or Released Claims by Exempt Employees
25 Subclass defined herein above any related pending actions, claims, complaints, or proceedings in any
26 state or federal court or with the DLSE or DOL, shall be stayed until the Class Members have had an
27 opportunity to decide to participate, object or file a request for exclusion from this Settlement.

28 89. No Public Comment. Following the filing of the Motion for Preliminary Approval, the

1 Parties understand and agree that there may be media coverage of the Settlement not initiated by
2 Plaintiff or Defendant, directly or indirectly, as a result of the public filings. Notwithstanding the
3 foregoing, Plaintiff, Defendant, and their respective counsel agree that no Party shall issue any press
4 release to the news media, nor shall any Party disclose any information regarding this settlement in
5 their marketing materials or firm websites, nor shall any Party communicate in any way with news
6 media concerning the settlement of the Class Action. This provision shall not apply to or limit the
7 public filing of motions or other case materials in the Class Action or to the LWDA related to seeking
8 and obtaining Court approval of the proposed Settlement Agreement, the fees and costs of Class
9 Counsel, the Class/PAGA Representative Enhancement Payment to the Class Representative, and the
10 other relief set forth in this Settlement Agreement. This provision shall not prohibit Class Counsel
11 from listing this Action by name in support of motions for appointments as class counsel, certification,
12 attorneys' fees and costs, or the like.

13 90. Encouragement of Class Members. The Parties to this Agreement and the counsel
14 representing such Parties shall not, directly or indirectly, through any person, encourage or solicit any
15 Class Member to exclude himself or herself from this Settlement (opt out) or to object to it. However,
16 Class Counsel and Defendant may respond to inquiries from Class Members. Class Counsel and
17 Defendant's counsel represent, through their signatures below, that they have not taken any action
18 prior to signing this Agreement that would encourage any Class Member to exclude himself or herself
19 from this Settlement, or to object to it. Class Counsel represents and warrants that at the time of
20 signing this Agreement, it has no clients or prospective clients who are potential plaintiffs with
21 potential or actual causes of action against Defendant.

22 91. Waiver. No waiver of any condition or covenant contained in this Settlement
23 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to
24 imply or constitute a further waiver by such Party of the same or any other condition, covenant, right
25 or remedy.

26 92. Enforcement of Actions. In the event that one or more of the Parties institutes any legal
27 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
28 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be

1 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs,
2 including expert witness fees incurred in connection with any enforcement actions.

3 93. Mutual Preparation. The Parties have had an opportunity to negotiate the terms and
4 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
5 construed more strictly against one party than another merely by virtue of the fact that it may have
6 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
7 negotiations between the Parties, all Parties have contributed to the preparation of this Settlement
8 Agreement.

9 94. Representation by Counsel. The Parties acknowledge that they have been represented
10 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
11 that this Settlement Agreement has been executed with the consent and advice of counsel. Further,
12 Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

13 95. All Terms Subject to Final Court Approval. All amounts and procedures described in
14 this Settlement Agreement will be subject to final Court approval.

15 96. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
16 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
17 Settlement Agreement.

18 97. Binding Agreement. The Parties warrant that they understand and have full authority
19 to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully
20 enforceable and binding on all parties and agree that it will be admissible and subject to disclosure in
21 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
22 might apply under federal or state law.

23 ***[ADDITIONAL SIGNATURES ON NEXT PAGE]***

24 Dated: _____

Leonides Trejo
Plaintiff/Class Representative

25
26
27 Dated: July 10, 2023
28 _____



By: Michael Pauline
Defendant Rescue Electric Corporation

1
2 **APPROVED AS TO FORM**

3 **GAINES & GAINES, APLC**

4 Dated: _____

5 _____
Daniel F. Gaines
Attorneys for Plaintiff

7 **LITTLER MENDELSON, P.C.**

8 Dated: July 10, 2023
9 _____

10 _____
Chad D. Greeson
Daniel XuLi
Attorneys for Defendant

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entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

93. Mutual Preparation. The Parties have had an opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

94. Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

95. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement will be subject to final Court approval.

96. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

97. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that might apply under federal or state law.

[ADDITIONAL SIGNATURES ON NEXT PAGE]

Dated: 07 / 05 / 2023

Leonides M Trejo

Leonides Trejo
Plaintiff/Class Representative

Dated: _____

By: Michael Pauline
Defendant Rescue Electric Corporation

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APPROVED AS TO FORM

GAINES & GAINES, APLC



Daniel F. Gaines
Attorneys for Plaintiff

Dated: July 5, 2023

LITTLER MENDELSON, P.C.

