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15 PARKER BUILDING SUPPLY-USLBM LLC

16 (Additional Counsel on Following Page)

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **FOR THE COUNTY OF SAN BERNARDINO**

19 HOLLY BROWN, on behalf of herself and
20 all "aggrieved employees" pursuant to Labor
21 Code § 2698 *et seq.*

22 Plaintiff,

23 v.

24 PARKER BUILDING SUPPLY-USLBM
25 LLC, a Delaware limited liability company,
26 and DOES 1 through 10, inclusive,

27 Defendants.

Case No. CIV SB 2200451

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

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1 **JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION**

2 **SETTLEMENT**

3 This Joint Stipulation of Class and Representative Action Settlement (“Agreement” or
4 “Settlement Agreement”) is made and entered into by and between Plaintiff HOLLY BROWN
5 (referred to herein as “Plaintiff” or “Class Representative”), as an individual and on behalf of
6 all others similarly situated and the State of California, and Defendant PARKER BUILDING
7 SUPPLY-USLBM LLC (“Defendant”). Collectively, Plaintiff and Defendant are referred to as
8 the “Parties.”

9 **RECITALS**

10 On or around October 29, 2021, Plaintiff submitted a “Notice of Labor Law
11 Violations” to the Labor and Workforce Development Agency (“LWDA”) alleging, among
12 other things, that Defendant failed to provide meal and rest breaks; failed to provide accurate
13 wage statements; failed to pay wages timely during employment and upon termination; and
14 failed to provide suitable seating (“LWDA Notice”).

15 On January 6, 2022, Plaintiff filed a Representative Action Complaint, pursuant to the
16 Private Attorneys General Act (“PAGA”), in the Superior Court of California, County of San
17 Bernardino, alleging a single cause of action seeking PAGA civil penalties for Labor Code
18 violations. The First Amended Complaint (the “Operative Complaint”), attached hereto as
19 **Exhibit B** and which will be filed as part of the settlement approval process, asserts class and
20 PAGA representative action claims against Defendant for for, among other things, failure to
21 provide meal and rest breaks; failure to provide accurate wage statements; failure to pay wages
22 timely during employment and upon termination; and failure to provide suitable seating.

23 On November 17, 2022, the Parties participated in private mediation with Mediator
24 David Rotman, Esq. The Parties reached a preliminary agreement to resolve this matter, the
25 terms of which are set forth in this Settlement Agreement.

26 This Settlement Agreement is made and entered into by and between Plaintiff, as an
27 individual, and on behalf of all others similarly situated, and Defendant, and is subject to the
28 terms and conditions hereof, and to the Court’s approval. The Parties expressly acknowledge

1 that this agreement is entered into solely for the purpose of compromising significantly
2 disputed claims and that nothing herein is an admission of liability or wrongdoing by
3 Defendant. If for any reason the Settlement Agreement is not approved, it will be of no force
4 or effect, and the Parties shall be returned to their original respective positions.

5 **DEFINITIONS**

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

8 1. “Action” means *Holly Brown v. Parker Building Supply-USLBM LLC*, Case No.
9 CIV SB 2200451 (Superior Court of the State of California for the County of San Bernardino).

10 2. “Aggrieved Employees” means Plaintiff and all persons who are or were
11 employed in California by Defendant as non-exempt employees at any point from October 29,
12 2020 through December 31, 2022 (the “PAGA Period”).

13 3. “Aggrieved Employee Payment” means the 25% portion of the PAGA Payment
14 (defined below) (Ten Thousand Dollars (\$10,000)) allocated to Aggrieved Employees.

15 4. “Claims Administrator” means Phoenix Settlement Administrators. The Parties
16 each represent that they do not have any financial interest in the Claims Administrator or
17 otherwise have a relationship with the Claims Administrator that could create a conflict of
18 interest.

