

SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIM

This Settlement Agreement and Release of PAGA Claim (“Settlement Agreement”) is made by and between Plaintiff Oscar Orellana (“Plaintiff”), on behalf of himself and as a representative for the California Labor Workforce Development Agency (“LWDA”), and Defendants Environment Control Puente Hills, Inc. and Environment Control – Greater Orange County, Inc. (“Defendants”), who may collectively be referred to herein as the “Parties,” and each may be individually referred to as a “Party.”

A. Definitions

The following terms, when used in this settlement agreement, shall have the following meanings:

1. “Action” or “Lawsuit” means *Orellana v. Environment Control – Puente Hills, Inc., et al.*, Los Angeles County Superior Court Case Number 21STCV41665.
2. “Agreement,” “Stipulation,” or “Settlement Agreement,” mean this Settlement Agreement and Release of PAGA Claim, including any attached Exhibits.
3. “Attorneys’ Fees and Costs” means the amount of \$74,925 (thirty-three and one-third percent of the Settlement Amount) which shall be allocated to Plaintiff’s Counsel for attorneys’ fees, and actual costs in the amount of \$14,640.66, all of which shall be paid out of the Gross Settlement Amount. This Settlement is not conditioned on approval of the Attorneys’ Fees and Costs; in other words, this Settlement shall remain in full force and effect if the Court awards less than the requested Attorneys’ Fees and Costs. If less than \$74,925 is awarded for Attorneys’ Fees and Costs, the difference shall return to the Net Settlement Amount.
4. “Court” (or “Judge”) means the Los Angeles County Superior Court, the Honorable Michelle Williams, judge presiding.
5. “Defendants” means Environment Control Puente Hills, Inc. and Environment Control – Greater Orange County, Inc.
6. “Defendants’ Counsel” means Christina C. Tillman of McCormick Barstow, LLP.
7. “Effective Date” means the date that the Gross Settlement Amount is fully-funded by Defendants.
8. “Eligible Pay Period” means any pay period worked by a PAGA Employee during the PAGA Release Period.
9. “Final Approval Date” means the date that the Court enters the Final Order and Judgment.
10. “Final Order and Judgment” means the Court’s order approving this Private Attorneys General Act of 2004 (“PAGA”) Settlement and Final Judgment. The Final Order and Judgment will be submitted, substantially in the form attached hereto as **Exhibit 1**, in connection with the Stipulation for Approval of this Settlement.

11. “Gross Settlement Amount” means the maximum settlement amount that Defendants will pay in connection with this Settlement, which is \$225,000.00. This is a non-reversionary Settlement; no portion of the Gross Settlement Amount will return to Defendants under any circumstances.

12. “LWDA Settlement Proceeds” means the seventy-five percent (75%) of the Net Settlement Amount that shall be paid to the Labor Workforce and Development Agency (“LWDA”).

13. “Net Settlement Amount” means the amount that remains after deducting Attorneys’ Fees and Costs, Settlement Administration Costs, and the Service Awards, from the Gross Settlement Amount.

14. “Notice” means the notice that will be sent to the PAGA Employees with payment after the Final Order and Judgment is entered by the Court. The Notice will be sent to PAGA Employees substantially in the form attached hereto as **Exhibit 2**. The Notice will also be sent in Spanish.

15. “Operative Complaint” means Plaintiff’s First Amended PAGA Complaint filed by Plaintiff, attached hereto as **Exhibit 3**, which the Parties stipulate to filing subject to the terms of this Settlement in order to carry out the terms of this settlement.

16. “LWDA Notices” means the notices submitted September 8, 2021, and June 22, 2022, by Plaintiff, to the Labor and Workforce Development Agency (LWDA) notifying the LWDA of alleged violations by Defendants.

17. “PAGA Employees” means all non-exempt employees of Defendants who worked for Defendants in California from September 8, 2020, through July 5, 2022.

18. “PAGA Employees Settlement Proceeds Fund” means the twenty-five percent (25%) of the Net Settlement Amount that shall be paid to the PAGA Employees.

19. “PAGA Representative Claims” means Plaintiff’s PAGA claims under California Labor Code § 2698 *et. seq.* based on alleged predicate violations of the California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.2, 226.7, 248.1, 248.2, 300, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 1199, 2802, and 2810.5 and all alleged violations of the accompanying and relevant IWC Wage Order provisions (including but not limited to failure to provide suitable seating and failure to provide adequate resting facilities) cited in Plaintiff’s LWDA Notice and/or alleged in the Operative Complaint.

20. “PAGA Settlement” or “Settlement” means the settlement of the Action as memorialized in this Agreement.

21. “PAGA Release Period” means September 8, 2020, through July 5, 2022. In the event that the parties stipulation is rejected by the court and more formal motion is required, the release date will be extended for the PAGA Employees to the date the stipulation is rejected plus 25 calendar days.

22. “Parties” means Plaintiff and Defendants collectively.

23. “Plaintiff” means Oscar Orellana.

24. “Plaintiff’s Counsel” means Scott E. Wheeler of the Law Office of Scott E. Wheeler.

25. “Released Parties” means Defendants and their parents, subsidiaries, predecessors, successors, assigns, owners, officers, directors, employees and agents.

26. “Settlement” means the collective settlement of the PAGA Representative Claims as memorialized in this Agreement.

27. “Settlement Administrator” means Phoenix Settlement Administrators. The Settlement Administrator will agree to enter into a confidentiality agreement by which it agrees to maintain as confidential the information so designated by Defendants and not to disseminate any designated information without the written approval of Defendants. The Settlement Administrator will be responsible for, *inter alia*, sending Notice and payments to PAGA Employees and the LWDA and distributing other payments as set forth in this Agreement.

28. “Settlement Administration Costs” means the amount of \$5,500.00 which shall be paid to the Settlement Administrator for performing the duties provided under the Settlement. The Settlement Administration Costs shall be no more than \$5,500.00 and if less than \$5,500.00 is approved for Settlement Administration costs, the difference shall return to the Net Settlement Amount.

29. “Service Award” means the amount of \$6,000.00 which shall be allocated to Plaintiff, subject to Court approval, in recognition for his efforts in prosecuting the case, obtaining the benefit of the Settlement, and as consideration for Plaintiff’s released claims, which includes a broad general release, against Defendants. The Service Award shall be paid from the Settlement Amount. This Settlement is not conditioned on approval of the Service Award; in other words, this Settlement shall remain in full force and effect if the Court awards less than the requested \$6,000.00. If less than \$6,000.00 is awarded to Plaintiff, the difference shall return to the Net Settlement Amount.

B. General

1. On November 12, 2021, Plaintiff filed the Action in the Los Angeles Superior Court, pursuant to the PAGA, alleging failure to provide required meal periods, failure to provide required rest breaks, failure to pay overtime wages, failure to pay all wages due to discharged and quitting employees, , failure to maintain required records, failure to furnish accurate itemized statements, failure to indemnify employees for necessary expenditures incurred in discharge of duties, and failure to provide supplemental COVID-19 sick leave.

2. On June 8, 2022, the Parties participated in a mediation with the highly experienced mediator, Gig Kyriacou. After a full-day ZOOM mediation, the Parties were unable to reach a settlement agreement. Thereafter, the Parties continued to exchange information and engage in settlement negotiations through the Mr. Kyriacou. On June 20, 2022, the Parties accepted a mediator’s proposal and fully executed a Memorandum of Understanding.

3. Defendants deny all of the allegations and claims asserted in the Lawsuit and deny that they have committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind.

4. The Parties have conducted a thorough investigation into the facts of the Action. This included, *inter alia*, conducting extensive informal discovery that involved the exchange of information and documents relating to the PAGA Representative Claims. Defendants produced documents consisting of employee handbooks and policy documents, etc. Defendants also produced the electronic time and payroll records for Aggrieved Employees which consisted of hundreds of thousands of lines of data. Plaintiff retained an expert to analyze this data and conduct an exposure analysis consistent with Plaintiff's theories of liability. Defendants also retained an expert to analyze the data and conduct an exposure analysis. Based on the foregoing data and on their own independent investigation and evaluation, Plaintiff's Counsel is of the opinion that the settlement with Defendants for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the LWDA and PAGA Employees in light of all known facts and circumstances, including the risk of significant delay, uncertainty associated with litigation, various defenses asserted by Defendants, and potential appellate issues. Defendants and counsel for Defendants also agree that the settlement is fair.