Chad D. Greeson
Daniel XuLi
Attorneys for Defendant

Dated: _____

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EXHIBIT A

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

Leonides Trejo v. Rescue Electric Corporation

Superior Court of the State of California, County of El Dorado, Case No. 21CV0106

To: All current and former California employees who were employed by Rescue Electric Corporation (“Rescue”) in California at any time between November 4, 2017, and _____, 2023 (*administrator to fill in the earlier of August 11, 2023, or PA Date) (the “Class”):

THIS NOTICE is of a proposed settlement of the above-referenced class action and representative action lawsuit (the “Lawsuit”), and a court hearing that you may attend. Your rights may be affected by the legal proceedings in this Lawsuit. The Court will conduct a hearing on _____, 2023, to address whether the proposed settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement (“Settlement”).

[IDENTIFYING INFORMATION]

You have been identified as a Class Member and possible Aggrieved Employee in the above Lawsuit. Under the terms of the proposed settlement, you are estimated to receive \$**INSERT AMOUNT** based on the number of eligible weeks that you worked for Rescue in California between November 4, 2017 and _____, 2023 (*administrator to fill in the earlier of August 11, 2023, or PA Date) (the “Class Period”) as your share of the Settlement should the Court approve the Settlement. Please note your actual share of the Settlement may be more or less than this estimate. Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you want to receive your full settlement payment, no further action is required. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. By accepting your full settlement payment, you will be bound by the terms of the Settlement and will give up your right to sue on the released class and PAGA claims described in Section IV under the provisions titled “Release of Class Claims” and “Release of PAGA Claims.”
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by _____, 2023 (see Section V(B) for more details on how to opt-out). If you opt-out of the settlement of the Class Claims, you will no longer be a Class Member, and you will (1) neither receive any settlement payment for the Class Claims nor release any Class Claims as set forth in Section IV, and (2) be barred from filing an objection to the Settlement. You still will receive a payment as part of the civil penalties paid pursuant to the California Private Attorneys General Act of 2004 (“PAGA”) and will release your claims for such civil penalties.
OBJECT	If you decide to object to the Settlement with respect to the Class Claims, you must submit an objection by _____, 2023 (see Section V(C) for more details on how to object).

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Trejo v. Rescue Electric Corporation*, El Dorado County Superior Court Case No. 21CV0106 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

Rescue’s records show that you were an employee in California at some point between November 4, 2017, and _____, 2023 (*administrator to fill in the earlier of August 11, 2023, or PA Date). The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by Rescue as an employee in California at any time during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On November 4, 2021, Plaintiff and Class Representative Leonides Trejo (“Plaintiff”), through his attorneys (“Class Counsel”), filed a PAGA representative action against Rescue for alleged wage-and-hour violations. Plaintiff later filed an amended complaint alleging similar wage-and-hour violations on a class action basis on behalf of all current and former employees employed by Rescue in California at any time since November 4, 2017. The Lawsuit alleges that Rescue violated various Labor Code sections by failing to pay all required minimum and overtime wages, failing to pay sick pay, failing to provide meal periods and rest breaks (or pay related premiums), failing to maintain records, failing to timely pay final wages, failing to reimburse business expenses, and failing to provide accurate and complete wage statements during the Class Period. The Lawsuit also sought equitable relief under the Unfair Competition Law. All these claims are called the “Class Claims.” The Lawsuit also sought, on behalf of the California Labor and Workforce Development Agency (“LWDA”), civil penalties pursuant to PAGA as a representative action. The civil penalty claims are called “PAGA Claims” and the relevant period for PAGA claims is August 16, 2020, through [REDACTED], 2023 (*administrator to fill in the earlier of August 11, 2023, or PA Date) (“PAGA Period”).

The Court has not ruled on the merits of Plaintiff’s factual or legal allegations in the Lawsuit. Rescue has denied, and continues to deny, the factual and legal allegations in the Lawsuit and believes that Rescue has and is in compliance with California law or has valid defenses. By settling, Rescue is not admitting liability on any of Plaintiff’s factual legal allegations in the case or that the case can proceed as a class action and/or a representative action.

After considering the risks, expenses, and inconvenience of continued litigation, Rescue and Plaintiff have concluded that it is in their best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. The Settlement was reached following arm’s length mediations with a respected and experienced mediator after the Parties exchanged extensive information. By approving the Settlement and issuing this Notice, the Court is not suggesting which party would win or lose this case if it went to trial.

The Class Representative and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to Rescue, the risk of denial of class certification or representative status, the inherent risk of trial on the merits, and the delays and uncertainties associated with such litigation.

If you are still employed by Rescue, this Settlement will NOT affect your employment. California law strictly prohibits unlawful retaliation. Rescue will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member regardless of whether the Class Member chooses to participate or not in the Settlement. If a Class Member does not participate as to the Class Claims, his/her share of the settlement of the Class Claims will be paid to those who do participate.

