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Attorneys for Plaintiff ERIC CHABEZ,

On behalf of the general public as private attorney general

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

ERIC CHABEZ on behalf of the general
public as private attorney general,

Plaintiff,

v.

AIT WORLDWIDE LOGISTICS, INC., an
Illinois Corporation; REAL TIME
STAFFING SERVICES, LLC dba SELECT
STAFFING, a California Limited Liability
Company; and DOES 1-50, inclusive,

Defendants.

Case No.: 21STCV41522

Assigned to the Hon. Elaine Lu, Dept. 26

**DECLARATION OF JAMES
HAWKINS IN SUPPORT OF
STIPULATION AND [PROPOSED]
ORDER APPROVING SETTLEMENT
OF PRIVATE ATTORNEYS
GENERAL ACT CLAIMS,
ENTERING JUDGMENT THEREON**

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1. I am an attorney at law duly licensed to practice law before all of the Courts in the State of California and various federal courts such as the United States District Court, for the Northern, Southern, Central, and Eastern Districts of California. I am a partner at James Hawkins, P.A. (“Counsel”). I am one of the attorneys of record for named Plaintiff ERIC CHABEZ who has brought this action on behalf of the aggrieved employees subject to the settlement agreement. I am making this Declaration in support of the PAGA Settlement. I have personal knowledge of the facts set forth below, and if called to testify regarding them, I could and would do so competently.

3. On August 2, 2021 Plaintiff transmitted a letter to the California Labor & Workforce Development Agency (“LWDA”) and Defendant in compliance with the exhaustion requirements of the California Labor Code Private Attorneys General Act (“PAGA”), articulating claims related to Defendant’s failure to (a) accurately pay wages including overtime wage, (b) failure to provide meal periods for every work period exceeding more than ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (c) failure to authorize and permit rest breaks for every four hours or major fraction thereof and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (d) failing to pay all wages earned and owed upon separation from Plaintiff’s employ, (e) failing to provide accurate itemized wage statements, (f) for issuing a statement of wages in the form of a non-Labor Code-compliant instrument, and (g) failure to reimburse business expenses. Attached hereto as **Exhibit B** is a true and correct copy of Plaintiff’s August 2, 2021 LWDA Letter.

4. On November 10, 2021, Plaintiff filed a Representative Action Complaint in the Superior Court of the State of California for the County of Los Angeles, entitled *Eric Chabez v. AIT Worldwide Logistics Inc., et al*, case number 21STCV41522. Plaintiff filed the Complaint on behalf

1 of the State of California and other aggrieved employees as a PAGA action based on violations of
2 Labor Code 201-203, 212, 213, 510, 512, 558, 226, 226.3, 226.7, 1174, 1174.5, 1175, 1194, 1197,
3 1197.1, 1198, 28028, and 2698.

4 5. During the course of the litigation, the Parties engaged in an informal discovery and
5 fully shared the information necessary for all sides to conduct a legitimate investigation into the
6 allegations of the action and potential defenses thereto including payroll and time keeping sampling
7 for approximately 10% of the purported Aggrieved Employees along with policies and relevant data
8 points. The Parties have reached this settlement only after discovery and investigation was
9 performed.

10 6. On January 24, 2023, the Parties participated in a day-long mediation with the
11 mediator Steve Serratore, a well-respected wage and hour class action and PAGA action mediator.
12 In preparation for the mediation, Plaintiff's counsel requested and Defendants' counsel provided
13 sample time and payroll data for the purported Aggrieved Employees, personnel and employment
14 documents. With Mr. Serratore's assistance, the Parties agreed to fully and finally resolve the
15 Action and the PAGA Released Claims as to Plaintiff, the State of California, the LWDA and the
16 Aggrieved Employees.

17 7. Being fully apprised of the value and strength of the PAGA theories alleged in the
18 action, counsel for Plaintiff and Defendants successfully negotiated a settlement through arm's-
19 length negotiations. The terms and conditions of the settlement are set forth in the Settlement
20 Agreement ("Settlement" or "Settlement Agreement"). The Settlement Agreement resolves all
21 claims asserted in the Complaint and contemplates that the settlement will be approved and the
22 Court will enter judgment.

23 8. Defendants disputes and denies the allegations and claims asserted in the operative
24 Complaint, and the January 12, 2022 notice to the LWDA. It was also Defendants' position that
25 Plaintiff could not maintain the PAGA Complaints because there is no evidence of a common policy
26 or practice that makes a trial manageable.

27 9. Counsel for Plaintiff and Defendants also considered the fact that the existence of
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1 numerous disputes of fact in this case make the outcome uncertain. In the estimation of counsel for
2 the Parties, the delay, inconvenience, distraction, and uncertainty imposed by the litigation demands
3 would far outweigh the potential benefits of additional litigation.

4 10. Based on the information and documents obtained through discovery, Plaintiff
5 assessed the maximum value of the limited PAGA claims to be released by the settlement to be
6 approximately \$213,600,00 (at the reasonable rate of a \$100 penalty for approximately 2,136 pay
7 periods at issue for approximately 266 purported Aggrieved Employees).

8 11. This Aggrieved Employees recovery compares favorably to the estimated amount
9 of PAGA penalties given the evidence provided and the risks of liability and then penalty awards
10 at trial. As discussed further herein, California Labor Code Section 2699(e) (1) permits a Court to
11 award a lesser amount than the maximum civil penalty if based on the facts and circumstances to
12 do otherwise would result in an award that is "unjust, arbitrary and oppressive or confiscatory."

13 12. Plaintiff and Plaintiff's Counsel believe that the Settlement is a fair, adequate, and
14 reasonable resolution of this matter. Plaintiff and his counsel recognize the expense and length
15 of continued proceedings necessary to litigate the matter through trial and any possible appeals and
16 have also considered the uncertainty and risk of the outcome of further litigation, and the difficulties
17 and delays inherent in such litigation based upon the burdens of proof. Plaintiff and his counsel are
18 also aware of the burdens of proof necessary to establish liability, both generally and in response to
19 Defendant's defenses thereto, and the difficulties in establishing Defendant's liability for, and the
20 right to recover, penalties on behalf of Plaintiff, the State of California, and the other purported
21 aggrieved employees.

22 13. The settlement is a compromise of highly disputed claims and to recover any
23 PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code
24 violations. *See Cardenas v. McLane Foodservice, Inc.*, No. SACV 10-473 DOC (FFMx), 2011 U.S.
25 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff
26 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the
27 Labor Code by the defendant."). Here, Plaintiff would need to prove each Aggrieved Employee
28 suffered a violation for each period the employee worked in relation to Defendant's failure to (a)

1 accurately pay wages including overtime wage, (b) failure to provide meal periods for every work
2 period exceeding more than ten (10) hours per day and failure to pay an additional hour's of pay or
3 accurately pay an additional hour's of pay in lieu of providing a meal period; (c) failure to authorize
4 and permit rest breaks for every four hours or major fraction thereof worked and failure to pay an
5 additional hour's of pay or accurately pay an additional hour's of pay in lieu of providing a rest
6 period; (d) failing to pay all wages earned and owed upon separation from Defendant's employ, (e)
7 failing to provide accurate itemized wage statements, (f) for issuing payment of wages in the form
8 of a non-Labor Code-compliant instrument, and (g) failure to reimburse business expenses..

9 14. The result achieved in this case, and the monetary recovery provided by this
10 Settlement, are well-within the range of an acceptable settlement under the circumstances, especially
11 when compared to the settlement of PAGA claims in other cases. *See, e.g., DCH Auto Wage and*
12 *Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) (approving the amount
13 of \$15,000 out of \$4 million toward settlement of PAGA claims); *Flores v. Dart Container Corp.*,
14 No. 2:19-cv-00083 WBS JDP, 2021 U.S. Dist. LEXIS 6897, at *3 (E.D. Cal. Jan. 12, 2021)
15 (approving the amount of \$15,000 out of \$411,000 towards settlement of PAGA claims); *Dawson*
16 *v. Hitco Carbon Composites, Inc.*, No. CV 16-07337 PSG (FFMx), 2019 U.S. Dist. LEXIS 226687,
17 at *6-7 (C.D. Cal. Nov. 25, 2019) (approving the amount of \$10,000 of \$1.1 million toward
18 settlement of PAGA claims); *Brown v. CVS Pharmacy, Inc.*, No. CV15-7631 PSG (PJWx), 2017
19 U.S. Dist. LEXIS 182309, at *3 (C.D. Cal. Apr. 24, 2017) (approving the amount of \$20,000 of \$3
20 million gross settlement towards settlement of PAGA claims); *Nordstrom Commissions Case*, 186
21 Cal.App.4th 576, 589 (2010) (finding no abuse of discretion by the trial court in approving a
22 settlement that allocates \$0 toward the settlement of PAGA claims that were at issue in the lawsuit);
23 *Alcala v. Meyer Logistics, Inc.*, No. CV 17-7211 PSG (AGRx), 2019 U.S. Dist. LEXIS 166879, at
24 *26 (C.D. Cal. June 17, 2019) (finding that courts approve PAGA settlements that fall within zero
25 to two percent of gross settlement recovery). Here, the value obtained for settlement of the PAGA
26 claims is very significant, and it will be distributed in accordance with and in fulfillment of the
27 objectives of the PAGA statute.

28 15. A crucial factor in evaluating the value of a PAGA-only case is that all PAGA

1 awards are discretionary and can be reduced by the Court.¹ California Labor Code Section
2 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if, based on
3 the facts and circumstances, to do otherwise would result in an award that is “unjust, arbitrary and
4 oppressive or confiscatory.” For example, in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504
5 (2018), the Court of Appeal affirmed a judgment after trial that only provided for a PAGA penalty
6 of \$5 per pay period. Given this precedent, there is a risk at trial that any PAGA penalties awarded
7 could be significantly less than Plaintiff’s calculation even where Plaintiff prevailed on the PAGA
8 claim. If the amount of \$5 per pay period from *Carrington v. Starbucks* is used, the potential
9 recovery of civil penalties would be only \$229,000.