5. The Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of Plaintiff's PAGA Representative Claims and that it is the desire and intention of the Parties to affect a final and complete resolution of the Action, including the PAGA Representative Claims, against Defendants. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability by Defendants.

6. Under California Law, the State may assess and collect civil penalties from employers for violations of certain provisions of the California Labor Code. (*See* Cal. Lab. Code §§ 2698 *et seq.*) Under PAGA, however, if an "aggrieved employee" "give[s] written notice by certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged to have been violated," and the State thereafter decides not to investigate, as was the case here, or does investigate and determines that a citation against the employer should not be issued, the employee may, "as an alternative" to enforcement by the State, act as a proxy or agent of the state's labor law enforcement agencies and bring a civil action under PAGA to recover civil penalties "on behalf of himself or herself and other current or former employees." *Id.* "[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees."

7. California Labor Code § 2699(1)(2) provides that the trial court shall "review and approve any settlement of any civil action filed pursuant to this part." Plaintiff will submit this Settlement Agreement to the LWDA concurrently with the filing of the Stipulation for Approval with the Court.

8. In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

C. Terms of Settlement

1. Subject to the Court's approval of the Settlement pursuant to California Labor Code § 2699(1)(2), which counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the following binding settlement of the Action.

2. The Gross Settlement Amount will be distributed in the following manner:

- a. **Settlement Administration Costs:** The costs associated with settlement administration (e.g. preparing and mailing payments to LWDA and PAGA Employees, tax documentation, etc.) shall be paid from the Settlement Amount and shall not exceed \$5,500.00. The Parties agree to use Phoenix Settlement Administrators as the Settlement Administrator. The Parties and their counsel represent that they do not have any involvement in the governance or work of the Settlement Administrator.
- b. **Attorneys' Fees and Costs:** The Parties agree that, subject to the Court's review and approval, Plaintiff's Counsel will be paid one-third of the Gross Settlement Amount as attorneys' fees \$74,925.00, plus actual litigation costs not to exceed \$20,000.00 (actual costs total \$14,640.66), incurred in connection with work performed to litigate the Action and obtain Court approval of the Settlement, which will be paid from the Settlement Amount.
- c. **Service Award to Plaintiff.** The Parties agree that, subject to the Court's review and approval, Plaintiff will be paid a service award of \$6,000.00, which will be paid from the Gross Settlement Amount.
- d. **Net Settlement Amount:** After deducting Settlement Administration Costs, Attorneys' Fees and Costs, and the Service Award from the Gross Settlement Amount, the remainder forms the Net Settlement Amount (which totals \$123,934.34 if the amounts set forth above are approved by the Court). The Net Settlement Amount shall be allocated seventy-five percent (75%) to the California Labor & Workforce Development Agency ("LWDA Settlement Proceeds"), which is estimated to total approximately \$92,950.75. The remaining twenty-five percent (25%) of the Net Settlement Amount, which is estimated to total approximately \$30,983.59, shall be paid to the PAGA Employees on a *pro rata* basis ("PAGA Employees Settlement Proceeds Fund"), which shall be determined based on the number of Eligible Pay Periods that he or she worked for Defendants during the PAGA Release Period and shall be calculated as follows:

The PAGA Employees Settlement Proceeds Fund will be divided by the total number of Eligible Pay Periods worked by all PAGA Employees during the PAGA Release Period, and the resulting figure will be referred to as the "Multiplier." Each PAGA Employee's *pro rata* share of the PAGA Employees Settlement Proceeds Fund will be determined by multiplying the Eligible Pay Periods that the PAGA Employee worked by the Multiplier. That amount shall be referred to as the PAGA Employee's "Individual Share."

- e. **Taxes and Reporting:** The PAGA Employees' Individual Share will be treated as non-wage income and reported by the Settlement Administrator on IRS Form 1099 (if applicable) to the respective PAGA Employee and applicable governmental authorities.

D. Release as to the PAGA Representative Claims

1. Upon the Effective Date, Plaintiff, as the representative for the State of California, and on behalf of all Aggrieved Employees, will forever completely release and discharge the Released Parties¹ with respect to any claim for the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, *et. seq.* only. It is expressly understood and agreed that this settlement includes a release of all the PAGA Representative Claims, based on all alleged violations of Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.2, 226.7, 248.1, 248.2, 300, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 1199, 2802, and 2810.5 and all alleged violations of the accompanying and relevant IWC Wage Order provisions (including but not limited to failure to provide suitable seating and failure to provide adequate resting facilities) cited in Plaintiff's LWDA Notice and/or alleged in the Operative Complaint. The release shall be effective as of the Effective Date, and it shall apply to claims within the above scope impacting Aggrieved Employees arising within the PAGA Period.

2. In accordance with California law as stated in *inter alia* *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985, a judgment in "a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 . . . is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding," which the Final Order shall so reflect. Accordingly, the Final Order and Judgment shall be binding on all PAGA Employees (including all nonparty aggrieved employees) as to all the PAGA Representative Claims. A statement to this effect shall be included in the Notice sent to the PAGA Employees. The Final Order shall not bind nor release the PAGA Employees of any individual wage claims (or other individual claims), unless such claim is subject to res judicata, issue preclusion, or collateral estoppel.

E. Release by Named Plaintiff Only

1. Release and Covenant Not to Sue

a. In consideration for the terms and provisions of the Agreement, Plaintiff, for himself, and for his heirs, assigns, partners, executors, conservators, administrators, agents, employees, attorneys, past and present (collectively, "Plaintiff Affiliates"), hereby fully and without limitation releases, covenants not to sue, and forever discharges Defendants, their subsidiaries, divisions, affiliated companies, affiliated partnerships, trustees, directors, officers, supervisors, shareholders, partners, agents, designees, employees, legal and equitable owners, members, associates, representatives, consultants, insurers, reinsurers, attorneys, heirs, assigns, executors, beneficiaries, and administrators, predecessors and successors, past and present, (collectively "Defendants Releasees"), both individually and collectively, from any and all rights, claims, contracts, agreements, debts, demands, liabilities, actions, and causes of action, whether in law or in equity, suits, damages, liabilities, losses, attorneys' fees, costs, and expenses, of whatever nature

¹ Released Parties are defined as Defendants and their parents, subsidiaries, predecessors, successors, assigns, owners, officers, directors, employees and agents.

whatsoever, known or unknown, fixed or contingent, suspected or unsuspected (“Claims”), that Plaintiff or the Plaintiff Affiliates now have, or may ever have, against Defendants, or any of Defendants Releasees, for any matter, occurring on or before the Effective Date of this Agreement.

- b. Without limiting the generality of the foregoing, Plaintiff acknowledges that the foregoing general release applies to any and all claims he or the Plaintiff Affiliates now have, or may ever have, against Defendants, or any of Defendants Releasees, that arise out of or are in any way related to any alleged violation of any federal or state law that regulates any aspect of the employer-employee relationship, including any claims for any alleged violations of any federal or state employment discrimination, harassment, and retaliation laws, including the California Fair Employment and Housing Act (which prohibits discrimination, harassment, and retaliation based upon one’s actual or perceived ancestry, race, religion, sex, sexual orientation, gender, gender identity, gender expression, age, color, national origin, disability, medical condition, military or veteran status and marital status), the California Family Rights Act, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, and the Family Medical Leave Act; as well as the Equal Pay Act; the Fair Labor Standards Act, the Employee Retirement Income Security Act of 1974, the California Business and Professions Code, the California Labor Code, and the California wage orders; as well as any claims for any alleged violation of public policy or retaliation; any claims for wages, hours, unpaid overtime, failure to pay minimum wage, failure to pay for downtime or waiting time, failure to provide meal or rest breaks or pay one hour’s wages in lieu thereof, failure to indemnify for all work related expenditures and losses, and all related statutory claims, including but not limited to, alleged violation of California Labor Code sections 201-204, 208, 210, 215-216, 218.5, 225.5, 226, 226.3, 226.6, 226.7, 450, 500, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2926, 2927, California Business and Professions Code sections 17000 and 17200 et. seq., the relevant Wage Orders issued by the Industrial Welfare Commission, Civil Code sections 52 and 52.1, or any other claim for any statutory penalty that could have been asserted under California law that arise from the allegations as described, any claims concerning or related to meal and/or rest breaks, inaccurate wage statements, any other employment-related claims under any federal, state, or local law, statute, regulation, or ordinance; and any and all common-law causes of action, including breach of contract, breach of implied contract, breach of the covenant of good faith and fair dealing, fraud, misrepresentation, unfair competition, unfair business practices, false advertising, negligence, defamation, infliction of emotional distress, invasion of privacy, and wrongful termination, which arise from any and all events occurring on or before the Effective Date of this Agreement, including without limitation, all claims arising from action or inaction by Defendants, or any of Defendants Releasees.
- c. **Promise Not to Prosecute:** Plaintiff agrees that neither he nor any of his agents or representatives shall, at any time hereafter, commence, maintain or prosecute any action, suit, proceeding, investigation, complaint, claim, grievance, or charge with any court, arbitrator, or any other body or person, whether Federal, State, contractual or otherwise, on his behalf, except in response to governmental agency or court inquiries or as compelled by legal process, against Defendants or any Defendants Releasees, based in whole or in

