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Attorneys for Plaintiff CRISTAL BOWMAN
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CRISTAL BOWMAN, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

DELTA DENTAL OF CALIFORNIA, a
California Non-Profit Corporation; and DOES
1-50, inclusive,

Defendants.

CASE NO. RG21108230

[Assigned for all purposes to the Hon. Evelio
Grillo, Dept. 21]

**DECLARATION OF JAMES R. HAWKINS
IN SUPPORT OF PLAINTIFF'S MOTION
FOR APPROVAL OF PAGA SETTLEMENT**

Date: April 11, 2023
Time: 10:00 a.m.
Dept. 21

Complaint Filed: August 9, 2021

RES ID: 342423094653

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I, James R. Hawkins, declare as follows:

1. I am an attorney licensed to practice before all courts in the State of California. I am the founder and principal of James Hawkins APLC, counsel for Plaintiff Cristal Bowman (“Plaintiff”) in the above-captioned action. Unless indicated otherwise, I have personal knowledge of the following facts in this declaration and, if called as a witness, I could and would testify to these facts under oath in court.

2. I submit this Declaration in Support of Plaintiff's Motion for Approval of the PAGA Settlement.

3. The terms of the Settlement are set forth in the Joint Stipulation of Action Settlement and Release Agreement, attached hereto as **Exhibit 1**.

The Bowman Litigation

4. On August 9, 2021, Plaintiff filed her Class Action complaint against Defendant in the Superior Court of California, County of Alameda, Case No.: RG21108230 (the “Class Action”). The Class Action complaint alleged causes of action for: (1) failure to pay wages owed, including minimum and overtime wages; (2) failure to provide lawful meal periods; (3) failure to authorize and permit rest periods; (4) failure to timely pay wages owed upon separation from employment; (5) failure to reimburse necessary expenses; (6) failure to provide lawful itemized wage statements; and (7) unfair competition. The Class Action was filed on behalf of Plaintiff and a putative class of “all persons who are or were employed by the Defendants as salaried, exempt employees in ‘analyst’ positions or in billing, customer service, or claims, in California within four years prior to the filing of this action through resolution or trial of the matter.” (Complaint, ¶ 49.)

5. That same day, Plaintiff filed her letter with the Labor & Workforce Development Agency (“LWDA”) alleging underlying violations of the California Labor Code as a basis for her PAGA Complaint. Attached hereto as **Exhibit 2** is a true and correct copy of the PAGA letter submitted to the LWDA.

6. On or about October 12, 2022, Defendant answered the Class Action Complaint by generally denying all allegations and asserting numerous affirmative defenses.

1 7. Having received no response from the LWDA after 65 days, on October 15, 2021, Plaintiff
2 separately filed a complaint against Defendants alleging a single cause of action for civil penalties under
3 PAGA, Labor Code section 2698 et seq. Plaintiff based this cause of action on underlying Labor Code
4 violations, specifically: (1) failure to pay wages owed, including minimum and overtime wages; (2)
5 failure to provide lawful meal periods; (3) failure to authorize and permit rest periods; (4) failure to timely
6 pay wages owed upon separation from employment; (5) failure to reimburse necessary expenses; and (6)
7 failure to provide accurate lawful itemized wage statements. Plaintiff brought her PAGA claim “as a
8 representative action on behalf of themselves and all other current and former aggrieved employees...”.

9 8. On or about January 13, 2022, Defendant answered the PAGA Complaint by generally
10 denying all allegations and asserting numerous affirmative defenses.

11 9. On or about March 22, 2022, the Class Action and PAGA Action were consolidated before
12 this Court, and the Class Action is the leading case.

13 **Plaintiff’s Counsel Thoroughly Investigated the Factual and Legal Issues in the Action**

14 **Allowing Them to Objectively Assess the Settlement’s Reasonableness.**

15 10. Since the filing of the Actions and through execution of the Settlement, Plaintiff’s
16 Counsel conducted a thorough investigation into the factual and legal issues implicated by
17 Plaintiff’s claims and were able to objectively assess the settlement’s reasonableness.

18 11. Prior to filing the Action, Plaintiff Bowman provided us with the factual bases for
19 pursuing her claims against Defendant for Labor Code violations. Plaintiff was intimately familiar
20 with Defendant’s labor policies and practices, and over the course of multiple interviews,
21 knowledgeably summarized those policies and practices. Plaintiff Bowman explained how the
22 policies and practices were instituted and provided valuable insight into how she believed they
23 gave rise to the alleged Labor Code violations. Based on these interviews and the review of
24 available information, we determined that there were legally sufficient grounds for pursuing this
25 Action against Defendant. Additionally, in preparation for drafting the LWDA notice and the civil
26 complaint for the Class Action, we conducted our own independent preliminary investigations
27 into the factual bases for Plaintiff’s claims, which entailed, inter alia, a careful examination of
28

1 Plaintiff's personnel files, related employment documents, and associated records.

2 12. We engaged in a thorough investigation of the facts and legal issues in the action,
3 and as pertinent to the aggrieved group as a whole which allowed us to objectively assess the
4 Actions and the reasonableness of the Settlement ultimately reached.

5 13. In lieu of formal discovery, the Parties agreed to first attend mediation with Judge
6 Ronald Sabraw (retired) and focus their efforts towards preparing for mediation. The informal
7 document and data exchanges allowed us to fully assess the nature and magnitude of the claims
8 being settled, as well as the impediments to recovery, and ultimately enabled us to make an
9 independent assessment of the reasonableness of the settlement's terms. We sent informal
10 discovery requests to Defendant seeking pertinent information during the relevant time period
11 We analyzed the data and information provided and created a damages model for mediation. In
12 connection with the mediation and settlement, Defendants produced a great deal of data and
13 information, including without limitation thousands of lines of payroll and earning data for the
14 members of the putative class as defined by Plaintiff (which included information for the
15 Allegedly Aggrieved Employees); an anonymized class list including hire dates, termination
16 dates, workweeks worked by the individual, job title, department, and location, and whether the
17 individual had previously signed a release; Plaintiff's personnel file; Plaintiff's wage statements;
18 job descriptions for the putative class; and documents outlining Defendants' relevant policies and
19 practices during the relevant time period. Defendant also provided pertinent documents related
20 to its prior reclassification of certain employees (including Plaintiff) from exempt to non-exempt.
21 Defendant also provided data points for the Allegedly Aggrieved Employees, the number of
22 workweeks and pay periods at issue, and the number of purportedly aggrieved employees.

23 14. In connection with the mediation and settlement, we also extensively researched
24 the claims and settlements in similar actions, and the legal requirements for establishing liability
25 for penalties for the alleged violations.

**The Parties Settled the Action After Mediation and Extensive Negotiation
With the Assistance of a Mediator**

15. On August 2, 2022, the Parties participated in a private mediation with Judge Ronald M. Sabraw (Ret.). The Parties were unable to reach a resolution at the mediation, but continued discussions with the mediator. In connection with such efforts, the Parties identified a group of 19 individuals (the “Allegedly Aggrieved Employees”), including Bowman, who were reclassified from exempt to non-exempt in or about April 2021.

16. After subsequent negotiations and discussions, Judge Sabraw issued a mediator’s proposal to (a) settle the Action on behalf of the Allegedly Aggrieved Employees, (b) voluntarily dismiss without prejudice the Action with respect to any employees who fit Plaintiff’s definition of “aggrieved employees” as defined in her operative Complaint or PAGA Notice to the LWDA but who are not “Allegedly Aggrieved Employees” and (c) to voluntarily dismiss the Class Action with prejudice as to Plaintiff’s individual claims, but without prejudice as to claims of putative class members. (Settlement Agreement, p. 7, Section IV.). The Parties ultimately accepted the Mediator’s Proposal and Plaintiff has concurrently submitted a request for dismissal of the Class Action and an amendment to the PAGA Complaint to redefine the group of aggrieved employees to the group of Allegedly Aggrieved Employees.

17. The Parties subsequently entered into the long-form Settlement Agreement and Release of PAGA Claims which they now request the Court approve. *See*, Ex. 1.

18. Separate and apart from the Class Action and PAGA Action, Plaintiff also raised certain individual wrongful termination and harassment claims, and the Parties executed an individual confidential settlement agreement between Plaintiff and Defendants in exchange for Plaintiff’s general release.

19. On March 15, 2023, Plaintiff submitted a copy of the Settlement Agreement to the Labor and Workforce Development Agency.

20. At all times, the Parties’ negotiations were adversarial and non-collusive, and aided by Judge Sabraw, an experienced wage and hour mediator. At all times, Defendant denied

any and all liability, the merits of Plaintiff's claims, and denied that the matter could be pursued on a representative basis.

21. The Settlement achieved constitutes a fair, adequate, and reasonable compromise of the claims at issue.

22. In summary, Plaintiff's Counsel performed a thorough investigation into the claims at issue, which included: (1) determining Plaintiff's suitability as a representative through interviews, investigations, and analyses of his employment files and related records; (2) evaluating all of Plaintiff's potential class claims, representative claims and those for the aggrieved group; (3) researching similar actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing time and wage records; (5) reviewing Defendant's employment policies and practices, and the various job positions at issue; (6) researching settlements in similar cases; (7) participating in mediation; (8) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (9) reviewing and refining the scope of the claims and the relevant group; and (10) participating in extensive arm's length negotiations with defense counsel aided by the mediator.

23. The proposed Settlement is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.

24. By engaging in such a thorough investigation and evaluation of Plaintiff's claims, I can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of the LWDA in light of all known facts and circumstances, including the risk of significant delay, the uncertainty associated with litigation, the uncertainty associated with PAGA claims, and various defenses asserted by Defendant.

25. In the operative complaint, Plaintiff alleges Defendant committed a number of Labor Code violations during the PAGA Period as a result of its misclassification of the Allegedly Aggrieved Employees, including a failure to (1) pay all earned wages, including minimum and

1 overtime wages; (2) failure to provide meal periods; (3) failure to authorize and permit rest
2 periods; (4) failure to timely pay wages owed upon separation; (5) failure to reimburse necessary
3 expenses; (6) failure to provide accurate lawful itemized wage statements; (7) failure to keep
4 accurate payroll and timekeeping records.

5 26. In assessing whether the amount in civil penalties is genuine and meaningful, the
6 Court may balance the amount in penalties with the risks of further litigation. Here, we
7 respectfully submit that Plaintiff obtained a meaningful amount in civil penalties under PAGA
8 despite facing significant challenges had the litigation continued. Defendant represented that, at
9 the time of mediation, there were approximately 2300 pay periods during the PAGA Period.
10 Based on the information and data presented, we understood that the Allegedly Aggrieved
11 Employees were re-classified from exempt to non-exempt in April 2021 and that Defendant
12 issued Plaintiff and other employees a retroactive payment for estimated overtime worked and
13 meal/rest premiums. Plaintiff sent her initial PAGA notice to the LWDA on or about August 9,
14 2021. Plaintiff argued that as a function of the tolling provisions in Emergency Rule 9 (due to
15 the Covid-19 pandemic), the relevant PAGA period extended 1 year and 6 months from the filing
16 with the LWDA to February 2020.

17 27. [intentionally omitted]

18 28. While Plaintiff's counsel argued that Defendant faced aggregate liability of over
19 \$4,122,900 million in penalties for the violations (9 violations at \$100 for each initial violation
20 and \$200 for each subsequent violation for each employee per pay period) and that stacking was
21 allowed for violations of the Labor Code for failure to pay all wages earned (including minimum
22 wages and overtime), failure to provide meal and rest periods, failure to provide accurate,
23 compliant wage statements; and keep accurate compliant time and payroll records, failure to
24 reimburse business expenses; failure to pay all wage during employment and at termination,
25 Plaintiff's Counsel is cognizant that there is at least an argument that Defendant's exposure would
26 be approximately $\$230,000 = 2300 \text{ violative pay periods} \times \100 .¹ Moreover, Plaintiff's
27

28 ¹ Moreover, Plaintiff's counsel is aware that certain statutes provide for different penalties under PAGA (e.g. LC

counsel is cognizant of the risks attendant to these types of PAGA representative actions.

29. While Plaintiff is confident in the merits of the case and her arguments regarding the relevant time period and the misclassification claims, a legitimate controversy exists regarding the factual allegations, the evidentiary basis, and the underlying claims. At all times, Defendant denied the factual and legal basis for Plaintiff's claims, and maintained that it acted lawfully at all times. Defendant also argued that the Allegedly Aggrieved Employees had entered into release agreements wherein they released their claims, and Defendant argued that the release vitiated any standing or claim that the Allegedly Aggrieved Employees might claim to have. Plaintiff also took into account the fact that continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery to the state and the Allegedly Aggrieved Employees. Plaintiff also considered burdens of proof necessary to establish liability, potential issues of manageability and the significant risk that Defendant may prevail on a motion for summary judgment on the underlying claims. In addition, Plaintiff recognized the significant risk that the Court would exercise its discretion under PAGA to drastically reduce the maximum civil penalties available by statute.

30. After calculating Defendant's maximum exposure under PAGA, Plaintiff then discounted that exposure for settlement purposes to account for the risks of continued litigation as set forth above, including: (i) the strength of Defendant's defenses on the merits; (ii) the risk of losing at trial; (iii) the significant risk that the Court would exercise its discretion under PAGA to drastically reduce the maximum civil penalties available by statute; (iv) the chances of a favorable verdict being reversed on appeal; (v) the potential for a change in applicable law which would undercut the PAGA claim; and (vi) the difficulties attendant to collecting on a judgment. Taking into account the above contingencies, Plaintiff and her counsel determined that \$320,000 settlement was warranted by the circumstances of the case, and that such a resolution was in the best interest of the state and the public.

226.3 provides for \$250 for an initial violation and \$1,000 for a subsequent violation); however, for the sake of discussion Plaintiff's counsel evaluated the claims using a \$100/\$200 framework.

31. Plaintiff's counsel and Plaintiff objectively and knowledgeably balanced the strengths and weaknesses of the claims against the risk of continued litigation and was able to determine a realistic range of settlement recovery for PAGA penalties. We respectfully submit that the Settlement therefore accomplishes PAGA's objectives by imposing sufficient civil penalties "to punish and deter" Defendant from future alleged Labor Code violations, while also ensuring that the penalties are not "unjust, arbitrary and oppressive, or confiscatory." Indeed, Plaintiff respectfully submits that this PAGA-only settlement which on average provides in excess of \$2,400 to each of the Allegedly Aggrieved Employees is objectively reasonable and constitutes an excellent result.

32. The Settlement therefore constitutes a fair, adequate, and reasonable compromise of the claims at issue. Attached hereto as **Exhibit 1** is a true and correct copy of the Settlement Agreement that the Parties request that the Court approve on this Motion.

33. The LWDA will be served with a copy of this motion with the Settlement Agreement through the online process as required by Labor Code § 2699(l), and therefore the LWDA has been provided notice of this PAGA settlement and this motion. This service on the LWDA is verified in the accompanying proof of service.

EXPERIENCE

34. In 1993, I graduated from the University of California, Los Angeles with a Bachelor of Arts Degree. Following graduation, I attended Whittier Law School. In 1996, while a full-time law student, I was also a full-time Judicial Extern for the Honorable Consuelo B. Marshall, United States District Court for the Central District of California. After approximately five months of service for Judge Marshall, I became a full-time extern for the United States Attorney's Office, Central District of California. My externship lasted for approximately five months. Thereafter, in 1997, I graduated from Whittier Law School. The same year, I was admitted to practice law in the State of California.

35. From 1997-2007, I was a named partner at Hawkins & Sofonio, a law firm based out of Irvine, California. At Hawkins & Sofonio, I pioneered the employment department

1 litigating plaintiff related employment issues such as: Wrongful Termination, Age
2 Discrimination, Disability, Wage and Hour and Sexual Harassment claims. Through the
3 success and experience I obtained litigating employment related matters, I commenced the
4 Wage and Hour division of our employment department in 2002. Since then, I have spent the
5 vast majority of my practice litigating Wage and Hour Class Actions.

6 36. In 2007, I incorporated my wage and hour class action practice as James
7 Hawkins APLC. Since its inception, this law firm has been exclusively involved in class action
8 and complex litigation. In 2009, I opened an additional office in Miami, Florida, prosecuting
9 wage and hour class actions.

10 37. I have a great deal of experience in wage and hour class action and representative
11 action litigation. I have obtained certification of numerous classes and have obtained resolutions
12 of numerous other class actions and representative actions. I have also been approved as class
13 counsel in many other wage/hour class actions, and I am currently litigating numerous others.
14 Although not an all-inclusive list, over the years I have prosecuted the following class action
15 matters as lead and/or co-lead counsel, all of which implicated similar law and facts to those
16 associated with this action:

17 a. *Aguilar v. 7-Eleven, Inc., et. al.*, Orange County Superior Court- Case No.: 30-
18 2009-00268714-CU-OE-CXC.

19 b. *Carey, et. al. v. Arthur J. Gallagher, et. al.*, USDC, SOUTHERN DISTRICT- Case
20 No.: 09-cv-0168.

21 c. *Dao v. 3M Company, et al.* USDC, CENTRAL DISTRICT, Case No. CV-08-
22 04554.

23 d. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW.

24 e. *Morgan v. Aramark Campus, LLC*, USDC, CENTRAL DISTRICT, Case No.
25 SACV08-00412.

26 f. *West v Iron Mountain Information Management, Inc, et. al.*; Los Angeles County
27 Superior Court, Case No. BC393709.

- 1 g. *Gonzalez v. Superior Industries Inter, Inc., et al.*, Los Angeles County Superior
2 Court, Case No. BC 357912.
- 3 h. *Acosta v. Fleetwood Travel Trailers of California, Inc.*, et al., Riverside County
4 Superior Court, Case No. RIC 440630.
- 5 i. *Walker v. Sharkeez, et al.*, Orange County Superior Court, Case No. 05CC00293.
- 6 j. *Padron v. Universal Protection Service, et al*, Orange County Superior Court,
7 Case No. 05CC00013.
- 8 k. *Martinez v. Securitas Security Services USA*, et al., Santa Clara Superior Court,
9 Case No. 105-CV047499, et al. J.C.C.P. No. 4460.
- 10 l. *Velasquez-Lopez v. Hotel Cleaning Services, Inc.* et al., Riverside Superior Court,
11 Case No. RIC 420909.
- 12 m. *Ruiz, et al. v. Unisourse Worldwide, Inc., et al.*, USDC, CENTRAL DISTRICT,
13 Case No. CV09-05848.
- 14 n. *Herrador v. Culligan International Company, et al.*, USDC, CENTRAL
15 DISTRICT, Case No. SACV 08-680.
- 16 o. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case No.
17 05CC00128.
- 18 p. *Denton v. BLB Enterprises, Inc., et al.*, Orange County Superior Court, Case No.
19 07CC01292.
- 20 q. *Rios v. Sandberg Furniture Manufacturing Co., Inc*, et al., Los Angeles Superior
21 Court, Case No. BC411477.
- 22 r. *McMurray v. Dave and Busters, Inc.*, et al., Orange County Superior Court, Case
23 No. 06CC00099.
- 24 s. *Osuna v. DFG Restaurants, Inc.*, et al., Los Angeles Superior Court, Case No. BC
25 330145.
- 26 t. *Burns v. Gymboree Operations, Inc.*, et al., San Francisco Superior Court, Case
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No. CGC-07-461612.

u. *Willems v. Diedrich Coffee, Inc., et al.*, Orange County Superior Court, Case No. 07CC00015.

v. *Davila, et al. v. Beckman Coulter, Inc., et al.*, Orange County Superior Court, Case No. 07CC01347.

w. *Perez v. Naked Juice Company of Glendora, Inc.*, Los Angeles Superior Court, Case No. BC387088.

x. *Coordination Proceeding Special Title [Rule 1550(b)] Wackenhut Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP 4545.

y. *Placencia v. Amcor Packaging Distribution, Inc.*, Orange County Superior Court, Case No. 30-2013-00694012-CU-OE-CXC.

z. *Trani v. Lisi Aerospace, et al.*, Los Angeles Superior Court, Case No. BC495527.

aa. *Galvan v. Goodwin Co.*, Orange County Superior Court, Case No. 30-2013-00637062-CU-OE-CXC.

bb. *Reyes v. Bristol Fiberlite*, Orange County Superior Court, Case No. 30-2013-00653425-CU-OE-CXC.

cc. *Gutierrez v. HMT Tank, USDC Central Dist.*, Case No. CV14-1967-CAS(MANx).

dd. *Williams v. Il Fornaio America Corp.*, Sacramento County, Case No. 34-2011-0009616.

ee. *Aguilar v. 7-Eleven, Inc.*, Orange County, Case No. 30-2009-002687141-CU-OE-CXC.

ff. *Madrigal v. Huntington Beach Market Broiler, Inc.*, Orange County, Case No. 30-2012-00611260.

gg. *Vang v. Jazz Semiconductor, Inc.*, Orange County, Case no. 30-2011-00460278.

hh. *Cano v. Financial Statement Services, Inc.*, Orange County, Case No. 30-2013-

00653349-CU-OE-CXC.

ii. ***Gonzalez v. Quality Aluminum Force, LLC***, Orange County, Case No. 30-2015-00817941-CU-OE-CXC.

jj. ***Smith v. Space Exploration Technologies Corp.***, Los Angeles County Case No. BC554258.

kk. ***Madrigal v. Balda C Brewer, Inc.***, Orange County Case No. 30-2015-00820218-CU-OE-CXC.

ll. ***Mendez v. Liberty Glass Fabricators, Inc.***, Riverside County Case No. RIC 1800119.

mm. ***Attia v. Neiman Marcus Group, Inc.***, United States District Court for the Central District of California Case No. 8:16-cv-001504-DOC-FFM

nn. ***Vigueras v. Red Robin***, United States District Court for the Central District of California Case No. 8:17-cv-1422-JVS-DFM.

oo. ***Payne v. Marriott Ownership Resorts, Inc.***, San Diego County Case No. 37-2018-00015175-CU-OE-CTL.