10 16. The settlement is also supported by other PAGA settlement previously approved
11 by other courts. See, e.g., *DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No.
12 JCCP4833 (May 2017) (approving the amount of \$15,000 out of \$4 million toward settlement of
13 PAGA claims); *Flores v. Dart Container Corp.*, No. 2:19-cv-00083 WBS JDP, 2021 U.S. Dist.
14 LEXIS 6897, at *3 (E.D. Cal. Jan. 12, 2021) (approving the amount of \$15,000 out of \$411,000
15 towards settlement of PAGA claims); *Dawson v. Hitco Carbon Composites, Inc.*, No. CV 16-07337
16 PSG (FFMx), 2019 U.S. Dist. LEXIS 226687, at *6-7 (C.D. Cal. Nov. 25, 2019) (approving the
17 amount of \$10,000 of \$1.1 million toward settlement of PAGA claims); *Brown v. CVS Pharmacy,*
18 *Inc.*, No. CV15-7631 PSG (PJWx), 2017 U.S. Dist. LEXIS 182309, at *3 (C.D. Cal. Apr. 24, 2017)
19 (approving the amount of \$20,000 of \$3 million gross settlement towards settlement of PAGA
20 claims); *Nordstrom Commissions Case*, 186 Cal.App.4th 576, 589 (2010) (finding no abuse of
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22 ¹ Under PAGA, courts have considerable discretion to reduce the penalty award. In *Thurman v.*
23 *Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012), the court found no
24 abuse of discretion when the trial court reduced the penalty by 30 percent based on the facts of the
25 case, ruling that “[t]o do otherwise under the particular facts and circumstances of this case would
26 be unjust, arbitrary, oppressive, and confiscatory.” Some trial courts have actually awarded no civil
27 penalties, even when Labor Code violations are established. See *Makabi v. Gedalia*, 2016 Cal. App.
28 Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the
Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*,
No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA
penalties denied after trial).

1 discretion by the trial court in approving a settlement that allocates \$0 toward the settlement of
2 PAGA claims that were at issue in the lawsuit); *Alcala v. Meyer Logistics, Inc.*, No. CV 17-7211
3 PSG (AGRx), 2019 U.S. Dist. LEXIS 166879, at *26 (C.D. Cal. June 17, 2019) (finding that courts
4 approve PAGA settlements that fall within zero to two percent of gross settlement recovery). Here,
5 the value obtained for settlement of the PAGA claims is reasonable, and it will be distributed in
6 accordance with and in fulfillment of the objectives of the PAGA statute.

7 17. Had the case not settled, the Parties would have been required to conduct extensive
8 formal written discovery, and multiple depositions of party and percipient witnesses all over the
9 State of California, to prepare the case for trial. From the inception of this litigation, Defendants
10 indicated that it would aggressively litigate this case. Even if Defendants failed to succeed on their
11 defenses, litigating a complex PAGA action is inherently expensive, and the litigation could
12 continue beyond entry of judgment if either party were to appeal adverse rulings. Additionally, there
13 is a real possibility that Plaintiff would recover nothing, either for himself or on behalf of the State
14 of California or other Aggrieved Employees, after years of costly and labor-intensive litigation.
15 Avoiding these risks and the likelihood of future contentious litigation, which would involve
16 significant costs, favors settlement.

17 18. Defendants argued that no penalties prior to the PAGA notification should be
18 awarded because the violations were not intentional. Defendants could also argue that the
19 subsequent violations under PAGA only start to accrue after employers receive notice through a
20 citation from the Labor Commissioner, which would have significantly decreased Defendants'
21 exposure. *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) (holding "[u]ntil
22 the employer has been notified that it is violating a Labor Code provision ... the employer cannot be
23 presumed to be aware that its continuing underpayment of employees is a 'violation' subject to
24 penalties."). *See also Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Servs.,*
25 *Inc.*, 2009 WL 2448430 *1, *9 (S.D. Cal. 2009) ("For the purposes of subsequent violation penalties,
26 the issue is not whether [defendant] willfully violated the Labor Code, but rather whether a court or
27 commissioner had notified it of any violation."); *Robinson v. Open Top Sightseeing San Francisco,*
28 *LLC*, No. 14-CV-00852-PJH, 2018 WL 895572, at *20 (N.D. Cal. Feb. 14, 2018) (applying "initial"

1 penalty to each violation of § 226 and § 2699(f)(2) because there was no evidence showing
2 defendant was previously notified its practice violated § 226); *Willis v. Xerox Bus. Servs., LLC*, 2013
3 WL 605383, at *1, *6 (E.D. Cal. 2013) (“for a plaintiff to recover for a ‘subsequent violation,’ an
4 employer must have notice that it has violated the Labor Code”). As such, Defendants contends
5 that Plaintiff’s calculation are inflated not only because the “stack” penalties for a single person
6 during a single pay period, but because the penalties Plaintiff would award in each instances are at
7 an inapplicable (doubled) rate.

8 19. These defenses present a risk to the PAGA claim and the potential that some or all
9 of the PAGA penalties sought may not be awarded. While Plaintiff maintains that the PAGA claim
10 has merit, in reaching the Settlement, Plaintiff and his counsel took into account the strengths and
11 weaknesses of each side’s position and the uncertainty associated with continued litigation, trial,
12 and/or appeals.

13 20. Defendants dispute that the penalties assessed by Plaintiff and Plaintiff’s expert
14 would have been awarded. Further, it is Defendants’ contention that PAGA penalties cannot be
15 stacked, and that at most just one PAGA penalty can be awarded to an aggrieved employee in any
16 one pay period. See Labor Code section 2699 (f)(2) (authorizing awardable PAGA penalties to be
17 measure by “each “each aggrieved employee per pay period”); *Smith v. Lux Retail North America,*
18 *Inc.*, 2013 WL 2932243, at *1, *4 (N.D. Cal. 2013) (rejecting a pleading that sought the “stacking
19 of penalties”; “[f]or the single mistake of failing to include commissions in the overtime base,
20 plaintiff has asserted *five* (count them, five) separate labor code violations that could lead to
21 statutory penalties;” “is it plausible that we would really pile one penalty on another for a single
22 substantive wrong?”; noting that “no actual holding in any judicial decision has ever blessed such
23 stacking”). As such, and for this initial reason, Defendants contend that the maximum potential
24 recovery in this action is significantly lower than as stated by Plaintiff.

25 21. Defendants further argues that Plaintiff would still face significant practical
26 problems in aggregating any material exposure, as each violation would need to be proven as to
27 each person and for each period for which recovery is sought. Defendants argue that it is unlikely
28 that any significant number of current and former employees would travel to the venue of a trial,

1 stay at a hotel, prepare for and deliver testimony, all in exchange for – at most – 25% of \$50 or
2 \$100 (i.e. \$12.50 or \$25) for each pay period in which there was a violation. (“wage statement
3 penalties”). For purposes of section 226, “a good faith dispute presents when there is (1)
4 uncertainty in the law; (2) representations by an authority that compliance was not required; or (3)
5 an employer’s good faith mistaken belief grounded in a good faith dispute.” *Magadia v. Wal-Mart*
6 *Assocs., Inc.*, 384 F. Supp. 3d 1058 (N.D. Cal. 2019). “Mere recklessness” is not a basis for
7 liability. *Pedroza*, 2012 WL 9506073, *5.

8 22. Plaintiff’s Counsel also took into account that even if Plaintiff prevailed on the
9 merits of the PAGA claim, Defendants could persuasively argue that the Court should exercise its
10 discretion, under Labor Code § 2699(e), to reduce the amount of civil penalties assessed. A court
11 in a PAGA action has the same discretion “to assess a civil penalty” that the Labor Commissioner
12 would have, as well as complete discretion to “award a lesser amount than the maximum civil
13 penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case,
14 to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
15 And indeed, it is common for courts to reduce the penalties. *See e.g., Ghrdilyan v. RJ Financial, et*
16 *al.*, Los Angeles Superior Court, Case No. BC430633 (94% reduction); *Parr v. Golden State*
17 *Overnight Delivery Service, Inc.*, Alameda County Superior Court, Case No. RG12-618103 (94%
18 reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011)
19 (82% reduction); *Gola v. University of San Francisco*, Case No. CGC-18-565018 (Sup. Ct. Decision
20 dates July 21, 2020) (85% reduction of PAGA penalties).

21 23. Defendants contend that Plaintiff and the Aggrieved Employees were properly
22 compensated, and that they did not violate the Labor Code as to any of them. Defendants asserted
23 additional defenses to the PAGA claim as discussed above. These defenses present a risk to the
24 PAGA claim and the potential that some or all of the PAGA penalties sought may not be awarded

25 24. The underlying Labor Code section 203 claim was uncertain given the defenses
26 asserted for the underlying claims as well as the lack of evidence of the “willfulness” prong
27 necessary for a Labor Code §203 claim. Plaintiff’s counsel also recognized a risk of an adverse
28 finding given Defendant’s apparently compliant policies and procedures at the time of mediation.

1 The labor code section 226 claim was dependent on the underlying claims for failure to pay wages.

2 **Settlement Allocation and Enhancement Award**

3 25. The Settlement provides for an enhancement award to be paid to Plaintiff in the
4 amount of \$7,500.00 in exchange for a general release of all known and unknown claims. Unlike
5 Aggrieved Employees who only releasing claims for civil penalties under PAGA, Plaintiff is
6 releasing his individual claims. In exchange for a release of these claims, the Parties agreed to an
7 Individual Settlement Payment of \$7,500.00. In addition, Plaintiff contributed considerable time and
8 effort to the litigation of this case in order to enforce the California Labor Code on behalf of the
9 State of California and for the benefit of other Aggrieved Employees. Plaintiff gathered and
10 produced relevant documents and information, provided the facts and evidence necessary to attempt
11 to prove the allegations, and discussed his employment with his counsel. Plaintiff assisted counsel
12 in developing the theories and evidence to prepare for mediation. He was available whenever his
13 counsel needed him and tried to obtain documents and information that would aid in the litigation
14 of the PAGA claims and pursuit of recovery on behalf of the State of California and the Covered
15 Employees.

16 26. Plaintiff as PAGA Representative has provided extensive supporting documents
17 and assisted Counsel in developing information necessary to litigate and settle this case. Plaintiff
18 also conducted record review and consultation with counsel in preparation for discovery and
19 eventual mediation, and to assist in evaluating and proving the claims.

20 27. The settlement is intended to fully and finally resolve the PAGA claims asserted
21 by Plaintiff on behalf of the State of California and aggrieved employees. After deducting the
22 Attorneys' Fees of 33% (\$33,000.00) and Costs \$16,067.98, Settlement Administration Expenses
23 not to exceed (\$5,990.00) APEX Class Action Administration (the Settlement Administrator), and
24 Plaintiff's separate Enhancement Payment (\$7,500.00), the remaining Net Settlement Amount is
25 estimated to be \$37,108.69 and will be distributed to the LWDA and Aggrieved Employees. An
26 estimated \$9,277.17 (25% of the NSA) will be distributed to the Aggrieved Employees on a pro rata
27 basis, amounting to an average of \$34.87 per Aggrieved Employee. The remaining \$27,831.51 (75%
28 of the NSA) is to be distributed to the LWDA.

1 28. As set forth in the Settlement Agreement, the amount of the settlement sum is
2 seven-hundred seventy-five thousand dollars (\$100,000.00) or approximately 46% of the maximum
3 discretionary recoverable penalties, and includes an apportionment of attorneys' fees and costs,
4 payment to the settlement administrator, and a general release payment/enhancement award to
5 Plaintiff.