part upon, or arising out of or in any way connected with, any of the Released Claims. Plaintiff further agrees that neither he nor any of his agents or representatives, including any of his attorneys, shall, at any time hereafter, aid, represent, or otherwise assist others in prosecuting such action, suit, proceeding, investigation, complaint, claim, grievance, or charge on his behalf, except for the PAGA claim, and except in response to governmental agency or court inquiries or as compelled by legal process, against Defendants or the Defendants Releasees, based in whole or in part upon, or arising out of or in any way connected with, any of the Released Claims, including, but not limited to, serving as a class representative or participating in a class action against Defendants under the California Labor Code. Plaintiff further agrees to indemnify and hold Defendants and Defendants Releasees harmless from and against any and all claims, demands, causes of action, damages or liability of any kind, including the cost of defense and reasonable attorneys' fees arising out of or in connection with, any action, suit, proceeding, investigation, complaint, claim, grievance, or charge commenced, maintained, or prosecuted by him contrary to the terms of this Agreement.

- d. Notwithstanding the generality of the foregoing, Plaintiff also understands and agrees that he is not waiving any right or claim that cannot be waived as a matter of law, such as the right to file a charge with or participate in an investigation by a governmental administrative agency.
- e. Plaintiff acknowledges represents, and warrants that he has not suffered any work-related injuries while employed by Defendants and has not filed and does not intend to file any claim for workers' compensation benefits of any type against Defendants or any of the Defendants Releasees. Plaintiff further acknowledges that Defendants have relied upon these representations, and that Defendants would not have entered into this Agreement but for these representations. As a result, Plaintiff agrees, covenants, represents, and warrants that any of the Defendants Releasees may, but are not obligated to, submit this Agreement to the Workers' Compensation Appeals Board for approval as a full compromise and release as to any workers' compensation claims in the event that he files such a claim.

2. In addition to the Release of the PAGA Representative Claims, Plaintiff agrees to release all known and unknown claims, including a release under Civil Code Section 1542. To effect a full and complete general release as described above, Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows:

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

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this release is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Agreement, and Plaintiff expressly acknowledges that this Agreement contemplates the

extinguishment of any such claims. Plaintiff warrants Plaintiff has read this Agreement, including this waiver of California Civil Code section 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Agreement and specifically about the waiver of section 1542, and Plaintiff warrants that Plaintiff understands this Agreement and the section 1542 waiver, and Plaintiff freely and knowingly enters into this Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or described in this Agreement, and even so Plaintiff agrees that the release contained in this Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes or controversies released or described in this Agreement or with regard to any facts now unknown to Plaintiff relating thereto.

Plaintiff's general release shall become effective on the Effective Date.

The general release set forth in Paragraph E of this Agreement applies only to Plaintiff. It does not apply to any PAGA Employees.

F. Settlement Approval and Implementation Procedures

1. Pursuant to California Labor Code § 2699(l)(2), or otherwise for the purposes of obtaining court approval of the Settlement, Plaintiff will file a Stipulation for Approval, separate declaration(s) advocating that the Settlement is fair, adequate, and reasonable, and any other documents in support of approval of the Settlement. Defendants shall not oppose the filing of any of these documents. Defendants shall also reasonably cooperate with any efforts to obtain approval of this Settlement.

2. No later than twenty (20) calendar days after the Final Approval Date, Defendants shall send to the Settlement Administrator a list of all PAGA Employees including each PAGA Employee's: (1) full name; (2) last known address; (3) social security number; and (4) the number of Eligible Pay Periods he or she worked as a non-exempt employee of Defendants in California during the PAGA Release Period (the "PAGA Employees List"). This information shall be treated as and remain confidential and shall be used solely to manage the notice and payment process described herein, and it shall not be disclosed to anyone other than the Settlement Administrator, except to applicable taxing authorities, or pursuant to express written authorization of Defendants, the individual in question, or by order of the Court.

3. No later than sixty (60) calendar days after the Final Approval Date, Defendants shall fully fund the Gross Settlement Amount by wire transferring to the Settlement Administrator the Gross Settlement Amount. The Settlement Administrator will hold all payments in an interest-bearing account until the full Gross Settlement Amount is received. Any interest earned will go to the Net Settlement Amount.

4. The Settlement Administrator will perform all settlement administration duties, including (i) performing a National Change of Address ("NCOA") search to update the addresses of the PAGA Employees, (ii) issuing the Notice and payments to the PAGA Employees, (iii) issuing any required IRS forms, and (iv) issuing payment to the LWDA and Plaintiff's Counsel. The Settlement Administrator shall issue the Notice and payments to the PAGA Employees along with required IRS forms and issue payment to the LWDA for PAGA penalties, a Service Award to Plaintiff, and Attorneys' Fees and Costs to

Plaintiff's Counsel, no later than ten (10) calendar days after it receives the full Gross Settlement Amount from Defendants.

5. PAGA Employees shall have one hundred and eighty (180) calendar days after the mailing to cash or deposit their settlement checks. If any PAGA Employee's check is not cashed or deposited within that period, the check will be voided and a stop-payment will be issued. Any funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be paid to the State of California Controller's Unclaimed Property division. Neither Defendants, Defendants' Counsel, Plaintiff's Counsel nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, unauthorized negotiation of settlement checks or failure to timely cash a settlement check within the 180-day period.

6. Upon the Effective Date, the Parties will: (i) be bound by the terms and conditions of this Agreement, and the releases set forth therein; and (ii) be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the settlement and the Court's Final Order and Judgment.

G. Miscellaneous Provisions.

1. **Additional Aggrieved Employees/PAGA Pay Periods:** There are 648 PAGA Employees included in the Settlement from September 8, 2020, through July 5, 2022 who worked approximately 12,072 PAGA Pay Periods. Defendant has confirmed will not be more than 650 PAGA employees.

2. **Voiding the Agreement:** The Settlement Agreement shall be voidable and unenforceable as to all Parties herein at the option of either Party if (a) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment, or (c) the approval of the Settlement and judgment is reversed, modified or declared or rendered void. In that event, then 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 had been neither entered into nor filed with the Court. Any fees already incurred by the Settlement Administrator shall be paid by Defendants. Notwithstanding the foregoing, the Parties shall attempt in good faith to cure any perceived defects in the Settlement to facilitate approval.

3. **Waiver:** The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

4. **Parties' Authority:** The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

5. **Mutual Full Cooperation:** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiff's Counsel shall, with the

assistance and cooperation of Defendants and Defendants' counsel, take all necessary steps to secure the Court's approval of the settlement, and the Final Order.

6. **No Prior Assignments:** The Parties hereto 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 rights released and discharged by this Settlement Agreement.