III. Who are the attorneys representing The Parties?

Attorneys for Plaintiff and Class Members:	Attorneys for Rescue:
Daniel F. Gaines <i>daniel@gaineslawfirm.com</i> Alex P. Katofsky <i>alex@gaineslawfirm.com</i> Gaines & Gaines, APLC 27200 Agoura Road, Suite 101 Calabasas, CA 91301 Tel: (866) 550-0855	Chad D. Greeson <i>cgreson@littler.com</i> Daniel XuLi <i>dxuli@littler.com</i> Littler Mendelson P.C. 1255 Treat Boulevard, Suite 600 Walnut Creek, CA 94597 Tel: (925) 932-2468

IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all current and former employees employed by Rescue in California at any time from November 4, 2017, through [REDACTED], 2023 (*administrator to fill in the earlier of August 11, 2023, or PA Date) (the “Settlement Class” or “Class Members”) and approved a representative class comprised of all current and former employees employed by Rescue in California at any time from August 16, 2020, through [REDACTED], 2023 (*administrator to fill in the earlier of August 11, 2023, or PA Date) (“Aggrieved Employees”).

Individuals who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, will become “Participating Class Members,” be mailed Settlement checks, and be bound by the Settlement and release certain wage and penalty claims against Rescue.

Without admitting any wrongdoing, Rescue has agreed to pay \$1,385,000 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Gross Settlement Amount:

Settlement Administration Costs. The Court has approved Phoenix Class Action Administration Solutions to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of \$20,000.00 will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

Settlement Administrator
Phoenix Class Action Administration Solutions
Address
Telephone
Fax

Penalties to the California Labor Workforce and Development Agency. The Labor Code Private Attorneys General Act (“PAGA”) authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other Aggrieved Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$50,000 of the Gross Settlement Amount will be allocated to Plaintiff’s PAGA Claims. Of the \$50,000, \$37,500 (75%) will be paid to the LWDA in satisfaction of the claims for civil penalties under PAGA, and the remaining \$12,500 (25%) will be divided between all Aggrieved Employees based on the number of Weeks Worked during the PAGA Period. Aggrieved Employees includes all current and former employees employed by Rescue in California at any time during the PAGA Period. You do not have the right to opt-out or exclude yourself from receiving the civil penalties paid to pursuant to PAGA. Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$12,500 (25%) allocation:

Do you Qualify as an Aggrieved Employee?	Weeks Worked as an Aggrieved Employee	Your Share of PAGA Penalties
YES/NO	INSERT	\$INSERT

Service Payment to Class Representative. Class Counsel will ask the Court to award the Class Representative a Service Payment in the amount of \$15,000 to compensate him for service and extra work provided on behalf of the Class Members and in exchange for a general release of claims. The Class Representative also will receive his individual share of the Settlement as a Class Member.

Attorneys’ Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the 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. Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or costs. Class Counsel will seek fees of thirty-five percent (35%) (\$484,750.00) of the Gross Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$15,000 for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above from the Gross Settlement Amount, the balance will form the “Net Settlement Amount” for distribution to Participating Class Members. The Net Settlement Amount will total approximately \$800,250. Four percent (4%) of the Net Settlement Amount will be allocated for the *Exempt Employee Subclass* and ninety-six percent (96%) of the Net Settlement Amount will be allocated for the *Non-Exempt Employee Subclass*. Individual Settlement Payments to Class Members will be calculated and apportioned from the Net Settlement Amount based on the number of calendar weeks during which a Settlement Class member was employed by Rescue in California and worked at least one shift (the “Weeks Worked”).

Calculations of Individual Settlement Payments to Participating Class Members of the *Exempt Employee Subclass* will be as follows: the Settlement Administrator will divide the 4% of the Net Settlement Amount allocated to the *Exempt Employee Subclass* by the total Weeks Worked by the *Exempt Employee Subclass* to determine a per “Workweek Value”. The Workweek Value will be multiplied by the number of Weeks Worked by each Participating Class Member of the *Exempt*

Employee *Subclass* during the Class Period to determine the “Individual Settlement Payment,” prior to legal deductions/withholdings, for each Participating Class Member of the *Exempt Employee Subclass*. If any Participating Class Member of the *Exempt Employee Subclass* opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members of the *Exempt Employee Subclass* (i.e., those who do not opt-out).

Calculations of Individual Settlement Payments to Participating Class Members of the *Non-Exempt Employee Subclass* will be as follows: the Settlement Administrator will divide the 96% of the Net Settlement Amount allocated to the *Non-Exempt Employee Subclass* by the total Weeks Worked by the *Non-Exempt Employee Subclass* to determine a per “Workweek Value”. The Workweek Value will be multiplied by the number of Weeks Worked by each Participating Class Member of the *Non-Exempt Employee Subclass* during the Class Period to determine the “Individual Settlement Payment,” prior to legal deductions/withholdings, for each Participating Class Member of the *Non-Exempt Employee Subclass*. If any Participating Class Member of the *Non-Exempt Employee Subclass* opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members of the *Non-Exempt Employee Subclass* (i.e., those who do not opt-out).