38. In sum, my firm has been lead or co-lead counsel in hundreds of cases since its inception. We have recovered hundreds of millions of dollars for employees in the State of California and millions for the State as well through PAGA.

39. Our firm has served as class counsel in a number of significant wage and hour settlements. Of particular note, in 2019, our firm was co-lead counsel in securing the largest wage and hour class action settlement in California history at \$130,000,000. During this case, Plaintiffs appealed a decertification order. This case involved several appeals. The appellate record amassed an extensive appellate record comprising a 23-volume joint appendix, a three-volume reporters transcript, five briefs, four letter briefs, two motions for judicial notice, a motion to augment the record, and several additional letters informing the appellate court of new legal authority issued after *Dukes*. The matter was argued to and submitted by the Court

1 of Appeal on September 15, 2016, and on November 21, 2016, the decertification order was
2 reversed and the case was remanded for further proceedings. (*Lubin v. The Wackenhut*
3 *Corporation* (“*Lubin*”), 5 Cal. App. 5th 960 (2016)). Wackenhut filed a petition for review of
4 the Court of Appeal decision to the California Supreme Court. The Supreme Court denied
5 Wackenhut’s petition for review of *Lubin*. The Court of Appeal issued remittitur on April 10,
6 2017. Eventually through more litigation, the parties were able to secure the 130 million
7 settlement that was approved on October 21, 2019 by Judge Highberger in the Los Angeles
8 Superior Court.

9 40. Additionally, in early 2020, our firm served as lead counsel in a class action jury
10 trial in the Central District of California involving the class and PAGA representative claims of
11 over 23,000 employees which successfully resolved in the midst of trial for \$8,500,000.

12 41. Even more recently, our office along with co-counsel filed an appeal in the 9th
13 circuit in *Valiente, et. al. vs. Swift Transportation Co. of Arizona*, Case No. 21-55456,
14 challenging the retroactive application of The Motor Vehicle Safety Act, 49 U.S.C. § 31141
15 preemption of California meal and rest periods laws as applied to commercial drivers.

16 42. Our firm has settled many high-stakes class and representative actions. Hawkins’
17 settlements have directly compensated hundreds of thousands of California workers and
18 consumers. Hawkins’ actions have also forced employers to modify their policies for the benefit
19 of employees including changing the compensation structure for certain employees and
20 changing practices to ensure that workers will be able to take timely rest and meal breaks. A
21 leader in prosecuting PAGA enforcement actions, Hawkins has secured millions of dollars in
22 civil penalties for the State of California.

23 43. Based on our experience, demonstrated competence, resources to prosecute the
24 claims at issue and reputation among our colleagues in the both the defense and plaintiffs’ bar, I
25 respectfully submit our firm’s experience in the field of wage and hour cases provides us the
26 ability to prosecute claims swiftly and often times without the need for protracted litigation.
27

1 Although, as demonstrated in the *Wackenhut* cases, we do not give up fighting for class
2 members when challenged and necessary.

3 **Fees and Costs**

4 44. Although case law supports as high as a 50% fee award on common settlement funds of
5 less than \$10 million, Plaintiffs' counsels request an attorneys' fees award of \$106,666.66 which is one-
6 third of the common fund Settlement. The fee request is less than Plaintiff's Counsel's lodestar.

7 45. James Hawkins, APLC's skill and experience support their hourly rates ranging from \$600
8 to \$900, which are in line with the rates typically approved in wage and hour class action litigation in
9 California.

10 46. I am the Founding Partner at James Hawkins, APLC and have devoted approximately 72.5
11 hours in prosecuting the action against Defendants since 2016. I graduated from the University of
12 California, Los Angeles in 1993 and received my law degree from Whittier Law School in 1997. I was
13 also a full-time Judicial Extern for United States District Judge Consuelo B. Marshall and the United
14 States Attorney's Office. I have been a member of the State Bar of California since 1997. From 1997 to
15 2007, I was a named partner at Hawkins & Sofonio, a law firm based out of Irvine, California. At
16 Hawkins & Sofonio, I pioneered the employment department litigating plaintiff related employment
17 issues such as wrongful termination, age discrimination, disability, wage and hour, and sexual harassment
18 claims. Through the success and experience I obtained litigating employment related matters, I
19 commenced litigating wage and hour class actions in 2002. Since then, I have spent the vast majority of
20 my practice litigating Wage and Hour Class Actions. In 2007, I incorporated my wage and hour class
21 action practice as James Hawkins, APLC. Since its inception, this law firm has been exclusively involved
22 in class action and complex litigation. In 2009, I opened an additional office in Miami, Florida,
23 prosecuting wage and hour class actions. Since 2002, I have been lead or co-lead counsel in hundreds of
24 wage and hour class actions. My hourly rate is \$900 per hour. The number of hours I have expended for
25 work performed and the corresponding attorney's fees of \$65,250.00 are reasonable and necessary.

26 47. Christina Lucio is Of Counsel to James Hawkins, APLC and has been the primary day to
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1 day attorney on this case. Ms. Lucio has devoted in excess of 98.2 hours to the litigation of the claims
2 against Defendants. Ms. Lucio's hourly rate is \$775 per hour. Such hours were reasonable and necessary.
3 Ms. Lucio graduated from the University of California, Riverside in 2003 and received her law degree
4 from the University of Southern California, Gould School of Law (USC Law School) in 2007. She has
5 been a member of the State Bar of California since 2007 and is a member of the Labor and Employment
6 Law section of the California Bar Association and American Bar Association. She was selected as a
7 "Rising Star" for 2015 by Super Lawyers Magazine. Ms. Lucio focuses primarily on employment law
8 including wrongful termination, discrimination, retaliation, wage and hour violations (individual and
9 class action), and sexual harassment claims. In recent years, a substantial part of her practice has been
10 focused on class actions, including wage and hour litigation. The number of hours Ms. Lucio expended
11 for work performed and the corresponding attorney's fees of \$76,105.00 are reasonable and necessary.

12 48. Mitchell Murray is Of Counsel to James Hawkins APLC. Mr. Murray is a 2007 graduate
13 of the University of California, San Diego and 2012 graduate of California Western School of Law. He
14 was admitted to the State Bar of California in 2012. He is a member of the Consumers Attorneys of San
15 Diego. He was selected as a "Rising Star" in 2019 by Super Lawyers Magazine. Mr. Murray's legal
16 experience has focused primarily on employment law. Since 2016, he has focused his practice in the area
17 of wage and hour class action. Mr. Murray has dedicated 28.4 hours in prosecuting this action on behalf
18 of Plaintiff and the class. Mr. Murray's hourly rate is \$625.00 per hour. The number of hours expended
19 by Mr. Murray for work performed and the corresponding attorney's fees of \$17,750.00 are reasonable
20 and necessary.

21 49. In addition, paralegal Melissa Whitson, has invested over 42 hours to the litigation of the
22 claims against Defendant. Ms. Whitson's hourly rate is \$200.00 per hour. The number of hours Ms.
23 Whitson expended for work performed and the corresponding fees of \$8,400.00 are reasonable and
24 necessary.

25 50. Accordingly, my office has invested over 241.1 hours in the litigation of this matter since
26 2021 and the lodestar for my office is in excess of \$167,500. My firm has invested a substantial amount
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1 in time and in costs litigating this matter to achieve the excellent result reached. These hours were spent
2 on the following tasks: investigating the claims and Plaintiff; drafting the complaint for the Class actions,
3 and drafting the amended complaint; reviewing Defendant's pleadings in the Class and PAGA cases;
4 drafting the related PAGA complaint and the documents associated with the filing of the related action;
5 interviewing Plaintiff and reviewing documents provided by her; preparing for and attending court
6 hearings; meeting and conferring regarding the claims at issue and certification-related issues; outlining
7 discovery; drafting informal discovery requests; meeting and conferring regarding a discovery plan and
8 potential informal exchange; interviewing witnesses; drafting case management statements, stipulations
9 and requests to address case management issues; drafting a list of information needed for mediation;
10 meeting and conferring with Defendant's counsel to obtain relevant documents and information;
11 reviewing policies, employer notices, personnel records, job descriptions, time and payroll records and
12 other employment records produced by Defendant; performing legal research regarding Plaintiff's claims
13 and Defendant's defenses thereto; reviewing the changes to Defendant's policies and Defendant's
14 reclassification; researching the issues related to certification and reviewing the various positions held
15 by members of the putative class; reviewing the circumstances related to the reclassification procedure;
16 drafting a mediation brief and preparing a damages analysis prior to mediations; attending private
17 mediation; negotiating, drafting, and revising the Settlement Agreement; drafting and revising the Motion
18 for Approval of PAGA Settlement and accompanying documents; attending court hearings; conferences
19 with client and members of the aggrieved group to provide updates.

20 51. The costs incurred to date by my office are approximately \$14,976.46. Attached hereto
21 as **Exhibit 3** is a true and correct copy of an itemization of the costs incurred in connection with the Class
22 and PAGA Actions. These costs were reasonably incurred in prosecuting this action.

23 52. In connection with the Settlement, Plaintiff also requests that the Court approve an
24 Enhancement Award not to exceed \$5,000.00, in recognition of her effort in bringing and presenting the
25 Action. Both the State of California and the Allegedly Aggrieved Employees are beneficiaries of a
26 settlement that would not have been made possible but for the effort and commitment of Plaintiff. As
27

1 detailed more extensively in her declaration, the requested payment is intended to recognize Plaintiff's
2 effort in bringing the Action, serving as private attorney general under PAGA, providing counsel with
3 pertinent documents and information to prosecute this action, assisting counsel with the investigation,
4 litigation, and settlement, regularly conferring with counsel on the status of the case, attending
5 mediation, and reviewing the proposed settlement to ensure that its terms are fair and achieve PAGA's
6 objectives. Plaintiff has been an exceptional representative throughout this litigation. During the time
7 since the Action was filed, Plaintiff has actively participated in the action and in making decisions in this
8 case, including in connection with the settlement. Plaintiff also faced the real risk that future employers
9 may not hire her because she lent her name as representative in this case, and she could have been liable
10 for Defendant's litigation costs if the case went to trial and she lost. We support the requested award.
11

12 I declare under penalty of perjury under the laws of the State of California that the foregoing is
13 true and correct. Executed on March 15, 2023 in Irvine, California.
14

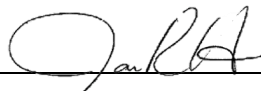
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16 _____
17 James R. Hawkins
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28

EXHIBIT 1

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10 Attorneys for Defendant
11 Delta Dental of California
12 (Counsel for Plaintiff on next page)

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA

15 CRISTAL BOWMAN, individually and on
16 behalf of all others similarly situated,
17 Plaintiff,
18 v.
19 DELTA DENTAL OF CALIFORNIA, a
California Non-Profit Corporation; and DOES
20 1-50, inclusive,
21 Defendant.

Case No. RG21108230
**Joint Stipulation of PAGA Action
Settlement and Release**
Dept: 21
Judge: Hon. Evelio Grillo
Trial Date: None Set

22 CRISTAL BOWMAN, individually and on
behalf of all others similarly situated,
23 Plaintiff,
24 v.
25 DELTA DENTAL OF CALIFORNIA, a
California Non-Profit Corporation; and DOES
26 1-50, inclusive,
27 Defendant.

Case No. 21CV000378
**Joint Stipulation of PAGA Action
Settlement and Release**
Dept: 21
Judge: Hon. Evelio Grillo
Trial Date: None Set

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Attorneys for Plaintiff CRISTAL BOWMAN,
Individually and on behalf of all others similarly situated

1 **PAGA SETTLEMENT AGREEMENT**

2 This Joint Stipulation of PAGA Action Settlement and Release ("Settlement Agreement,"
3 "Settlement," or "Agreement") is made and entered into between Cristal Bowman ("Plaintiff" or
4 "PAGA Representative"), individually and in her capacity as the representative of the Allegedly
5 Aggrieved Employees, and Defendant Delta Dental of California ("Defendant") and is subject to
6 the terms and conditions herein and the approval of the Court. Plaintiff and Defendant are
7 referenced collectively herein as "the Parties."

8 **I. CONDITIONAL NATURE OF SETTLEMENT**

9 This Agreement is made for the sole purpose of settling the above-captioned action on a
10 representative basis. This Settlement is made in compromise of disputed claims as set forth in the
11 representative PAGA action entitled *Cristal Bowman v. Delta Dental of California*, Case No.
12 21CV000378, pending in the Superior Court of California, County of Alameda (the "Action").
13 The PAGA Action was consolidated with and into a class action entitled *Cristal Bowman v. Delta*
14 *Dental of California*, Case No. RG21108230, pending in the Superior Court of California, County
15 of Alameda (the "Class Action"). The Class Action is the leading Case Number. The Parties have
16 reached this Settlement in compromise of disputed claims in the PAGA Action on behalf of
17 Plaintiff and the Allegedly Aggrieved Employees as defined in Section III below, and Plaintiff
18 has agreed, as part of this Settlement, to voluntarily dismiss the Class Action with prejudice as to
19 her own individual claims and without prejudice to any claims of putative class members, and to
20 amend her complaint in the Action to revise the scope of the aggrieved employees to reflect the
21 Allegedly Aggrieved Employees who will release their claims for civil penalties under PAGA as
22 part of this settlement. The Settling Parties (as defined in Section II of this Agreement) enter into
23 this Agreement on a conditional basis.

24 Furthermore, in the event that the Court does not enter the Final Approval Order, or a
25 Judgment is not entered in the Action, or the conditions precedent are not met for any reason, the
26 Parties shall be restored to their respective positions immediately prior to the execution of this
27 Agreement and this Settlement shall be deemed void *ab initio*, it shall be of no force or effect
28 whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the

1 negotiations, terms, and entry of the Agreement shall remain subject to the provisions of
2 California Evidence Code §§ 1119 and 1152 and any other analogous rules of evidence that may
3 apply.

4 Defendant denies all claims as to liability, damages, penalties, interest, fees, restitution,
5 injunctive relief, and all other forms of relief as well as the representative allegations asserted in
6 the Action. Defendant has agreed to resolve the Action through this Settlement, but to the extent
7 this Settlement is deemed void, Defendant does not waive, but rather expressly reserves, all rights
8 to challenge all such claims and allegations in the Action upon all procedural and factual grounds,
9 including without limitation the ability to challenge class or representative action treatment on
10 any grounds, as well as asserting any and all other potential defenses or privileges. The PAGA
11 Representative and PAGA Counsel agree that Defendant retains and reserves these rights.
12 Specifically, the PAGA Representative and PAGA Counsel agree not to argue or present any
13 argument that, in the event this Settlement is not approved in full, Defendant could not file a later
14 motion for summary judgment/adjudication or assert any and all other potential defenses and
15 privileges if this Action were to proceed. The PAGA Representative and PAGA Counsel hereby
16 waive such arguments and agree they will not take a position contrary to this provision.

17 Similarly, the Parties have agreed to resolve the Action through this Settlement, but to the
18 extent this Settlement is deemed void, the Parties do not waive, but rather expressly reserve, all
19 rights to pursue and defend such claims and allegations in the Action upon all procedural and
20 factual grounds. The Parties and their Counsel agree they will not take a position contrary to this
21 provision.

22 **II. PARTIES TO AGREEMENT**

23 This Agreement is made and entered into by and among the following, herein referred to
24 as the "Settling Parties": (i) the PAGA Representative (on behalf of herself, the State of
25 California, and each of the Aggrieved Employees), with the assistance of PAGA Counsel; and (ii)
26 Delta Dental of California, with the assistance of its counsel of choice. The Settling Parties intend
27 this Agreement to fully, finally, and forever resolve, discharge, and settle the Released Claims
28 upon and subject to the terms and conditions hereof.

1 **III. DEFINITIONS**

- 2 **A.** “Action” means the PAGA case entitled *Cristal Bowman v. Delta Dental of*
3 *California*, Case No. 21CV000378, pending in the Superior Court of California,
 County of Alameda.
- 4 **B.** “Agreement” means this particular agreement, entered into by the Parties to
5 effectuate the terms of the Settlement.
- 6 **C.** “Allegedly Aggrieved Employees” means Plaintiff and the following 18 California
7 employees of Defendant who were reclassified from exempt to non-exempt in
8 April 2021: (1) Walter (Clark) Bowers; (2) Vickie Ferris; (3) James Grigg; (4)
9 Christian Ibanez; (5) Huy Le; (6) Mabel Lee; (7) Ariel Lopez; (8) Michele
10 Mamauag; (9) Lory Aglanao Martin; (10) Maylene Matibag; (11) Rachel Nasca;
11 (12) Julie Thi Nguyen; (13) Trinh Nguyen; (14) Nora Peterson; (15) Lywantin
 Piamonte; (16) Adlyn Kavita Ram; (17) Arleemah Sharafan; (18) Angela Thorn.
- 12 **D.** “Allegedly Aggrieved Individual Data” means records for each Allegedly
13 Aggrieved Individual including: (1) name, (2) social security number, (3) last
14 known residential address, (4) last known telephone number, and (5) number of
 Covered Pay Periods worked during the PAGA Period.
- 15 **E.** “Approval” means an Order granting approval of the Settlement of this PAGA
16 action, including Plaintiff’s request to file a First Amended PAGA Complaint, and
17 approval of Plaintiff’s request to voluntarily dismiss the class action lawsuit
18 *Cristal Bowman v. Delta Dental of California*, Case No. RG21108230 with
19 prejudice as to her own claims and without prejudice as to claims of any putative
20 class members.
- 21 **F.** “Attorneys’ Fees” means the fees for work performed by PAGA Counsel and
22 approved for reimbursement by the Court as set forth in Section 8.3 of this
23 Agreement.
- 24 **G.** “Class Action” means the putative class action entitled *Cristal Bowman v. Delta*
25 *Dental of California*, Case No. RG21108230, pending in the Superior Court of
26 California, County of Alameda.
- 27 **H.** “Class Action Complaint” means the operative complaint on file in the Class
28 Action.
- I.** “Court” means the Superior Court of the State of California, County of Alameda.
- J.** “Covered Pay Period” means any pay period during the PAGA Period in which an
 Allegedly Aggrieved Individual was classified as an exempt employee by
 Defendant for at least some portion of the pay period.
- K.** “Cy Pres Recipient” means Legal Aid at Work, whom the Parties have selected to
 receive any funds remaining in the QSF after Allegedly Aggrieved Employees
 have had 180 days to cash or otherwise negotiate their Settlement Checks and
 failed to do so.
- L.** “Defendant” means Delta Dental of California.

- 1 **M.** “Defendant’s Counsel” means:
- 2 Erin M. Connell (State Bar No. 223355)
3 econnell@orrick.com
4 Alexandra Stathopoulos (State Bar No. 286681)
5 astathopoulos@orrick.com
6 ORRICK, HERRINGTON & SUTCLIFFE LLP
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10 Telephone: +1 415-776-5700
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12 Scott.morrison@orrick.com
13 ORRICK, HERRINGTON & SUTCLIFFE LLP
14 2050 Main Street, Suite 1100
15 Irvine, CA 92614-8255
16 Telephone: +1 949-567-6700
- 17 **N.** “Enhancement Payment” means a payment to Plaintiff out of the Gross Settlement
18 Amount of up to Five Thousand Five Hundred Dollars (\$5,000.00), or a lesser
19 amount if ordered by the Court, which will be paid to Plaintiff for serving as
20 PAGA Representative.
- 21 **O.** “Effective Date” means the date that the Court’s Judgment in the Action becomes
22 final. For purposes of this Settlement Agreement, the Judgment “becomes final”
23 upon the last to occur of the following: (a) the date of final affirmance on appeal of
24 the Judgment; (b) the date of final dismissal of any appeal from the Judgment or
25 the final dismissal of any proceeding to review the Judgment; or (c) if no appeal is
26 filed, the expiration date of the time for the filing or noticing of any appeal from
27 the Court’s Judgment (the day immediately after the last day by which a Notice of
28 Appeal of Judgment may be timely filed with the California Court of Appeal – the
 sixty-first calendar day following entry of Judgment – and no such appeal being
 filed).
- P.** “First Amended PAGA Complaint” means the PAGA complaint attached hereto as
 Exhibit B, which will replace the PAGA Complaint if the Settlement is approved
 by the Court.
- Q.** “Gross Settlement Amount” shall mean the total of Three Hundred Twenty
 Thousand Dollars (\$320,000). The Gross Settlement Amount will be used to pay
 third-party settlement administration costs, Plaintiff’s attorneys’ fees and costs,
 Plaintiff’s Enhancement Payment, and PAGA Penalties.
- R.** “Individual PAGA Payment” means the pro rata amount payable from the Net
 Settlement Amount to each of the Allegedly Aggrieved Employees based on each
 PAGA Settlement Member’s number of Covered Pay Periods during the PAGA
 Period. The Allegedly Aggrieved Employees will be issued an IRS Form 1099 for
 their Individual PAGA Payments.
- S.** “Judgment” means a judgment entered by the Court following entry of the
 Approval order.
- T.** “LWDA” means the California Labor Workforce Development Agency.