7. **No Admission:** Defendants deny any and all liability to Plaintiff and/or the PAGA Employees in this Lawsuit, as to any and all causes of action that were asserted or that might have been asserted in this Action. Nonetheless, Defendants desire to settle and compromise the matters at issue in the Operative Complaint to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendants also have taken into account the uncertainty and risks inherent in litigation and, without conceding any infirmity in the defenses that it has asserted or could assert against Plaintiff and the PAGA Employees, have determined that it is desirable and beneficial that Plaintiff's and the PAGA Employees' claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

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

9. **Enforcement Actions:** Except as otherwise provided in this Settlement Agreement, in the event that one or more of the Parties to this Settlement Agreement institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any enforcement actions.

10. **Notices:** All notices shall be provided by United States mail and electronic mail. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third calendar day after mailing by United States mail and electronic mail, addressed as follows:

To Plaintiff:

Scott E. Wheeler
Law Office of Scott E. Wheeler
250 West First Street, Suite 216
Claremont, California 91711
Tel: (909) 621-4988
Fax: (909) 621-4622

E-mail: sew@scottwheelerlawoffice.com

To Defendants:

McCormick Barstow LLP
Christina Cusimano Tillman
7647 North Fresno Street
Fresno, California 93720
Telephone: (559) 433-1300
Facsimile: (559) 433-2300
E-mail: Christina.CusimanoTillman@mccormickbarstow.com

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

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

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

14. **Choice of Law:** This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

15. **Integration Clause:** This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, 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 merged herein. No rights hereunder may be waived except in writing.

16. **Binding On Assigns:** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

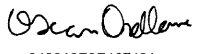
17. **Counterparts:** This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Settlement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

18. **Entire Agreement:** This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. Any modification to this Agreement must be in writing and signed by the Parties.

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Settlement Agreement and Release as of the date set forth below.

Dated: 7/8/2022

PLAINTIFF

DocuSigned by:

943013E8E467481...

OSCAR ORELLANA

Dated: _____

DEFENDANT ENVIRONMENT CONTROL –
PUENTE HILLS, INC.

Name: _____

Title: _____

Dated: _____

DEFENDANT ENVIRONMENT CONTROL –
GREATER ORANGE COUNTY, INC.

Name: _____

Title: _____

18. **Entire Agreement:** This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. Any modification to this Agreement must be in writing and signed by the Parties.

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Settlement Agreement and Release as of the date set forth below.

Dated: _____

PLAINTIFF

OSCAR ORELLANA

Dated: Jul 8, 2022

DEFENDANT ENVIRONMENT CONTROL –
PUENTE HILLS, INC.

Bill Sanders

Name: William E. Sanders

Title: President

Dated: Jul 8, 2022

DEFENDANT ENVIRONMENT CONTROL –
GREATER ORANGE COUNTY, INC.

Bill Sanders

Name: William E. Sanders

Title: President

APPROVED AS TO FORM:

Dated: July 8, 2022

THE LAW OFFICE OF SCOTT E. WHEELER



Scott Ernest Wheeler

Attorneys for Plaintiff and the Aggrieved
Employees

Dated: July 8, 2022

McCormick Barstow LLP



Christina Cusimano Tillman

Attorneys for Defendants Environment Control
Puente Hills, Inc. and Environment Control –
Greater Orange County, Inc.

EXHIBIT 1

1 **LAW OFFICE OF SCOTT E. WHEELER**

2 Scott E. Wheeler (SBN 187998)

3 250 West First Street, Suite 216

4 Claremont, CA 91711

5 Telephone: (909) 621-4988

6 Facsimile: (909) 621-4622

7 E-mail: sew@scottwheelerlawoffice.com

8 *Attorneys for Plaintiff*

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

11 **COUNTY OF LOS ANGELES**

12
13 OSCAR ORELLANA, individually, and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 ENVIRONMENT CONTROL – PUENTE
18 HILLS, INC., a California corporation; and
DOES 1 through 50, inclusive,

19 Defendants.

Case No: 21STCV41665

[Assigned for all purposes to the Honorable
Michelle Williams, Department 74]

**[PROPOSED] ORDER AND JUDGMENT
APPROVING PAGA SETTLEMENT**

1 **[PROPOSED] ORDER AND JUDGMENT**

2 The Court has before it the Stipulation for Approval of PAGA Settlement,¹ submitted by
3 Plaintiff Oscar Orellana (“Plaintiff”) and Defendants Control – Puente Hills, Inc. and Environment
4 Control – Greater Orange County, Inc. (“Defendants”) (collectively, the “Parties”), indicating that
5 they have reached a settlement that will resolve this matter in its entirety. The Stipulation, and
6 therefore this Order and Judgment incorporates the following defined terms.

7 **DEFINED TERMS**

8 1. “Operative Complaint” means Plaintiff’s First Amended PAGA Complaint filed by
9 Plaintiff, which the Parties stipulate to filing subject to the terms of this Settlement in order to
10 carry out the terms of this settlement.

11 2. “LWDA Notices” means September 8, 2021, and June 22, 2022, submitted by
12 Plaintiff to the Labor and Workforce Development Agency (LWDA) notifying the LWDA of
13 alleged violations by Defendants.

14 3. “PAGA Employees” means all non-exempt employees of Defendants who worked
15 for Defendants in California from September 8, 2020, through July 5, 2022.

16 4. “PAGA Representative Claims” means Plaintiff’s PAGA claims under California
17 Labor Code § 2698 *et. seq.* based on alleged predicate violations of the California Labor Code §§
18 201, 202, 203, 204, 210, 221, 226, 226.2, 226.7, 248.1, 248.2, 300, 510, 512, 558, 1174, 1174.5,
19 1194, 1197, 1198, 1199, 2802, and 2810.5 and all alleged violations of the accompanying and
20 relevant IWC Wage Order provisions of Wage Order 5-2001 cited in Plaintiff’s LWDA Notice
21 and/or alleged in the Operative Complaint.

22 5. “PAGA Settlement” or “Settlement” means the settlement of the Action as
23 memorialized in this Settlement Agreement.

24 6. “PAGA Release Period” means September 8, 2020, through July 5, 2022.

25
26
27 ¹ The Court has also reviewed and considered the records and files of this case, as well as all
28 documents submitted in connection with the Parties’ Stipulation for Approval of PAGA Settlement,
including the Declaration of Scott E. Wheeler.

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1. Unless otherwise provided herein, all capitalized terms used herein shall have the same meaning as defined in the Settlement Agreement and Release (“Settlement Agreement”). The Court has jurisdiction over the subject matter of this lawsuit and all matters relating thereto, and over all parties to the action.

3. The Court hereby finds the Settlement involves the resolution of a bona fide dispute, was entered into in good faith, and is fair, reasonable, and adequate. The Court also finds that the Settlement provides genuine and meaningful relief that benefits the public consistent with the purpose of the Private Attorneys General Act of 2004, California Labor Code § 2699 *et seq.*

5. Neither the Settlement nor any of the terms set forth in the Settlement Agreement are admissions by Defendants, or any of the other Released Parties, of liability on any of the allegations alleged in the Action, nor is this Order a finding of the validity of any claims in the Action, or of any wrongdoing by the Defendants, or any of the other Released Parties.

1 6. The Court finds that Plaintiff's Counsel has adequately represented the Plaintiff, the
2 PAGA Employees, and the LWDA for purposes of entering into and implementing the Settlement.

3 7. The Court finds that the Settlement, and in particular the Gross Settlement Amount
4 ("GSA") of \$225,000.00 total to be distributed as set forth herein and in the Settlement Agreement,
5 is in all respects fair, reasonable, and adequate and is hereby approved. *See* California Labor Code
6 § 2699(1)(2).

7 8. Pursuant to the terms of the Settlement, Administration Costs in the amount of
8 \$5,500.00, which are necessary to administer the Settlement, are hereby granted and shall be paid
9 to Phoenix Settlement Administrators, the designated third-party Settlement Administrator.