Review the information below to determine your share as a Class Member:

Weeks Worked as a Class Member During the Class Period	Your Share of the Net Settlement Amount
INSERT	\$INSERT

Disputes to Work Weeks or Pay Periods Credited. For each Settlement Class Member, the Weeks Worked during the Class Period and the Pay Periods Worked during the PAGA Period will be calculated from Rescue’s records. If you disagree with the numbers above, you may submit evidence to the Settlement Administrator on or before [REDACTED], 2023, to establish the number of Weeks Worked you claim to have actually worked for Rescue in California during the relevant periods. **DO NOT SEND ORIGINALS AS DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.** The Parties and Settlement Administrator will evaluate the evidence submitted by the Settlement Class member and discuss in good faith how many Weeks Worked should be credited to the Settlement Class member.

Payments to Class Members. After the Court grants Final Approval of the Settlement and judgment is entered, settlement checks will be mailed to Participating Class Members. For Aggrieved Employees who requested to be excluded from the Class Claims settlement, their settlement checks will only be for their share of PAGA civil penalties for release of their PAGA Claims. Participating Class Members and Aggrieved Employees will have 180 days from the issuance of the last check to cash all of the checks. In the event that any Participating Class Member or Aggrieved Employee fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the Court Appointed Special Advocates for Children of El Dorado County, Child Advocates of El Dorado County (www.casaeldorado.org), or an alternative recipient as approved by the Court.

Allocation and Taxes. One-third (1/3) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining two-thirds (2/3) will be considered and reported as interest and penalties (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, the payments will be reported on IRS Form 1099 as income. Payments for PAGA penalties shall be paid one hundred percent (100%) as penalties for which no taxes shall be withheld and for which payment will be reported on IRS Form 1099. Participating Class Members and Aggrieved Employees are responsible for the proper income tax treatment of the Individual Settlement Payments and their payments for PAGA Claims. The Settlement Administrator, Rescue and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments or payments for PAGA Claims. Participating Class Members and Aggrieved Employees will be solely responsible for the proper income tax treatment and payment of any taxes and penalties assessed on their Individual Settlement Payments or payments for PAGA Claims. Participating Class Members and Aggrieved Employees should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release by Participating Non-Exempt Employee Subclass Members. Upon the Effective Date, and subject to Defendant's full payment of the Gross Fund and all employer side payroll taxes due, the Participating Non-Exempt Employee Subclass Members shall release the Released Parties from all Released Class Claims by Non-Exempt Employee Subclass.

The "Released Class Claims by Non-Exempt Employee Subclass" are all claims, rights, demands, liabilities, and causes of action, arising from or related to unpaid wages, minimum wage, overtime, meal and rest breaks (and related premiums), failure to maintain records, inaccurate wage statements, sick pay, waiting time penalties, expense reimbursements, and unfair business practices related to these claims, as well as any claims that were alleged in the complaints and the LWDA letters or that could have been alleged based on the facts asserted in the complaints (including the Second Amended Complaint and LWDA letters) related to these issues, for all periods of employment in California in a non-exempt position during the Class Period. The claims released include but are not limited to those under Labor Code sections 90.5, 200-204, 210, 218.5, 226, 226.3, 226.7, 233, 246, 256, 510, 512, 558, 1174, 1174.5, 1182.12 et seq., 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1198.5, 1199, and 2802, and the applicable California wage orders, Bus. & Prof. Code sections 17200 et seq.

Release by Participating Exempt Employee Subclass Members. Upon the Effective Date, and subject to Defendant's full payment of the Gross Fund and all employer side payroll taxes due, the Participating Exempt Employee Subclass Members shall release the Released Parties from all Released Class Claims by Exempt Employees Subclass.

The "Released Class Claims by Exempt Employee Subclass" are all claims, rights, demands, liabilities, and causes of action arising from or related to inaccurate wage statements, expense reimbursements, and unfair business practices related to these claims, as well as any claims that were alleged in the complaints and the LWDA letters or that could have been alleged based on the facts asserted in the complaints (including the Second Amended Complaint and LWDA letters) related to these claims, for all periods of employment in California in an exempt position during the Class Period. The claims released include but are not limited to those under Labor Code sections 226, 226.3, and 2802, and Bus. & Prof. Code sections 17200 et seq., and the applicable California wage orders.