6 29. Based on their extensive experience litigating over 200 representative actions,
7 counsel for Plaintiff believes the settlement here is fair and reasonable and warrants approval by the
8 Court.

9 30. I and my firm have a great deal of experience in wage and hour class action litigation.
10 I have been certified and approved as class counsel in many other wage/hour class actions, and I am
11 currently litigating numerous others before federal and state courts. I have been working with James
12 Hawkins of James Hawkins, APLC, formerly of Hawkins & Sofonio, since the commencement of
13 my practice of law in 2002. Since then, I have been committed solely to representing Plaintiffs in
14 both individual employment litigation and complex wage and hour class actions.

15 31. In approximately 2003 to 2004, I began to focus almost exclusively in class action
16 litigation. In my practice as a class action Plaintiffs' attorney, I have been involved in litigating,
17 mediating and settling numerous wage and hour class actions dealing with class sizes ranging from
18 several hundred to several thousand class members resulting in settlements ranging from six figures
19 to multimillion-dollar settlements.

20 32. The following is a non-exhaustive list of other class action cases that I also
21 litigated: Cole, et. al. v. CRST Van Expedited, et. al.; USDC, CENTRAL DISTRICT,
22 EASTERN DIVISION- Case No.: EDCV 08-1570, Wage and Hour Class Action seeking past
23 minimum wages and meal and rest break violations for drivers of Defendant in the State of
24 California; Coordination Proceeding Special Title [Rule 1550(b)] Wackenhut Wage and Hour
25 Cases, Los Angeles Superior Court, Case No. JCCP 4545, Wage and Hour Class Action seeking
26 past wages for overtime, meal and rest period violations for security guards employed by
27 defendant in the State of California; Coordination Proceeding Special Title [Rule 1550(b)]
28 California Logistics Wage and Hour Cases, Los Angeles Superior Court, Case No. JCCP 4622,

1 Wage and Hour Class Action seeking past wages for overtime, meal and rest period violations for
2 misclassified drivers employed by defendant in the State of California. Gonzalez v. Robertson's
3 Ready Mix, Ltd., Riverside County Superior Court, Case No. RIC 110770, Wage and Hour Class
4 Action seeking past wages.

5 33. The following is a non-exhaustive list of class action cases in which I was either
6 counsel or co-lead counsel in which final approval and attorneys' fees were granted along with my
7 corresponding hourly rates approved by the various courts throughout my class action career:
8 Walker v. Surf City Hospitality, aka Sharkeez, et al. OCSC, No. 05CC00293, hourly rate approved
9 in 2006 at \$350.00 per hour; Padron v. Universal Protection Service, OCSC No. 05CC00013 and
10 JCCP 4480, hourly rate approved in 2008 at \$400.00 per hour; Davila v. Beckman Coulter, Inc.,
11 OCSC No. 07CC01347, hourly rate approved in 2009 at \$500.00 per hour; Perez v. Naked Juice
12 Company of Glendora, Inc., et. al., LASC No. BC387088, hourly rate approved in 2009 at
13 \$500.00 per hour; Gonzalez v. Superior Industries International, Inc., et al., LASC No. BC
14 357912, approved fees of 33.3% of total settlement amount; Wilson v. MCP Foods, Inc. aka
15 Firmenich, OCSC No. 30-2008-00065584-CU-OE-CXC, hourly rate approved in 2010 at \$500.00
16 per hour; Garcia v. Quiksilver, Inc., OCSC Case No. 30-2008-00083896-CU-OE-CXC, hourly
17 rate approved in 2011 at \$500 per hour; Guterrez, et. al. v. Hilton Hotels Corp., OCSC No. 30-
18 2009-00282002-CU-OE-CXC, hourly rate approved in 2011 at \$550.00 per hour; Sanchez v.
19 HVM LQ Management, LLC, USDC Central District No. SA CV11-00123 JAK (PJWx), hourly
20 rate approved in 2012 at \$560.00 per hour; Esquivel v. Fairmont Hotels and Resorts, U.S., Inc.,
21 Case No. 30-2010-00418849-CU-OE-CXC, hourly rate approved in 2012 at \$600.00 per hour;
22 Galvez v. Walt Disney Parks and Resorts U.S., Inc., OCSC NO. 30-2011-00473272-CU-OE-CXC,
23 hourly rate approved in 2013 at \$600.00 per hour; Fernando v. GCS Service, Inc., OCSC No. 30-
24 2011-00473162-CU-OE-CXC, hourly rate approved in 2013 at \$600.00 per hour; Navarro v. QS
25 Wholesale, Inc., OCSC Case No. 30-2011-00462143-CU-OE-CXC, hourly rate approved in 2013
26 at \$600.00 per hour; LoCascio, et. al. v. Hertz Local Edition, SDSC Case No. 37-2015-00020830,
27 hourly rate approved in 2017 at \$750 per hour; Terrado v. Accredited Debt Relief, et. al., SDSC
28 Case No: 37-2018-00014181-CU-OE-CTL, hourly rate approved in 2018 at \$750 per hour; Singer,

1 et. al. v. M.A.C. Cosmetics, SDSC Case No. 37-2019-00033695-CU-OE-CTL, hourly rate of
2 approved in 2020 at \$850 per hour.

3 34. Our firm served as class counsel in a number of significant wage and hour
4 settlements. Of particular note, in 2019, our firm was co-lead counsel in securing the largest
5 wage and hour class action settlement in California history at \$130,000,000. During this case,
6 Plaintiffs appealed a decertification order. This case involved several appeals. The appellate record
7 amassed an extensive appellate record comprising a 23-volume joint appendix, a three-volume
8 reporters transcript, five briefs, four letter briefs, two motions for judicial notice, a motion to
9 augment the record, and several additional letters informing the appellate court of new legal
10 authority issued after *Dukes*. The matter was argued to and submitted by the Court of Appeal on
11 September 15, 2016, and on November 21, 2016, the decertification order was reversed and the
12 case was remanded for further proceedings. (*Lubin v. The Wackenhut Corporation* (“*Lubin*”), 5
13 Cal. App. 5th 960 (2016)). Wackenhut filed a petition for review of the Court of Appeal decision
14 to the California Supreme Court. The Supreme Court denied Wackenhut’s petition for review of
15 *Lubin*. The Court of Appeal issued remittitur on April 10, 2017. Eventually through more
16 litigation, the parties were able to secure the 130 million settlement that was approved on October
17 21, 2019 by Judge Highberger in the Los Angeles Superior Court.

18 35. First, the requested fees are justified by the result achieved. Plaintiff’s Counsel
19 negotiated a recovery of \$100,000.00 and this result justifies the requested fees equal to 33% of
20 this recovery (\$33,000.00). This percentage is within the standard contingent recovery percentage
21 of one-third, and this percentage is what was expressly approved by the Supreme Court in *Laffitte*
22 *v. Robert Half Int’l Inc.*, 1 Cal.5th 480, 504, (2016). Second, the requested fees are justified by the
23 work performed.

24 36. Our firm as Counsel, on behalf of Plaintiff and the Settlement Aggrieved
25 Employees, invested numerous hours litigating this matter through the date of this declaration and
26 have invested attorney time at a rate of more than double the requested fees. The rates charged by
27 my firm are in line with the prevailing rates of attorneys in the local legal community for similar
28

1 work and, if this were a commercial matter, these are the charges that would be made and presented
2 to the client. The requested fees are reasonable.

3 37. Finally the award of litigation expenses is based upon the actual expenses incurred
4 by Plaintiff and Plaintiff's Counsel, and were all reasonably necessary to the litigation, and are
5 detailed in **Exhibit C** attached hereto. Under the Agreement, Plaintiff's Counsel will be
6 recovering litigation expenses in the total amount of \$16,067.98.

7 38. Attached hereto **as Exhibit D** is a true and correct copy of the Proposed Settlement
8 Administrator's quote to administer the terms of the settlement.

9 39. The Parties request that the Court enter the accompanying proposed order,
10 approving the Settlement as permitted by Labor Code § 2699(1), in accordance with the terms and
11 conditions of the Settlement Agreement.

12 40. Notice of the Settlement has been provided to the LWDA along with a copy of the
13 Settlement Agreement.

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct. Executed on August 28, 2023 at Irvine, California.

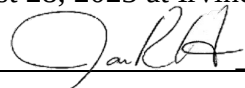
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17 _____
18 James R. Hawkins
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EXHIBIT A

JAMES HAWKINS APLC
 James R. Hawkins, State Bar No. 192925
 James@iameshawkinsaplc.com
 Gregory Mauro, State Bar No. 222239
 Greg@iameshawkinsaplc.com
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Attorneys for Defendants
 AIT WORLDWIDE LOGISTICS, INC. and REAL TIME
 STAFFING SERVICES, LLC dba SELECT STAFFING

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ERIC CHABEZ on behalf of the general public
 as private attorney general,

Plaintiff,

vs.

AIT WORLDWIDE LOGISTICS, INC., an
 Illinois Corporation; REAL TIME STAFFING
 SERVICES, LLC dba SELECT STAFFING, a
 California Limited Liability Company; and
 DOES 1-50, inclusive,

Defendants.

) Case No. 21STCV41522

) Assigned for All Purposes To:

) Judge: Elaine Lu

) Dept: 26

) **JOINT STIPULATION OF SETTLEMENT**
) **AND RELEASE OF PAGA ACTION**

) Action Filed: November 10, 2021

This Joint Stipulation of Settlement and Release of PAGA Action (“Agreement”) is made and entered into between Plaintiff Eric Chabez (“Plaintiff”), individually and on behalf of the proposed PAGA Group, (defined below), and Defendants AIT Worldwide Logistics, Inc. (“AIT”) and Real Time Staffing Services, LLC dba Select Staffing (“Real Time”) (AIT and Real Time collectively, “Defendants”). This Agreement is subject to approval of the Court and is made for the sole purpose of attempting to consummate settlement of the Action (as defined below) on a PAGA basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting approval of the PAGA Settlement (as defined below) and enter judgment, or the conditions precedent are not met for any reason, this Agreement is void and of no force or effect whatsoever.

1. **DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Agreement are not specifically defined below, but are defined elsewhere in this Agreement, they are incorporated by reference into this definition section.

1.1 **Action.** “Action” shall mean this civil action entitled *Eric Chabez v. AIT Worldwide Logistics, Inc., et al.*, Los Angeles County Superior Court Case No. Case No. 21STCV41522, filed on or about November 10, 2021, and the underlying PAGA Notice sent to the Labor and Workforce Development Agency (“LWDA”) by Plaintiff on August 2, 2021.