10 9. Pursuant to the terms of the Settlement, the requested attorneys' fees in the amount
11 of \$74,925.00 are reasonable under the common fund method and the lodestar method. The GSA of
12 a total of \$74,925.00 represents a true and common fund, as Defendants must pay the full GSA and
13 no amount of the GSA will return to Defendants under any circumstances. It is recognized that
14 attorneys who recover a common fund are entitled to a reasonable fee award from the fund. *See,*
15 *e.g., Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ("a litigant or a lawyer who recovers a
16 common fund for the benefit of persons other than himself or his client is entitled to a reasonable
17 attorney's fee from the fund as a whole."); *In re Washington Public Power Supply Sys. Sec. Litig.*
18 (9th Cir. 1994) 19 F.3d 1291, 1300 ("[T]hose who benefit from the creation of the fund should share
19 the wealth with the lawyers whose skill and effort helped create it."); *Serrano v. Priest* (1977) 20
20 Cal.3d 25, 34 ("[W]hen a number of persons are entitled in common to a specific fund, and an
21 action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation
22 of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund.
23 [Citations.]"). Moreover, one-third of the common fund is standard in settlements similar to this
24 one. *See, e.g., Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 506 (approving fees
25 of one-third of the common fund); *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558
26 n.13 ("Empirical studies show that, regardless whether the percentage method or the lodestar method
27 is used, fee awards in class actions average around one-third of the recovery."); *Chavez v. Netflix,*
28 *Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (recognizing that fee awards in class actions average around

1 one-third of the recovery”). Courts also regularly approve fee awards in excess of one-third of the
2 fund. *See, e.g., Cubillas v. Dav-El Los Angeles*, 2018 WL 3760657, at *3-4 (Cal. Super.) (awarding
3 \$1.12 million in attorneys’ fees, equivalent to 40% of the common fund, where lodestar-multiplier
4 exceeded the fee request).

5 10. The Court also finds that the requested attorneys’ fees are reasonable under the
6 lodestar method, or as a crosscheck on the percentage fee. *See Laffitte*, 1 Cal.5th at 506. Plaintiff’s
7 counsel’s lodestar of \$122,595.00 exceeds the attorneys’ fees amount of \$74,925.00. In fact, the fee
8 award amounts to an implied negative multiplier on Plaintiff’s counsel’s lodestar.

9 11. The Court further finds that Plaintiff’s counsel’s requested litigation costs of
10 \$14,640.66 are reasonable and were necessary to prosecute the action.

11 12. Accordingly, and consistent with California Labor Code § 2699(g)(1), which
12 authorizes an award of attorneys’ fees and costs, the requested attorneys’ fees in the amount of
13 \$74,925.00 and litigation costs in the amount of \$14,640.66, are hereby granted and shall be paid to
14 the Law Office of Scott E. Wheeler pursuant to the terms of the Settlement.

15 13. Pursuant to the terms of the Settlement, service awards to Plaintiff Oscar Orellana in
16 the amount of \$6,000.00 in recognition of his efforts in prosecuting this action for the benefit of the
17 State of California and PAGA Employees, and Plaintiff’s broad general release of all of his
18 individual claims against Defendants, is hereby granted and shall be paid to Plaintiff Oscar Orellana.
19 Comparable service awards are routinely issued to named plaintiffs in analogous wage-and-hour
20 class action settlements, *see, e.g., In re Yahoo Mail Litig.*, No. 13-CV-4980-LHK, 2016 WL
21 4474612, at *11 (N.D. Cal. Aug. 25, 2016) (“Ninth Circuit has established \$5,000 as a reasonable
22 benchmark [for service awards].”); *Alikhan v. Goodrich Corp.*, 2020 WL 4919382, at * (C.D. Cal.
23 Jun. 25, 2020) (approving a \$10,000 service award), as well as PAGA settlements like this one. *See,*
24 *e.g., Abelar v. American Residential Services, L.L.C.*, 2019 WL 6054607, at *6 (C.D. Cal. Nov. 14,
25 2019) (approving PAGA only settlement and holding “[t]he service award of \$5000 is reasonable
26 compensation for the time and acceptance of adverse employment risk by Plaintiff.”).

27 14. After deducting Settlement Administration Costs, Attorneys’ Fees and Costs, and the
28 Service Awards from the GSA, the remainder of \$123,934.34, consistent with California Labor

1 Code § 2699(i), shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent
2 (25%) to PAGA Employees. Accordingly, \$92,950.75 shall be paid to the LWDA, and \$30,983.59
3 shall be paid to PAGA Employees. The payments to the PAGA Employees will be paid
4 proportionally based on the number of pay periods that each individual employee worked for
5 Defendants during the PAGA Release Period.

6 15. As of the Effective Date, Plaintiffs, as the representatives for the State of California,
7 and on behalf of all PAGA Employees, will forever completely release and discharge the Released
8 Parties from any claim for the recovery of civil penalties under the California Private Attorneys
9 General Act, California Labor Code § 2698, *et. seq.* only. It is expressly understood and agreed that
10 this settlement includes a release of all PAGA Representative Claims based on violations of Labor
11 Code §§ 201, 202, 203, 204, 210, 221, 226, 226.2, 226.7, 248.1, 248.2, 300, 510, 512, 558, 1174,
12 1174.5, 1194, 1197, 1198, 1199, 2802, and 2810.5 and all alleged violations of the accompanying
13 and relevant IWC Wage Order provisions of Wage Order 5-2001 cited in Plaintiff's LWDA Notice
14 and/or the Operative Complaint. The release shall be effective as of the Effective Date, and it shall
15 apply to claims within the above scope impacting the PAGA Employees arising within the PAGA
16 Release Period. This settlement agreement shall not impact any PAGA Employee's ability to assert
17 Labor Code claims other than PAGA claims (i.e., a claim brought under California Labor Code §
18 2698, *et. seq.*).

19 16. In accordance with California law as stated in *inter alia* *Arias v. Superior Court*
20 (2009) 46 Cal.4th 969, 985, a judgment in "a representative action brought by an aggrieved
21 employee under the Labor Code Private Attorneys General Act of 2004 . . . is binding not only on
22 the named employee plaintiff but also on government agencies and any aggrieved employee not a
23 party to the proceeding." Thus, both the named employee plaintiff and nonparty aggrieved
24 employees (i.e. all PAGA Employees) are bound by this Order and Judgment. *Id.* at 986. However,
25 the Parties' Settlement Agreement shall not impact any PAGA Employee's ability to assert Labor
26 Code claims other than the PAGA claims (i.e., a claim brought under California Labor Code § 2698,
27 *et. seq.*) unless such claim is subject to res judicata, issue preclusion, or claim estoppel.

17. Neither this Order nor the Settlement Agreement (nor any other document referred to herein, nor any action taken to carry out this Order) is, may be construed as, or may be used as, an admission or concession by or against Defendants or the Released Parties of the validity of any claim or actual or potential fault, wrongdoing, or liability. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related to it, shall not be considered as, or deemed evidence of, an admission or concession as to Defendants' denials or defenses and shall not be offered or received in evidence in any action or proceeding against any party hereto in any court, administrative agency or other tribunal for any purpose whatsoever, except as evidence of the Settlement or to enforce the provisions of this Order and the Settlement Agreement; provided, however, that this Order and the Settlement Agreement may be filed in any action against or by Defendants or the Released Parties to support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

18. Judgment in this matter is entered in accordance with the terms of the Settlement Agreement and Approval Order. This judgment is intended to be a final disposition of the above captioned action in its entirety and is intended to be immediately appealable.

19 The Court reserves exclusive and continuing jurisdiction over the lawsuit for the purposes of supervising the implementation, enforcement, construction, administration, and interpretation of the Settlement Agreement and this Order.

IT IS SO ORDERED.

DATED: _____

HONORABLE MICHELLE WILLIAMS
JUDGE OF THE SUPERIOR COURT

EXHIBIT 2

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Payment From PAGA Settlement

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed is your payment from the settlement of the lawsuit entitled *Orellana v. Environment Control – Puente Hills, Inc., et al.*, Los Angeles Superior Court, Case No. 21STCV41665 (the “Lawsuit”). You are receiving this payment as your share of the Settlement. You have 180 days to cash or deposit the settlement check. If you do not cash or deposit your settlement check by on or before [REDACTED], those funds will be paid in your name to the State of California Controller’s Unclaimed Property division.

The Lawsuit was filed against Environment Control – Puente Hills, Inc. and Environment Control – Greater Orange County, Inc. (“Defendants”) pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called “PAGA”). The claim was brought on behalf of the State of California and all similarly situated aggrieved employees of Defendants (the “PAGA Employees”). You have been identified as one of the PAGA Employees on whose behalf the case was brought.