Release by Aggrieved Employees. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Superior Court of San Joaquin County (Dairy)*, 46 Cal.4th 969 (2009), and *Cardenas v. McLane Foodservice, Inc.*, 2011 WL 379413 at *3 (C.D. Cal. Jan. 31, 2011), subject to the occurrence of the Effective Date and Defendant's full payment of the Gross Fund and all employer side payroll taxes due hereunder, all non-exempt Aggrieved Employees, including those who exclude themselves from the Class, shall release the Released Parties from the Released PAGA Claims by Non-Exempt Aggrieved Employees, and all Exempt Aggrieved Employees, including those who exclude themselves from the Class, shall release the Released Parties from the Released PAGA Claims by Exempt Aggrieved Employees.

The "Released PAGA Claims by Non-Exempt Aggrieved Employees" are all claims for PAGA civil penalties related in any way to unpaid wages, minimum wage, overtime, meal and rest breaks (and related premiums), failure to maintain records, inaccurate wage statements, sick pay, waiting time penalties, and expense reimbursements, as well as any claims that were alleged in the complaints and the LWDA letters or that could have been alleged based on the facts asserted in the complaints (including the Second Amended Complaint and LWDA letters) related to these issues, for all periods of employment in California in a non-exempt position during the PAGA Period.

The "Released PAGA Claims by Exempt Aggrieved Employees" means all claims for PAGA civil penalties related in any way to inaccurate wage statements and expense reimbursements, as well as any claims that were alleged in the complaints and the LWDA letters or that could have been alleged based on the facts asserted in the complaints (including the Second Amended Complaint and LWDA letters) related to these issues, for all periods of employment in California in an exempt position during the PAGA Period.

The "Released Parties" are Defendant and its respective former and present parents, subsidiaries, divisions, and affiliated corporations and entities and each of their respective former and present officers, directors, employees, partners, shareholders, principals, agents, attorneys, insurers, and any other assigns or legal representatives.

The "Effective Date" is the latter of (1) last date after the final judgment by which a notice of appeal of the order granting final approval or the final judgment may be timely filed, and none is filed (i.e., 60 days after the date of entry of the order granting final approval); or (2) if a notice of appeal from the order granting final approval or the final judgment is filed, the date on which the Superior Court's order granting final approval or final judgment is finally affirmed or upheld without any further right of appeal by any party or third party and following the expiration of any such period for such further appeal that may be available.

Waiver of Labor Code Sections 206.5(e). Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. Section 206.5 of the Labor Code provides in pertinent part as follows:

“No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.”

Conditions of Settlement. This 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.

V. What options do I have?

A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive a Settlement Payment unless you exclude yourself from the settlement by following the exclusion procedure set forth below. If you disagree with the number of Work Weeks credited, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described below.

B. **Exclude Yourself from the Class Claims in the Settlement.** If you do not wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion from the Class Claims in the Class Action Settlement” letter/card postmarked no later than [REDACTED], 2023 with your full name, address, telephone number, last four digits of your social security number, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE RESCUE ELECTRIC LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS ACTION PORTION OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator, [ADDRESS], [FAX] postmarked (or, if sent by fax, transmitted and received) no later than [REDACTED], 2023. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement with respect to the Class Claims, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any money for the Class Claims under this Settlement; and (3) will not be bound by this Settlement, or the Judgment, with respect to the Class Claims. You still will be bound by this Settlement with respect to the release of the PAGA Claims.

C. **Object to Settlement.** You also have the right to object to the terms of the Settlement with respect to the Class Claims if you believe they are unfair or unreasonable. 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 Class Claims portion of the Settlement, you must submit a written objection stating your full name, your address, your telephone number, the last four digits of your social security number, your dates of employment with Rescue, the case name and number, the name and address of your attorney(s) if you are represented, your signature, and each specific reason in support of your objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed or faxed to the Settlement Administrator, [ADDRESS], [FAX] by no later than [REDACTED], 2023. Objections that do not include all required information, or that are not submitted timely, may not be considered by the Court. You need not object to the Settlement if you only dispute the number of Work Weeks credited. To dispute the number of the number of Work Weeks credited, please refer to the directions provided under the provision entitled “Calculation of Individual Settlement Payments to Class Members” in Section IV of this Notice.

If you choose to object to the Class Claims portion of the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2023, at [REDACTED] a.m. in Department 10 of the El Dorado County Superior Court, located at 3321 Cameron Park Drive, Cameron Park, CA 95682. You have the right to appear either 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 [REDACTED], 2023. All objections or other correspondence must state the name and number of the

case. If you wish to appear at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

VI. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by Rescue in California at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and released the class claims in this Lawsuit, described above in Section IV under the provision titled “Release of Class Claims.” All Aggrieved Employees will be deemed to have entered into a release of the PAGA Claims, described above in Section IV under the provision titled “Release by Aggrieved Employees.” If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue, and the releases will not take effect.