1.2 **Approval and Fairness Hearing.** “Approval and Fairness Hearing” shall mean the hearing held to ascertain the fairness, reasonableness, and adequacy of the PAGA Settlement. At this hearing, the Court will consider PAGA Counsel’s application for Attorneys’ Fees and Expenses, the PAGA Representative Incentive Award, the Administration Expenses, and approval of the PAGA Payment. The proposed Order Granting Approval and Entering Judgment is attached, in substantial form, as **Exhibit B**.

1.3 **Approval Date.** “Approval Date” shall mean the date upon which the Court enters an order granting approval of the PAGA Settlement and enters Judgment.

1.4 **Claims.** “Claims” shall mean the claims and theories asserted and causes of action alleged in the Action, or that could have been alleged in the Action, including the PAGA

penalties alleged in the Action.

1.5 **Court.** “Court” shall mean the Superior Court of California, County of Los Angeles.

1.6 **Defendants.** “Defendants” shall mean AIT Worldwide Logistics, Inc. and Real Time Staffing Services, LLC dba Select Staffing, and includes any of their officers, directors, executives, partners, managers, owners, shareholders, members, employees, agents, attorneys, any of their former and present parents, subsidiaries, successors, assigns and affiliates, and their officers, directors, managers, owners, executives, partners, employees, shareholders, agents, attorneys, and any other successors, assigns, or legal representatives.

1.7 **Defense Counsel.** “Defense Counsel” shall mean David G. Hagopian and Garrett V. Jensen of CDF Labor Law LLP, 18300 Von Karman Avenue, Suite 800, Irvine, California 92612.

1.8 **Effective Date.** “Effective Date” shall be the later of the time when: (i) the date of final affirmance of the Judgment on an appeal of the Judgment, the expiration of the time for, or the denial of, a petition to review the Judgment, or if review is granted, the date of final affirmance of the Judgment following review pursuant to that grant, (ii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review the Judgment, provided that the Judgment is affirmed and/or not reversed in any part, (iii) the final resolution (or withdrawal) of any filed appeal in a way that affirms the Final Approval Order and Judgment in a form substantially identical to the form of the Final Approval Order entered by the Court, and the time to petition for review with respect to any appellate decision affirming the Final Approval Order has expired; or (iv) if no appeal is filed, the sixty-first (61st) day after the Court enters final approval of the settlement and the Judgment approving this Agreement.

1.9 **Gross Settlement Amount.** “Gross Settlement Amount” means the agreed upon settlement amount totaling \$100,000.00, to be paid by Defendants in full settlement of the Released Claims asserted in this case, which includes the Attorneys’ Fees and Costs, Settlement Administration Fees, Enhancement Award to Plaintiff (if any), and the LWDA Payment, and Individual Settlement Payments. In no event shall Defendants be required to pay more than the

1 Gross Settlement Amount.

2 1.10 **Individual Settlement Payment.** “Individual Settlement Payment(s)” shall
3 mean the proportionate share of the Net Settlement Amount to be distributed to each PAGA
4 Member based on the number of his or her Pay Periods worked in the PAGA Period in relation to
5 the aggregate number of Pay Periods worked by the Settlement Group during the PAGA Period.

6 1.11 **Net Settlement Amount.** “Net Settlement Amount” or “NSA” shall mean the
7 Gross Settlement Amount, minus the Court-approved amounts awarded for the Attorneys’ Fees and
8 Costs, Settlement Administration Fees, Enhancement Award to Plaintiff (if any), and the LWDA
9 Payment. The Parties intend that the NSA shall be sufficient to pay all valid claims of Settlement
10 Group Members. Accordingly, if for any reason the total value of Individual Settlement Payments
11 to Settlement Group Members exceeds this amount, then payment to each Settlement Group
12 Member will be adjusted on a pro-rated basis so that the total payout to Settlement Group Members
13 does not exceed the NSA.

14 1.12 **PAGA:** “PAGA” refers to the Labor Code Private Attorneys General Act of
15 2004, Labor Code sections 2699, *et seq.*

16 1.13 **PAGA List:** “PAGA List” shall mean the information for each PAGA Member
17 which Defendants shall compile from their business records and provide to the Administrator for
18 purposes of providing notice of the Settlement to the PAGA Group. The PAGA List shall be in a
19 readable, ready to use, MS Excel spreadsheet, which will provide for each Settlement Class
20 Member, the following information: (a) full name; (b) last-known mailing address; (c) telephone
21 numbers; (d) Social Security number; (e) dates of employment; and (f) number of pay periods
22 employed as a PAGA Member during the PAGA Period. The PAGA List will be provided to the
23 Settlement Administrator within 21 days of Defendants receiving written notification that the Court
24 granted approval of the Settlement.

25 1.14 **PAGA Counsel:** “PAGA Counsel” refers to James Hawkins APLC, 9880
26 Research Drive, Suite 200, Irvine, CA 92618.

27 1.15 **PAGA Counsel’s Attorneys’ Fees and Expenses:** “PAGA Counsel’s
28 Attorneys’ Fees and Expenses” shall mean PAGA Counsel’s attorneys’ fees and expenses

to be requested and subject to approval by the Court at the time of the Approval Hearing in an amount not to exceed \$33,333.33 for attorneys' fees and in an amount not to exceed \$20,000.00 for expenses.

1.16 **PAGA Member(s)**: "PAGA Member(s)" and "Settlement Group Members" shall mean all current and former non-exempt employees of Real Time who were placed on assignment at AIT in California during the PAGA Period.

1.17 **PAGA Period**. "PAGA Period" means the period from November 10, 2020 through March 25, 2023.

1.18 **PAGA Release**. See Released Claims.

1.19 **Parties**. "Parties" shall mean Plaintiff (as defined below) and Defendants.

1.20 **Pay Periods**. "Pay Periods" means the number of pay periods a PAGA Member was employed during the PAGA Period.

1.21 **Plaintiff**. "Plaintiff" and "PAGA Representative" shall mean Plaintiff Eric Chabez.

1.22 **Released Claims**. "Released Claims" shall mean all claims and theories that were set forth, or that could have been set forth based on the facts alleged in the Action during the PAGA Period, including but not limited to under California Labor Code sections 201-203, 212, 213, 510, 512, 558, 226, 226.3, 226.7, 1174, 1174.5, 1175, 1194, 1197.1, 1198, 2802, 2698, 2699, 2699.5 and related IWC Wage Orders, based on the various theories of liability, including, but not limited to, Defendants' alleged failure to: accurately pay wages, including overtime, provide meal periods, provide rest periods, pay all wages earned and owed upon separation, provide accurate written wage statements, allegedly issuing payment of wages in the form of a non-Labor Code-compliant instrument and reimburse business expenses.

1.23 **Released Parties**. "Released Parties" shall mean AIT Worldwide Logistics, Inc. and Real Time Staffing Services, LLC dba Select Staffing, and includes any of their officers, directors, executives, partners, managers, owners, shareholders, members, employees, agents, attorneys, any of their former and present parents, subsidiaries, successors, assigns and affiliates, and their officers, directors, managers, owners, executives, partners, employees, shareholders,

agents, attorneys, and any other successors, assigns, or legal representatives.

1.24 **Settlement**. “Settlement” shall mean the settlement between Parties, which is memorialized in this Agreement, including any attached exhibits, and subject to Court approval.

1.25 **Settlement Administrator**. “Settlement Administrator” or “Administrator” shall mean APEX Class Action Administration the third-party settlement administrator selected by the Parties and to be approved by the Court, which the Parties have agreed will be responsible for administration of the Settlement and related matters. The Administrator’s fee and expenses are estimated to not exceed \$10,000.00.

1.26 **Settlement Group**. “Settlement Group” or “Settlement Group Members” shall mean all PAGA Members.

1.27 **Settlement Letter**. “Settlement Letter” shall mean the letter accompanying the Individual Settlement Payments attached, in substantial form, as **Exhibit A**.

2. **FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

2.1 On November 10, 2021, Plaintiff filed the Action in Los Angeles Superior Court.

2.2 The Parties agreed to mediate with Steve Serratore, Esq., and Plaintiff requested, and received, informal discovery to evaluate the claims and theories alleged. With the continued assistance of the mediator, they were able to resolve the matter, the terms of which were memorialized in a Memorandum of Understanding executed by the Parties.

2.3 The Parties and their respective counsel believe this Agreement reflects a fair, adequate, and reasonable settlement of the Action and have arrived at this Agreement as a result of arms’-length negotiations, facilitated by an experienced and neutral mediator, taking into account all relevant factors, present and potential.

3. **ALLEGATIONS OF THE PAGA REPRESENTATIVE AND BENEFITS OF THE SETTLEMENT**

3.1 The investigation and extensive exchange of information and informal discovery conducted in this matter, as well as discussions between counsel have been adequate to give and PAGA Counsel an understanding of the merits of the Parties’ respective positions and to evaluate

1 the worth of the claims of the Settlement Group. The information and data exchanged by the
2 Parties prior to and during mediation and settlement negotiations are sufficient to reliably assess the
3 merits of the Parties' respective positions and to compromise the issues on a fair and equitable
4 basis.

5 3.2 The Parties recognize and acknowledge the expense and delay of continued
6 lengthy proceedings necessary to prosecute the Action against Defendants through trial and through
7 appeals. PAGA Counsel has considered the uncertain outcome of the litigation, the risk of
8 continued litigation in complex actions such as this, as well as difficulties and delays inherent in
9 such litigation, as well as trying the claims of the Settlement Group. PAGA Counsel believes that
10 the Settlement set forth in this Agreement confers substantial benefits upon Plaintiff and the
11 Settlement Group Members and that an independent review of this Agreement by the Court in the
12 approval process will confirm this conclusion. Based on their own independent investigation and
13 evaluation, PAGA Counsel has determined that the Settlement set forth in the Agreement is in the
14 best interests of Plaintiff and the Settlement Class Members.

15 4. **NO ADMISSION OF ANY LIABILITY**

16 4.1 This Agreement represents a compromise and settlement of highly disputed
17 claims. This Agreement does not constitute, is not intended to constitute, and will not be deemed
18 to constitute, an admission of liability by Defendants as to the merits, validity, or accuracy of any
19 of the allegations or claims made against Defendants in the Action. Defendants deny each and all
20 of Plaintiff's allegations in their entirety.

21 4.2 Nothing in this Agreement, the Memorandum of Understanding nor any action
22 taken or made in implementation thereof, nor any statements, discussions, or communications, nor
23 any materials prepared, exchanged, issued, or used during the course of the negotiations leading to
24 the Agreement, is intended by the Parties to, nor will any of the foregoing constitute, be introduced,
25 be used, or be admissible in any way in this case or any other judicial, arbitral, administrative,
26 investigative or other forum or proceeding as evidence of any violation of any federal, state, or
27 local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or
28 in equity. Notwithstanding the foregoing, the Agreement may be used in any proceeding in the

1 Court that has as its purpose the interpretation, implementation, or enforcement of the Agreement
2 or any orders or judgments of the Court entered into in connection therewith.