- 1 **U.** “LWDA Payment” means the 75% portion of the PAGA Penalties that will be paid
2 to the LWDA pursuant to California Labor Code § 2699(i).
- 3 **V.** “Net Settlement Amount” means the 25% portion of the PAGA Penalties that is
4 remaining after the LWDA Payment is made, from which the Individual PAGA
5 Payments will be paid.
- 6 **W.** “PAGA” means the California Labor Code Private Attorneys General Act,
7 California Labor Code §§ 2698, et seq.
- 8 **X.** “PAGA Complaint” means the complaint seeking PAGA penalties currently on
9 file in the Action.
- 10 **Y.** “PAGA Counsel” means:
11 James R. Hawkins (SBN 192925)
12 Christina M. Lucio (SBN 253677)
13 **JAMES HAWKINS APLC**
14 9880 Research Drive, Suite 200
15 Irvine, California 92618
16 Telephone: (949) 387-7200
17 Facsimile: (949) 387-6676
18 James@Jameshawkinsaplc.com
19 Christina@Jameshawkinsaplc.com
- 20 **Z.** “PAGA Notice” means the notice that Plaintiff provided to the Department of
21 Industrial Relations, dated August 9, 2021, which informed the PAGA
22 Administrator of the alleged violations of the Labor Code that are at issue in this
23 Action (LWDA-CM-840796-21).
- 24 **AA.** “PAGA Penalties” means the amount remaining after Plaintiff’s Attorneys’ Fees
25 and Litigation Expenses, Plaintiff’s Enhancement Payment, and the costs of
26 settlement administration have been deducted from the Gross Settlement Amount.
27 Pursuant to California Labor Code § 2699(k), 75% of the PAGA Penalties will be
28 paid to the LWDA as the “LWDA Payment.” The remaining 25% of the PAGA
 Penalties will constitute the Net Settlement Amount, from which Individual PAGA
 Payments will be paid.
- BB.** “PAGA Period” means the time period from February 15, 2020, through the date
 on which the Court issues an Approval Order.
- CC.** “PAGA Released Claims” means all claims for civil penalties under PAGA during
 the PAGA Period for the Allegedly Aggrieved Employees based on or reasonably
 related to the factual allegations in the First Amended PAGA Complaint, which is
 attached here as **Exhibit B** and will replace the PAGA Complaint if the Settlement
 is approved by the Court, Case No. 21CV000378 or Plaintiff’s PAGA Notice to
 the LWDA, including but not limited to alleged violations of Labor Code sections
 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 516, 1174, 1174.5, 1175, 1194,
 1197, 1197.1, 1198, 2698 *et seq.*, 2802, applicable Wage orders, and any other
 civil penalties that could have been sought by the Labor Commissioner or through
 PAGA for violations reasonably arising out of the facts, policies, practices,
 occurrences, or acts alleged in the First Amended PAGA Complaint or Plaintiff’s
 PAGA Notice to the LWDA or that derive from the alleged misclassification of the
 Allegedly Aggrieved Employees as exempt employees. The PAGA Released
 Claims are released solely for the Allegedly Aggrieved Employees.

- 1 **DD.** “QSF” means the Qualified Settlement Fund established by the Settlement
2 Administrator for the benefit of the Allegedly Aggrieved Employees and from
3 which the Individual PAGA Payments and, if applicable, payroll taxes shall be
4 paid.
- 5 **EE.** “Reasonable Address Verification Measure” means utilization of the National
6 Change of Address Database maintained by the United States Postal Service prior
7 to the initial mailing of the Settlement Checks and skip-tracing of bad addresses
8 upon the return of undelivered Settlement Checks.
- 9 **FF.** “Released Parties” means Defendant and its past and present parents, subsidiaries,
10 affiliates, predecessors, successors, assigns, and its present and former officers,
11 agents, shareholders, fiduciaries, plan administrators, employees, attorneys,
12 insurers, and representatives, in their individual and corporate capacities.
- 13 **GG.** “Settlement Administrator” means Simpluris, Inc. who the Parties have selected to
14 administer this Settlement.
- 15 **HH.** “Settlement Administration Costs” means the reasonable costs and fees incurred
16 by the Settlement Administrator, as approved by the Court, to administer the
17 Settlement in accordance with this Agreement, which will be paid from the Gross
18 Settlement Amount and is expected not to exceed Five Thousand Dollars
19 (\$5,000.00).
- 20 **II.** “Settlement Check” means a check mailed by the Settlement Administrator to an
21 Allegedly Aggrieved Individual with that Allegedly Aggrieved Individual’s
22 Individual PAGA Payment.
- 23 **JJ.** “Updated Address” means a mailing address that was updated via a Reasonable
24 Address Verification Measure, or an updated mailing address provided by the
25 United States Postal Service, an Allegedly Aggrieved Individual, or any other
26 valid source.

27 **IV. PROCEDURAL BACKGROUND**

28 On August 9, 2021, Plaintiff filed a Class Action Complaint on behalf of herself and a
group of putative class members who “were or are currently employed by Delta Dental of
California as salaried, exempt employees, including without limitation in ‘analyst’ positions or in
billing, customer service, or claims, in California” since February 12, 2017. That is Case No.
RG21108230 and is pending in this Court. In that Class Action Complaint, Plaintiff alleged
various wage and hour violations under California law stemming from the alleged
misclassification of the putative class members as exempt, including claims for: (1) unpaid
minimum and overtime wages; (2) failure to provide meal periods; (3) failure to provide rest
periods; (4) failure to timely pay wages owed upon separation; (5) failure to reimburse necessary
expenses; (6) failure to provide accurate lawful itemized wage statements; and (7) unfair
competition.

1 Then, on October 15, 2021, Plaintiff filed a separate, representative action complaint on
2 behalf of herself and the same group of employees, alleging a single claim for civil penalties
3 under PAGA for the same underlying alleged violations that were at issue in the Class Action
4 Complaint. That is Case No. 21CV000378 and covers the time period of February 15, 2020,
5 through the present.

6 On March 22, 2022, the two cases were consolidated with and into Case No.
7 RG21108230, with RG21108230 as the leading case number.

8 The Parties agreed to attend mediation with The Honorable Judge Ronald Sabraw (Ret.)
9 and participated in informal discovery in advance of mediation. The Parties exchanged relevant
10 documents and data, including documents regarding policies and/or practices that are at issue in
11 this lawsuit, records kept by Defendant regarding the putative class members and Allegedly
12 Aggrieved Employees, exemplar wage statement samples, and detailed time and earnings data.
13 The Parties also engaged in their own respective investigations and research, as well as engaged
14 in extensive discussions between counsel regarding the claims and defenses asserted. The Parties
15 also exchanged their mediation briefs under the mediation privilege.

16 The Parties have engaged in arm's length negotiations, including a mediation session on
17 August 2, 2022, facilitated by Judge Sabraw, who has extensive experience in labor and
18 employment law. The Parties identified 19 individuals (the "Allegedly Aggrieved Employees"),
19 including Bowman herself, who were reclassified from exempt to non-exempt in April 2021.
20 Judge Sabraw issued a Mediator's Proposal to (a) settle the Action on behalf of the Allegedly
21 Aggrieved Employees, (b) voluntarily dismiss without prejudice the Action with respect to any
22 employees who fit Plaintiff's definition of "aggrieved employees" as defined in her operative
23 Complaint or PAGA Notice to the LWDA but who are not "Allegedly Aggrieved Employees"
24 and (c) to voluntarily dismiss the Class Action with prejudice as to Plaintiff but without prejudice
25 as to claims of putative class members. The Parties ultimately accepted the Mediator's Proposal
26 and have reflected the material terms of which in this Settlement Agreement. To facilitate (b),
27 Plaintiff will amend her PAGA Complaint to redefine the group of aggrieved employees to the
28 group of Allegedly Aggrieved Employees as defined in this Agreement.

1 The Parties and their counsel are sufficiently familiar with the facts of this case and the
2 applicable laws to make an informed judgment as to the fairness of the Settlement, the respective
3 strengths and weaknesses of the claims brought by the group that Plaintiff sought to represent,
4 and the risks of proceeding in litigation. The Parties are represented by competent counsel and
5 have had the opportunity to consult with counsel prior to the signing of this Agreement.

6 **V. DEFENDANT'S DENIAL OF LIABILITY**

7 Defendant specifically and generally denies any and all liability or wrongdoing of any sort
8 with respect to any of the claims alleged in the Action and makes no concessions or admissions of
9 liability of any sort. Defendant maintains that for any purpose other than settlement, the Action is
10 not appropriate for class or representative treatment and that, had this matter proceeded through
11 litigation, it would be unmanageable and not certifiable. Nonetheless, Defendant has concluded
12 that further litigation would be protracted, distracting, and expensive, and that it is desirable that
13 the Action be fully and finally settled in the manner and upon the terms and conditions set forth in
14 this Agreement. Defendant has also taken into account the uncertainty and risks inherent in any
15 litigation. Defendant has therefore determined that it is desirable and beneficial to settle the
16 Action in the manner and upon the terms and conditions set forth in this Agreement.

17 The Parties agree there is a bona fide dispute as to the claims in the alleged Action, and
18 neither this Agreement, nor the Settlement-related documents, nor the Settlement itself shall be
19 construed as an admission of either fact or law on any issue by any Party.

20 **VI. CLAIMS OF THE PAGA REPRESENTATIVE AND BENEFITS OF**
21 **SETTLEMENT**

22 The PAGA Representative and PAGA Counsel believe that the claims released by the
23 Allegedly Aggrieved Employees have merit and that evidence developed to date supports the
24 claims. However, the PAGA Representative and PAGA Counsel recognize and acknowledge the
25 significant expense, resources, and time required to prosecute the Action against Defendant
26 through trial and through appeals. The PAGA Representative and PAGA Counsel have also taken
27 into account the uncertain outcome and the risks of litigation, the Court's discretion in limiting
28 PAGA recovery, the difficulties and delays inherent in this and similar litigation, the challenges

1 of proving manageability throughout the Action, and the problems of proving liability and
2 rebutting possible defenses to the claims alleged in the Complaint. Based upon their evaluation,
3 the PAGA Representative and PAGA Counsel have determined that the settlement set forth in
4 this Agreement is fair, reasonable, adequate, and in the interests of the PAGA Representative and
5 the Allegedly Aggrieved Employees. Both PAGA Counsel and the PAGA Representative believe
6 that the settlement set forth in this Agreement confers substantial benefits upon all Allegedly
7 Aggrieved Employees.

8 Further, after conducting pre-mediation informal discovery, Plaintiff has decided to
9 represent herself and only the Allegedly Aggrieved Employees. As part of this Settlement,
10 Plaintiff will voluntarily dismiss her Class Action Complaint with prejudice as to Plaintiff and
11 without prejudice as to the claims of any putative class members. The Parties have entered into a
12 confidential individual settlement agreement to resolve Plaintiff's individual claims, including,
13 but not limited to, Plaintiff's individual claims in the Class Action Complaint as well as
14 threatened claims of wrongful termination. Nothing in the confidential individual settlement
15 agreement purports to release claims alleged in the PAGA Complaint. As further part of this
16 Settlement, Plaintiff will amend her PAGA Complaint by filing the First Amended PAGA
17 Complaint, attached here as **Exhibit B**, which will redefine the group of aggrieved employees
18 whose claims are being released as part of this Settlement to the Allegedly Aggrieved Employees.

19 **VII. CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT**

20 7.1 The Parties enter into this Agreement and the Settlement on a conditional basis.
21 This Agreement and Settlement will become final and effective only upon the occurrence of all of
22 the following events:

23 7.1.1 The Court enters an Approval Order and Judgment;

24 7.1.2 The Court grants Plaintiff's request to voluntarily dismiss the Class Action
25 with prejudice as to her own individual claims and without prejudice as to any claims of
26 putative class members; and

27 7.1.3. The Effective Date occurs, and any challenge to the Settlement, whether by
28 objection or appeal, is resolved in favor of enforcement of the Settlement.

1 7.2 Unless the Court orders otherwise or agreed in writing by the Parties, this
2 Agreement shall be deemed null and void ab initio upon the failure of any of these conditions to
3 occur.

4 **VIII. SETTLEMENT CONSIDERATION—NO CLAIM FORM REQUIRED;**
5 **DEDUCTIONS FROM THE GROSS SETTLEMENT AMOUNT; CALCULATION**
6 **OF PAYMENTS FROM THE NET SETTLEMENT AMOUNT**

7 8.1 **Payment of the Gross Settlement Amount:** Defendant will pay the Gross
8 Settlement Amount in full and final settlement of the Action. The Gross Settlement Amount will
9 constitute adequate consideration for this Settlement. Since any uncashed settlement check funds
10 will be distributed pursuant to the cy pres doctrine, this Agreement and the associated Judgment
11 do not and will not create any unpaid residue or unpaid residual, and no distribution of such shall
12 be required.

13 8.2 **Attorneys' Fees and Litigation Expenses:** PAGA Counsel will submit an
14 application for: (a) an award of Attorneys' Fees of no more than 33 1/3% of the Gross Settlement
15 Amount, or One Hundred Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$
16 106,666.66); and (b) an award of PAGA Counsel's actual Litigation Expenses up to \$15,000 (as
17 documented), both of which shall be paid out of the Gross Settlement Amount as approved by the
18 Court. The Attorneys' Fees and Litigation Expenses set forth in this Section, as approved by the
19 Court, will constitute complete consideration for all work performed and expenses incurred to
20 date and for all worked to be performed and expenses to be incurred through the completion of
21 the Action, its settlement, and the effort to secure an Approval Order and Judgment by PAGA
22 Counsel. The Attorneys' Fees and Litigation Expenses, as approved by the Court, shall constitute
23 full satisfaction of any claim for fees or costs. Defendant will not oppose a motion for approval of
24 PAGA Counsel's Attorneys' Fees and Litigation Expenses consistent with this Agreement.

25 8.2.1 In the event that the Court (or any appellate court) awards less than the
26 amount requested for Attorneys' Fees or Litigation Expenses, only the awarded amounts shall be
27 paid and shall constitute satisfaction of those obligations and full payment thereunder, and any
28 remaining or unawarded portion of the requested Attorneys' Fees or Litigation Expenses shall be
made a part of the Gross Settlement Amount. To the extent the Court does not approve any or all

of the Attorneys' Fees or Litigation Expenses requested, the Settlement shall remain binding except as otherwise provided, and this will not be a justification for Plaintiff or Allegedly Aggrieved Employees to withdraw from the Settlement.

8.2.2 PAGA Counsel agrees to be solely responsible for any claims, liens or other demands from persons or entities who previously represented Plaintiff and may seek to be compensated out of the Gross Settlement Amount for attorneys' fees and/or legal costs arising from prosecution of the Action against Defendant.

8.3 **Settlement Administration Costs:** From the Gross Settlement Amount, Settlement Administration Costs shall be paid in an amount estimated to be Five Thousand Dollars (\$5,000.00), subject to approval from the Court.

8.4 Enhancement Payment to Plaintiff: From the Gross Settlement Amount, Defendant agrees to pay to Plaintiff, subject to Court approval, an Enhancement Payment of up to Five Thousand Dollars (\$5,000.00). Defendant will not oppose Plaintiff's application to the Court for an Enhancement Payment consistent with this Agreement. Plaintiff shall be issued an Internal Revenue Service Form 1099 for any Enhancement Payment approved by the Court. Plaintiff hereby acknowledges that she has obtained no tax advice from Defendant and that neither Defendant nor its attorneys have made any representation concerning tax consequences, if any, of the Enhancement Payment. Plaintiff agrees that she is solely responsible for the tax consequences of the Enhancement Payment.

8.4.1 In the event that the Court (or any appellate court) awards less than the amount requested for the Enhancement Payment, only the awarded amount shall be paid and shall constitute satisfaction of those obligations and full payment thereunder, and any remaining or unawarded portion of the requested Enhancement Payment shall be made a part of the Gross Settlement Amount.

8.4.2 The Enhancement Payment, if approved by the Court, is in addition to the Plaintiff's Individual PAGA Payment and any payment that Plaintiff may be entitled to as part of the separate confidential individual settlement and release agreement.

8.5 **PAGA Penalties; LWDA Payment; Net Settlement Amount:** The PAGA

Penalties are the amount remaining after Plaintiff's Attorneys' Fees and Litigation Expenses, the costs of Settlement Administration, and Plaintiff's Enhancement Payment (all as approved by the Court) have been deducted from the Gross Settlement Amount.

8.5.1 Pursuant to California Labor Code § 2699(i), 75% of the PAGA Penalties will be paid to the LWDA as the "LWDA Payment."

8.5.2 The remaining 25% of the PAGA Penalties will constitute the Net Settlement Amount, from which Individual Settlement Payments will be paid.

8.5.3 Individual Settlement Payments will be calculated pro rata based on the number of Covered Pay Periods each Allegedly Aggrieved Individual has during the PAGA Period according to Defendant's records. Individual Settlement Payments will be paid to Allegedly Aggrieved Employees in the form of a check.

8.6 **Taxes**: Individual Settlement Payments will be treated as non-wage penalties and interest, reportable to the Internal Revenue Service on Form 1099. Defendant shall not be responsible for tax payments on any portion of the Gross Settlement Amount. The Parties further understand that the Plaintiff and any Allegedly Aggrieved Individual who receives any Individual Settlement Payment pursuant to this Agreement shall be solely responsible for any and all tax obligations associated with such receipt

IX. ADMINISTRATION OF THE SETTLEMENT

9.1 **Motion for Approval of Settlement Agreement and Dismissal of Class Action / Remaining PAGA Claims Without Prejudice**: After the execution of this Agreement, PAGA Counsel will prepare a Motion for Approval of PAGA Settlement, which will be provided to Defendant's counsel at least five (5) court days prior to filing to allow Defendant's counsel a reasonable opportunity to review and comment on it. The Motion for Approval of PAGA Settlement will include and/or be accompanied by Plaintiff's request to voluntarily dismiss her Class Action Complaint with prejudice as to Plaintiff and without prejudice as to the claims of putative class members, and a request to file a First Amended PAGA Complaint. PAGA Counsel shall file the Motion for Approval of PAGA Settlement and accompanying papers as described in this Paragraph, and will serve the Motion and this Settlement Agreement on the LWDA

1 consistent with Labor Code section 2699(1)(2). Plaintiff and PAGA Counsel further agree to
2 undertake any efforts necessary for the Court to issue an Approval Order and enter Judgment.
3 Within ten (10) days of the Judgment, Plaintiff shall submit a copy of the Judgment to the LWDA
4 consistent with Labor Code section 2699(1)(3).

5 9.2 **Settlement Administrator:** The Parties agree to jointly utilize a third-party
6 Settlement Administrator to distribute the Gross Settlement Amount as outlined in this
7 Agreement. The Parties have selected Simpluris, Inc. to administer the Settlement, but may
8 jointly select a different settlement administrator subject to the approval of the Court. Settlement
9 Administration Costs are expected not to exceed Five Thousand Dollars (\$5,000.00). If the actual
10 cost of settlement administration is less than the amount approved by the Court, the remaining
11 amount shall be added to the Gross Settlement Amount and distributed accordingly. Settlement
12 Administration Costs as approved by the court shall come out of the Gross Settlement Amount.
13 The Settlement Administrator's duties shall include the following: distribute payments for
14 Attorneys' Fees and Litigation Expenses to PAGA Counsel; distribute Plaintiff's Enhancement
15 Payment to Plaintiff; make payment to the LWDA for its 75% share of the PAGA Penalties;
16 maintain a website including information related to the Settlement; update addresses for
17 Allegedly Aggrieved Employees via the USPS National Change of Address database and perform
18 a skip tracing process to determine the best, most recent address prior to distribution of the Net
19 Settlement Amount; determine Individual PAGA Payment amounts for each Allegedly Aggrieved
20 Individual; mail Individual PAGA Payments to each allegedly Aggrieved Individual; re-mail
21 undeliverable Individual PAGA Payments; pay to the Cy Pres Recipient any funds remaining in
22 the QSF; and perform related tax, accounting, and administration services.