VII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, including Class Counsel’s request for attorneys’ fees and reimbursement of documented litigation costs, and the Service Payment to the Class Representative on [REDACTED], 2023 at [REDACTED] a.m. in Department 10 of the El Dorado County Superior Court, located at 3321 Cameron Park Drive, Cameron Park, CA 95682.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

VIII. How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you can access an electronic version of this Notice and other important documents in this Lawsuit, including the Settlement Agreement and operative complaint, by visiting this website: INSERT WEBSITE HERE. You may also contact Class Counsel at the contact information listed in Section III above. Additionally, you may inspect the pleadings, records, and other papers on file in this lawsuit by visiting the Cameron Park Branch for the El Dorado County Superior Court, located at 3321 Cameron Park Drive, Cameron Park, CA 95682. Lastly, you can also access records for this Lawsuit by utilizing the online access for such files provided by El Dorado County Superior Court, located at: <https://public-portal-eldorado.journaltech.com/public-portal/>. To access the case file for this Lawsuit, create a free online account, then log-in, then click on “Case Search,” then type in the case number (21CV0106) where requested, then click “Search.”

IX. Reminder as to time limits

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion from the Class Claims is [REDACTED], 2023. The deadline for submitting an objection to the Settlement Administrator is [REDACTED], 2023.

These deadlines will be strictly enforced. To be considered timely, any Requests for Exclusion and objections to the Settlement must be postmarked or transmitted by fax by the above-stated deadlines. Any Requests for Exclusion and objections to the Settlement that are not postmarked or faxed on or before these deadlines will be deemed untimely and disregarded.

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

EXHIBIT B

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Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Leonides Trejo, on behalf of himself and on behalf of all similarly situated individuals and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF EL DORADO

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

Plaintiffs,

v.

RESCUE ELECTRIC CORPORATION, a
California corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: 21CV0106

Assigned to the Hon. Dylan Sullivan, Dept. 9

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

**1. FAILURE TO PAY ALL MINIMUM
AND OVERTIME WAGES DUE (LABOR
CODE §§ 200, 204, 210, 218.5, 233, 246, 510,
558, 1174, 1174.5, 1182.12 *et seq.*, 1194,
1194.2, 1194.3, 1197, 1197.1, 1198, AND
1199)**

**2. FAILURE TO PROVIDE REST
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE § 226.7; IWC
WAGE ORDER 16-2001)**

**3. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7 AND
512; IWC WAGE ORDER 16-2001)**

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

**5. FAILURE TO REIMBURSE ALL
BUSINESS-RELATED EXPENSES
(LABOR CODE § 2802)**

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**6. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION OF
EMPLOYMENT (LABOR CODE §§ 201-
203 AND 256)**

**7. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200**

**8. PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 200-202, 204, 218.5,
226(a), 226.7, 233, 246, 256, 510, 512, 1174,
1174.5, 1182.12 *et seq.*, 1194, 1194.3, 1197,
1197.1, 1198, 1198.5, 1199 AND 2802 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
210, 226.3, AND 558**

DEMAND FOR JURY TRIAL

Complaint Filed: November 4, 2021

Plaintiff LEONIDES TREJO (“Plaintiff”), individually and on behalf of all similarly situated individuals (the “Class” or “Class Members”), on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), complains of RESCUE ELECTRIC CORPORATION, a California corporation, and/or any subsidiaries or affiliated companies (hereinafter referred to as “Defendants”), as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

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

2. For at least four (4) years prior to the filing of this action, and continuing to the present (the “liability period”), Defendants have had consistent policies of failing to pay Class Members (as defined below) all minimum and overtime wages due; provide legally compliant meal and rest periods or compensation in lieu thereof to Class Members; issue complete and accurate wage statements to Class Members (as defined below); reimburse Class Members for all business-related expenses; and timely pay wages to Class Members at the separation of their employment.

3. Plaintiff, on behalf of himself and the members of the Class, brings this action pursuant to Labor Code §§ 90.5, 200-204, 210, 218.5, 226, 226(a), 226.3, 226.7, 233, 246, 256, 510, 512, 558, 1174, 1174.5, 1182.12 *et seq.*, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1198.5, 1199 and 2802, seeking compensation for all unpaid minimum and overtime wages, unpaid premium meal and rest period wages, unpaid business-related expenses, statutory penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

4. Plaintiff, on behalf of himself and members of the Class and pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages and expense reimbursement due to THE CLASS and Class Members, respectively.

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

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiff and Class Members in El Dorado County, California.

II.

PARTIES

A. Plaintiff

7. Plaintiff LEONIDES TREJO was employed by Defendants from 2015 through July 2021 as a non-exempt employee in El Dorado County, California.

8. During his work with Defendants, Plaintiff was:

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

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B. Defendants

9. Defendant RESCUE ELECTRIC CORPORATION is a California corporation. Defendant RESCUE ELECTRIC CORPORATION employed Plaintiff and Class Members in El Dorado County, California.

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

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

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

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III.