3 4.3 The Parties agree that Plaintiff's motion for approval of the Settlement and
4 Defendants' agreement thereto is for purposes of the Settlement only. If, for any reason, the
5 Settlement is not approved, this Agreement will not be admissible in this or any other proceeding
6 as evidence that (i) the Action should proceed forward, or (ii) Defendants are liable to Plaintiff or
7 the Settlement Group Members as Plaintiff alleged. In the event that this Agreement is not
8 approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable,
9 Defendants will not be deemed to have waived, limited, or affected in any way any of their
10 objections or defenses in the Action, including, but not limited to, their ability to move to compel
11 arbitration, raise defenses in opposition to the Action, contest the merits of the claims and theories
12 alleged, etc.

13 5. **SETTLEMENT CONSIDERATION**

14 5.1 **Gross Settlement and Net Settlement Amounts and Distribution.** The Gross
15 Settlement Amount and other actions and forbearances taken by Defendants shall constitute
16 adequate consideration for the Settlement and will be made in full and final settlement of: (a) the
17 Released Claims, (b) PAGA Counsel's Attorneys' Fees and Expenses, (c) Administration
18 Expenses, (d) LWDA Payment, (e) Enhancement Award to Plaintiff (if any) and (d) the Individual
19 Settlement Payments to Settlement Group Members, and any other obligation of Defendants under
20 this Agreement.

21 5.2 **Payments to Settlement Group Members.** Each Settlement Group Member
22 shall be eligible to receive an Individual Settlement Payment. The Parties understand that
23 Settlement Group Members who receive an Individual Settlement Payment pursuant to this
24 Agreement shall be solely responsible for any and all other individual tax obligations associated
25 with the payment.

26 5.3 **No Effect on Employee Benefits.** Neither the Settlement nor any amounts paid
27 under the Settlement will modify any previously credited hours, days, or weeks or service under
28 any employee benefit plan, policy or bonus program sponsored by Defendants (or their affiliates,

1 parents or successors). Such amounts will not form the basis for additional contributions to, benefit
2 under, or any other monetary entitlement under Defendants' sponsored benefit plans, policies or
3 bonus programs, if any. The payments made under the terms of this Settlement shall not be applied
4 retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form
5 of compensation for the purposes of any of Defendants' benefit plans, policies or bonus programs,
6 if any. Defendants retain the right to modify the language of their benefits plans, policies and
7 bonus programs to effect this intent and to make clear that any amounts paid pursuant to this
8 Agreement are not for "weeks worked," "weeks paid," "weeks of service," or any similar
9 measuring term as defined by applicable plans, policies and bonus programs for purpose of
10 eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or
11 benefits are not required by this Agreement. Defendants do not consider the Individual Settlement
12 Payments "compensation" for purposes of determining eligibility for, or benefit accrual within, any
13 benefits plan, policy, or bonus program, or any other plan or program sponsored by Defendants (or
14 their affiliates, parents or successors), if any.

15 5.4 **PAGA Counsel Attorneys' Fees and Expenses.** As part of the motion for
16 approval of the Settlement, PAGA Counsel may submit an application for an award of Attorneys'
17 Fees and Expenses. Defendants agree not to object to any such fee, cost or expense application in
18 line with this Agreement and in an amount not to exceed 33% of the Gross Settlement Amount for
19 attorneys' fees and \$20,000 for costs. As a condition of this Settlement, PAGA Counsel has agreed
20 to pursue fees and costs only in the manner reflected by this Agreement. Any PAGA Counsel
21 Attorneys' Fee and Expenses awarded by the Court shall be paid from the Gross Settlement
22 Amount. If the PAGA Counsel voluntarily reduces the request for Attorneys' Fees and Expenses
23 or the Court's award is less than set forth above, the difference shall remain with the Net
24 Settlement Amount.

25 The Attorneys' Fees and Expenses approved by the Court shall encompass: (a) all work
26 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
27 represent the Settlement Group through the date of this Agreement; (b) all work to be performed
28 and costs to be incurred in connection with approval by the Court of the Settlement set forth in this

Agreement; (c) all work to be performed and costs and expenses, if any, incurred in connection with administering the Class Settlement through the Effective Date; and (d) may be based on the Catalyst Theory and/or Common Fund Doctrine.

5.5 **Payment of PAGA Counsel Attorneys' Fees and Expenses.** PAGA Counsel Attorneys' Fees and Expenses as awarded by the Court shall be paid by the Settlement Administrator within thirty (30) days of the Effective Date.

5.6 **Size of the Settlement Group.** There are approximately 266 PAGA settlement group members who worked approximately 2,136 Pay Periods from 11/10/20 to 3/25/23 ("Pay Period Total"). If the number of Pay Periods increases by 10% beyond the Pay Period Total, the Settlement Period will end on the last day before the 10% threshold is exceeded.

6. **ADMINISTRATION COSTS AND EXPENSES**

6.1 **The Settlement Administrator's Costs and Expenses.** All costs and expenses due to the Settlement Administrator in connection with its administration of the Settlement described in the Agreement, including, but not limited to, formatting and mailing the Settlement Letter and Individual Settlement Payments, performing a National Change of Address database search to update Settlement Group Members addresses prior to the mailing, performing skip-traces to locate and update Settlement Group Members' addresses, calculating, and distributing Individual Settlement Payments, and any other tasks requested by the Parties or by the Court, among other tasks as reflected within this Agreement, will be paid through the Gross Settlement Amount.

7. **FUNDING AND DISTRIBUTION**

7.1 **Funding of the Gross Settlement Amount.** The Settlement Administrator will provide Defendants with its bank wire instructions to establish the Qualified Settlement Fund (QSF).

Within five (5) days of the Effective Date, Defendants shall transmit the Gross Settlement Amount to the Settlement Administrator.

7.2 **Distribution of the Gross Settlement Amount.** Within 30 calendar days of the Effective Date, the Administrator will pay to Settlement Group Members, their Individual Settlement Payments via first-class regular U.S. Mail; to PAGA Counsel, the Court-awarded

Attorneys' Fees and Litigation Expenses Payment; to the LWDA, the Court-approved LWDA Payment; Enhancement Award to Plaintiff (if any); and to the Administrator, the Court-awarded Administration Fees and Expenses.

7.3 **Non-Cashed Settlement Checks.** Settlement Group Members shall have one hundred eighty days (180) to cash their checks. Any funds associated with uncashed checks after one hundred eighty (180) days will be sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those Settlement Group Members whose checks were voided.

8. **NULLIFICATION OF THIS AGREEMENT**

8.1 **Non-Approval of the Agreement.** If (a) the Court should for any reason fail to approve this Agreement in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment on this Action, or (c) the approval of the Settlement and judgment is reversed, modified or declared or rendered void, then the Settlement shall be considered null and void, and neither the Settlement nor any of the related negotiations or proceedings shall be of any force or effect, and all Parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement has been neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects in the Agreement to facilitate approval. In the event the Court awards less than the requested amounts for Administration Fees, PAGA Counsel's Attorneys' Fees and Expenses, Enhancement Award to Plaintiff (if any), or the PAGA Payment, the difference shall become part of the Net Settlement Amount.

8.2 **Invalidation.** Invalidation of any material portion of the Settlement shall invalidate the Settlement in its entirety, unless the Parties shall subsequently agree in writing that the remaining provisions of the Settlement are to remain in full force and effect.

8.3 **Stay Upon Appeal.** In the event of a timely appeal from the approval of the Settlement and Judgment, the Judgment shall be stayed, and Defendants shall not be obligated to fund the Gross Settlement Amount or take any other actions required by this Agreement until all appeal rights have been exhausted by operation of law.

1 9. **MOTION OR STIPULATION FOR COURT APPROVAL**

2 9.1 **Approval.** PAGA Counsel will submit this Agreement to the Court along with a
3 Motion or Stipulation for an Order Granting Approval of the Settlement.

4 10. **RELEASES AND WAIVERS**

5 10.1 **Settlement Group Members' Release.** Upon the Effective Date, Plaintiff, the
6 Settlement Group Members, and the State of California vis-à-vis the LWDA shall hereby release
7 the Released Parties for the Released Claims for the PAGA Period.

8 11. **DUTIES OF THE PARTIES**

9 11.1 **Mutual Full Cooperation.** The Parties agree to cooperate fully with one
10 another to accomplish and implement the terms of this Agreement. Such cooperation shall include,
11 but not be limited to, execution of such other documents and the taking of such other actions as
12 may reasonably be necessary to fulfill the terms of this Settlement. The Parties shall use their best
13 efforts, including all effects contemplated by this Agreement and any other efforts that may become
14 necessary by Court order or otherwise, to effectuate the terms of this Agreement. As soon as
15 practicable after execution of this Agreement, PAGA Counsel, with the cooperation of Defendants
16 and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final
17 approval of this Agreement.

18 11.2 **Duty to Support and Defend the Settlement.** The Parties agree to abide by all
19 of the terms of the Settlement in good faith and to support the Settlement fully and to use their best
20 efforts to defend this Settlement from any legal challenge, whether by appeal or collateral attack.

21 12. **MISCELLANEOUS PROVISIONS**

22 12.1 **Different Facts.** The Parties hereto, and each of them, acknowledge that, except
23 for matters expressly represented herein, the facts in relation to the dispute and all claims released
24 by the terms of this Agreement may turn out to be other than or different from the facts now known
25 by each party and/or their counsel, or believed by such Party or counsel to be true, and each Party
26 therefore expressly assumes the risk of the existence of different or presently unknown facts, and
27 agrees that this Agreement shall be in all respects effective and binding despite such difference.
28

12.2 **No Prior Assignments.** The Parties represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right herein released and discharged except as set forth herein.

12.3 **Non-Admission.** Nothing in this Agreement shall be construed as or deemed to be an admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other person, and the Parties specifically disclaim any culpability, negligence, or wrongdoing toward each other or any other person. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies. Nothing herein shall constitute any admissions by Defendants of wrongdoing or liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any admission by Defendants regarding the merits of the Claims in this Action. Nothing herein shall constitute an admission by Defendants that the Action was properly brought as a representative action other than for settlement purposes. To the contrary, Defendants have denied and continue to deny each and every material factual allegation and all Claims. To this end, the Settlement of the Action, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Agreement or the Settlement are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants or of the truth of any of the factual allegations in the Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Defendants in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

12.4 **Media or Press.** Plaintiff and Defendants, and their respective counsel, agree to limit public comment on this Settlement, the Action, and claims in the Action, stating that the matter has been resolved to the satisfaction of the Parties. Plaintiff and Defendants, and their respective counsel shall not initiate public comment and/or discuss with or present to the media or press.