23 9.3 **Establishment and Funding of the QSF:** The Parties agree that the QSF is
24 intended to be a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code
25 and Treasury Regulation § 1.468B-1 (26 C.F.R. § 1.468B-1 et seq.) and will be administered by
26 the Settlement Administrator as such. With respect to the QSF, the Settlement Administrator
27 shall: (1) open and administer a settlement account in such a manner as to qualify and maintain
28 the qualification of the QSF as a "Qualified Settlement Fund" under Section 468B of the Internal

Revenue Code and Treasury Regulation § 1.468B-1; (2) satisfy all federal, state and local income and other tax reporting, return, and filing requirements with respect to the QSF; and (3) satisfy out of the QSF all fees, expenses and costs incurred in connection with the opening and administration of the QSF and the performance of its duties and functions as described in this Agreement. The aforementioned taxes, fees, expenses, and costs shall be treated as and included in the costs of administering the QSF and as Settlement Administration Costs. The Parties and the Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1(j)(2)(i), and such election statement shall be attached to the appropriate returns as required by 26 C.F.R. § 1.468B-1(j)(2)(ii). The Parties agree to cooperate with the Settlement Administrator and one another to the extent reasonably necessary to carry out the provisions of this section of the Agreement.

9.4 **Allegedly Aggrieved Individual Data:** For each Allegedly Aggrieved Individual, Defendant will provide the Settlement Administrator with the following data from its records, to the extent available: 1) name, 2) social security number, 3) last known residential address, 4) last known telephone number, and 5) number of Covered Pay Periods worked during the PAGA Period (“Allegedly Aggrieved Individual Data”). Defendant will provide the Allegedly Aggrieved Individual Data to the Settlement Administrator within 30 calendar days (or, if that date falls on a weekend or holiday, the next business day thereafter) after the Court enters its Approval Order and Judgment. The Settlement Administrator shall utilize Reasonable Address Verification Measures which may include running the mailing addresses provided through the National Change of Address database and using Updated Addresses for each Allegedly Aggrieved Individual when mailing Individual PAGA Payments. Allegedly Aggrieved Individual Data shall be provided in a format to be mutually agreed upon by the Settlement Administrator and Defendant.

9.5 **Distribution of Gross Settlement Amount:**

9.5.1 No later than five (5) business days after the Effective Date has passed, the Settlement Administrator shall prepare a final list of all Allegedly Aggrieved Employees. For each person on this list, the Settlement Administrator will calculate the amounts due to each

1 Allegedly Aggrieved Individual using the methodology set forth in this Agreement.

2 9.5.2 No later than thirty (30) calendar days after the Effective Date has passed
3 (or, if that date falls on a weekend or holiday, the next business day thereafter), Defendant shall
4 transfer to the Settlement Administrator the Gross Settlement Amount of \$320,000.00. Defendant
5 will wire the funds requested by the Settlement Administrator into the QSF set up and controlled
6 by the Settlement Administrator.

7 9.5.3 No later than thirty (30) calendar days after receipt of the Gross Settlement
8 Amount from Defendant, the Settlement Administrator will (1) pay from the Gross Settlement
9 Amount the Settlement Administration Costs, as approved by the Court; (2) pay from the Gross
10 Settlement Amount to PAGA Counsel the Attorneys' Fees and Litigation Expenses, as approved
11 by the Court; (3) pay from the Gross Settlement Amount to Plaintiff the Enhancement Payment,
12 as approved by the Court; and (4) pay from the Gross Settlement Amount the PAGA Penalties to
13 the LWDA and Individual PAGA Payments, which will be accompanied by a short explanatory
14 letter (Exhibit A).

15 9.5.4 Individual PAGA Payments will remain negotiable for one hundred eighty
16 (180) calendar days from the original date of mailing. Any checks returned as non-deliverable on
17 or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the
18 forwarding address affixed thereto. If no forwarding address is provided, the Settlement
19 Administrator will promptly utilize Reasonable Address Verification Measures to attempt to
20 determine the correct address using a skip-trace, or other search using the name, address, or
21 Social Security number of the PAGA Settlement Member involved and will then perform a single
22 re-mailing using an Updated Address, if available. The Settlement Administrator shall mail a
23 check-cashing reminder postcard to those Allegedly Aggrieved Employees who have not
24 negotiated their Individual PAGA Payment checks within ninety (90) days of mailing. Funds
25 represented by settlement checks returned as undeliverable and those settlement checks remaining
26 uncashed for more than 180 days after the original date of mailing shall be paid to Legal Aid at
27 Work. Both Plaintiff and Defendant, and their respective Counsel represent that they do not have
28 any relationship or involvement with Legal Aid at Work.

1 9.6 After the Individual Settlement Payments have been mailed and any payment to
2 the Cy Pres Recipient has been made, the Settlement Administrator will provide an accounting in
3 a signed declaration to the Parties of all amounts paid out in connection with this Settlement.

4 **X. RELEASED CLAIMS**

5 10.1 **PAGA Release:** In her capacity as private attorney general “aggrieved employee”
6 acting on behalf of herself and as a proxy or agent of the LWDA, Plaintiff agrees to release
7 Defendant and the other Released Parties, from any and all PAGA Released Claims that arose
8 during the PAGA Period. The express purpose of this Settlement Agreement and the Judgment to
9 be entered by the Court following approval of this Settlement Agreement is to forever bar
10 Plaintiff, the Allegedly Aggrieved Employees, the LWDA, and any other individual or entity
11 acting on behalf of or purporting to act on behalf of the LWDA or State of California from
12 asserting any of the PAGA Released Claims in any future litigation or proceeding. It is the intent
13 of the Parties that, to the greatest extent provided by law, including under the holding of *Arias v.*
14 *Superior Court*, 46 Cal. 4th 969, 986 (2009), the ability of Plaintiff, the State of California, and
15 any Allegedly Aggrieved Individual (which includes any legal heirs and/or successors in interest
16 of each and every Allegedly Aggrieved Individual) to bring a PAGA Released Claim is
17 completely and forever foreclosed. Any Party to this Settlement Agreement may use the
18 Settlement Agreement to assert that this Settlement Agreement and the Judgment to be entered by
19 the Court following approval of this Settlement Agreement bar any later-filed action asserting any
20 of the PAGA Released Claims against any of the Released Parties. The provisions of this
21 paragraph apply regardless of whether Plaintiff and/or the Allegedly Aggrieved Employees cash
22 their Individual PAGA Payment checks.

23 **XI. RIGHT TO REVOKE**

24 11.1 **Right to Revoke:** Defendant has the right in its sole and exclusive discretion to
25 terminate this Agreement and withdraw from the Settlement at any time prior to date the Court
26 enters the Approval Order on this Settlement if: (a) the Settlement is construed in such a fashion
27 that Defendant is required to pay more than the Gross Settlement Amount; (b) any court,
28 following the signing of this Agreement but before the Court enters the Approval Order, certifies,

whether on a conditional basis or not, a class, collective, or representative action involving a claim described in the Action by potential aggrieved individuals covered by this Settlement; or (c) the Settlement is construed in such a fashion that the Class Action Complaint is not dismissed, or the Court does not permit the filing of the First Amended PAGA Complaint (**Exhibit B**). If for any reason the Settlement does not become final, or if Defendant withdraws from the Settlement for any of the reasons set forth in this section, this Agreement and any related settlement documents shall be null and void. In such an event, neither the Agreement, nor the settlement documents, nor the negotiations leading to the Settlement may be used as evidence for any purpose, and Defendant shall retain the right to challenge all claims and allegations in the Action, to assert all applicable defenses, and to dispute the propriety of representative treatment on all applicable grounds.

11.2 Non-Approval of Settlement Agreement: Because settlement of the Action requires Court approval pursuant to Labor Code section 2699(1)(2), the Settlement Agreement is conditional and contingent upon approval and entry of the Approval Order and Judgment. If the conditions of the Settlement set forth in this Agreement are not satisfied—including, but not limited to, the dismissal of the Class Action Complaint or the filing of the First Amended PAGA Complaint—or if Defendant terminates and withdraws from the Agreement, or if the Court does not enter the Approval Order and Judgment, or if appellate review is sought and on such review the Court's Approval Order is materially modified or reversed, then this Settlement shall be canceled, terminated, and shall have no force or effect. If the Effective Date does not occur (due to the failure of the Court to grant approval or otherwise), or if this Settlement is terminated, revoked, or canceled pursuant to its terms the Parties to this Settlement shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement. A reduction by the Court or on appeal as to the amount of Attorneys' Fees and Litigation Expenses, and/or to the amount of Plaintiff's Enhancement Payment does not provide a basis for terminating this Settlement.

XII. COOPERATION

12.1 The Parties shall cooperate fully with one another in seeking approval of the Court

1 of this Agreement and to use their respective best efforts to consummate the Settlement and cause
2 the Approval Order and Judgment to be entered and to become final. The Parties therefore agree to
3 cooperate in good faith to promptly prepare, execute and finalize all Settlement-related documents,
4 seek all necessary Court approvals, and do all other things necessary to consummate the Settlement.

5 12.2 The Parties also agree to mutually seek to stay any pending or subsequently-filed
6 representative action lawsuits that allege any of the Released Claims.

7 12.3 No Party to this Agreement shall seek to evade his, her, or its good faith obligations
8 to seek approval and implementation of this Settlement by virtue of any ruling, order, governmental
9 report, or other development, whether in the Action, in any other litigation, or otherwise, that
10 hereafter might occur and might be deemed to alter the relative strengths of the Parties with respect
11 to any claims or defenses or their relative bargaining power with respect to negotiating.

12 12.4 The PAGA Representative, PAGA Counsel, the LWDA and Allegedly Aggrieved
13 Employees hereby waive appeals of an order granting approval of this Settlement or entering
14 Judgment in the Action as to Defendant so long as such order is consistent with the material terms
15 of this Agreement.

16 12.5 Plaintiff and PAGA Counsel agree not to issue a press release or otherwise notify
17 the media about the terms of the Settlement or advertise or market any of the terms of the
18 Settlement, including, but not limited to, through written, recorded, or electronic communications.
19 Nothing herein shall prevent PAGA counsel from generally referencing the Action in an
20 adequacy declaration. Plaintiff and PAGA Counsel further agree that if contacted regarding this
21 case, they will state only that the Action exists and has been resolved. Any confirmation of
22 settlement shall remain confidential until the Court issues an Order approving the Settlement.

23 **XIII. MISCELLANEOUS PROVISIONS**

24 13.1 All of the Parties have been represented by counsel throughout all negotiations that
25 preceded the execution of this Agreement, and this Agreement is made with the consent and
26 advice of counsel.

27 13.2 This Agreement may not be modified or amended, except in a writing that is
28 signed by the respective counsel of record for the Parties and approved by the Court.

1 13.3 This Agreement and the Exhibits attached hereto constitute the entire agreement
2 between the Parties concerning the subject matter hereof, and supersede and replace all prior
3 negotiations, understandings, memoranda of understanding and proposed agreements, written and
4 oral, relating thereto. No extrinsic oral or written representations or terms shall modify, vary or
5 contradict the terms of the Agreement unless made in writing, signed by duly authorized
6 representatives of all Parties, and approved in writing by a final order of the Court. No waiver of
7 any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one
8 or more instance shall be deemed to be or construed as a further or continuing waiver of any such
9 term, provision or condition.

10 13.4 This Agreement shall be subject to, governed by, construed, enforced, and
11 administered in accordance with the laws of the State of California, without giving effect to the
12 principles of conflict of laws, both in its procedural and substantive aspects, and shall be subject
13 to the continuing jurisdiction of the Court. This Agreement shall be construed as a whole
14 according to its fair meaning and intent, and not strictly for or against any party, regardless of
15 who drafted (or was principally responsible for drafting) this Agreement or any specific term or
16 condition thereof. In any construction to be made of the Agreement, the Agreement shall not be
17 construed against any party and the canon of contract interpretation set forth in California Civil
18 Code section 1654 shall not be applied.

19 13.5 The Settlement shall be binding upon and inure to the benefit of the settling
20 Parties' respective successors, assigns, heirs, spouses, marital communities, executors,
21 administrators and legal representatives. The Agreement and Settlement are not designed to and
22 do not create any third-party beneficiaries either express or implied.

23 13.6 The Parties agree to have Judge Sabraw seek to resolve any and all disputes that
24 may arise in connection with interpreting the terms of the Settlement.

25 13.7 The Parties agree the Court shall retain jurisdiction with respect to the
26 implementation and enforcement of the terms of the Agreement, and all Parties hereto submit to
27 the jurisdiction of the Court for purposes of implementing and enforcing the terms of the
28 Agreement.

1 13.8 This Agreement may be executed in one or more counterparts, each of which shall
2 be deemed an original and together shall constitute one and the same instrument. When each of
3 the Parties has signed at least one such counterpart, this Agreement shall become binding as to all
4 of the Parties as of the day and year last executed. Fax and/or electronically scanned signatures
5 shall be deemed as effective as originals.

6 13.9 The Parties hereto represent, covenant, and warrant that they have not directly or
7 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
8 person or entity any portion of any liability, claim, demand, action, cause of action or rights
9 herein released and discharged except as set forth herein.

10 13.10 Each individual signing this Agreement warrants that he or she has the authority
11 and is expressly authorized to enter into this Agreement on behalf of the party(ies) for which that
12 individual signs.

13 13.11 Any notices or other documents that must or may be transmitted to PAGA Counsel
14 and/or Defendant's Counsel, pursuant to any section of this Agreement, shall be transmitted to the
15 addresses set forth in the definitions of PAGA Counsel and Defendant's Counsel, respectively, set
16 forth above.

17 13.12 The Parties and all counsel acknowledge and agree that for the purposes of any
18 claims, actions, and/or proceedings arising out of this Agreement, notice provided to PAGA
19 Counsel shall be deemed to be notice to the Plaintiff.

20 13.13 The Parties believe this Settlement Agreement is a fair, adequate, and reasonable
21 settlement of the Actions, acknowledging that the Court "may award a lesser amount than the
22 maximum civil penalty amount specified by "PAGA" if, based on the facts and circumstances of
23 the particular case, to do otherwise would result in an award that is unjust, arbitrary and
24 oppressive, or confiscatory." Lab. Code § 2699(e)(2). The Parties have arrived at this Settlement
25 Agreement after arm's-length negotiations by experienced counsel. The Parties further
26 acknowledge that they are each represented by competent counsel and that they have had an
27 opportunity to consult with their counsel regarding the fairness and reasonableness of this
28 Settlement Agreement.

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement, and hereby executes it voluntarily and with full understanding of its consequences

Dated: January 11, 2023

DocuSigned by:
Cristal Bowman
6112AC4085FF470...

Cristal Bowman, Plaintiff

Dated: January 25, 2023

Delta Dental of California

By: *Michael Hankinson*

~~Ara Alikian~~
~~Senior Corporate Counsel, Head of Labor & Employment~~
~~Delta Dental of California~~

Michael G. Hankinson
Executive Vice President & Chief Legal and Compliance Officer
Delta Dental Insurance Company

APPROVED AS TO FORM AND CONTENT:

Dated: January 11, 2023

By: *[Signature]*

James Hawkins
Christina Lucio
JAMES HAWKINS APLC
Attorneys for Plaintiff and the Allegedly Aggrieved Employees

Dated: January 25, 2023

By: *Erin Connell*

Erin Connell
Alexandra Stathopoulos
Scott Morrison
Orrick, Herrington & Sutcliffe, LLP
Attorneys for Defendant Delta Dental of California

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EXHIBIT A

Notice of PAGA Settlement and Release of Claims

Cristal Bowman v. Delta Dental of California, Case No. 21CV000378

I. Notice of PAGA Settlement

The Alameda County Superior Court (the “Court”) has approved a Settlement in the above-captioned action filed by Plaintiff Cristal Bowman (“Plaintiff”) on behalf of herself and current and former employees who worked for Defendant Delta Dental of California (“Defendant”) in California and were allegedly misclassified as exempt at any point from February 15, 2020, through [date on which Court enters Approval Order] (“PAGA Period”) against Defendant. On a representative basis, Plaintiff sought penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, *et seq.*, based on alleged (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) failure to provide compliant meal periods; (4) failure to provide compliant rest periods; (5) failure to provide accurate and itemized wage statements; (6) failure to timely pay all wages upon separation; and (7) failure to reimburse for all reasonable and necessary business expenses.

The Court has made no determination about Plaintiff’s claims. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claims. Defendant contends that the claims lack merit and denies each and every one of Plaintiff’s claims and contentions alleged in the lawsuit.

You are receiving this Notice because you are in the group of “Allegedly Aggrieved Employees” and are bound by the Settlement. The enclosed payment is in consideration for the settlement of this case.

II. Calculation of Individual PAGA Payment

Each Individual PAGA Payment was calculated on a *pro rata* basis based on the number of pay periods during the PAGA Period in which an Allegedly Aggrieved Individual was classified as an exempt employee and worked at least one shift (“Covered Pay Periods”), relative to the total number of Covered Pay Periods worked by all Allegedly Aggrieved Employees during the PAGA Period.

You worked <<**Covered Pay Periods**>> Covered Pay Periods during the PAGA Period. The total amount of Covered Pay Periods worked by all Allegedly Aggrieved Employees during the PAGA Period is <<**Total**>> and the Net Settlement Amount to be distributed as Individual PAGA Payments to Allegedly Aggrieved Employees is <<**Net Settlement Amount**>>. Your Individual PAGA Payment is <<**Check Amount**>> and is enclosed with this Notice.

The payment shall be reported as penalties on IRS Form 1099.

III. Release

“Released Parties” means Defendant and its past and present parents, subsidiaries, affiliates, predecessors, successors, assigns, and its present and former officers, agents, shareholders, fiduciaries, plan administrators, employees, attorneys, insurers, and representatives, in their individual and corporate capacities.

1 The Court has approved the Parties' Settlement Agreement ("Settlement"). By operation of the
2 Settlement's terms, all Allegedly Aggrieved Employees release the Released Parties from all
3 claims for civil penalties under PAGA during the PAGA Period based on or reasonably related to
4 the factual allegations in the operative Complaint or Plaintiff's PAGA Notice to the LWDA,
5 including but not limited to alleged violations of Labor Code sections 201, 202, 203, 204, 210,
6 226, 226.3, 226.7, 510, 516, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, 2802,
7 applicable Wage orders, and any other civil penalties that could have been sought by the Labor
8 Commissioner or through PAGA for violations reasonably arising out of the facts, policies,
9 practices, occurrences, or acts alleged in the operative Complaint or Plaintiff's PAGA Notice to
10 the LWDA or that derive from the alleged misclassification of the Allegedly Aggrieved
11 Employees as exempt employees.

12 **IV. What Should I Do Now?**

13 **PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT'S COUNSEL FOR**
14 **INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.**

15 There is no need to take any action to enroll in the Settlement, as you have been automatically
16 included, and there is no option to opt out or object. The Court has already granted Approval of
17 the Settlement, and you will be bound by the Settlement and Release whether or not you cash
18 your Individual PAGA Payment check.

19 Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such
20 an event, the Settlement Administrator shall direct all unclaimed funds to Legal Aid at Work.

21 You may call the Settlement Administrator, Simpluris, toll free at <<**Phone Number**>> with any
22 questions. If your check is lost or misplaced, you should contact the Settlement Administrator
23 immediately to request a replacement. You must inform the Settlement Administrator of any
24 change of address to ensure receipt of your Individual PAGA Payment.

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EXHIBIT B

James R. Hawkins (SBN 192925)
Christina M. Lucio (SBN 253677)
JAMES HAWKINS APLC
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Telephone: (949) 387-7200
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Attorneys for Plaintiff CRISTAL BOWMAN,
individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CRISTAL BOWMAN, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

DELTA DENTAL OF CALIFORNIA, a
California Non-Profit Corporation; and
DOES 1-50, inclusive,

Defendants.

Case No. 21CV000378

PAGA REPRESENTATIVE ACTION

Assigned for All Purposes To:
Hon. Evelio Grillo
Dept.: 21

FIRST AMENDED COMPLAINT FOR:

**(1) Civil Penalties Under the Private
Attorneys' General Act, Labor Code
Section 2698 *et seq.***

1 Plaintiff CRISTAL BOWMAN (“Plaintiff”), individually and on behalf of others similarly
2 situated, and asserts claims against defendant DELTA DENTAL OF CALIFORNIA, a California
3 Non-Profit corporation, and DOES 1-50, inclusive (collectively “Defendants”) as follows:

4 I.

5 **INTRODUCTION**

6 1. This is a representative action for recovery of penalties under the Private Attorneys’
7 General Act of 2004 (“PAGA”), Cal. Lab. Code section 2698 *et seq.* PAGA permits “aggrieved
8 employees” to bring a lawsuit as a representative action on behalf of themselves and all other
9 current and former aggrieved employees, to recover civil penalties and address an employer’s
10 violations of the California Labor Code.

11 2. Plaintiff brings this action pursuant to the PAGA on a representative basis on behalf
12 of Plaintiff and a group of 18 California employees of Defendant who were reclassified from
13 exempt to non-exempt in April 2021 (the “Aggrieved Employees”). The period of the action runs
14 from February 15, 2020 through the date of the conclusion of the Action.

15 3. Plaintiff brings this action on behalf of herself and the Aggrieved Employees to
16 recover civil penalties and address Defendants’ violations of the California Labor Code and the
17 IWC Wage Orders, primarily stemming from Defendant’s misclassification of the Aggrieved
18 Employees as exempt employees.

19 4. Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an
20 employee who brings a representative action and was affected by at least one of the violations
21 alleged in the complaint has standing to pursue penalties on behalf of the state and not only for that
22 violation, but for violations affecting other employees as well. Accordingly, Ms. Bowman has
23 standing to pursue penalties on behalf of the state of violations affecting all the aggrieved employee
24 at Delta Dental, regardless of their classification, job title, or locations in California.