CLASS ACTION ALLEGATIONS

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

THE CLASS

All California employees who were employed by Defendants from
November 4, 2017 and the present.

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

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

A. Numerosity

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

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

B. Commonality

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

- a. Whether Defendants failed to pay all overtime wages due to Plaintiff and Class Members, in violation of Labor Code §§ 200, 204, 210, 218.5, 233, 246, 510, 558, 1174, 1174.5, 1182.12 et seq., 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, and 1199;
- b. Whether Defendants failed to properly provide rest periods or compensation in lieu thereof to Plaintiff and Class Members, in violation of Labor Code § 226.7, and IWC Wage Order 16-2001;
- c. Whether Defendants failed to properly provide meal periods or compensation in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§ 226.7 and 512, and IWC Wage Order 16-2001;
- d. Whether Defendants failed to provide Plaintiff and members of the Class and II with accurately itemized wage statements, in accordance with Labor Code § 226(a) and (e);
- e. Whether Defendants failed to reimburse Plaintiff and members of the Class for all business-related expenses incurred, in violation of Labor Code § 2802;
- f. Whether Defendants failed to timely pay Plaintiff and Class Members all wages due and owing at the separation of their employment, in violation of Labor Code §§ 201-203 and 256; and
- g. Whether Plaintiff and Class Members are entitled to equitable relief pursuant to Business & Professions Code § 17200 et seq.

C. Typicality

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

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1 **D. Adequacy of Representation**

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

5 **E. Superiority of Class Action**

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

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

15 **IV.**

16 **CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**

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

19 **FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES DUE**

20 **(LABOR CODE §§ 200, 204, 210, 218.5, 233, 246, 510, 558, 1174, 1174.5, 1182.12 ET SEQ.,**
21 **1194, 1194.2, 1194.3, 1197, 1197.1, 1198, AND 1199)**

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

24 24. During the liability period, Defendants failed to pay Plaintiff and Class Members the
25 correct rate of pay when they worked overtime hours, in violation of Labor Code §§ 510 and 1194.
26 As a result, Plaintiff and Class Members were not properly compensated for work performed in excess
27 of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a
28 rate of no less than one and one-half times the regular rate of pay and were instead paid straight time

1 wages. Defendants also failed to pay all minimum wages due to Plaintiff and Class Members during
2 the liability period. This violates Labor Code §§ 200, 204, 210, 218.5, 233, 246, 510, 558, 1174,
3 1174.5, 1182.12 et seq., 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, and 1199.

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

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

9 **V.**

10 **SECOND CAUSE OF ACTION**

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

12 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**
13 **(LABOR CODE § 226.7 AND IWC WAGE ORDER 16-2001)**

14 26. Plaintiff incorporates paragraphs 1 through 25 of this Complaint as though fully set
15 forth herein.

16 27. Plaintiff and Class Members are entitled to one hour of pay for each day that
17 Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and
18 IWC Wage Order 16-2001.

19 28. Defendants failed to pay premium wages to Plaintiff and Class Members who were
20 denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 16-2001. Plaintiff and
21 Class Members were routinely not authorized and unable to take an off-duty, 10-minute rest period
22 for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one
23 hour's pay for each missed rest period. When they were provided with a rest break, they were
24 oftentimes late, cut short, or on-duty. This violates Labor Code § 226.7 and IWC Wage Order 16-
25 2001.

26 29. Pursuant to Labor Code § 226.7 and IWC Wage Order 16-2001, Plaintiff seeks the
27 payment of all rest period compensation which he and Class Members are owed for four years
28 preceding the filing of this Action, according to proof.

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

VI.

THIRD CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

**FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF
(LABOR CODE §§ 226.7 AND 512 AND IWC WAGE ORDER 16-2001)**

30. Plaintiff incorporates paragraphs 1 through 29 of this Complaint as though fully set forth herein.

31. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7, 512 and IWC Wage Order 16-2001.

32. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 16-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, and a second meal period when they worked shifts greater than ten hours, but were not paid premium wages of one hour's pay for each missed meal period. When they were provided with a meal break, they were oftentimes late, cut short, or on-duty. This violates Labor Code §§ 226.7 and 512 and IWC Wage Order 16-2001.

33. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 16-2001, Plaintiff seeks the payment of all meal period compensation which he and Class Members are owed for four years preceding the filing of this Action, according to proof.

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

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VII.
FOURTH CAUSE OF ACTION
PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT PROVISIONS
(LABOR CODE § 226(a), (e))

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

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

36. Defendants failed to issue Plaintiff and members of the Class wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Class Members were not paid all wages due, including all overtime wages and premium wages for unauthorized meal and rest periods, as stated above. As such, the wage statements provided by Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked by the employee, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period

1 and the corresponding number of hours worked at each hourly rate by the employee, in violation of
2 Labor Code § 226(a)(9).