The Plaintiff in the case claimed that Defendants owed penalties under PAGA for violations of California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.2, 226.7, 248.1, 248.2, 300, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 1199, 2802, and 2810.5 and violations of the accompanying and relevant IWC Wage Order provisions pursuant to Wage Order 5-2001 cited in Plaintiff’s LWDA Notice and/or alleged in the Operative Complaint (the “PAGA Claims”).

Defendants deny that they did anything wrong and deny that they owe any penalties. No court has made a decision about the allegations or the lawfulness of Defendants conduct. In order to avoid the time and expense of continued litigation, Defendants have agreed to resolve the claims raised in the Lawsuit without further court action. The parties agreed to resolve the case, and as part of that settlement, Defendants agreed to pay a certain amount of money categorized as PAGA penalties.

The Court approved the Settlement on [REDACTED]. Under California law and the terms of the parties’ agreement, Plaintiff’s counsel received one-third of the settlement for attorneys’ fees along with their actual costs incurred; 75 percent of the remaining amount is awarded to the State of California and 25 percent is paid to the employees who worked during the applicable period.

In exchange for this payment, the settlement releases any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, action or causes of action contingent or accrued for, arising out of the PAGA Claims for the period of September 8, 2020 through July 5, 2022 (the “Released Claims”). The Final Order and Judgment entered by the Court is binding on all the PAGA Employees, including you, as to the Released Claims. The settlement does not release any individual claims belonging to you, unless such claim is subject to res judicata, issue preclusion, or collateral estoppel.

This Notice summarizes the Action and the basic terms of the Settlement. For more complete information, the pleadings and other records in this litigation may be examined during regular court hours at the Los Angeles Superior Court, located at 111 N. Hill Street, Los Angeles, CA 90012, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

If you have any questions about this payment, contact the Settlement Administrator at [CONTACT]. Please note that the Settlement Administrator cannot provide tax advice.

EXHIBIT 3

1 **LAW OFFICE OF SCOTT ERNEST WHEELER**

2 Scott Ernest Wheeler (SBN 187998)
3 250 West First Street, Suite 216
4 Claremont, California 91711
5 Telephone: (909) 621-4988
6 Facsimile: (909) 621-4622
7 Email: sew@scottwheelerlawoffice.com

8 *Attorney for Plaintiff and the Aggrieved Employees*

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12 STANLEY MOSK COURTHOUSE

13 OSCAR ORELLANA, individually, and on
14 behalf of all other aggrieved employees,

15 Plaintiff,

16 v.

17 ENVIRONMENT CONTROL - PUENTE
18 HILLS, INC., a California corporation;
19 ENVIRONMENT CONTROL – GREATER
ORANGE COUNTY, INC., and DOES 1
through 50, inclusive,

20 Defendants.

CASE NUMBER: 21STCV41665

**FIRST AMENDED COMPLAINT FOR
VIOLATION OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (“PAGA”)**

[California Labor Code § 2698 *et seq.*]

1 This is a representative action brought by Oscar Orellana, individually and on behalf of all
2 other aggrieved employees (“Plaintiff”), relating to systemic violations of California wage and hour
3 laws by his employers ENVIRONMENT CONTROL - PUENTE HILLS, INC. (“EC-PH”) and
4 ENVIRONMENT CONTROL – GREATER ORANGE COUNTY, INC., (“EC-OC” or collectively
5 as “Defendants”). Plaintiff makes the following allegations on information and belief, except as to
6 allegations pertaining to Plaintiff individually, which are based on his personal knowledge.

7 **INTRODUCTION**

8 1. EC-PC is a company that provides cleaning and disinfecting services for commercial
9 businesses throughout the State of California. Defendant is a private, for-profit non-union, janitorial
10 business.

11 2. EC-OC is a company that provides cleaning and disinfecting services for commercial
12 businesses throughout the State of California. Defendant is a private, for-profit non-union, janitorial
13 business.

14 3. As a private, for-profit business, Defendants implemented common policies and
15 practices that have resulted in systemic violations of California’s wage and hour laws. Defendants
16 have failed to implement adequate practices to protect the rights of its employees, particularly in
17 light the nature of its business, which is to maximize profits.

18 4. Defendants attempt to maximize profits by among other methods, understaffing of its
19 facilities and denying employees the ability to take meal and rest breaks.

20 5. Defendants have implemented unlawful written policies with respect to meal and rest
21 breaks. Defendants also require its non-exempt employees, who are informed that the needs of the
22 businesses take top priority, to work through meal and rest breaks, to take untimely meal periods and
23 to remain on call during such breaks. As a result, Plaintiff and other aggrieved employees have been
24 denied the ability to take the meal and rest breaks that they were and are legally entitled to take.

25 6. Moreover, Defendants uniformly failed to pay Plaintiff and other aggrieved
26 employees proper overtime wages due the fact that it improperly calculates the regular rate of pay,
27 and willfully turns a blind eye to off-the-clock work that Plaintiff and other non-exempt employees
28

perform as a direct consequence of Defendants understaffing and imposition of an unreasonable workload.

7. Also, during the applicable statute of limitations period, Defendant's wage statements failed to provide for eighty (80) hours of available California supplemental COVID-19 sick leave and the amount remaining if used by Plaintiff and the other aggrieved employees.

JURISDICTION AND VENUE

8. The Superior Court of the State of California has jurisdiction in this matter because Plaintiff is a resident of the State of California, and Defendants are licensed to do business under the laws of the State of California.

9. Venue is proper in this judicial district and the County of Los Angeles, California because Plaintiff resides in the County of Los Angeles and was assigned by Defendants to provide services for Defendants' customer in the City of La Verne, located in the County of Los Angeles. Moreover, many of Defendants' unlawful actions and omissions, as set alleged herein, occurred in the County of Los Angeles and elsewhere throughout the State of California.

10. Defendants employed Plaintiff and other aggrieved employees within the State of California and the unlawful acts alleged herein have a direct effect on Plaintiff and other aggrieved employees.

THE PARTIES

11. During the statute of limitations period, Plaintiff was employed by Defendants working in Housekeeping, which is a non-exempt, hourly position. Defendants would assign Plaintiff and other aggrieved employees to work at various places throughout the state of California.

12. Plaintiff is informed and believes, and thereon alleges, that Defendant EC-PH is, and at all times relevant hereto was, a corporation organized and existing under the laws of the State of California and license to do business in the State of California.

13. Plaintiff is informed and believes, and thereon alleges, that Defendant EC-OC is, and at all times relevant hereto was, a corporation organized and existing under the laws of the State of California and license to do business in the State of California.

1
2 14. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
3 Plaintiff at this time, and Plaintiff therefore sues such defendant under fictitious names. Plaintiff is
4 informed and believes, and thereon alleges, that each defendant designated as a DOE is in some
5 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved
6 employees' injuries and damages, as alleged herein, were proximately caused by the conduct of such
7 DOE Defendant. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names
8 and capacities of such DOE Defendant when ascertained.

9 15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
10 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
11 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
12 attributable to the other Defendant. Furthermore, Defendant in all respects acted as the employer
13 and/or joint employer of Plaintiff and the other aggrieved employees.

14 16. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
15 in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy. Managing agent,
16 and/or principal of the Defendant, and in performing the acts mentioned below was acting, at least in
17 part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture,
18 employee, alter-ego, managing agent, and/or principal with the permission and consent of the above
19 Defendant. Plaintiff also alleges that the acts of each Defendant are legally attributable to the other
20 Defendant.

21 17. Plaintiff is informed and believes, and based thereon alleges, that each Defendant sued
22 herein was, at all relevant times, the employer, owner, shareholder, principal, joint venture, alter-ego,
23 employee, proxy, managing agent, and/or principal of the remaining Defendant, and was acting, at
24 least in part, within the course and scope of such employment and agency, with the express and implied
25 permission, consent and knowledge, approval and/or ratification of the other Defendant. The above
26 Defendant, managing agents, and supervisors, aided, abetted, condoned, permitted, approved,
27 authorized, and/or ratified the unlawful acts described herein.