25 5. In this case, Defendants violated various provisions of the California Labor Code
26 and IWC Wage Order, including without limitation Labor Code sections 201, 202, 203, 204, 210,
27 226, 226.3, 226.7, 510, 516, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, 2802, and
28 the applicable Wage Order. Defendants’ violations include: (1) failure to pay wages owed,

1 including minimum wages and overtime; (2) failure to provide lawful meal periods; (3) failure to
2 authorize and permit rest periods; (4) failure to timely pay wages during employment and owed
3 upon separation from employment; (5) failure to reimburse necessary expenses; and (6) failure to
4 provide accurate lawful itemized wage statements.

5 6. This action is timely because Plaintiff suffered from a violation or numerous
6 violations of the California Labor Code within one year of the date on which a PAGA notice was
7 sent to the LWDA via online submission. More than 65 days have passed, and no response has
8 been received by the LWDA. A copy of the letter sent to the LWDA with enclosure is attached
9 hereto as **Exhibit A**, thereby satisfying the notice requirement under the statute and permitting
10 Plaintiff to proceed with this action in a representative capacity.

11 II.

12 JURISDICTION AND VENUE

13 7. This Court has jurisdiction over this action pursuant to the California Constitution
14 Article VI section 10, which grants the California Superior Court original jurisdiction in all causes
15 except those given by statute to other courts. The statutes under which this action is brought do not
16 give jurisdiction to any other court.

17 8. Further, there is no federal question at issue, as the issues herein are based solely on
18 California statutes and law, including the Labor Code, IWC Wage Orders, the California Code of
19 Civil Procedure, the California Civil Code, and the California Business and Professions Code.

20 9. Venue is proper in this Court because upon information and belief, one or more of
21 the Defendants transact business, or have offices in this County and the acts or omissions alleged
22 herein took place in this County and because Plaintiff is presently a resident of this County.

23 III.

24 PARTIES

25 10. Defendant Delta Dental of California is a California domestic nonprofit corporation
26 in good standing and authorized to do business in California and operates in Alameda County and
27 throughout California. It is based at 560 Mission Street, Suite 1300, San Francisco, California
28 94105. On information and belief, Plaintiff alleges that at all relevant times referenced herein

1 Defendants did and continue to transact business throughout California.

2 11. Delta Dental of California provides a dental insurance for local communities.

3 12. Plaintiff Cristal Bowman is and during the liability period has been, a resident of
4 California.

5 13. Plaintiff was employed as a salaried employee in the position of Billing Analyst for
6 Delta Dental of California. Plaintiff worked at a location in Oakland, California. Plaintiff was
7 employed by Defendants from November 2019 until March 12, 2021.

8 14. The named Plaintiff and every other Aggrieved Employee worked in California, and
9 was misclassified as a salaried, exempt employee.

10 15. Whenever in this complaint reference is made to any act, deed, or conduct of
11 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through
12 one or more of Delta Dental of California's officers, directors, agents, employees, or
13 representatives, who was actively engaged in the management, direction, control, or transaction of
14 the ordinary business and affairs of Defendants.

15 16. The true names and capacities of Defendants, whether individual, corporate,
16 associate, or otherwise, sued herein as DOES 1 through 100, inclusive, are currently unknown to
17 Plaintiff, who therefore sues Defendants by such fictitious names under California Code of Civil
18 Procedure section 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true
19 names and capacities of the Defendants designated hereinafter as DOES when such identities
20 become known.

21 17. Plaintiff is informed and believe, and thereon alleges, that the Doe Defendants are
22 the partners, agents, or principals and co-conspirators of Delta Dental of California and of each
23 other; that Delta Dental of California and the Doe Defendants performed the acts and conduct herein
24 alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified,
25 and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is
26 liable to the extent of the liability of the Defendants as alleged herein.

27 18. Plaintiff is further informed and believes, and thereon alleges, that at all times
28 material herein, each Defendant was dominated or controlled by its co-Defendants and each was

1 the alter ego of the other. Whenever and wherever reference is made in this complaint to any
2 conduct by Defendant or Defendants, such allegations and references shall also be deemed to mean
3 the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and
4 wherever reference is made to individuals who are not named as Defendants in this complaint, but
5 were employees and/or agents of Defendants, such individuals, at all relevant times acted on behalf
6 of Defendants named in this complaint within the scope of their respective employments.

7 **IV.**

8 **FACTUAL ALLEGATIONS**

9 19. Plaintiff and Aggrieved Employees were or are currently employed by Delta Dental
10 of California as salaried, exempt employees, including without limitation in “analyst” positions or
11 in billing, customer service, or claims, in California (also referred to as “Aggrieved Employees”).
12 (the “Aggrieved Group”).

13 20. Plaintiff and the Aggrieved Employees were, and at all times pertinent hereto,
14 have been non-exempt employees within the meaning of the California Labor Code, and the
15 implementing rules and regulations of the IWC California Wage Orders. They are subject to the
16 protections of the IWC Wage Orders and the Labor Code.

17 21. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
18 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
19 requirements of California’s wage and employment laws.

20 22. During the relevant time frame, pursuant to their uniform policies and procedures,
21 Defendants classified Plaintiff and the Aggrieved Employees as exempt and paid them a set salary
22 irrespective of the number of hours they actually worked, and deprived them of statutorily required
23 meals and rest breaks.

24 23. During the relevant time frame, Aggrieved Employees typically worked five (5)
25 days per week and generally averaged over forty-five (45) hours per week. Plaintiff and the
26 Aggrieved Employees worked long hours typically substantially in excess of 40 hours per week.

27 24. During the relevant time frame, Aggrieved Employees were not primarily engaged
28 in exempt duties as they spent and consistently spend more than fifty percent (50%) of their working

1 time performing non-exempt and non-managerial tasks. The majority of their time is spent
2 performing non-exempt, non-managerial activities that include, but are not limited to:

- 3 a. Apply open payments;
- 4 b. Log into bank accounts and make sure payment belongs to the specified account;
- 5 c. Reconcile accounts from different accounts;
- 6 d. Calling clients; and,
- 7 e. Update reports.

8 As a result, Aggrieved Employees were not and have not been consistently engaged in performing
9 exempt work as defined by the IWC Wage Orders.

10 25. Plaintiff alleges that Defendants' locations are virtually identical in service and
11 operation. The duties of Aggrieved Employees are set forth by written company-wide policies and
12 procedures. Aggrieved Employees are not allowed to deviate from such policies and procedures.
13 Aggrieved Employees do not and have not exercised independent judgment or discretion in the
14 performance of the vast majority of their job duties.

15 26. Defendants' misclassified Aggrieved Employees as exempt when they were in fact
16 non-exempt employees entitled to the protections of IWC

17 27. During the relevant time frame, in violation of the mandates of Labor Code section
18 1174(d) and the IWC Wage Orders, Defendants failed to maintain accurate time records showing
19 the beginning and end of each work period, including meal periods, and all hours worked by
20 Plaintiff and Aggrieved Employees.

21 28. During the relevant time frame, and as a consequence of the misclassification of
22 Plaintiff and the Aggrieved Employees as exempt, Plaintiff and the Aggrieved Employees
23 frequently worked over eight (8) hours in a day or over forty (40) hours in a workweek without
24 being paid overtime at a rate of 1.5 times the employee's regular rate of pay for hours worked in
25 excess of 8 hours in a day or 40 hours in a week.

26 29. During the relevant time frame, Plaintiff and Aggrieved Employees on occasion
27 worked over twelve (12) hours in a workday and for seven consecutive days in a workweek without
28 being paid overtime at a rate of 2.0 times the employee's regular rate of pay for hours worked as

1 required by law.

2 30. Plaintiff also alleges that to the extent she and the other Aggrieved Employees were
3 paid overtime or meal/rest period premiums at any point (however, they largely were not paid
4 overtime as a matter of Defendants' policies and practice), they were not paid the proper regular
5 rate because Plaintiff and the Aggrieved Employees earned certain sums including bonuses,
6 incentives, and gift cards which, upon information and belief, were not factored into the regular
7 rate of compensation.

8 31. During the relevant time frame, Plaintiff and the Aggrieved Employees were
9 required to incur numerous expenses in carrying out their job duties, including mileage, cell phones,
10 and supply purchases.

11 32. In addition, Plaintiff and the certain Aggrieved Employees were required to work
12 from home during the Covid-19 pandemic and were required to incur costs associated with
13 maintaining a home office, including costs associated with personal computers, supplies, and
14 internet services.

15 33. However, Plaintiff and the Aggrieved Employees were not fully reimbursed for
16 these necessary expenditures.

17 34. Defendants also failed to provide lawful, timely and uninterrupted meal and rest
18 periods as a matter of Defendants' policies and practices.

19 35. Despite the above-mentioned meal and rest period violations, Defendants did not
20 compensate Plaintiff and, on information and belief, did not compensate Aggrieved Employees one
21 additional hour of pay at their regular rate as required by California law when meal or rest periods
22 were not lawfully provided.

23 36. Defendants failed to properly pay Plaintiff and other Aggrieved Employees the legal
24 minimum wages and overtime wages they earned, failed to provide all authorized meal and rest
25 periods owed to Aggrieved Employees, and failed to pay one (1) hour wages in lieu of each non-
26 provided meal and rest period. Defendants have made it difficult to account with precision for the
27 unlawfully withheld wages owed to Plaintiff and Aggrieved Employees during the liability period
28 and failed to implement and preserve a lawful record-keeping method to record all non-provided

1 meal and rest periods owed to employees, as required for Non-Exempt Employees by California
2 Labor Code section 226 and applicable California Wage Orders. Plaintiff and Aggrieved
3 Employees are therefore entitled to penalties not to exceed \$4,000 for each employee pursuant to
4 Labor Code section 226(e).

5 37. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
6 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees
7 were entitled to receive accurate wages for minimum wages, overtime compensation, and premium
8 wages under Labor Code section 226.7(b) and the IWC Wage Order, but were not receiving
9 accurately calculated compensation.

10 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
11 mentioned, Defendants knew that they had a duty to accurately compensate Plaintiff and Aggrieved
12 Employees for all hours worked including minimum wages, overtime wages and meal and rest
13 period premiums, and that Defendants had the financial ability to pay such compensation, but
14 willfully, knowingly, recklessly, and/or intentionally failed to do so.

15 39. Plaintiff and Aggrieved Employees are covered by applicable California IWC Wage
16 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
17 section 11000 *et seq.*

18 *FAILURE TO PAY ALL WAGES OWED, INCLUDING MINIMUM WAGES AND OVERTIME*
19 *WAGES*

20 40. Labor Code section 204 establishes the fundamental right of all employees in the
21 State of California to be paid wages, including minimum wage and overtime, in a timely fashion
22 for their work.

23 41. Labor Code section 1194 (a) provides that notwithstanding any agreement to work
24 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
25 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
26 of the full amount of this minimum wage or overtime compensation, including interest thereon,
27 reasonable attorney's fees, and costs of suit.

1 42. Labor Code section 1197 provides: “The minimum wage for employees fixed by
2 the commission or by any applicable state or local law, is the minimum wage to be paid to
3 employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

4 43. Labor Code section 510(a) reads in pertinent part: “Any work in excess of eight
5 hours in one workday and any work in excess of 40 hours in any one workweek ... shall be
6 compensated at the rate of no less than one and one-half times the regular rate of pay for any
7 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less
8 than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours
9 on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular
10 rate of pay of an employee.”

11 44. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
12 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
13 Wage Order(s).

14 45. IWC Wage Order No. 4-2001 applies to Plaintiff’s and Aggrieved Employees’
15 employment. It provides for the payment of at least minimum wage for all hours worked and
16 overtime wages equal to one and one-half times an employee’s regular rate of pay for all hours
17 worked in excess of 8 hours in a day or 40 hours in workweek or, in certain circumstances, two
18 times an employee’s regular rate of pay.

19 46. At all times relevant hereto, Defendants treated Plaintiff and others similarly
20 situated as “salaried exempt” employees—that is exempt from the protections of the California
21 Labor Code.

22 47. In California, employees are presumed to be non-exempt and all exemptions are
23 narrowly construed against the employer. *Ramirez v. Yosemite Water Co., Inc.* (1999) 20 Cal. 4th
24 785; *Nordquist v. McGraw-Hill Broadcasting Co.* (1995) 32 Cal.App.4th 555.

25 48. Defendants improperly misclassified Plaintiff and the Aggrieved Employees, as the
26 Aggrieved Employees did not meet exemption criteria because, among other things, the Aggrieved
27 Employees:

1 a. Were not primarily engaged in the management of the enterprise in
2 which he or she is employed or of a customarily recognized department or subdivision thereof; and

3 b. Were not customarily and regularly directing the work of two or
4 more other employees therein; and

5 c. Were not granted the authority to hire or fire other employees, and
6 their suggestions and recommendations as to the hiring or firing and as to the advancement and
7 promotion or any other change of status of other employees were not given particular weight; and

8 d. Were not customarily and regularly exercising discretion and
9 independent judgment in the performance of their duties; and

10 e. Spent less than fifty percent (50%) of their worktime “engaged in”
11 managerial work; and

12 f. Spent over 50% of their worktime engaged in non-exempt duties .

13 49. Plaintiff and the other salaried Aggrieved Employees are and were expected to work
14 in excess of 8 hours in a day and/or over 40 hours in a week.

15 50. Per its policy and practice, Defendants failed to keep records of hours worked by its
16 employees, including meal periods, as required by California’s wage orders.

17 51. Defendants’ pattern, practice and uniform administration of corporate policy
18 regarding illegal employee compensation as described herein is unlawful and creates an entitlement
19 to recovery by the members of the Aggrieved Group, in a civil action, for the unpaid balance of the
20 full amount of the unpaid wages, including minimum wages and overtime, and interest thereon,
21 reasonable attorneys’ fees, and costs of suit.

22 52. Defendants’ nonpayment of compensation, including overtime compensation, to the
23 members of the Aggrieved Group was Defendants’ uniform policy and procedure, and therefore a
24 class action is the most efficient means of resolving the Overtime Aggrieved Employees’ overtime
25 claims. (See, e.g. *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319).

26 53. That calculation of individual damages for the members of the Aggrieved Group
27 may at some point be required does not foreclose the possibility of taking common evidence on
28 questions regarding their entitlement to overtime compensation. (See, e.g. *Collins v. Rocha* (1972)

1 7 Cal.3d 232; *Hypolite v. Carleson* (1975) 52 Cal.App.3d 566; *Employment Development Dept. v.*
2 *Superior Court* (1981) 30 Cal.3d 256).

3 54. Plaintiff is informed and believes that Defendant knew or should have known that
4 salaried Aggrieved Employees did not qualify as exempt employees and purposely elected not to
5 pay them for their labor.

6 55. As a result of the unlawful acts of Defendants, Plaintiff and Aggrieved Employees
7 have been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled
8 to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant
9 to Labor Code sections 218, 218.5, 218.6, 510, 1194, 1197, 1198, and 1199, and Civil Code section
10 3287, and other applicable statutes.

11 *FAILURE TO PROVIDE MEAL PERIODS*

12 56. Labor Code section 226.7(a) provides that “No employer shall require any employee
13 to work during any meal or rest period mandated by an applicable order of the Industrial Welfare
14 Commission.”

15 57. Labor Code section 512 provides that “An employer may not employ an employee
16 for a work period of more than five hours per day without providing the employee with a meal
17 period of not less than 30 minutes, except that if the total work period per day of the employee is
18 no more than six hours, the meal period may be waived by mutual consent of both the employer
19 and employee.” The applicable wage order contains a similar mandate.

20 58. Labor Code section 512 further provides that “An employer may not employ an
21 employee for a work period of more than 10 hours per day without providing the employee with a
22 second meal period of not less than 30 minutes, except that if the total hours worked is no more
23 than 12 hours, the second meal period may be waived by mutual consent of the employer and the
24 employee only if the first meal period was not waived.” The applicable wage order contains a
25 similar mandate.

26 59. Labor Code section 226.7(c) provides: “If an employer fails to provide an employee
27 a meal or rest or recovery period in accordance with a state law ... the employer shall pay the
28 employee one additional hour of pay at the employee's regular rate of compensation for each

1 workday that the meal or rest or recovery period is not provided.”

2 60. During the relevant time period, Defendants failed to provide Plaintiff and the
3 Aggrieved Employees with lawful, timely off-duty thirty-minute uninterrupted meal periods as
4 required by the Wage Order and Labor Code section 512.

5 61. By their failure to provide meal periods for days on which Plaintiff and the
6 Aggrieved Employees work(ed) work periods in excess of five and/or ten hours, and their failure
7 to provide compensation for such non-provided meal periods, Defendants willfully violated the
8 provisions of Labor Code section 226.7, 512 and applicable IWC Wage Orders.

9 62. As a result of the unlawful acts of Defendants, Plaintiff and the Aggrieved Group
10 she seeks to represent have been deprived of premium wages in amounts to be determined at trial,
11 and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees,
12 and costs, under Labor Code sections 218.5, 218.6, 226.7, 512 and the applicable IWC Wage
13 Orders, and Civil Code section 3287.

14 *FAILURE TO AUTHORIZE AND PERMIT PAID REST PERIODS*

15 63. Labor Code section 226.7(b) reads: “No employer shall require any employee to
16 work during any meal or rest period ...mandated by an applicable... order of the Industrial Welfare
17 Commission.”

18 64. Labor Code section 516 provides that the Industrial Welfare Commission may adopt
19 or amend working condition orders with respect to break periods for any workers in California
20 consistent with the health and welfare of those workers.

21 65. The applicable IWC Wage Order requires employers to authorize and permit
22 employees to take a net 10-minute rest period for every four hours worked or major fraction thereof,
23 which insofar as practicable shall be taken in the middle of each work period.

24 66. Such rest periods constitute compensable time.

25 67. As a matter of Defendants’ established company policy, Defendants failed to
26 authorize and permit the required paid rest periods established by Labor Code section 226.7 and
27 Labor Code section 516 and the IWC Wage Order(s).

28 68. Plaintiff and, upon information and belief, the Aggrieved Employees did not

1 voluntarily or willfully waive rest periods and were regularly required to work through rest periods.

2 69. By their failure to provide rest periods for every four hours or major fraction thereof
3 worked per day by Plaintiff and the Aggrieved Employees, and by failing to provide compensation
4 for such non-provided rest periods, as alleged above, Defendants willfully violated the provisions
5 of Labor Code section 226.7, and the applicable IWC Wage Orders.

6 70. As a result of the unlawful acts of Defendants, Plaintiff and the Aggrieved Group
7 they seek to represent have been deprived of premium wages in amounts to be determined at trial,
8 and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees,
9 and costs, under Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil
10 Code 3287.

11 *FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS*

12 71. Labor Code section 226(a) reads in pertinent part: "Every employer shall,
13 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
14 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
15 when wages are paid by personal check or cash, an accurate itemized statement in writing showing
16 (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net
17 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
18 the employee and only the last four digits of his or her social security number or an employee
19 identification number other than a social security number, (8) the name and address of the legal
20 entity that is the employer, and (9) all applicable hourly rates in effect during each the pay period
21 and the corresponding number of hours worked at each hourly rate by the employee....".

22 72. Further, the IWC Wage Orders require: Every employer shall keep accurate
23 information with respect to each employee including the following: (3) Time records showing when
24 the employee begins and ends each work period. Meal periods, split shift intervals, and total daily
25 hours worked shall also be recorded...(5) Total hours worked in the payroll period and applicable
26 rates of pay...."

27 73. Labor Code section 1174 of the California also requires Defendants to maintain and
28 preserve, in a centralized location, among other items, records showing the names and addresses of

1 all employees employed and payroll records showing the hours worked daily by, and the wages
2 paid to, its employees.

3 74. On information and belief and based thereon, Defendants have knowingly and
4 intentionally failed to comply with Labor Code section 1174, including by implementing the
5 policies and procedures and committing the violations alleged in the preceding causes of action and
6 herein. Defendants' failure to comply with Labor Code section 1174 is unlawful pursuant to Labor
7 Code section 1175.

8 75. Under Labor Code section 226 and applicable IWC Wage Orders, the wage
9 statements Defendants provide to employees must show all payments owed. Employers such as
10 Defendants must also accurately report total hours worked by employees such as Plaintiff and
11 Aggrieved Employees, and all applicable hourly rates in effect during the hours worked, along with
12 the total hours worked each day at each applicable hourly rate. The wage statements Defendants
13 provided to Plaintiff and Aggrieved Employees failed to comply with these requirements.

14 76. Defendants have failed to record many of the items delineated in applicable
15 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section 1174,
16 including by virtue of the fact that each wage statement which failed to accurately compensate
17 Plaintiff and Aggrieved Employees for all hours worked and for missed and non-provided meal and
18 rest periods, or which failed to include compensation for all overtime hours worked, was an
19 inaccurate wage statement.