12.5 **Construction.** The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arms-length non-collusive negotiations between the Parties and that this Agreement is not to be construed in favor of or against any party by reason of the extent to which any Party or their counsel participated in the drafting of this Agreement. If any of the dates in the Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the next business day.

12.6 **Governing Law.** This Agreement is intended to and shall be governed by the laws of the State of California, without regard to conflict of law principles, in all respects, including execution, interpretation, performance, and enforcement.

12.7 **Captions and Interpretations.** Section titles or captions contained herein are inserted as a matter of convenience and for reference only and in no way define, limit, extend, or describe the scope of this Agreement or any provision thereof.

12.8 **Modification.** This Agreement may not be changed, altered, or modified, except in writing signed by the Parties and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

12.9 **Integration Clause.** This Agreement contains the entire agreement between the Parties relating to the Settlement of the Action and the transactions contemplated thereby (with the exception of Plaintiff's individual settlement agreement), and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, and whether by a party or such party's legal counsel, are hereby superseded (with the exception of Plaintiff's individual agreement). No rights under this Agreement may be waived except in writing as provided above.

12.10 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and Settlement Group Members and their respective present and former heirs, trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension and welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint

ventures, predecessors, successors, and assigns.

12.11 **Corporate Signatories.** Any person executing this Agreement or any such related document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all Parties hereto, that such person has been duly authorized by such corporation or partnership to execute this Agreement or any such related document.

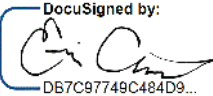
12.12 **Execution in Counterparts.** This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

12.13 **Attorneys' Fees, Costs and Expenses.** Except as otherwise specifically provided for herein, each Party shall bear their or its own attorneys' fees, costs and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other Party to this Agreement.

IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement on the date below their signatures of their representatives. The date of the Agreement shall be the date of the latest signature.

Dated: August__, 2023
8/22/2023

Plaintiff

By:  DocuSigned by:
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Eric Chabez

Attorneys for Plaintiff
ERIC CHABEZ

Dated: August22, 2023

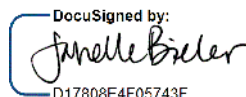
JAMES HAWKINS, APLC

By: 
James R. Hawkins
Gregory Mauro

Attorneys for Plaintiff
ERIC CHABEZ

1 Dated: August __, 2023

Defendant Real Time Staffing Services, LLC

DocuSigned by:

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By: _____
Janelle Bieler, Division President

2
3
4
5 Dated: August __, 2023

Defendant AIT Worldwide Logistics, Inc.

6
7
8 By: _____
Kory Glen, Vice President & Treasurer

9
10 Dated: August __, 2023

CDF LABOR LAW LLP

11
12
13 By: _____
David G. Hagopian
Attorneys for Defendants
AIT WORLDWIDE LOGISTICS, INC. and REAL TIME
STAFFING SERVICES, LLC dba SELECT STAFFING

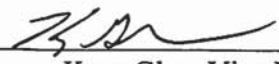
1 Dated: August __, 2023

Defendant Real Time Staffing Services, LLC

2
3
4 By: _____
Janelle Bieler, Division President

5 Dated: August __, 2023

Defendant AIT Worldwide Logistics, Inc.

6
7
8 By:  _____
Kory Glen, Vice President & Treasurer

9
10 Dated: August ²², 2023

CDF LABOR LAW LLP

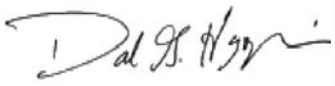
11
12 
13 By: _____
David G. Hagopian
Attorneys for Defendants
AIT WORLDWIDE LOGISTICS, INC. and REAL TIME
STAFFING SERVICES, LLC dba SELECT STAFFING

EXHIBIT B

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

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

August 2, 2021

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

AIT WORLDWIDE LOGISTICS, INC.

Agent for Service of Process: REGISTERED AGENT SOLUTIONS, INC.,
1220 S Street, Suite 150
Sacramento, CA 95811
Receipt No. 7020 1810 0002 0535 7625

REAL TIME STAFFING SERVICES, LLC dba SELECT STAFFING

Agent for Service of Process: CORPORATE CREATIONS NETWORK INC.
4640 Admiralty Way, 5th Floor
Marina del Rey, CA 90292
Receipt No. 7020 1810 0002 0535 7618

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

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff ERIC CHABEZ, individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency; AIT WORLD WIDE LOGISTICS, INC., and REAL TIME STAFFING SERVICES LLC dba SELECT STAFFING through their agent of service of process.

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the Los Angeles County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Gregory Mauro', with a stylized, cursive script.

Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint

JAMES HAWKINS APLC
James R. Hawkins, Esq. (#192925)
Gregory Mauro, Esq. (#222239)
Michael Calvo, Esq. (#314986)
Jeanne Sarmiento, Esq. (#309660)
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.: (949) 387-7200
Fax: (949) 387-6676
Email: James@jameshawkinsaplc.com
Email: Greg@jameshawkinsaplc.com
Email: Michael@jameshawkinsaplc.com
Email: Jeanne@jameshawkinsaplc.com

Attorneys for Plaintiff ERIC CHABEZ.
on behalf of all the general public as private attorney general,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ERIC CHABEZ on behalf of the general public
as private attorney general,

Plaintiff,

v.

AIT WORLDWIDE LOGISTICS, INC., an
Illinois Corporation; REAL TIME STAFFING
SERVICES, LLC dba SELECT STAFFING, a
California Limited Liability Company; and
DOES 1-50, inclusive,

Defendants.

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

**PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq.*)**

COMES NOW Plaintiff ERIC CHABEZ (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants AIT WORLDWIDE LOGISTICS, INC., an Illinois Corporation; REAL TIME STAFFING SERVICES, LLC dba SELECT STAFFING, a California Limited Liability Company and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

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

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to unpaid wages resulting from Defendant’s: (a) failure to accurately pay wages including overtime wage, (b) failure to provide meal periods for every work period exceeding more than ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (c) failure to authorize and permit rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (d) failing to pay all wages earned and owed upon separation from Defendant’s employ, (e) failing to provide accurate itemized wage statements, (f) for issuing payment of wages in the form of a non-Labor Code-compliant instrument, and (g) failure to reimburse business expenses. As a result Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

1 3. The California Superior Court has jurisdiction over this action pursuant to
2 California Constitution Article VI, Section 10, which grants the Superior Court “original
3 jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which
4 this action is brought do not give jurisdiction to any other court.

5 4. This Court has jurisdiction over Defendants because, upon information and belief,
6 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
7 avails itself of the California market so as to render the exercise of jurisdiction over it by the
8 California Courts consistent with traditional notions of fair play and substantial justice.

9 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
10 Civil Procedure section 395. Defendants are doing business throughout California, including but
11 not limited to San Joaquin County, and each Defendant is within the jurisdiction of this Court for
12 service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and
13 all other aggrieved employees within the State of California. Defendants employ numerous
14 aggrieved employees in in the State of California.

15 6. On information and belief, Defendants have conducted business within the State of
16 California during the purported liability period and continue to conduct business throughout the
17 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
18 similarly situated non-exempt aggrieved employees within California.

19 7. The California Superior Court also has jurisdiction in this matter because on
20 information and belief there are no federal questions at issue, as the issues herein are based solely
21 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
22 California Code of Civil Procedure, the California Civil Code, and the California Business and
23 Professions Code.

24 8. On information and belief, during the statutory liability period and continuing to
25 the present ("liability period"), Defendant consistently maintained and enforced against
26 Defendant's Non-Exempt Aggrieved Employees, among others, the following unlawful practices
27 and policies, in violation of California state wage and hour laws: (a) failure to accurately pay
28

1 wages including overtime wage, (b) failure to provide meal periods for every work period
2 exceeding more than ten (10) hours per day and failure to pay an additional hour's of pay or
3 accurately pay an additional hour's of pay in lieu of providing a meal period; (c) failure to authorize
4 and permit rest breaks for every four hours or major fraction thereof worked and failure to pay an
5 additional hour's of pay or accurately pay an additional hour's of pay in lieu of providing a rest
6 period; (d) failing to pay all wages earned and owed upon separation from Defendant's employ,
7 (e) failing to provide accurate itemized wage statements, (f) for issuing payment of wages in the
8 form of a non-Labor Code-compliant instrument, and (g) failure to reimburse business expenses.

9 9. On information and belief, during the statutory liability period and continuing to
10 the present, Defendants have had a consistent policy of failing to provide its Non-Exempt
11 Employees within the State of California, including Plaintiff, unfettered, uninterrupted, duty free
12 rest periods of at least (10) minutes per four (4) hours worked or major fraction thereof and failing
13 to pay such employees one (1) hour of pay at the employees regular rate of compensation for each
14 workday that the rest period is not provided, as required by California state wage and hour laws.

15 10. On information and belief, during the statutory liability period and continuing to
16 the present, Defendants have had a consistent policy of failing to accurately pay wages including
17 overtime wages for hours worked while subject to the control of Defendants.

18 11. On information and belief, during the statutory liability period and continuing to
19 the present (rest and meal period liability period), Defendants have had a consistent policy of
20 requiring its Non-Exempt Employees within the State of California, including Plaintiff, to work at
21 least five (5) and or ten (10) hours without a meal period and failing to pay or accurately pay such
22 employees one (1) hour of pay at the employees regular rate of compensation for each workday
23 that the meal period is not provided, as required by California state wage and hour laws.

24 12. On information and belief, during the statutory liability period and continuing to
25 the present (rest and meal period liability period), Defendants have had a consistent policy of
26 requiring its Non-Exempt Employees within the State of California, including Plaintiff, to work in
27 excess of four hours and or ten (10) hours without authorizing and permitting a rest period and
28

1 failing to pay or accurately pay such employees one (1) hour of pay at the employees regular rate
2 of compensation for each workday that the rest period is not authorized and permitted, as required
3 by California state wage and hour laws.

4 13. On information and belief, during the statutory liability period and continuing to
5 the present, Defendants have had a consistent policy of failing to timely pay wages upon
6 separation.

7 14. On information and belief, during the statutory liability period and continuing to
8 the present, Defendants have failed to provide Plaintiff and aggrieved employees accurate itemized
9 wage statements.

10 15. On information and belief, during the statutory liability period and continuing to
11 the present, Defendants have failed to provide indemnify necessary business expenses as a result
12 of the discharge of Plaintiff's and aggrieved employees' duties.

13 16. Plaintiff on behalf of the general public as private attorney general and all other
14 aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations
15 enumerated under 2699.5 as follows: sections 201-203, 212, 213, 510, 512, 558, 226, 226.3, 226.7,
16 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802 and seeking penalties, interest, attorneys' fees
17 and costs.