28 18. As a direct and proximate result of the unlawful actions of Defendants, Plaintiff and

1 the other aggrieved employees have suffered and continue to suffer penalties in amounts as yet
2 unascertained but subject to proof at trial and within the jurisdiction of this Court.

3 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

4 19. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”),
5 California Labor Code §§ 2698-2699.5, Plaintiff brings this action on behalf of himself and all other
6 aggrieved employees, e.g., current and former non-exempt employees of Defendants who are
7 California citizens and performed work for Defendants in the State of California at any time within
8 the period beginning one (1) year prior to the filing of the Complaint in this action, or as otherwise
9 permitted under PAGA, and ending at the time this action settles or proceeds to final judgment
10 (“statute of limitations period”).

11 20. On September 8, 2021, Plaintiff gave written notice by certified mail pursuant to
12 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
13 (“LWDA”) and Defendants, of the specific provisions of the California Labor Code and IWC Wage
14 Order alleged to have been violated, including the facts and theories to support the alleged
15 violations. Plaintiff has not received any response from the LWDA. As Plaintiff has waited more
16 than sixty-five (65) days from the September 8, 2021 postmark date of his written notice before
17 filing this action, Plaintiff has complied with all of the requirements set forth in California Labor
18 Code § 2699.3 to commence a representative action under PAGA.

19 21. On June 22, 2022, Plaintiff amended his September 8, 2021 PAGA Notice, and added
20 Environment Control – Greater Orange County, Inc. as an additional Defendant.

21 **FACTUAL ALLEGATIONS**

22 **Failure to Provide Required Meal Periods**

23 **[Cal. Lab. Code §§ 226.7, 512, 558; § 11 of the Applicable IWC Wage Order]**

24 22. During the statute of limitations period, as part of Defendants illegal policies and
25 practices to minimize labor costs and maximize corporate profits, Defendants required, permitted or
26 otherwise suffered Plaintiff and aggrieved employees to perform work during their meal periods, to
27 completely skip their meal periods, to take late and short meal periods, and Defendants otherwise
28 failed to provide the required meal periods to Plaintiff and aggrieved employees as required under

1 California Labor Code §§ 226.7, 512, 558 and § 11 of the applicable IWC Order.

2 23. Defendants implemented several practices that have caused Plaintiff and aggrieved
3 employees to systematically miss and otherwise take non-compliant meal periods. Defendants
4 systematically understaff assigned personnel to client facilities such that its non-exempt employees
5 are given so much work to complete that they regularly miss or take non-compliant meal periods. As
6 a direct consequence of this understaffing, Plaintiff and aggrieved employees have so much work to
7 complete within their scheduled shifts that they are forced to skip their meal periods altogether, to
8 take them after working longer than five (5) hours, to perform work during their meal periods, or
9 return to work after taking less than a thirty (30) minute meal period.

10 24. There are also frequently occasions when Plaintiff and aggrieved employees need to
11 perform other duties immediately before the time during which they are legally entitled to take a
12 meal period. Pursuant to Defendants' policies, Plaintiff and aggrieved employees cannot simply
13 drop their urgent job duties to take a meal period. Consequently, Plaintiff and aggrieved employees
14 regularly miss meal periods, take late meal periods, return early from meal periods, and even clock
15 out for meal periods but continue working.

16 25. Plaintiff and aggrieved employees often cannot timely simply stop working and take
17 their meal period, which often causes them to regularly miss and otherwise take non-compliant meal
18 periods.

19 26. Despite the foregoing, Defendants implemented a policy and practice of actively
20 discouraging the issuance of meal period premium payments, and in the process, Defendants have
21 also violated California Labor Code §§ 226.7, § 11 of the applicable IWC Wage Order, and the
22 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to
23 compensate Plaintiff and aggrieved employees who were not authorized and permitted to take a
24 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper
25 regular rate of pay for each workday that such a meal period was not authorized or permitted.

26 **Failure to Provide Required Rest Breaks**

27 **[Cal. Lab. Code §§ 226.7, 512; § 12 of the Applicable IWC Wage Order]**

28 27. During the statute of limitations period, as part of Defendants' illegal policies and

1 practices to minimize labor costs and maximize corporate profits, Defendants have failed to
2 authorize and permit Plaintiff and other aggrieved employees to take rest breaks as required under
3 California Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Order.

4 28. The same common policies and practices that deprive Plaintiff and other aggrieved
5 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to
6 take their first and second and third rest breaks. As alleged herein, Defendants understaffs client
7 assignments which create so much work for Plaintiff and other aggrieved employees that they are
8 frequently unable to take rest breaks. Moreover, Plaintiff and other aggrieved employees need to
9 secure permission before taking a rest break, which is often denied by supervisors.

10 29. Defendants also violated California Labor Code § 226.7, § 12 of the applicable IWC
11 Order, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by
12 failing to pay Plaintiff and other aggrieved employees who were not provided with a rest break, in
13 accordance with the applicable wage order, one additional hour of compensation at the proper
14 regular rate of pay for each workday that a rest break was not provided.

15 **Failure to Pay Overtime Wages**

16 **[Cal. Lab. Code §§ 510, 1194, 1198; § 3 of the Applicable IWC Wage Order]**

17 30. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC
18 Order, Defendant is required to compensate Plaintiff and other aggrieved employees for all overtime,
19 which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in
20 excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on
21 the seventh consecutive workday, with double time for all hours worked in excess of twelve (12)
22 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
23 consecutive day of work in any workweek.

24 31. Plaintiff and other aggrieved employees are current and former non-exempt
25 employees entitled to the protections of California Labor Code §§ 510, 1194, and § 3 of the
26 applicable IWC Order. During the statute of limitations period, Defendants have failed to
27 compensate Plaintiff and other aggrieved employees for all overtime hours worked as required under
28 the foregoing provisions of the California Labor Code and IWC Wage Order by, among other

1 methods: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as
2 provided by California Labor Code §§ 510, 1194 and § 3 of the applicable IWC Order, requiring,
3 permitting or suffering Plaintiff and other aggrieved employees to work off-the-clock, and to work
4 through meal and rest breaks, but not compensating them for this time, improperly calculating the
5 regular rate of pay based on shift differential and other remuneration, and other methods to be
6 discovered.

7 32. In a short-sighted attempt to maximize profits, Defendants understaff client facilities.
8 Not only has this practice resulted in widespread missed meal and rest breaks, but it has also caused
9 Plaintiff and other aggrieved employees to perform work while off-the-clock. Defendants have
10 actual or constructive knowledge of this off-the-clock work and subtly condone it. Plaintiff and other
11 aggrieved employees routinely arrive to work early to check so that they are prepared and ready to
12 begin performing their duties promptly at the start of their shifts, as they must be pursuant to
13 Defendants' requirements. Defendants know and are aware that Plaintiff and other aggrieved
14 employees perform this work off-the-clock work.

15 33. Defendants have knowingly and willfully refused to perform their obligations to
16 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
17 violation of California Labor Code §§ 510, 1194 and 1198 and § 3 of the applicable IWC Order.

18 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

19 **[Cal. Lab. Code §§ 201 - 203]**

20 34. Pursuant to California Labor Code § 201, 202 and 203, Defendants are required to
21 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
22 mandates that if an employers discharges an employee, the employee's wages accrued and unpaid at
23 the time of discharge are due and payable immediately.

24 35. Furthermore, pursuant to California Labor Code § 202, Defendants are required to
25 pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her
26 employment, unless the employee provided 72 hours previous notice of his or her intention to quit,
27 in which case the employee is entitled to his or wages at the time of quitting.

28 36. California Labor Code § 203 provides that if an employer willfully fails to pay, in

1 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
2 quits, the employers is liable for waiting time penalties in the form of continued compensation to the
3 employee at the same rate for up to 30 workdays.

4 37. During the statute of limitations period, Defendants have willfully failed to pay
5 accrued wages and other compensation to Plaintiff and other aggrieved employees in accordance
6 with California Labor Code §§ 201 and 202. Defendants does not have a sufficient policies in place
7 to provide Plaintiff and other aggrieved employees with their final paychecks within the timeframes
8 required under California law. In addition, because Defendants failed and continues to fail to
9 properly compensate Plaintiff and other aggrieved employees for all hours worked when due,
10 overtime wages, and compensation for non-compliant meal and rest breaks, Defendants have also
11 willfully failed and continues to fail to pay accrued wages and other compensation to Plaintiff and
12 other aggrieved employees in accordance with California Labor Code §§ 201 and 202.