20 77. On information and belief, Defendants failed to implement and preserve a lawful
21 record-keeping method to record hours worked and all non-provided meal and rest periods owed to
22 employees or all hours worked, as required under California Labor Code section 226 and applicable
23 California Wage Orders. In order to determine if they had been paid the correct amount and rate
24 for all hours worked, Plaintiff and Aggrieved Employees have been, would have been, and are
25 compelled to try to discover the required information missing from their wage statements and to
26 perform complex calculations in light of the inaccuracies and incompleteness of the wage
27 statements Defendants provided to them.

28 78. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC

1 Wage Orders, Defendants did not and still do not furnish Aggrieved Employees with accurate
2 itemized statements in writing accurately reflecting all of the required information.

3 79. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
4 Wage Orders, Defendants, did not and do not maintain accurate records pertaining to the total hours
5 worked for Defendants by the members of the Aggrieved Group, including but not limited to,
6 beginning and ending of each work period, meal period and split shift interval, the total daily hours
7 worked, and the total hours worked per pay period and applicable rates of pay.

8 80. Plaintiff and the members of the Aggrieved Group have suffered injury as a result
9 of Defendants' failure to maintain accurate records for the members of the Aggrieved Group in that
10 the members of the Aggrieved Group were not timely provided written accurate itemized
11 statements showing all requisite information, such that the members of the Aggrieved Group were
12 misled by Defendants as to the correct information regarding various items, including but not
13 limited to total hours worked by the employee, net wages earned and all applicable hourly rates in
14 effect during the pay period and the corresponding number of hours worked at each hourly rate.

15 81. Pursuant to Labor Code section 226, and in light of Defendants' violations addressed
16 above, Plaintiff and the Aggrieved Employees are each entitled to recover up to a maximum of
17 \$4,000.00, along with an award of costs and reasonable attorneys' fees.

18 ***FAILURE TO TIMELY PAY ALL WAGES OWED AT SEPARATION***

19 82. Labor Code sections 201-202 requires an employer who discharges an employee to
20 pay compensation due and owing to said employee immediately upon discharge, and that if an
21 employee voluntarily leaves his or her employment, his or her wages shall become due and payable
22 not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72)
23 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or
24 her wages on their last day of work.

25 83. Labor Code section 203 provides that if an employer willfully fails to pay
26 compensation promptly upon discharge, as required by Labor Code sections 201-202, the employer
27 is liable for waiting time penalties in the form of continued compensation for up to thirty (30) work
28 days.

1 84. During the liability period, Defendants willfully failed and refused, and continue to
2 willfully fail and refuse, to pay Plaintiff and members of the Aggrieved Group their wages, earned
3 and unpaid, either at the time of discharge, or within seventy-two (72) hours of their voluntarily
4 leaving of Defendants' employment. These wages include unpaid straight time and overtime
5 wages, and unpaid meal and rest period premiums as described above.

6 85. As described, employees were not paid all hourly and overtime wages earned, and
7 were not provided all rest periods and meal periods, and accordingly any members of the Plaintiffs'
8 Aggrieved Group who were discharged or resigned from Defendant's employment during the
9 liability periods have not received such compensation for all rest periods and meal periods and
10 unpaid overtime wages that Defendants failed to provide.

11 86. Upon information and belief, more than thirty (30) days have passed since the
12 affected Aggrieved Employees, including Plaintiff, have left Defendants' employment, and on
13 information and belief, they have not received payment of all compensation owed to them by
14 Defendants.

15 87. Defendants' willful failure to pay Plaintiff and the Aggrieved Employees their
16 wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their
17 voluntarily leaving Defendants' employment, violates Labor Code sections 201-202.

18 88. As a result of their above described actions, Defendants are liable to Plaintiff and
19 members of the Aggrieved Group for waiting time penalties pursuant to Labor Code section 203
20 in an amount according to proof at the time of trial. Plaintiff is also entitled to an award of
21 interest and attorney's fees pursuant to statute.

22 ***FAILURE TO REIMBURSE NECESSARY EXPENDITURES***

23 89. Plaintiff repeats and incorporates herein by reference each and every allegation set
24 forth above, as though fully set forth herein.

25 90. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Aggrieved
26 Employees for necessary expenditures incurred in direct consequence of the discharge of his or her
27 duties.

28 91. Plaintiff, and on information and belief members of the Aggrieved Group, were

1 required to incur expenses in the performance of their assigned job duties. For example, Plaintiff
2 and the Aggrieved Employees were required to incur numerous out of pocket expenses, including
3 mileage, supplies, home office equipment, internet services, and cellular phone charges.

4 92. Upon information and belief, the Defendants did not reimburse Plaintiffs or the
5 Aggrieved Employees for such expenses.

6 93. As a result of the unlawful acts of Defendants, Plaintiffs and the Aggrieved
7 Employees have been deprived of un-reimbursed sums in amounts to be determined at trial, and
8 are entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
9 costs, pursuant to Labor Code §2802.

10 **Failure to Keep Accurate Payroll and Timekeeping Records**

11 94. The IWC wage orders, Labor Code sections 226(a), 1174, and 1174.5 require that
12 the Defendant keep accurate payroll and timekeeping information.

13 95. By virtue of the above-specified violations, including the failure to record hours
14 worked off the clock, wages earned, proper rates of pay and hours worked during purportedly
15 provided meal breaks, and the failure to timely pay wages according to requirements of Labor
16 Code 204, Defendant failed to keep accurate timekeeping and wage information and violated
17 Labor Code sections 226(a), 1174, and 1174.5.

18 96. Defendant also failed to keep accurate payroll information as a consequence of the
19 above specified violations, including the failure to pay for all hours worked, premiums for missed
20 meal and rest breaks as required by law.

21 **CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

23 **PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE**

24 **SECTION 2698 ET SEQ.**

25 97. Plaintiff incorporates by reference each and every paragraph above, and realleges
26 each and every allegation contained above as though fully set forth herein.

27 98. On August 9, 2021, Plaintiff gave written notice by online submission to the
28 LWDA and by certified mail to Defendants of Defendants' violations of numerous provisions of

1 the California Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were
2 paid as required by statute. A copy of the letter sent to the LWDA with enclosure is attached
3 hereto as **Exhibit A**.

4 99. Plaintiff is an “aggrieved employee” as defined in Labor Code Section 2699(A), as
5 she was employed by Defendants during the statutory period and suffered one or more of the
6 Labor Code violations set forth herein. She seeks to recover of herself and all other current and
7 former aggrieved employees of Defendants the civil penalties provided by PAGA, plus
8 reasonable attorneys’ fees and costs.

9 100. 65 days have passed, and no response has been received from the LWDA.
10 Accordingly, the LWDA has permitted Plaintiff to proceed in a representative capacity.

11 101. Plaintiff has exhausted all administrative procedures required of them under the
12 Labor Code §§2698, 2699, 2699.3, and as a result, is justified as a matter of right in bringing
13 forward this cause of action.

14 102. Pursuant to Labor Code section 2699(a) Plaintiff seeks to recover civil penalties
15 for which Defendants are liable due to numerous Labor Code violations as set forth in this
16 Complaint.

17 103. Plaintiff seeks to recover the PAGA civil penalties through a representative action
18 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
19 4th 969. Class certification of the PAGA claims is not required.

20 104. Pursuant to Labor Code section 2698 et seq and 2699(a), Plaintiff seeks to recover
21 civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order
22 violations as set forth in this Complaint.

23 105. Specifically, Plaintiff, on behalf of herself and the Aggrieved Employees, seek
24 penalties under Labor Code §2699, for, without limitation, the claims set forth herein, including:

- 25 a. Defendants’ failure to comply with the requirement of Labor Code §1182.12,
26 1194, 1197, 1198, and Wage Orders to pay at least minimum wage for every
27 hour worked;

- 1 b. Defendants' failure to comply with the requirement of Labor Code §510, 1194,
2 1197, 1198, and Wage Orders to accurately pay all wages earned including
3 overtime wages;
- 4 c. Defendants' failure to comply with the requirement of Labor Code §216 to pay
5 wages after demand was made;
- 6 d. Defendants' failure to comply with the requirement of Labor Code §§204 and
7 210 to pay, without condition and within the time set by the applicable article,
8 all wages, or parts thereof;
- 9 e. Defendants' failure to comply with the requirement of Labor Code §225.5 to
10 pay wages due;
- 11 f. Defendants' failure to comply with the requirement of Labor Code §§201 and
12 202 to pay wages due to former employees;
- 13 g. Defendants' failure to comply with the requirement of Labor Code §203 to pay
14 waiting time penalties to former employees;
- 15 h. Defendants' failure to comply with the requirement of Labor Code §226.7,
16 1198, and IWC Wage Orders to authorize and permit ten (10) minute rest
17 breaks;
- 18 i. Defendants' failure to comply with the requirement of Labor Code §§226.7,
19 1198, and IWC Wage Orders to pay one hour of premium pay at the regular
20 rate for each statutorily required rest break that was not lawfully authorized
21 and permitted;
- 22 j. Defendants' failure to comply with the requirement of Labor Code §226.7,
23 512, 1198, and IWC Wage Orders to provide timely, uninterrupted 30 minutes
24 off-duty meal periods;
- 25 k. Defendants' failure to comply with the requirement of Labor Code §226.7,
26 1198, and IWC Wage Orders to pay one hour of premium pay at the regular
27 rate for each lawful meal break that was not provided;
- 28

- l. Defendants' failure to provide accurate compliant wage statements under Labor Code section 226;
- m. Defendants' failure to reimburse necessary expenses in violation of Labor Code §2802.
- n. Defendants' failure to maintain required records in violation of Labor Code §226, 1174, and Wage Orders for the above-specified violations, and failure to maintain accurate clock in and out times;

106. Plaintiff seeks civil penalties for Defendants' violation of Labor Code provisions for which a civil penalty is specifically provided, including but not limited to the following:

- a. Pursuant to Labor Code §210, for violations of Labor Code §204, Defendants are subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred (\$200) per employee for violations in subsequent pay periods plus 25% of the amount unlawfully withheld.
- b. Pursuant to Labor Code §226.3, for violations of Labor Code §226 (a) Defendants are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period where a violation occurs and one thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay periods.
- c. Pursuant to Labor Code §558(a), "[a]ny employer or other person acting on behalf of an employer who violated, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission," including Labor Code §§ 510 and 512, shall be subject to a civil penalty, in addition to any other penalty provided by law, of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid and one hundred dollars (\$100) for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid.

1 d. Pursuant to Labor Code §1197.1, an employer who pays or causes to be paid to
2 any employee a wage less than the minimum fixed by an order of the
3 commission, shall be subject to a civil penalty as follows: for any initial
4 violation that is intentionally committed, one hundred dollars (\$100) for each
5 underpaid employee for each pay period for which the employee is underpaid;
6 and for each subsequent violation of the same offense, two hundred fifty
7 dollars (\$250) for each underpaid employee for each pay period for which the
8 employee is underpaid regardless of whether the initial violation was
9 intentionally committed.

10 e. Pursuant to Labor Code § 1174.5, for violations of Labor Code §1174(d),
11 Defendants are subject to a civil penalty of five hundred dollars (\$500).

12 107. Further, as a result of the acts alleged hereinabove, Plaintiff seeks penalties under
13 Labor Code §§2698 et seq. and 2699 because of Defendants' violation of numerous provisions of
14 the California Labor Code and IWC Wage Orders.

15 108. Under Labor Code §2699, Plaintiff and Aggrieved Employees are entitled to \$100
16 for any initial violation and \$200 for all subsequent violations of the above-mentioned provisions
17 of the California Labor Code.

18 109. Under Labor Code §2699, Plaintiff and Aggrieved Employees should be awarded
19 twenty-five (25%) of all penalties due under California Law, interest, attorneys' fees and costs.

20 110. Under Labor Code §2699, the State of California should be awarded seventy-five
21 percent (75%) of the penalties due under California Law.

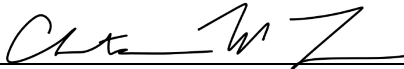
1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays judgment against Defendants, as follows:

- 3 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq. for the
4 violations specified above;
- 5 2. For penalties under Labor Code sections 210, 226.3, 1174.5, 1197.1, and 2699(a) and
6 (f);
- 7 3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California
8 Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-
9 judgment interest;
- 10 4. For reasonable attorneys' fees, expenses, and costs under Labor Code §§1194, 226,
11 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable provisions
12 providing for attorneys' fees and costs; and
- 13 5. For such other and further relief as the Court deems proper.

14
15
16 Respectfully submitted,

17
18 Dated: March 14, 2023

19 
JAMES HAWKINS, APLC
James R. Hawkins, Esq.
Christina M. Lucio, Esq.

20
21 Attorneys for PLAINTIFF CRISTAL BOWMAN,
22 individually and on behalf of all others similarly
23 situated
24
25
26
27
28

EXHIBIT 2

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

August 9, 2021

Via Online Filing (LWDA) and Certified Mail (Employer)

California Labor and Workforce Development Agency
Attn: PAGA Administrator

Delta Dental of California
560 Mission St., Ste. 1300
San Francisco, CA 94105
Certified Mail Receipt: 7020 0640 0001 0089 8120

Delta Dental of California
Agent for Service of Process
Michael G. Hankinson
560 Mission St., Ste. 1300
San Francisco, CA 94105
Certified Mail Receipt: 7020 0640 0001 0089 8137

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiff Cristal Bowman, on behalf of herself and all others similarly situated, hereby gives NOTICE of her Complaint pursuant to Labor Code Sections 2698, *et seq.* against Defendants Delta Dental of California, a California Non-Profit Corporation, and DOES 1 through 50, inclusive. Plaintiff intends to commence an action against Defendants pursuant to Labor Code sections 2698 *et seq.* Plaintiff hereby gives written notice by online submission to the Labor and Workforce Development Agency, and by certified mail to Defendant Delta Dental of California via its agent for service of process.

Plaintiff has attached her Complaint, and incorporates the allegations in the Complaint as though fully set forth herewith, setting out the specific provisions of the Labor Code that Plaintiff alleges have been violated, including the facts and relevant theories alleged against Defendants in the Complaint.

NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 et seq.

August 9, 2021

Page 2

Plaintiff alleges that Defendants committed the violations specified in the Complaint against both her and the group of aggrieved employees that she seeks to represent: Any and all persons who are or were employed by the Defendants as salaried, exempt employees in “analyst” positions or in billing, customer service, or claims, in California through resolution or trial of the matter (the “Aggrieved Employees”) during the liability period. 1

All Labor Code and related Complaint allegations pertain to all entities or individuals named in the Complaint, even if not so specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

/s/ Christina M. Lucio

Christina M. Lucio, Esq.

Enclosure: Class Action Complaint

1 As properly tolled by California Rule of Court App I. R.R. Emergency Rule 9

James R. Hawkins (SBN 192925)
Christina M. Lucio (SBN 253677)
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Irvine, California 92618
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James@Jameshawkinsaplc.com
Christina@Jameshawkinsaplc.com

Attorneys for Plaintiff CRISTAL BOWMAN,
individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CRISTAL BOWMAN, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

DELTA DENTAL OF CALIFORNIA, a
California Non-Profit Corporation; and
DOES 1-50, inclusive,

Defendants.

Case No.

CLASS ACTION

Assigned for All Purposes To:
Dept.:

CLASS ACTION COMPLAINT FOR:

- (1) Failure to Pay Wages Owed, including Minimum Wages and Overtime**
- (2) Failure to Provide Lawful Meal Periods;**
- (3) Failure To Authorize And Permit Rest Periods;**
- (4) Failure to Timely Pay Wages Owed Upon Separation From Employment;**
- (5) Failure to Reimburse Necessary Expenses;**
- (6) Failure to Provide Accurate Lawful Itemized Wage Statements; And**
- (7) Unfair Competition**

DEMAND FOR JURY TRIAL

Plaintiff CRISTAL BOWMAN ("Plaintiff"), individually and on behalf of others similarly situated, and asserts claims against defendant DELTA DENTAL OF CALIFORNIA, a California Non-Profit corporation, and DOES 1-50, inclusive (collectively "Defendants") as follows:

///

///

I.

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure section 382, on behalf of Plaintiff and all employees who are employed or were formerly employed by Defendant Delta Dental of California as exempt employees, including without limitation as analysts or in billing, customer service, or claims, in California (also referred to as “Class Members”).

2. During the “liability period,” as defined as the applicable statute of limitations (as tolled by Emergency Rule 9) for each and every cause of action contained herein, i.e. Plaintiff’s claims under the Unfair Competition Law is four (4) years; Plaintiff’s claim for either unpaid wages or actual damages is three (3) years; and Plaintiff’s claims for statutory penalties is one (1) year from the filing of this action to the present and through resolution of this action (“the liability period(s)”), Defendants consistently maintained and enforced against their Class Members unlawful practices and policies in violation of California state wage and hour laws, including failing to provide required meal and rest periods, failing to pay minimum wage for each hour worked, failing to pay overtime, and failing to accurately pay employees all earned wages for their hours worked, including overtime wages as well as premium wages for each day on which a meal and/or rest period violation occurred. Defendants also failed to timely pay all wages owed upon separation, failed to keep accurate records, failed to reimburse expenses, and failed to furnish accurate, itemized wage statements to Class Members.

3. Defendants’ violated the law by erroneously treating Class Members as employees exempt from overtime and minimum wage requirements and the requirements of the IWC Wage Orders. Class Members were misclassified as exempt, salaried employees and as a consequence were not properly paid for all hours worked and were not provided with statutorily required meal and rest breaks.

4. Defendants implemented policies and practices that failed to properly pay employees for all hours worked and deprived Class members of overtime wages earned.

5. Defendants set up and enforced schedules, policies, and workload requirements

1 wherein Plaintiff and Class Members were regularly not provided with a timely, legally compliant
2 first uninterrupted meal period of at least thirty (30) minutes during shifts of greater than five (5)
3 hours and were not timely provided a second timely, legally compliant uninterrupted meal period
4 of at least thirty (30) minutes during shifts of greater than ten (10) hours.

5 6. Defendants also did not authorize and permit Class Members to take a net ten (10)
6 minute rest period for every four (4) hours worked or major fraction thereof.

7 7. Defendants also failed to keep accurate records of the hours worked by employees
8 and of meal periods as required by law.

9 8. Defendants have also consistently failed to timely pay all wages owed at
10 separation and failed to furnish accurate, itemized wage statements reflecting rate of pay and all
11 wages owed. Such violations have resulted, at least in part, from Defendants' consistent decision
12 not to pay premium wages for non-provided meal and rest periods and to require its employees to
13 work hours, including overtime hours, without receiving legally required compensation.

14 9. Defendants also failed to reimburse employees for necessary expenses, including
15 mileage, and cellular phone usage.

16 10. Such actions and policies, as described above and further herein, were and
17 continue to be in violation of the California Labor Code. Plaintiff, on behalf of herself and all
18 Class members, bring this action pursuant to the California Labor Code, including sections 201,
19 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 558, 1194, 1194.5, 1195, 1197, 1198, 2698 *et*
20 *seq.*, 2802, applicable IWC California Wage Orders and California Code of Regulations, Title 8,
21 section 11000 *et seq.*, seeking unpaid overtime and minimum wages, and meal period and rest
22 period compensation, unreimbursed expenses, interest thereon, penalties and reasonable
23 attorneys' fees and costs.

24 11. Plaintiff, on behalf of herself and all others similarly situated, pursuant to Business
25 and Professions Code sections 17200-17208, also seeks restitution from Defendants for their
26 failure to pay to Plaintiff and Class Members all of their wages earned including minimum wages,
27 overtime wages and meal and rest period premiums.

28 ///

1 II.

2 **JURISDICTION AND VENUE**

3 12. This class action is brought pursuant to California Code of Civil Procedure, section
4 382. The monetary damages and restitution sought by Plaintiff exceed the minimum jurisdiction
5 limits of the California Superior Court and will be established according to proof at trial.

6 13. This Court has jurisdiction over this action pursuant to the California Constitution
7 Article VI section 10, which grants the California Superior Court original jurisdiction in all
8 causes except those given by statute to other courts. The statutes under which this action is
9 brought do not give jurisdiction to any other court.

10 14. This Court has jurisdiction over Defendants because, upon information and belief,
11 each Defendant is either a resident of California, has sufficient minimum contacts in California,
12 or otherwise intentionally avails itself of the California market so as to render the exercise of
13 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
14 substantial justice. Further, Defendants have done and are doing business in California and in
15 Alameda County. The unlawful acts alleged herein have a direct effect on Plaintiff and the other
16 similarly situated putative Class Members within Alameda County and throughout the State of
17 California and Defendants have employed at least a hundred Class Members in Alameda County
18 and throughout California.

19 15. The California Superior Court also has jurisdiction in this matter because the
20 individual claims of the Class Members described herein are presently believed to be under the
21 seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the
22 aggregate potential damages and recovery by all of the claims of the Plaintiff's Class, including
23 attorneys' fees, placed in controversy by Plaintiff's class-wide claims, is presently believed to be
24 under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005.
25 Further, there is no federal question at issue, as the issues herein are based solely on California
26 statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil
27 Procedure, the California Civil Code, and the California Business and Professions Code.

28 16. Venue is proper in this Court because upon information and belief, one or more of

1 the Defendants transact business, or have offices in this County and the acts or omissions alleged
2 herein took place in this County and because Plaintiff is presently a resident of this County.