19 5. “Claims Administration Costs” means the costs payable from the Class
20 Settlement Amount to the Claims Administrator for administering this Settlement, including,
21 but not limited to, printing, distributing, and tracking documents for this Settlement,
22 calculating estimated settlement amounts per Class Member, providing necessary reports and
23 declarations, mailing the Notices, processing Requests for Exclusions and objections, tax
24 reporting, establishing and maintaining an interest bearing settlement fund for the purpose of
25 administering the Settlement and disbursing sums from the fund, and other duties and
26 responsibilities set forth herein to process this Settlement as requested by the Parties. The
27 Claims Administration Costs shall be paid from the Class Settlement Amount. The Claims
28 Administration Costs are estimated to be Eight Thousand Dollars (\$8,000.00).

- 1 6. “Class Counsel” means the law firm of GAINES & GAINS, APLC.
- 2 7. “Class Counsel Award” means attorneys’ fees agreed upon by the Parties and
3 approved by the Court for Class Counsel’s litigation and resolution of the Action, and all costs
4 incurred and to be incurred by Class Counsel in the Action. Defendant agrees to not to object
5 to Class Counsel requesting a Class Counsel Award not to exceed the amount of thirty-five
6 percent (35%) (or Two Hundred Forty-Five Thousand Dollars--\$245,000) of the Class
7 Settlement Amount for attorneys’ fees, and costs not to exceed Twenty Thousand Dollars
8 (\$20,000.00), subject to the Court finally approving this Settlement Agreement and subject to
9 the exhaustion of any and all appeals. Any portion of the Class Counsel Award not awarded to
10 Class Counsel shall be added to the Net Settlement Amount.
- 11 8. “Class List” means a complete list of all Class Members that Defendant will
12 diligently and in good faith compile from its records and provide to the Claims Administrator
13 within fourteen (14) calendar days after Preliminary Approval of this Settlement. The Class
14 List shall be formatted in Microsoft Office Excel and shall include each Class Member’s
15 name, most recent known mailing address and telephone number, Social Security Number,
16 dates of employment, and the respective number of pay periods that each Class Member
17 worked during the Class Period.
- 18 9. “Class Member(s)” means all persons who are or were employed in California
19 by Defendant as non-exempt employees at any point from January 6, 2018 through December
20 31, 2022 (the “Class Period”). Defendant represents that there were 110 putative Class
21 Members who worked a collective 10,500 workweeks as of November 1, 2022, the first date
22 of the month on which the Parties participated in their mediation.
- 23 10. “Class Period” means the period from January 6, 2018 through December 31,
24 2022.
- 25 11. “Class Settlement Amount” means the maximum settlement amount of Seven
26 Hundred Thousand Dollars (\$700,000.00) to be paid by Defendant in full satisfaction of all
27 class and representative action claims arising from the facts alleged in the Action and LWDA
28 Notice, which includes all Individual Settlement Payments to Participating Class Members,

1 Class Representative enhancement payment, Claims Administration Costs, the PAGA
2 Payment, and the Class Counsel Award. This Class Settlement Amount has been agreed to by
3 Plaintiff and Defendant based on an “all in” Class Settlement Amount. In no event will
4 Defendant be liable for more than the Class Settlement Amount for the Released Class Claims
5 and Released PAGA Claims, with the exception of Defendant’s share of payroll taxes, which
6 shall be funded separate and apart from the Class Settlement Amount. No later than ten (10)
7 business days after the Effective Date, Defendant shall deposit the Class Settlement Amount
8 into an interest-bearing Qualified Settlement Fund created by the Claims Administrator. The
9 Claims Administrator shall handle such monies pursuant to the terms of the Joint Stipulation
10 of Class and Representative Action Settlement.

11 12. “Court” means the Superior Court of the State of California for the County of
12 San Bernardino or any other court taking jurisdiction of the Action.

13 13. “Defendant” means Parker Building Supply-USLBM LLC.

14 14. “Effective Date” means the 7th calendar day following: (a) the last day on which
15 the deadline to appeal an order granting final approval of the Joint Stipulation of Class and
16 Representative Action Settlement expires, if timely objections are filed; (b) the resolution of
17 any appeal in the Action that does not alter the terms of the settlement; or (c) if no timely
18 objections are filed, the date upon which the Court enters an order granting final approval of
19 the Joint Stipulation of Class and Representative Action Settlement.