3 37. Independent of the above allegations, the wage statements issued to Plaintiff and Class
4 Members also violate Labor Code § 226(a)(8) as they fail to set forth the address of the legal entity
5 that is the employer (an employer address is omitted entirely from the wage statements).

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

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

17 **VIII.**

18 **FIFTH CAUSE OF ACTION**

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

20 **FAILURE TO REIMBURSE ALL BUSINESS-RELATED EXPENSES**

21 **(LABOR CODE § 2802)**

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

24 40. Pursuant to California Labor Code § 2802, Defendants are required to fully reimburse
25 Plaintiff and Class Members for all out-of-pocket expenses incurred by them in the performance of
26 their job duties.

27 41. Plaintiff and Class Members were required to use their personal vehicles while
28 working for Defendants, but were not fully reimbursed by Defendants for these expenses.

42. As a proximate result of the aforementioned violations, Plaintiffs and Class Members have been damaged in an amount according to proof at the time of trial.

43. Pursuant to Labor Code § 2802, Plaintiffs and Class Members are entitled to recover from Defendants the full amount of the expenses they incurred in the performance of their job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

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

IX.

SIXTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203 AND 256)

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

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

46. Defendants paid Plaintiff and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code §§ 203 and 256. Plaintiff and Class Members were not paid all wages due and owing throughout the course of their employment, including all overtime wages and premium wages for missed and denied meal and rest periods, as detailed above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due and owing for the entirety of their employment.

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

48. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiff and Class Members are entitled to up to 30 days' wages as

1 a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of
2 employment.

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

4 **X.**

5 **SEVENTH CAUSE OF ACTION**

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

7 **UNFAIR COMPETITION PURSUANT TO**

8 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

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

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

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

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

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

1 54. Defendants have violated statutes and public policies. Through the conduct alleged
2 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
3 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
4 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
5 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
6 guaranteed to all employees under law.

7 55. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
8 §17200 *et seq.* of the Business & Professions Code.

9 56. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
10 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
11 17200 *et seq.* of the Business & Professions Code.

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

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

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XI.

EIGHTH CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 200-202, 204, 218.5, 226(a), 226.7, 233, 246, 256, 510, 512, 1174, 1174.5,
1182.12 *et seq.*, 1194, 1194.3, 1197, 1197.1, 1198, 1198.5, 1199 AND 2802 AND PURSUANT
TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 210, 226.3, AND
558**

59. Plaintiff incorporates paragraphs 1 through 58 of this Complaint as though fully set forth herein.

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

61. Furthermore, and independent of the above allegations, Defendants failed to make the contents of Plaintiff's personnel records available for inspection to Plaintiff or his representative at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date Defendants received a written request, in violation of Labor Code § 1198.5. Plaintiff demanded the production of his employee file, however, Defendants refused to produce it within the time limits required by Labor Code § 1198.5. Accordingly, Plaintiff seeks civil penalties pursuant to PAGA for this violation.

62. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f) for violations of Labor Code §§ 200-202, 204, 218.5, 226(a), 226.7, 233, 246, 256, 510, 512, 1174, 1174.5, 1182.12 *et seq.*, 1194, 1194.3, 1197, 1197.1, 1198, 1198.5, 1199 and 2802, \$100 for the initial violation per employee per pay period and \$200 for each subsequent violation per employee per pay period; and
- b. Pursuant to Labor Code § 2699(a) for violations of Labor Code §§ 226.3 and 558, the penalties as set forth in Labor Code §§ 210, 226.3, and 558.

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

64. On August 16, 2021, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of August 16, 2021. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

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

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§ 226.7 and 512;
2. For penalties pursuant to Labor Code § 226(e) for Plaintiff and members of the Class;
3. For compensatory damages pursuant to Labor Code §§ 200, 204, 210, 218.5, 233, 246, 510, 1174, 1174.5, 1182.12 *et seq.*, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, and 1199 in the amount of all unpaid overtime wages due to Plaintiff and Class Members;
3. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members;
4. For reimbursement of all expenses incurred by Plaintiff and Class Members pursuant to Labor Code § 2802;
5. An award of prejudgment and post-judgment interest;
6. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
7. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;

1 8. An award providing for payment of costs of suit pursuant to Labor Code §§ 226(h),
2 2699(g)(1), 2802, and other applicable law;

3 9. An award of attorneys' fees pursuant to Labor Code §§ 226(h), 2699(g)(1), 2802, and
4 other applicable law; and

5 10. Such other and further relief as this Court may deem just and proper.

6 Dated: June 29, 2023

Respectfully submitted,

7 GAINES & GAINES
8 A Professional Law Corporation

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

13 **DEMAND FOR JURY TRIAL**

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

15 Dated: June 29, 2023

Respectfully submitted,

16 GAINES & GAINES
17 A Professional Law Corporation

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