18 **III. PARTIES**

19 **A. Plaintiff**

20 17. Plaintiff, ERIC CHABEZ was at all times relevant to this action, a resident of
21 California. Plaintiff was employed by Defendants in approximately October 2020 as a Non-
22 Exempt Employee and worked at Defendants' warehouse as a General Laborer and Forklift
23 Operator during the liability period until his separation from Defendants' employ in approximately
24 March 2021. Plaintiff's duties included but were not limited to driving a forklift, signing in
25 international shipments, scanning and unloading trucks, check-in and sign for shipments.
26

27 18. As Defendants' employee, Plaintiff, and all other aggrieved employees were
28 regularly required to and subsequently suffered:

- a) perform work subject to the control of the employer without being compensated all wages including overtime, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Order ("IWC");
- b) work without being permitted or authorized a minimum ten-minute rest period for every four hours or major fraction thereof worked and not compensated one (1) hour of pay at his regular rate of compensation for each workday that a rest period was not provided, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Orders ("IWC");
- c) work in excess of six and ten hours per day without being provided meal periods and not compensated one (1) hour of pay at the regular rate of compensation for each workday that a meal period was not provided, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Orders ("IWC");
- d) not reimbursed for business expenses incurred; and
- e) not provided accurate itemized wage statements.

19. On information and belief, Defendants willfully failed to pay all earned wages in the form regular wages and overtime wages, and meal and rest period premium wages, to its Non-Exempt Employees and members of the Representative Group; nor have Defendants returned to Plaintiff or members of the Representative Group, upon or after separation from employment with Defendants, all wages earned and owing. Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees..

B. Defendants

20. Defendant AIT WORLDWIDE LOGISTICS, INC., operates as a freight and logistics company throughout the United States including California. Plaintiffs estimate there are in excess of 100 Non-Exempt Employees who work or have worked for Defendants over the last year.

21. Defendant REAL TIME STAFFING SERVICES, LLC dba SELECT STAFFING

operates as a services company providing consulting, direct hire, temporary staffing, training, contract employees, and payroll services to various business across the U.S., including in California

22. Other than identified herein, Plaintiff is unaware of the true names, capacities, relationships and extent of participation in the conduct alleged herein, of the defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capabilities are ascertained.

23. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other members of the Representative Group , and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects pertinent to this action as the agent of the other defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants.

IV. GENERAL ALLEGATIONS

24. At all times set forth herein, Defendants employed Plaintiff and other persons in the capacity of non-exempt positions, however titled, throughout the state of California.

25. Plaintiff is informed and believes Aggrieved Employees have at all times pertinent hereto been Non-Exempt within the meaning of the California Labor Code and the implementing rules and regulations of the IWC California Wage Orders.

26. Plaintiff is informed and believes that all Aggrieved Employees are citizens of the state of California.

27. Defendants continue to employ Non-Exempt Employees, however titled, in California and implement a uniform set of policies and practices to all non-exempt employees, as they were all engaged in the generic job duties of providing support to Defendants' logistics and

1 freight business.

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

5 29. During the relevant time frame, Defendants compensated Plaintiff and Aggrieved
6 Employees based upon an hourly rate.

7 30. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
8 Employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work
9 week.

10 31. During the relevant time frame, Plaintiff and Aggrieved Employees were not
11 compensated for all hours worked as a result of off-the-clock work performed. For instance,
12 Plaintiff and Aggrieved Employees were required to perform work related activities after clocking
13 out for the day such as filling out paperwork directed by Defendants' lead(s), and/or help to advise
14 other employees regarding the location of items in the warehouse prior to leaving, which took
15 approximately 5-10 minutes. Plaintiff and Aggrieved Employees also performed work off the
16 clock as they would get calls about freights outside of work hours. As a result of the above,
17 Defendants failed to compensate Plaintiff and Aggrieved employees for all time worked leading
18 to a disproportionate underpayment of minimum and overtime wages.

19 32. On information and belief, Defendants violated Labor Code sections 212 and 213
20 by issuing payment to Plaintiff and Aggrieved Employees for their wages in a non-Labor Code-
21 compliant instrument. For instance, Defendants on occasion would issue pay cards to Plaintiff and
22 Aggrieved Employees to be included as a form of compensation. Further, Defendants paid Plaintiff
23 for his last pay on a pay card.

24 33. Plaintiff and the Aggrieved Employees were regularly required to work shifts in
25 excess of five hours without being provided a lawful meal period and over ten hours in a day
26 without being provided a second lawful meal period as required by law.

27 34. Indeed, during the relevant time, as a consequence of Defendants' staffing and
28

1 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
2 Defendants frequently failed to provide Plaintiff and the Aggrieved Employees timely, legally
3 complaint uninterrupted 30-minute meal periods on shifts over five hours as required by law.
4 Similarly, as a consequence of Defendants' staffing and scheduling practices, lack of coverage,
5 work demands, and Defendants' policies and practices, Defendants frequently failed to provide
6 Plaintiff and the Aggrieved Employees legally compliant second meal periods on shifts over ten
7 hours as required by law.

8 35. On information and belief, Plaintiff and Aggrieved Employees did not waive their
9 rights to meal periods under the law.

10 36. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-duty
11 meal periods.

12 37. Despite the above-mentioned meal period violations, Defendants failed to
13 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,
14 one additional hour of pay at their regular rate as required by California law when meal periods
15 were not timely or lawfully provided in a compliant manner.

16 38. Plaintiff are informed and believe, and thereon alleges, that Defendants know,
17 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees
18 were entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7
19 but were not receiving such compensation.

20 39. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
21 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
22 period for every four hours worked or major fraction thereof, which is a violation of the Labor
23 Code and IWC wage order.

24 40. Defendants maintained and enforced scheduling practices, policies, and imposed
25 work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful,
26 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
27 requisite rest periods were not timely authorized and permitted as a result of Defendants' failure
28

1 to provide relief for Plaintiff and Aggrieved Employees to take their lawfully required breaks.

2 41. Despite the above-mentioned rest period violations, Defendants did not compensate
3 Plaintiff, and on information and belief, did not pay Aggrieved Employees one additional hour of
4 pay at their regular rate as required by California law, including Labor Code section 226.7 and the
5 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
6 permitted.

7 42. Defendants also failed to provide accurate, lawful itemized wage statements to
8 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In
9 addition, upon information and belief, Defendants omitted an accurate itemization of total hours
10 worked, including premiums due and owing for meal and rest period violations, gross pay and net
11 pay figures from Plaintiff and the Aggrieved Employees' wage statements. Defendants further
12 failed to include or itemize the gift card payments made to Plaintiff and Aggrieved Employees.

13 43. Plaintiff are informed and believe, and thereon alleges, that at all times herein
14 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
15 thereof for resignations without prior notice as the case may be) they had a duty to accurately
16 compensate Plaintiff and Aggrieved Employees for all wages owed including overtime wages,
17 meal and rest period premiums, and that Defendants had the financial ability to pay such
18 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
19 because of the above-specified violations.
20

21 44. On information and belief, Defendants failed to reimburse business expenses
22 incurred by Plaintiff and Aggrieved Employees as a result of the discharge of their duties. For
23 instance, Plaintiff and Aggrieved Employees were required to use their personal cellphones for
24 work related purposes including but not limited to sending company emails, taking phone calls,
25 answering texts, and taking photos of freight. Despite these realities, Defendants' failed to
26 reimburse Plaintiff and Aggrieved Employees pursuant to Labor Code § 2802

27 45. Upon information and belief, Defendants knew and or should have known that it is
28 improper to implement policies and commit unlawful acts such as:

1 (a) requiring employees to work four (4) hours or a major fraction thereof without
2 being provided a minimum ten (10) minute rest period and without compensating the employees
3 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
4 rest period was not provided;

5 (b) requiring employees to work in excess of five (5) hours or ten (10) hours per day
6 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
7 and without compensating employees with one (1) hour of pay at the regular rate of compensation
8 for each workday that such a meal period was not provided;

9 (c) failing to pay Plaintiff and Aggrieved Employees for accurately pay overtime
10 wages and sick pay owed;

11 (d) failing to timely pay Plaintiff and Aggrieved Employees;

12 (e) failing to provide accurate itemized wage statements;

13 (f) providing non-compliant wage compensation in the form of pay cards; and

14 (g) failing to reimburse business expenses.
15

16 46. In addition to the violations above, and on information and belief, Defendants knew
17 they had a duty to compensate Plaintiff and Aggrieved Employees for the allegations asserted
18 herein and that Defendants had the financial ability to pay such compensation, but willfully,
19 knowingly, recklessly, and/or intentionally failed to do so.

20
21 **V. REPRESENTATIVE CLAIMS**

22 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 et seq.**

23 47. Plaintiff incorporates by reference and re-alleges each and every allegation
24 contained above, as though fully set forth herein.

25 48. On August 2, 2021 Plaintiff complied with notice requirements pursuant to Labor
26 Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**,
27 indicating that the LWDA and Defendants were put on notice of the claims alleged here and that
28 the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not

1 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
2 representative capacity. The substance and violations set forth in this Complaint of which the
3 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
4 Action Complaint to the LWDA.

5 49. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
6 Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt
7 Employees of Defendants.

8 50. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
9 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
10 including without limitation Labor Code section 201-203, 212, 213, 510, 512, 558, 226, 226.3,
11 226.7, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802 and 2698 *et seq.*, applicable IWC Wage
12 Orders and California Code of Regulations, Title 8, section 11000 *et. seq.*

13 51. At all times relevant, Plaintiff and all other aggrieved employees regularly
14 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and
15 rest break requirements of the applicable IWC wage order and the Labor Code.

16 52. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay
17 overtime wages owed as discussed above due to Defendants' failure to account for work time
18 performed off-the-clock by Plaintiff and Aggrieved Employees. Therefore, Defendants violated
19 section 510, and 1194 by not compensating its Non-Exempt Employees for work performed in
20 excess of eight hours (8) in a day or forty hours in a work week (40). Section 510 of the Labor
21 Code codifies the right to overtime compensation at the rate of one and one-half times the regular
22 rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a work
23 week and to overtime compensation twice the regular rate of pay for hours worked in excess of
24 twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work in a
25 particular work week.

26 53. Defendants violated Labor Code section 200, 558, 1194, 1197, by failing to
27 accurately pay at least minimum wages due as a result Defendants' failure to compensate Plaintiff
28

1 and Aggrieved Employees for off the clock work performed.

2 54. On information and belief, Defendants violated Labor Code sections 212 and 213
3 by issuing payment to Plaintiff and Aggrieved Employees for their wages in a non-Labor Code-
4 compliant instrument. For instance, Defendants on occasion would issue pay cards to Plaintiff and
5 Aggrieved Employees to be included as a form of compensation. Plaintiff also received his last
6 pay from Defendants in the form of a pay card.