3 **III.**

4 **PARTIES**

5 17. Defendant Delta Dental of California is a California domestic nonprofit
6 corporation in good standing and authorized to do business in California and operates in Alameda
7 County and throughout California. It is based at 560 Mission Street, Suite 1300, San Francisco,
8 California 94105. On information and belief, Plaintiff alleges that at all relevant times
9 referenced herein Defendants did and continue to transact business throughout California.

10 18. Delta Dental of California provides a dental insurance for local communities.

11 19. Plaintiff Cristal Bowman is and during the liability period has been, a resident of
12 California.

13 20. Plaintiff was employed as a salaried employee in the position of Billing Analyst
14 for Delta Dental of California. Plaintiff worked at a location in Oakland, California. Plaintiff
15 was employed by Defendants from November 2019 until March 12, 2021.

16 21. The named Plaintiff and every other Class Member worked in California, and was
17 misclassified as a salaried, exempt employee.

18 22. Whenever in this complaint reference is made to any act, deed, or conduct of
19 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
20 through one or more of Delta Dental of California's officers, directors, agents, employees, or
21 representatives, who was actively engaged in the management, direction, control, or transaction
22 of the ordinary business and affairs of Defendants.

23 23. The true names and capacities of Defendants, whether individual, corporate,
24 associate, or otherwise, sued herein as DOES 1 through 100, inclusive, are currently unknown to
25 Plaintiff, who therefore sues Defendants by such fictitious names under California Code of Civil
26 Procedure section 474. Plaintiff will seek leave of court to amend this Complaint to reflect the
27 true names and capacities of the Defendants designated hereinafter as DOES when such identities
28 become known.

24. Plaintiff is informed and believe, and thereon alleges, that the Doe Defendants are the partners, agents, or principals and co-conspirators of Delta Dental of California and of each other; that Delta Dental of California and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the liability of the Defendants as alleged herein.

25. Plaintiff is further informed and believes, and thereon alleges, that at all times material herein, each Defendant was dominated or controlled by its co-Defendants and each was the alter ego of the other. Whenever and wherever reference is made in this complaint to any conduct by Defendant or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as Defendants in this complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times acted on behalf of Defendants named in this complaint within the scope of their respective employments.

IV.

FACTUAL ALLEGATIONS

26. Plaintiff and Class Members were or are currently employed by Delta Dental of California as salaried, exempt employees, including without limitation in “analyst” positions or in billing, customer service, or claims, in California (also referred to as “Class Members”). (the “Class”).

27. Plaintiff and the Class Members were, and at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders. They are subject to the protections of the IWC Wage Orders and the Labor Code.

28. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws.

1 29. During the relevant time frame, pursuant to their uniform policies and procedures,
2 Defendants classified Plaintiff and the Class Members as exempt and paid them a set salary
3 irrespective of the number of hours they actually worked, and deprived them of statutorily
4 required meals and rest breaks.

5 30. During the relevant time frame, Class Members typically worked five (5) days per
6 week and generally averaged over forty-five (45) hours per week. Plaintiff and the Class
7 Members worked long hours typically substantially in excess of 40 hours per week.

8 31. During the relevant time frame, Class Members were not primarily engaged in
9 exempt duties as they spent and consistently spend more than fifty percent (50%) of their working
10 time performing non-exempt and non-managerial tasks. The majority of their time is spent
11 performing non-exempt, non-managerial activities that include, but are not limited to:

- 12 a. Apply open payments;
- 13 b. Log into bank accounts and make sure payment belongs to the specified account;
- 14 c. Reconcile accounts from different accounts;
- 15 d. Calling clients; and,
- 16 e. Update reports.

17 As a result, Class Members were not and have not been consistently engaged in performing
18 exempt work as defined by the IWC Wage Orders.

19 32. Plaintiff alleges that Defendants' locations are virtually identical in service and
20 operation. The duties of Class Members are set forth by written company-wide policies and
21 procedures. Class Members are not allowed to deviate from such policies and procedures. Class
22 Members do not and have not exercised independent judgment or discretion in the performance of
23 the vast majority of their job duties.

24 33. Defendants' misclassified Class Members as exempt when they were in fact non-
25 exempt employees entitled to the protections of IWC

26 34. During the relevant time frame, in violation of the mandates of Labor Code section
27 1174(d) and the IWC Wage Orders, Defendants failed to maintain accurate time records showing
28 the beginning and end of each work period, including meal periods, and all hours worked by

1 Plaintiff and Class Members.

2 35. During the relevant time frame, and as a consequence of the misclassification of
3 Plaintiff and the Class Members as exempt, Plaintiff and the Class Members frequently worked
4 over eight (8) hours in a day or over forty (40) hours in a workweek without being paid overtime
5 at a rate of 1.5 times the employee's regular rate of pay for hours worked in excess of 8 hours in a
6 day or 40 hours in a week.

7 36. During the relevant time frame, Plaintiff and Class Members on occasion worked
8 over twelve (12) hours in a workday and for seven consecutive days in a workweek without being
9 paid overtime at a rate of 2.0 times the employee's regular rate of pay for hours worked as
10 required by law.

11 37. Plaintiff also alleges that to the extent she and the other Class Members were paid
12 overtime or meal/rest period premiums at any point (however, they largely were not paid
13 overtime as a matter of Defendants' policies and practice), they were not paid the proper regular
14 rate because Plaintiff and the Class Members earned certain sums including bonuses, incentives,
15 and gift cards which, upon information and belief, were not factored into the regular rate of
16 compensation.

17 38. During the relevant time frame, Plaintiff and the Class Members were required to
18 incur numerous expenses in carrying out their job duties, including mileage, cell phones, and
19 supply purchases.

20 39. In addition, Plaintiff and the certain Class members were required to work from
21 home during the Covid-19 pandemic and were required to incur costs associated with maintaining
22 a home office, including costs associated with personal computers, supplies, and internet services.

23 40. However, Plaintiff and the Class Members were not fully reimbursed for these
24 necessary expenditures.

25 41. Defendants also failed to provide lawful, timely and uninterrupted meal and rest
26 periods as a matter of Defendants' policies and practices.

27 42. Despite the above-mentioned meal and rest period violations, Defendants did not
28 compensate Plaintiff and, on information and belief, did not compensate Class Members one

1 additional hour of pay at their regular rate as required by California law when meal or rest periods
2 were not lawfully provided.

3 43. Defendants failed to properly pay Plaintiff and other Class members the legal
4 minimum wages and overtime wages they earned, failed to provide all authorized meal and rest
5 periods owed to Class Members, and failed to pay one (1) hour wages in lieu of each non-
6 provided meal and rest period. Defendants have made it difficult to account with precision for the
7 unlawfully withheld wages owed to Plaintiff and Class Members during the liability period and
8 failed to implement and preserve a lawful record-keeping method to record all non-provided meal
9 and rest periods owed to employees, as required for Non-Exempt Employees by California Labor
10 Code section 226 and applicable California Wage Orders. Plaintiff and Class Members are
11 therefore entitled to penalties not to exceed \$4,000 for each employee pursuant to Labor Code
12 section 226(e).

13 44. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
14 should know, knew, and/or should have known that Plaintiff and the other Class Members were
15 entitled to receive accurate wages for minimum wages, overtime compensation, and premium
16 wages under Labor Code section 226.7(b) and the IWC Wage Order, but were not receiving
17 accurately calculated compensation.

18 45. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants knew that they had a duty to accurately compensate Plaintiff and Class
20 Members for all hours worked including minimum wages, overtime wages and meal and rest
21 period premiums, and that Defendants had the financial ability to pay such compensation, but
22 willfully, knowingly, recklessly, and/or intentionally failed to do so.

23 46. Plaintiff and Class Members are covered by applicable California IWC Wage
24 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
25 section 11000 *et seq.*

1 V.

2 **CLASS ACTION ALLEGATIONS**

3 47. Plaintiff brings this action on her own behalf, as well as on behalf of each and all
4 other persons similarly situated, and thus, seeks class certification under California Code of Civil
5 Procedure section 382.

6 48. All claims alleged herein arise under California law, for which Plaintiff seeks
7 relief as authorized by California law.

8 49. The proposed class is comprised of and defined as: **Any and all persons who are**
9 **or were employed by the Defendants as salaried, exempt employees in “analyst” positions or**
10 **in billing, customer service, or claims, in California within four years prior to the filing of**
11 **this action¹ through resolution or trial of the matter (hereinafter collectively referred to as**
12 **the “Class” or “Class Members”).**

13 50. Plaintiff also seeks to represent Subclasses, included in the Plaintiff’s Class, which
14 are composed of Class Members satisfying the following definitions:

15 a. All Class Members who worked from home at any time during the
16 relevant time period (collectively **“Work from Home Subclass”**).

17 b. All Class Members who were not paid at least minimum wage for
18 all hours worked (collectively **“Minimum Wage Subclass”**);

19 c. All Class Members who worked overtime hours without being
20 provided proper overtime compensation (collectively **“Overtime Wages Subclass”**).

21 d. All Class Members who worked more than five (5) hours in a
22 workday and were not provided with an uninterrupted meal period of thirty (30) minutes, or
23 compensation in lieu thereof (collectively **“Meal Period Subclass”**);

24 e. All Class Members who worked more than ten (10) hours in a
25 workday and were not provided with a second uninterrupted meal period of thirty (30) minutes, or
26 compensation in lieu thereof (collectively **“Second Meal Period Subclass”**);

27 f. All Class Members who are or were employed by Defendants and

28 ¹ As properly tolled by California Rule of Court App I. R.R. Emergency Rule 9

1 who worked more than three and half (3 ½) hours in a workday without being permitted or
2 authorized to take one net ten-minute rest period for every four hours worked or major fraction
3 thereof (collectively “**Rest Period Subclass**”);

4 g. All Class Members who resigned or whose employment was
5 terminated at any time within three (3) years prior to filing of the Complaint in this action until
6 resolution of this lawsuit who were not timely paid all wages due to them upon separation from
7 Defendants’ employment (collectively “**Waiting Time Subclass**”);

8 h. All Class Members who were not provided lawful, accurate,
9 itemized wage statements (collectively “**Inaccurate Wage Statement Subclass**”);

10 i. All Class Members who were not reimbursed for all necessary
11 expenditures (collectively “**Indemnification Subclass**”) and

12 j. All Class Members who were employed by Defendants and subject
13 to Defendant’s Unfair Business Practices (collectively “**Unfair Business Practices Subclass**”).

14 51. Plaintiff reserves the right, under Rule 3.765, California Rules of Court, to amend
15 or modify the descriptions of the Class and Subclasses to provide greater specificity if it should
16 be deemed necessary by the Court or to further divide the Class Members into additional
17 Subclasses or to limit the Subclasses to particular issues.

18 52. As set forth in further detail below, this action has been brought and may properly
19 be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure
20 because there is a well-defined community of interest in the litigation and the proposed Class and
21 Subclasses are easily ascertainable.

22 a. Numerosity: The members of the Class and Subclasses are so numerous
23 that joinder of all members of the Class and Subclasses would be unfeasible and impractical. The
24 membership of the entire Class and Subclasses is unknown to Plaintiff at this time, however, the
25 Class is estimated to be greater than one hundred (100) individuals, and the identity of such
26 membership is readily ascertainable by inspection of Defendants’ employment records.

1 b. Commonality: There are common questions of law and fact as to the Class
2 and Subclasses that predominate over questions affecting only individual Class Members. These
3 common questions of law and fact include, without limitation:

4 1) Whether Plaintiff and the Class Members were uniformly misclassified as
5 exempt, in violation of the California Labor Code and applicable IWC Wage Orders;

6 2) Whether Defendants were required to compensate Plaintiff and Class
7 Members for all actual hours worked, including overtime;

8 3) Whether the purportedly exempt positions of Class Members were properly
9 classified;

10 4) Whether Defendants failed to accurately calculate and pay overtime
11 pursuant to Labor Code section 510 and the applicable Industrial Welfare Commission (“IWC”)
12 wage order to Plaintiff and Class Members for overtime hours worked;

13 5) Whether Defendants failed to provide meal periods in accordance with
14 Labor Code section 512 and the applicable IWC wage order;

15 6) Whether Defendants failed to authorize and permit lawful paid rest periods
16 in accordance with the California Labor Code and the applicable IWC wage order;

17 7) Whether Defendants failed to comply with accurate, itemized wage
18 statements in accordance with Labor Code section 226;

19 8) Whether Defendants failed to accurately record clock in and out times
20 and/or meal periods as required by the California Labor Code and the applicable IWC Wage
21 Order;

22 9) Whether Defendants properly reimbursed necessary expenses;

23 10) Whether Defendants failed to timely pay all wages upon separation in
24 accordance with Labor Code section 203; and

25 11) Whether Defendants engaged in unfair competition in violation of
26 California Business & Professions Code sections 17200, et seq.; and

27 12) The appropriate amount of damages, restitution, and/or monetary penalties
28 resulting from Defendants’ violations of California law.

1 c. Typicality: Plaintiff is qualified to, and will fairly and adequately protect
2 the interests of each member of the Class and Subclasses with whom she has a well-defined
3 community of interest. Plaintiff's claims herein alleged are typical of those claims which could
4 be alleged by any member of the Class and/or Subclasses, and the relief sought is typical of the
5 relief which would be sought by each member of the Class and/or Subclasses in separate actions.
6 All members of the Class and/or Subclasses have been similarly harmed by Defendants'
7 misclassification, denial of payment of overtime wages, meal and rest periods, failure to pay for
8 all hours worked, failure to timely pay all wages owed at separation, failure to reimburse for
9 necessary expenses; and failure to provide accurate itemized wage statements, all due to
10 Defendants' policies and practices that affected each member of the Class and/or Subclasses
11 similarly. Further, Defendants benefited from the same type of unfair and/or wrongful acts as to
12 each member of the Class and/or Subclasses.

13 d. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect
14 the interests of each member of the Class and/or Subclasses with whom she has a well-defined
15 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges
16 that she has an obligation to make known to the Court any relationships, conflicts, or differences
17 with any member of the Class and/or Subclasses, and no such relationships or conflicts are
18 currently known to exist. Plaintiff's attorneys and the proposed counsel for the Class and
19 Subclasses are versed in the rules governing class action discovery, certification, litigation, and
20 settlement and experienced in handling such matters. Other former and current employees of
21 Defendants may also serve as representatives of the Class and Subclasses if needed.

22 e. Superiority: The nature of this action makes the use of class action
23 adjudication superior to other methods. A class action will achieve economies of time, effort,
24 judicial resources, and expense, which would not be achieved with separate lawsuits. The
25 prosecution of separate actions by individual members of the Class and/or Subclasses would
26 create a risk of inconsistent and/or varying adjudications with respect to the individual members
27 of the Class and/or Subclasses, establishing incompatible standards of conduct for the
28 Defendants, and resulting in the impairment of the rights of the members of the Class and/or

1 Subclasses and the disposition of their interests through actions to which they were not parties.
2 Thus, a class action is superior to other available means for the fair and efficient adjudication of
3 this controversy because individual joinder of all Class Members is not practicable, and questions
4 of law and fact common to the Class predominate over any questions affecting only individual
5 Class Members. Each member of the Class has been damaged and is entitled to recovery by
6 reason of Defendants' unlawful policies and practices as set forth herein. Class action treatment
7 will allow those similarly situated persons to litigate their claims in the manner that is most
8 efficient and economical for both parties and the judicial system. Plaintiff is unaware of any
9 difficulties that are likely to be encountered in the management of this action that would preclude
10 its maintenance as a class action.

11 f. Public Policy Considerations: Employers in the state of California violate
12 employment and labor laws every day. However, current employees are often afraid to assert
13 their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing
14 actions because they believe their former employers may damage their future endeavors through
15 negative references and/or other means. The nature of this action allows for the protection of
16 current and former employees' rights without fear of retaliation or damage. Additionally, the
17 citizens of California have a significant interest in ensuring employers comply with California's
18 labor laws and in ensuring those employers who do not are prevented from taking further
19 advantage of their employees.

20 VI.

21 CAUSES OF ACTION

22 FIRST CAUSE OF ACTION

23 FAILURE TO PAY ALL WAGES OWED, INCLUDING MINIMUM WAGES AND

24 OVERTIME WAGES

25 (Against All Defendants)

26 53. Plaintiff repeats and incorporates herein by reference each and every allegation set
27 forth above, as though fully set forth herein.

28 54. Labor Code section 204 establishes the fundamental right of all employees in the

1 State of California to be paid wages, including minimum wage and overtime, in a timely fashion
2 for their work.

3 55. Labor Code section 1194 (a) provides that notwithstanding any agreement to work
4 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
5 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
6 of the full amount of this minimum wage or overtime compensation, including interest thereon,
7 reasonable attorney's fees, and costs of suit.

8 56. Labor Code section 1197 provides: “The minimum wage for employees fixed by
9 the commission or by any applicable state or local law, is the minimum wage to be paid to
10 employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

11 57. Labor Code section 510(a) reads in pertinent part: “Any work in excess of eight
12 hours in one workday and any work in excess of 40 hours in any one workweek ... shall be
13 compensated at the rate of no less than one and one-half times the regular rate of pay for any
14 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less
15 than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours
16 on any seventh day of a workweek shall be compensated at the rate of no less than twice the
17 regular rate of pay of an employee.”

18 58. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
19 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
20 IWC Wage Order(s).

21 59. IWC Wage Order No. 4-2001 applies to Plaintiff’s and Class Members’
22 employment. It provides for the payment of at least minimum wage for all hours worked and
23 overtime wages equal to one and one-half times an employee’s regular rate of pay for all hours
24 worked in excess of 8 hours in a day or 40 hours in workweek or, in certain circumstances, two
25 times an employee’s regular rate of pay.

26 60. At all times relevant hereto, Defendants treated Plaintiff and others similarly
27 situated as “salaried exempt” employees—that is exempt from the protections of the California
28 Labor Code.

1 61. In California, employees are presumed to be non-exempt and all exemptions are
2 narrowly construed against the employer. *Ramirez v. Yosemite Water Co., Inc.* (1999) 20 Cal. 4th
3 785; *Nordquist v. McGraw-Hill Broadcasting Co.* (1995) 32 Cal.App.4th 555.

4 62. Defendants improperly misclassified Plaintiff and the Class Members, as the
5 Class Members did not meet exemption criteria because, among other things, the Class Members:

6 a. Were not primarily engaged in the management of the enterprise in
7 which he or she is employed or of a customarily recognized department or subdivision thereof;
8 and

9 b. Were not customarily and regularly directing the work of two or
10 more other employees therein; and

11 c. Were not granted the authority to hire or fire other employees, and
12 their suggestions and recommendations as to the hiring or firing and as to the advancement and
13 promotion or any other change of status of other employees were not given particular weight; and

14 d. Were not customarily and regularly exercising discretion and
15 independent judgment in the performance of their duties; and

16 e. Spent less than fifty percent (50%) of their worktime “engaged in”
17 managerial work; and

18 f. Spent over 50% of their worktime engaged in non-exempt duties .

19 63. Plaintiff and the other salaried Class Members are and were expected to work in
20 excess of 8 hours in a day and/or over 40 hours in a week.

21 64. Per its policy and practice, Defendants failed to keep records of hours worked by
22 its employees, including meal periods, as required by California’s wage orders.

23 65. Defendants’ pattern, practice and uniform administration of corporate policy
24 regarding illegal employee compensation as described herein is unlawful and creates an
25 entitlement to recovery by the members of the Class, in a civil action, for the unpaid balance of
26 the full amount of the unpaid wages, including minimum wages and overtime, and interest
27 thereon, reasonable attorneys’ fees, and costs of suit.

66. Defendants' nonpayment of compensation, including overtime compensation, to the members of the Class was Defendants' uniform policy and procedure, and therefore a class action is the most efficient means of resolving the Overtime Class Members' overtime claims. (See, e.g. *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319).

67. That calculation of individual damages for the members of the Class may at some point be required does not foreclose the possibility of taking common evidence on questions regarding their entitlement to overtime compensation. (See, e.g. *Collins v. Rocha* (1972) 7 Cal.3d 232; *Hypolite v. Carleson* (1975) 52 Cal.App.3d 566; *Employment Development Dept. v. Superior Court* (1981) 30 Cal.3d 256).

68. Plaintiff is informed and believes that Defendant knew or should have known that salaried Class Members did not qualify as exempt employees and purposely elected not to pay them for their labor.

69. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code sections 218, 218.5, 218.6, 510, 1194, 1197, 1198, and 1199, and Civil Code section 3287, and other applicable statutes.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(Against All Defendants)

70. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

71. Labor Code section 226.7(a) provides that “No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

72. Labor Code section 512 provides that “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is

1 no more than six hours, the meal period may be waived by mutual consent of both the employer
2 and employee.” The applicable wage order contains a similar mandate.

3 73. Labor Code section 512 further provides that “An employer may not employ an
4 employee for a work period of more than 10 hours per day without providing the employee with a
5 second meal period of not less than 30 minutes, except that if the total hours worked is no more
6 than 12 hours, the second meal period may be waived by mutual consent of the employer and the
7 employee only if the first meal period was not waived.” The applicable wage order contains a
8 similar mandate.