13 **Failure to Furnish Accurate Itemized Wage Statements**

14 **[Cal. Lab. Code §§ 226(a); 248.2, § 7 of the Applicable IWC Wage Order]**

15 38. During the statute of limitations period, Defendants have routinely failed to provide
16 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
17 Defendants pay stubs violate Labor Code § 226 on their face by, among other things, failing to state
18 the name and address of the legal entity that was Plaintiff's and aggrieved employees' employers.
19 Derivatively, Defendant were and are not providing Plaintiff and other aggrieved employees with
20 proper meal periods and rest breaks but intentionally fails to include in their wage statements one (1)
21 additional hour of compensation at their regular rates of pay for each non-compliant meal period or
22 rest break, applicable overtime rates of pay, applicable rate of pay for sick leave, available
23 supplemental COVID-19 sick leave and the amount take and other California Labor Code violations
24 yet to be discovered.

25 39. In order to conceal its wage theft, Defendants knowingly and intentionally failed to
26 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements
27 in accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

28 40. Plaintiff and other aggrieved employees suffered injury as a result of Defendants'

1 failure to provide timely and accurate itemized wage statements prevented them from discovering the
2 scope and extent of Defendants' violations of California wage and hour laws, prevented them from
3 being able to determine the gross wages earned, the total hours worked, all deductions made, the net
4 wages earned, all applicable hourly rates in effect during each pay period and the corresponding
5 number of hours worked at each hourly rate, the accurate rate of pay, available amount of supplemental
6 Covid-19 sick leave available and amount taken, and other violations yet to be discovered.

7 **Failure to Maintain Required Records**

8 **[Cal. Lab. Code §§ 226(a), 248.2, 1174(d), 2810.5; § 7 of the Applicable IWC Wage Order]**

9 41. During the statute of limitations period, as part of Defendants' illegal payroll policies
10 and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due,
11 Defendants' knowingly and intentionally failed to maintain records as required under California
12 Labor Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Order, including but not limited
13 to the following records: total daily hours worked by each employee; applicable rates of pay; all
14 deductions; meal periods; time records showing when each employee begins and ends each work
15 period; and accurate itemized statements. Defendants' had knowledge that they was not providing
16 its non-exempt employees with proper meal and rest periods, but knowingly failed to include in the
17 wage statements one (1) extra hour of compensation for each missed meal and rest period.
18 Defendants also illegally and inaccurately recorded the time in which Plaintiff and other aggrieved
19 employees worked. Defendants have also failed to maintain accurate, itemized wage statements,
20 failed maintained records relating to supplemental COVID-19 sick leave and amount taken as
21 alleged above, and other violations of the California Labor Code which have not been discovered.

22 **Failure to Pay COVID-19 Supplemental Sick Leave**

23 **[Cal. Lab. Code §§ 248.1, 248.2]**

24 42. Plaintiff is informed and believes, during the statute of limitations period, Defendants
25 failed to provide 80 hours of COVID-19 Supplemental Paid Sick leave and compensate Aggrieved
26 Employees at their regular rate of pay for supplemental sick leave, i.e., their highest regular rate of
27 pay, taking into consideration non-discretionary bonuses, etc., in violation of California Labor Code
28 § 248.1(b)(3)(A). Defendants also failed to provide COVID-19 Supplemental Sick Leave to Aggrieved

1 Employees in violation of California Labor Code § 248.1(b)(2)(D). Defendants also failed to
2 accurately reflect any offset and/or the current amount of COVID-19 Supplemental Sick Leave
3 available to Aggrieved Employees on their wage statements, in violation of California Labor Code §§
4 248.1(b)(2)(D), 248.2 and for the reasons provided herein.

5 **Failure to Indemnify Employees for Necessary Expenditures**

6 **[Cal. Lab. Code § 2802; and all applicable IWC Wage Orders]**

7 43. California Labor Code § 2802(a) requires an employer to indemnify an employee for
8 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge
9 of her duties, or of his or her obedience to the directions of the employer. Moreover, § 7 of IWC Wage
10 Order 5-2001 or any other applicable Wage Order require employers to provide and maintain uniforms
11 for employees when such uniforms are required.

12 44. During the Statute of Limitations Period, Defendants failed to reimburse Aggrieved
13 Employees for the mileage reimbursement, cellular telephone usage, safety glasses, gloves and other
14 protective gear. Plaintiff and other aggrieved employees were forced to purchase their own equipment
15 in order to work for Defendants, as a condition of employment. Defendants did not reimburse Plaintiff
16 and other Aggrieved Employees for the costs of the expenditures and all mileage as alleged herein.

17 **FIRST CAUSE OF ACTION**

18 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

19 **[Cal. Lab. Code § 2698 *et seq.*]**

20 (On Behalf of Plaintiff against Defendant)

21 45. Plaintiff incorporates herein by specific reference, as though fully set forth, the
22 allegations in paragraphs 1 through 44.

23 46. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
24 2699(c), and a proper representative to bring a civil action on behalf of himself and other current and
25 former non-exempt employees of Defendants pursuant to the procedures specified in Labor Code §
26 2699.3, because Plaintiff was employed by Defendants and one or more of the alleged California
27 Labor Code violations was committed against Plaintiff during the statute of limitations period.

28 47. Plaintiff seeks to recover civil penalties through a representative action permitted by

1 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus,
2 class certification is not required.

3 48. A plaintiff has standing to represent all aggrieved employees for all of her asserted
4 violations of the California Labor Code under PAGA. See *Huff v. Securitas Security Services USA,*
5 *Inc.* (2018) 23 Cal.App.5th 745, 757 (“For PAGA standing a plaintiff need only have been employed
6 by the violator and affected by ‘one or more’ of the alleged violations. (Sec. 2699, subds. (a), (c)).
7 Here, Plaintiff was not provided with meal period premium payments for late or untimely meal
8 periods, was not reimbursed mileage at the applicable rate and other California Labor Code
9 violations as alleged herein.

10 49. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
11 penalties from Defendant in a representative action for the violations set forth above, including but
12 not limited to violations of California Labor Code §§ 201, 202, 203, 226(a), 226.7, 248.2, 510, 512,
13 1174(d), 1194, 1197, 1198 and 2810.5.

14 50. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties
15 for Defendants’ violations of California Labor Code provisions for which a civil penalty is
16 specifically provided, including but not limited to, the following:

- 17 a. Pursuant to California Labor Code § 210, for violations of California Labor
18 Code § 204, Defendants are subject to a civil penalty in the amount of one
19 hundred dollars (\$100) for the initial violation for each failure to pay each
20 employee, and two hundred dollars (\$200) per employee for violations in
21 subsequent pay periods.
- 22 b. Pursuant to California Labor Code § 226.3, for violations of California Labor
23 Code § 226(a), Defendants are subject to a civil penalty in the amount of two
24 hundred and fifty dollars (\$250) per aggrieved employee for the initial pay
25 period where a violation occurs and one thousand dollars (\$1,000) per
26 aggrieved employee for violations in subsequent pay periods.
- 27 c. Pursuant to California Labor Code § 1174.5, for violations of California Labor
28 Code § 1174(d), Defendants are subject to a civil penalty of five hundred

1 dollars (\$500).

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

11 51. California Labor Code § 2699(f) provides that for all California Labor Code
12 violations for which a civil penalty is not specifically provided, the following civil penalties are
13 established: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
14 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
15 subsequent violation.

16 52. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f)
17 for Defendants' violations of California Labor Code provisions for which a civil penalty is not
18 specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 226.7,
19 1194, 1197, and 1198.

20 53. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California
21 Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays
24 for relief against Defendants, as follows:

- 25 1. For civil penalties according to proof;
- 26 2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g),
27 California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for
28 attorneys' fees and costs; and

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3. For such further relief that the Court may deem just and proper.

DATED: July ____, 2022

THE LAW OFFICE OF SCOTT ERNEST WHEELER

By: _____
SCOTT ERNEST WHEELER

*Attorney for Plaintiff and the other Aggrieved
Employees*