7 55. California Labor Code § 212 requires California employers to comply with a series
8 of provisions when issuing wages to employees. In short, the provisions of section 212(a)(1) forbid
9 an employer from issuing payment of wages in an instrument that is not (1) negotiable, (2) payable
10 in cash, (3) on demand, (4) without discount, (5) at an established place of business in the State,
11 (6) the name and address of which appears on the instrument, and (7) which place of business has
12 been prepared, by the deposit of funds, the establishment of credit, or by some arrangement or
13 understanding, to pay the money called for by the instrument. *See People v. Turner*, 154 Cal. App.
14 2d F. Supp. 883, 885-86 (1957).

15 56. Labor Code § 213 prohibits an employer from depositing wages due or to become
16 due or an advance on wages to be earned in an account in any bank, savings and loan association,
17 or credit union of the employee's choice with a place of business located in this state, provided
18 that the employee has voluntarily authorized that deposit. If an employer discharges an employee
19 or the employee quits, the employer may pay the wages earned and unpaid at the time the employee
20 is discharged or quits by making a deposit authorized pursuant to this subdivision, provided that
21 the employer complies with the provisions of this article relating to the payment of wages upon
22 termination or quitting of employment.

23 57. Defendants violated Labor Code sections 512 and 226.7 for failing to provide
24 timely, uninterrupted first and second meal periods and requiring unlawful on duty meal periods,
25 or compensation in lieu thereof. Pursuant to Labor Code section 512, no employer shall employ
26 an employee for a work period of more than five (5) hours without providing a meal break of not
27 less than thirty (30) minutes in which the employee is relieved of all of his or her duties. An
28

1 employer may not employ an employee for a work period of more than ten (10) hours per day
2 without providing the employee with a second meal period of not less than thirty (30) minutes,
3 except that if the total hours worked is no more than twelve (12) hours, the second meal period
4 may be waived by mutual consent of the employer and the employee only if the first meal period
5 was not waived.

6 58. Defendants failed to provide Plaintiff and all other aggrieved employees
7 uninterrupted duty free meal periods of not less than thirty (30) minutes. Defendants implemented
8 and enforced policies of on duty meal period practices which required employees to work during
9 their meal periods, to forego their meal periods, and/or to return to work from meal periods prior
10 to thirty (30) uninterrupted minutes. As a proximate result of the aforementioned violations,
11 Plaintiff and all other aggrieved employees have been damaged in an amount according to proof
12 at time of trial.

13 59. Plaintiff, and on information and belief, all aggrieved employees, were
14 systematically not permitted or authorized to take ten minute rest periods for every four hours
15 worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.
16 Plaintiff and on information and belief, aggrieved employees, were not compensated with one hour
17 of wages for every day in which a rest period was missed or untimely as a result of Defendants'
18 policies, practices, or work demands. By failing to authorize and permit a ten-minute rest period
19 for every four hours or major fraction thereof worked per day by its Non-Exempt Employees, and
20 by failing to provide compensation for such non-provided or shortened rest periods, as alleged
21 above, Defendants willfully violated the provisions of Labor Code sections 226.7, 512 and the
22 applicable IWC Wage Order.

23 60. Defendants also willfully violated Labor Code sections 201-203 by failing to
24 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
25 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
26 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if
27 an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
28

1 pay the subject employee's wages until the back wages are paid in full or an action is commenced.
2 The penalty cannot exceed 30 days of wages.

3 61. Plaintiff and all other aggrieved employees who were separated from employment
4 are entitled to compensation for all forms of wages earned, including but not limited to
5 compensation overtime wages, sick pay, and for non-provided meal and rest periods, but to date
6 have not received such compensation, therefore entitling them to penalties under PAGA for
7 violations of Labor Code sections 201-203.

8 62. On information and belief, Defendants willfully failed to pay all wages due and
9 owing upon separation from employment. These wages include minimum and overtime wages,
10 and meal and rest period premiums.

11 63. On information and belief, Defendants failed to provide accurate itemized wage
12 statements which failed to include all hours worked, including overtime, accurate accounting of,
13 the lawful meal and rest period premiums due and owing to Plaintiff and the aggrieved employees,
14 and the address of the legal entity that is the employer pursuant to Labor Code section 226(a).
15 Defendants further failed to include or itemize the pay card payments made to Plaintiff and
16 Aggrieved Employees.

17 64. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
18 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
19 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
20 for each violation in a subsequent citation, for which the employer fails to provide the employee a
21 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

22 65. Additionally, Defendants have no accurate records relating to aggrieved
23 employees' work periods, meal periods, total daily hours worked, total hours worked per payroll
24 period and applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to
25 maintain accurate records relating to hours worked daily in violation of Labor Code sections
26 1174(d), 1174.5.

27
28 66. Lastly, Defendants failed to reimburse Plaintiff and Aggrieved Employees for all

1 business expenses incurred for the use of their personal cellphones as discussed above pursuant to
2 Labor Code § 2802.

3 67. Labor Code §2804 states in pertinent part: “Any contract or agreement, express or
4 implied, made by any employee to waive the benefits of this article or any part thereof is null and
5 void, and this article shall not deprive any employee or his or her personal representative of any
6 right or remedy to which he is entitled under the laws of this State.

7 68. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees
8 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
9 worked.

10 69. Plaintiff and the Representative Aggrieved Employees are entitled to recover
11 Penalties and attorneys’ fees and costs sunder Labor Code section 2698, et. seq.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 14 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 15 2. For reasonable attorneys’ fees and costs; and
- 16 3. For such other and further relief as the Court deems proper.
- 17

18

19 Dated: August 2, 2021

JAMES HAWKINS APLC

20 By: _____

21 JAMES R. HAWKINS, ESQ.
22 GREGORY MAURO, ESQ.
MICHAEL CALVO, ESQ.
JEANNE SARMIENTO, ESQ.

23 Attorneys for Plaintiff ERIC CHABEZ on
24 behalf of the general public as private attorney
25 general
26
27
28

EXHIBIT C

Matter Billing Detail

JAMES HAWKINS APLC

Date Range: 01/01/1900 to 08/23/2023
Client: MEDTRONIC003 - Eric Chabez
Matter: AITWORLDWIDE - AIT Worldwide Logistics/ Select Staffing - PAGA -Eric Chabez v. AIT

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
Balance Forward:									
08/17/2021	POS	Postage- 08.02.21- Cert Mail to Agent re LWDA notice (2)	\$0.00		Unbilled				
11/10/2021	FST	First Legal Network - E-File: Complaint, Civil Case Cover Sheet, Summons - IN #30179004	\$514.70		Unbilled				
01/07/2022	FST	First Legal Network - process branch same day, complaint, initial docs , ntes , order (2), E-Filing, proof of personal service; IN#30185317	\$311.90		Unbilled				
02/07/2022	FST	First Legal Network - E-Filing, Plaintiffs request to continue case IN#30188503	\$59.70		Unbilled				
02/23/2022	FST	First Legal Network - E-Filing, case management statement IN#30188503	\$37.70		Unbilled				
03/17/2022	FST	First Legal Network - E-Filing, case management statement, plaintiffs ntc of case management IN#30192286	\$75.40		Unbilled				
11/30/2022	FST	First Legal Network - E-Filing - Case Management Statement IN# 30222171	\$37.70		Unbilled				
12/28/2022	MED	Mediation Services- CK#10524	\$12,500.00		Unbilled				
01/31/2023	EXA	Expert Analysis- IN#8196 CK#10567	\$2,430.00		Unbilled				
02/17/2023	CRT	Court Documents - 2.14.23 Ntc of Stmt	\$3.00		Unbilled				
02/21/2023	FST	First Legal Network - E-Filing - Notice of Settlement IN# 30227367	\$39.95		Unbilled				
07/13/2023	FST	First Legal Network - E-Filing - Notice of Settlement IN# 30244254	\$39.95		Unbilled				
Total:			\$16,067.98	\$0.00					
Balance:			\$16,067.98						

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 :-----	\$16,067.98						
		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						

EXHIBIT D

**Quotation Request:**

Greg Mauro
James Hawkins ALPC
greg@jameshawkinsaplc.com
949.387.7200

Case Name:

Chabez v. AIT

Date:

Monday, August 21, 2023

RFP Number:

72000011

Prepared By:

Sean Hartranft
Apex Class Action LLC
Sean@apexclassaction.com
949.878.3676

Settlement Specifications

Number of Aggrieved Employees	300
Certified Language Translation:	Yes
Static Settlement Website	No
Percentage of Undeliverable Mail	20%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
Data Analytics and Standardization				
Import and Standardize Data*	Per Hour	\$125.00	1	\$125.00
Data Analyst	Per Hour	\$150.00	1	\$150.00
*Data provided must be in a workable format. Apex can standardized provided data at an additional cost of \$150/hr.				
			Sub Total:	\$275.00
Project Management				
Project Management	Per Hour	\$150.00	2	\$300.00
Project Coordinator	Per Hour	\$90.00	2	\$180.00
Data Analyst and Reporting	Per Hour	\$140.00	1	\$140.00
			Sub Total:	\$620.00
Toll-Free Contact Center, Website, Reporting & Pre Distribution				
Form Set Up	Per Hour	\$100.00	1	\$100.00
Bilingual Toll-Free Contact Center	Static Rate	\$42.00	1	\$42.00
NCOA Address Update (USPS)	Static Rate	\$40.00	1	\$40.00
Certified Language Translation: Spanish	Static Rate	\$500.00	1	\$500.00
Settlement Status Reports	Static Rate	\$750.00	1	Waived
			Sub Total:	\$682.00



Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Distribution & Settlement Fund Management				
Settlement Calculations (Preliminary and Final)	Per Hour	\$120.00	3	\$360.00
Account Management and Reconciliation	Per Hour	\$140.00	3	\$420.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$2.00	300	\$600.00
USPS First Class Postage	Per Piece	\$0.66	300	\$198.00
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$2.50	30	\$75.00
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	8	\$800.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,250.00	1	\$1,250.00
Sub Total:				\$3,703.00

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	2	\$270.00
Project Management Reconciliation	Per Hour	\$100.00	2	\$200.00
Declarations	Per Hour	\$120.00	2	\$240.00
Sub Total:				\$710.00

TOTAL ESTIMATED ADMINISTRATION COST:	\$5,990.00
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Thank you for your business!



Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. Services: Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. Payment Terms: As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. Incurred Expenses: In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. Invoicing: Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. Case Duration: The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. Termination of Services: Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. Independent Contractor: As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.

9. Limitation of Liability: The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. Indemnification: The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. Confidentiality: Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of these terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.

13. Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.

14. COMPLETE AGREEMENT. These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.

16. Force Majeure: In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.

18. Severability: This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. Nonwaiver: This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.