9 74. Labor Code section 226.7(c) provides: “If an employer fails to provide an
10 employee a meal or rest or recovery period in accordance with a state law ... the employer shall
11 pay the employee one additional hour of pay at the employee's regular rate of compensation for
12 each workday that the meal or rest or recovery period is not provided.”

13 75. During the class period, Defendants failed to provide Plaintiff and the Class
14 Members with lawful, timely off-duty thirty-minute uninterrupted meal periods as required by the
15 Wage Order and Labor Code section 512.

16 76. By their failure to provide meal periods for days on which Plaintiff and the Class
17 Members work(ed) work periods in excess of five and/or ten hours, and their failure to provide
18 compensation for such non-provided meal periods, Defendants willfully violated the provisions of
19 Labor Code section 226.7, 512 and applicable IWC Wage Orders.

20 77. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
21 represent have been deprived of premium wages in amounts to be determined at trial, and are
22 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
23 costs, under Labor Code sections 218.5, 218.6, 226.7, 512 and the applicable IWC Wage Orders,
24 and Civil Code section 3287.

25 **THIRD CAUSE OF ACTION**

26 **FAILURE TO AUTHORIZE AND PERMIT PAID REST PERIODS**

27 **(Against All Defendants)**

28 78. Plaintiff repeats and incorporates herein by reference each and every allegation set

1 forth above, as though fully set forth herein.

2 79. Labor Code section 226.7(b) reads: “No employer shall require any employee to
3 work during any meal or rest period ...mandated by an applicable... order of the Industrial
4 Welfare Commission.”

5 80. Labor Code section 516 provides that the Industrial Welfare Commission may
6 adopt or amend working condition orders with respect to break periods for any workers in
7 California consistent with the health and welfare of those workers.

8 81. The applicable IWC Wage Order requires employers to authorize and permit
9 employees to take a net 10-minute rest period for every four hours worked or major fraction
10 thereof, which insofar as practicable shall be taken in the middle of each work period.

11 82. Such rest periods constitute compensable time.

12 83. As a matter of Defendants’ established company policy, Defendants failed to
13 authorize and permit the required paid rest periods established by Labor Code section 226.7 and
14 Labor Code section 516 and the IWC Wage Order(s).

15 84. Plaintiff and, upon information and belief, the Class Members did not voluntarily
16 or willfully waive rest periods and were regularly required to work through rest periods.

17 85. By their failure to provide rest periods for every four hours or major fraction
18 thereof worked per day by Plaintiff and the Class Members, and by failing to provide
19 compensation for such non-provided rest periods, as alleged above, Defendants willfully violated
20 the provisions of Labor Code section 226.7, and the applicable IWC Wage Orders.

21 86. As a result of the unlawful acts of Defendants, Plaintiff and the Class they seek to
22 represent have been deprived of premium wages in amounts to be determined at trial, and are
23 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
24 costs, under Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil Code
25 3287.

26 **FOURTH CAUSE OF ACTION**

27 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

28 **(On Behalf of Plaintiff and Wage Statement Class)**

(Against All Defendants)

87. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

88. Labor Code section 226(a) reads in pertinent part: “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (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 each the pay period and the corresponding number of hours worked at each hourly rate by the employee....”.

89. Further, the IWC Wage Orders require: Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period and applicable rates of pay....”

90. Labor Code section 1174 of the California also requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees.

91. On information and belief and based thereon, Defendants have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged in the preceding causes of action and herein. Defendants’ failure to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.

1 92. Under Labor Code section 226 and applicable IWC Wage Orders, the wage
2 statements Defendants provide to employees must show all payments owed. Employers such as
3 Defendants must also accurately report total hours worked by employees such as Plaintiff and
4 Class Members, and all applicable hourly rates in effect during the hours worked, along with the
5 total hours worked each day at each applicable hourly rate. The wage statements Defendants
6 provided to Plaintiff and Class Members failed to comply with these requirements.

7 93. Defendants have failed to record many of the items delineated in applicable
8 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
9 1174, including by virtue of the fact that each wage statement which failed to accurately
10 compensate Plaintiff and Class Members for all hours worked and for missed and non-provided
11 meal and rest periods, or which failed to include compensation for all overtime hours worked,
12 was an inaccurate wage statement.

13 94. On information and belief, Defendants failed to implement and preserve a lawful
14 record-keeping method to record hours worked and all non-provided meal and rest periods owed
15 to employees or all hours worked, as required under California Labor Code section 226 and
16 applicable California Wage Orders. In order to determine if they had been paid the correct
17 amount and rate for all hours worked, Plaintiff and Class Members have been, would have been,
18 and are compelled to try to discover the required information missing from their wage statements
19 and to perform complex calculations in light of the inaccuracies and incompleteness of the wage
20 statements Defendants provided to them.

21 95. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
22 Wage Orders, Defendants did not and still do not furnish Class Members with accurate itemized
23 statements in writing accurately reflecting all of the required information.

24 96. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
25 Wage Orders, Defendants, did not and do not maintain accurate records pertaining to the total
26 hours worked for Defendants by the members of the Class, including but not limited to, beginning
27 and ending of each work period, meal period and split shift interval, the total daily hours worked,
28 and the total hours worked per pay period and applicable rates of pay.

97. Plaintiff and the members of the Class have suffered injury as a result of Defendants' failure to maintain accurate records for the members of the Class in that the members of the Class were not timely provided written accurate itemized statements showing all requisite information, such that the members of the Class were misled by Defendants as to the correct information regarding various items, including but not limited to total hours worked by the employee, net wages earned and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

98. Pursuant to Labor Code section 226, and in light of Defendants' violations addressed above, Plaintiff and the Wage Statement Class Members are each entitled to recover up to a maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

**FIFTH CAUSE OF ACTION FOR
FAILURE TO TIMELY PAY ALL WAGES OWED AT SEPARATION**

By Plaintiff and Waiting Time Class Against All Defendants

99. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

100. Labor Code sections 201-202 requires an employer who discharges an employee to pay compensation due and owing to said employee immediately upon discharge, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages on their last day of work.

101. Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge, as required by Labor Code sections 201-202, the employer is liable for waiting time penalties in the form of continued compensation for up to thirty (30) work days.

102. During the liability period, Defendants willfully failed and refused, and continue to willfully fail and refuse, to pay Plaintiff and members of the Waiting Time Subclass their wages, earned and unpaid, either at the time of discharge, or within seventy-two (72) hours of their

1 voluntarily leaving of Defendants' employment. These wages include unpaid straight time and
2 overtime wages, and unpaid meal and rest period premiums as described above.

3 103. As described, employees were not paid all hourly and overtime wages earned, and
4 were not provided all rest periods and meal periods, and accordingly any members of the
5 Plaintiffs' class who were discharged or resigned from Defendant's employment during the
6 liability periods have not received such compensation for all rest periods and meal periods and
7 unpaid overtime wages that Defendants failed to provide.

8 104. Upon information and belief, more than thirty (30) days have passed since the
9 affected Waiting Time Subclass Members, including Plaintiff, have left Defendants' employment,
10 and on information and belief, they have not received payment of all compensation owed to them
11 by Defendants.

12 105. Defendants' willful failure to pay Plaintiff and the Waiting Time Subclass
13 Members their wages earned and unpaid at the time of discharge, or within seventy-two (72)
14 hours of their voluntarily leaving Defendants' employment, violates Labor Code sections 201-
15 202.

16 106. As a result of their above described actions, Defendants are liable to Plaintiff and
17 members of the Waiting Time Subclass for waiting time penalties pursuant to Labor Code section
18 203 in an amount according to proof at the time of trial. Plaintiff is also entitled to an award of
19 interest and attorney's fees pursuant to statute.

20 **SIXTH CAUSE OF ACTION**

21 **Failure to Reimburse Necessary Expenditures**

22 (On Behalf of Plaintiff and the Indemnification Subclass)

23 107. Plaintiff repeats and incorporates herein by reference each and every allegation set
24 forth above, as though fully set forth herein.

25 108. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Class Members
26 for necessary expenditures incurred in direct consequence of the discharge of his or her duties.

27 109. Plaintiff, and on information and belief members of the Indemnification Class,
28 were required to incur expenses in the performance of their assigned job duties. For example,

1 Plaintiff and the Indemnification Class Members were required to incur numerous out of pocket
2 expenses, including mileage, supplies, home office equipment, internet services, and cellular
3 phone charges.

4 110. Upon information and belief, the Defendants did not reimburse Plaintiffs or the
5 Plaintiff's subclass for such expenses.

6 111. As a result of the unlawful acts of Defendants, Plaintiffs and the Plaintiffs'
7 Subclass Members have been deprived of un-reimbursed sums in amounts to be determined at
8 trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon,
9 attorneys' fees, and costs, pursuant to Labor Code §2802.

10 SEVENTH CAUSE OF ACTION

11 UNFAIR COMPETITION

12 **By Plaintiff and Class Against All Defendants**

13 112. Plaintiff repeats and incorporates herein by reference each and every allegation set
14 forth above, as though fully set forth herein.

15 113. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
16 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
17 general public. Plaintiff also seeks to enforce important rights affecting the public interest within
18 the meaning of the California Code of Civil Procedure section 1021.5.

19 114. Defendants' policies, activities, and actions as alleged herein are violations of
20 California law and constitute unlawful business acts and practices in violation of California
21 Business and Professions Code sections 17200, *et seq.*

22 115. A violation of California Business and Professions Code sections 17200, *et seq.*,
23 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
24 violated the law by:

25 a. Defendant's policies and practices of misclassifying Plaintiff and
26 Class Members as "exempt"

27 a. failing to accurately calculate and pay Plaintiff and Class Members
28 accurate minimum wages and overtime wages over the past four (4) years violates Labor Code

1 section 1194, 1197, 1198 and section 510;

2 b. failing to lawfully provide Plaintiff and the Class with meal periods
3 or pay one (1) hour of premium pay when a meal period was not lawfully provided violates Labor
4 Code section 512, section 226.7, and the IWC Wage Order;

5 c. Defendants' policy of failing to authorize and permit a ten-minute
6 rest period for every four hours worked or major fraction thereof, or pay one (1) hour of premium
7 pay when a rest period was not lawfully permitted or authorized violates the Labor Code 226.7
8 and implementing Wage Order;

9 d. Defendants' policy of failing to provide accurate, compliant wage
10 statements violates Labor Code 226 and Wage Order;

11 e. Defendants' policy of failing to maintain accurate time records,
12 including clock in and out times, and meal period clock in and out times;

13 f. Defendants policy of failing to reimburse or indemnify employees
14 for necessary expenses in violation of Labor Code section 2802;

15 g. Defendants' policy of failing to timely pay all wages owed at the
16 time of termination or within 72 hours violates the Labor Code;

17 h. Defendants' failure to maintain accurate time-keeping records and
18 other records required by statute violates the Labor Code.

19 116. Plaintiff and Class Members have each been personally aggrieved by Defendants'
20 unlawful and unfair business acts and practices alleged herein by the loss of money and/or
21 property.

22 117. The actions of Defendants, as alleged within this Complaint, constitute false,
23 fraudulent, unlawful, unfair, and deceptive business practices, within the meaning of Business
24 and Professions Code sections 17200 et seq.

25 118. As a result of their unlawful acts, Defendants have reaped and continue to reap
26 unfair benefits at the expense of Plaintiffs and the Class they seek to represent. Defendants should
27 be enjoined from this activity and made to restore to Plaintiffs and the Members of the Plaintiff
28 Class the wrongfully withheld wages, pursuant to Business and Professions Code section 17203.

1 Plaintiffs are informed and believe, and thereon allege, that Defendants are unjustly enriched
2 through their requiring employees to assume Defendants' expenditures and losses and their
3 failure to pay legal wages and/or other compensation for working through meal periods and rest
4 periods. Plaintiffs and Members of the Plaintiff Class are prejudiced by Defendants' unfair trade
5 practices, as are the people of California as well as Defendants' law-abiding competitors.

6 119. As a direct and proximate result of the unfair business practices of Defendants, and
7 each of them, Plaintiffs and Members of the Plaintiff Class are entitled to restitution of all wages
8 which have been unlawfully withheld from them as a result of the business acts and practices
9 described herein, and an award of costs and attorney's fees.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays judgment against Defendants, as follows:

13 **Class Certification**

- 14 1. That this action be certified as a class action;
- 15 2. That Plaintiff be appointed as the representative of the Class;
- 16 3. That Plaintiff be appointed as the representative of the Subclasses; and
- 17 4. That counsel for Plaintiff shall be appointed as counsel for the Class and
18 Subclasses.

19 **On the First Cause of Action**

20 (Failure to Pay Wages, Including Minimum Wages and Overtime Wages)

- 21 1. For compensatory damages in an amount equal to the amount of unpaid minimum
22 wages, straight time wages, and overtime compensation owed to Plaintiff and Class Members;
- 23 2. For pre-judgment interest on any unpaid compensation due from the day that such
24 amounts were due;
- 25 3. For liquidated damages;
- 26 4. For reasonable attorneys' fees and costs pursuant to statute, including Labor Code
27 218.5; and
- 28 5. For such other and further relief as the Court deems proper.

1 **On the Second Cause of Action**

2 (Failure to Provide Meal Periods)

- 3 1. For one (1) hour of penalty pay pursuant to Labor Code section 226.7 and IWC
4 Wage Order for each day in which a required meal period was not lawfully provided;
5 2. For reasonable attorneys' fees and costs pursuant to statute; and
6 3. For such other and further relief as the Court deems proper.

7 **On the Third Cause of Action**

8 (Failure to Authorize and Permit Rest Periods)

- 9 1. For one (1) hour of premium pay pursuant to Labor Code Section 226.7 and IWC
10 Wage Order for each day in which a required rest period was not lawfully permitted or
11 authorized; and
12 2. For reasonable attorneys' fees and costs pursuant to statute; and
13 3. For such other and further relief as the Court deems proper.

14 **On the Fourth Cause of Action**

15 (Failure to Comply with Accurate Itemized Wage Statements)

- 16 1. For statutory penalties pursuant to Labor Code section 226;
17 2. For reasonable attorneys' fees and costs pursuant to statute; and
18 3. For such other and further relief as the Court deems proper.

19 **On the Fifth Cause of Action**

20 (Failure to Timely Pay All Wages Owed at Separation)

- 21 1. For statutory penalties pursuant to Labor Code section 203;
22 2. For interest for wages untimely paid;
23 3. For reasonable attorneys' fees and costs pursuant to statute; and
24 4. For such other and further relief as the Court deems proper.

25 **On the Sixth Cause of Action**

26 (Failure to Reimburse Necessary Expenses)

- 27 1. For un-reimbursed sums pursuant to Labor Code section 2802,
28

- 1 2. For interest on un-reimbursed sums,
2 3. For reasonable attorneys' fees and costs pursuant to statute; and
3 4. For such other and further relief as the Court deems proper.

4 **On the Seventh Cause of Action**

5 (Unfair Competition)

6 1. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of
7 sums to Plaintiff and Class Members for their past failure to accurately pay minimum wages,
8 straight time wages, and overtime wages over the last four (4) years in an amount according to
9 proof;

10 2. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of
11 sums to Plaintiff and Class Members for the Defendants' past failure to pay premium wages for
12 meal periods and rest periods that were not provided to Plaintiff and Class Members over the last
13 four (4) years in an amount according to proof;

14 3. For pre-judgment interest on any unpaid overtime wages due from the day that
15 such amounts were due;

16 4. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to
17 recover under Labor Code section 1194, and California Code of Civil Procedure section 1021.5;

18 5. For costs of suit incurred herein that Plaintiff and Class Members are entitled to
19 recover under Labor Code section 1194; and

20 6. For such other and further relief as the Court deems proper.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff, on behalf of the Class and Subclasses, respectfully demands a jury trial in this
23 matter.

24
25 Respectfully submitted,

26
27 Dated: August 8, 2021

28 
JAMES HAWKINS, APLC

James R. Hawkins, Esq.
Christina M. Lucio, Esq.
Attorneys for PLAINTIFF CRISTAL BOWMAN,
individually and on behalf of all others similarly
situated

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EXHIBIT 3

Matter Billing Detail

Report Date: 2/23/2023
Report Time: 10:42AM
Page: 1 of 2
User ID: Mateo

JAMES HAWKINS APLC

Date Range: 01/01/1900 to 02/23/2023
Client: DELTADENTL02 - Cristal Bowman
Matter: DELTA DENTL001 - Delta Dental of California - Cristal Bowman

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
		Balance Forward:	\$0.00						
08/09/2021	FST	First Legal Network- FILED- Complaint, Summons, Civil Cover Sheet, Civil Addendum IN#30169470	\$1,716.15		Unbilled				
08/31/2021	FST	First Legal Network - Process - cmplt, smmns, civ cvr sheet, ntc Filing- proof of service summons IN#30172635	\$307.49		Unbilled				
10/26/2021	FST	First Legal Network - Filing: Initial CMC Statement, Req to Cont. IN: 30175944	\$199.15		Unbilled				
12/03/2021	FST	First Legal Network - E-Filing, Plaintiffs ntc of order re complaint IN#30182125	\$39.95		Unbilled				
12/13/2021	CRT	Court Documents- Order	\$2.00		Unbilled				
03/15/2022	FST	First Legal Network - E-Filing , case management statement (2) IN#30192286	\$80.90		Unbilled				
06/07/2022	MED	Mediation Services JAMS IN#6175528 CK#10026	\$7,975.00		Unbilled				
09/23/2022	CRT	Court Documents- 9.20.22 Order	\$1.00		Unbilled				
11/07/2022	MED	Mediation Services - IN#63549 CK#10370 JAMS Inc.	\$3,618.75		Unbilled				
01/19/2023	FST	First Legal Network - E-filing of Plaintiff's Case Management Statement (IN#30224217)	\$42.70		Unbilled				
02/23/2023	FIL	Filing Fee - Future Estimated Cost(s) Until Case Completion: Case Management Report, Motion for Approval of PGA Settlement, Declaration for Final Accounting, Notice of Entry of Order)	\$243.10		Unbilled				
		Total:	\$14,226.19	\$0.00					
		Balance:	\$14,226.19						

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
Total Fees Billed- - - - -			\$0.00						
Total Fees Unbilled : - - - - -			\$0.00						
Total Fees Received : - - - - -			\$0.00						
Total Soft Cost Billed : - - - - -			\$0.00						
Total Soft Cost Unbilled : - - - - -			\$0.00						
Total Soft Cost Received : - - - - -			\$0.00						
Total Hard Cost Billed : - - - - -			\$0.00						
Total Hard Cost Unbilled : - - - - -			\$14,226.19						
Total Hard Cost Received : - - - - -			\$0.00						
Total Taxes Billed : - - - - -			\$0.00						
Total Taxes Unbilled : - - - - -			\$0.00						
Total Taxes Received : - - - - -			\$0.00						
Total Late Charges Billed : - - - - -			\$0.00						
Total Late Charges Unbilled: - - - - -			\$0.00						
Total Late Charges Received : - - - - -			\$0.00						
Trust Balance: - - - - -			\$0.00						

Matter Billing Detail

Report Date:2/23/2023

Report Time:10:41AM

Page:1 of 2

User ID:Mateo

JAMES HAWKINS APLC

Date Range:01/01/1900 to 02/23/2023

Client:DELTADENTL02 - Cristal Bowman

Matter:DELTADENTAL04 - Delta Dental of California -PAGA-Cristal Bowman

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
		Balance Forward:	\$0.00						
10/14/2021	FST	First Legal Network - E-Filing: Complaint and Initial Docs IN: 30175944	\$518.45		Unbilled				
12/17/2021	FST	First Legal Network , Filing branch PDF same day, NAR IN#30182125	\$119.65		Unbilled				
02/10/2022	FST	First Legal Network - E-Filing, case management statement IN#30188503	\$40.45		Unbilled				
02/23/2022	CRT	Court Documents - 02.23.22 needed to pull orders off docket	\$7.00		Unbilled				
09/12/2022	ONE	One Legal Services- Case management Statement- in#04344452	\$20.02		Unbilled				
09/16/2022	CRT	Court Documents - 09.16.22 pulling orders off docket	\$2.00		Unbilled				
02/23/2023	FIL	Filing Fee - Future Estimated Cost(s) Until Case Completion (Case Management Report)	\$42.70		Unbilled				
		Total:	\$750.27	\$0.00					
		Balance:	\$750.27						

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
Total Fees Billed- - - - -			\$0.00						
Total Fees Unbilled : - - - - -			\$0.00						
Total Fees Received : - - - - -			\$0.00						
Total Soft Cost Billed : - - - - -			\$0.00						
Total Soft Cost Unbilled : - - - - -			\$0.00						
Total Soft Cost Received : - - - - -			\$0.00						
Total Hard Cost Billed : - - - - -			\$0.00						
Total Hard Cost Unbilled : - - - - -			\$750.27						
Total Hard Cost Received : - - - - -			\$0.00						
Total Taxes Billed : - - - - -			\$0.00						
Total Taxes Unbilled : - - - - -			\$0.00						
Total Taxes Received : - - - - -			\$0.00						
Total Late Charges Billed : - - - - -			\$0.00						
Total Late Charges Unbilled: - - - - -			\$0.00						
Total Late Charges Received : - - - - -			\$0.00						
Trust Balance: - - - - -			\$0.00						