20 15. “Individual Settlement Payment” means each Participating Class Member’s
21 share of the Net Settlement Amount, to be distributed to the Participating Class Members.

22 16. “LWDA Payment” means the 75% portion of the PAGA Payment (defined
23 below) (Thirty Thousand Dollars (\$30,000)) allocated to the LWDA. (\$10,000.00), of the
24 LWDA Payment shall be distributed to the Class Members.

25 17. “Net Settlement Amount” means the portion of the Class Settlement Amount
26 remaining after deduction of the approved Claims Administration Costs, PAGA Payment, and
27 the Class Counsel Award. The Net Settlement Amount will be distributed to Participating
28 Class Members.

1 18. “Notice of Objection” means a Class Member’s valid and timely written
2 objection to the Settlement Agreement. For the Notice of Objection to be valid, it must be: (a)
3 signed by the Class Member; (b) filed with the Court and served on all parties; and (c) be
4 postmarked on or before the Response Deadline. Class Members may not object or opt out of
5 the Aggrieved Employee Payment (as defined below) or the release of the PAGA Claims.

6 19. “Notice Packet” means the Notice of Class and Representative Action
7 Settlement, substantially in the form attached as **Exhibit A**.

8 20. “Operative Complaint” (attached hereto as **Exhibit B**) is the First Amended
9 Complaint that will be filed as part of the settlement approval process and means the class and
10 PAGA representative action claims against Defendant.

11 21. “PAGA Claims” means any and all claims for civil penalties pursuant to PAGA
12 based on the operative facts set forth in the Operative Complaint, including but not limited to
13 alleged violations of Labor Code §§ 201, 202, 226, 226.7, and 512, that accrued during the
14 PAGA Period.

15 22. “PAGA Payment” means the amount that the Parties have agreed to pay to the
16 LWDA and the Aggrieved Employees in connection with PAGA. The Parties have agreed that
17 Forty Thousand Dollars (\$40,000.00) of the Class Settlement Amount shall be allocated to the
18 resolution of any and all Aggrieved Employees’ and the State of California’s claims arising
19 under PAGA. Pursuant to PAGA, Seventy-Five Percent (75%), or Thirty Thousand Dollars
20 (\$30,000.00), of the PAGA Payment shall be paid to the LWDA (this is defined above as the
21 LWDA Payment), and twenty-five percent (25%), or Ten Thousand Dollars (\$10,000.00), of
22 the PAGA Payment shall be distributed to the Aggrieved Employees (this payment is defined
23 below as the “Aggrieved Employee Payment”).

24 23. “PAGA Period” means October 29, 2020 through December 31, 2022.

25 24. “Parties” means Plaintiff and Defendant collectively.

26 25. “Participating Class Members” means all Class Members who do not submit
27 valid Requests for Exclusion.

28 26. “Plaintiff” means Holly Brown.

1 27. “Preliminary Approval” means the court order granting preliminary approval of
2 the Settlement Agreement.

3 28. “Released Class Claims” means any and all claims and/or causes of action,
4 known or unknown, which accrued during the Class Period during employment in a non-
5 exempt position in California, that are alleged, or that could have been alleged in the Action
6 based on the facts set forth in the First Amended Complaint to-be-filed in the Action as part of
7 the preliminary approval process (which will include direct class action claims under Labor
8 Code sections 201-203, 226(a), 226.7, and 512 and under Business & Professions Code
9 section 17200 *et seq.* predicated on the underlying Labor Code claims alleged). No PAGA
10 claims are encompassed in the Released Class Claims.

11 29. “Released PAGA Claims” means any and all PAGA claims and/or causes of
12 action, known or unknown, which accrued during the PAGA Period during employment in a
13 non-exempt position in California, that are alleged in the to-be-filed First Amended Complaint
14 on file in the Action, or that could have been alleged in the Action based on the facts set forth
15 in the First Amended Complaint. No Aggrieved Employee may opt out of the PAGA portion
16 of the Settlement.

17 30. “Released Parties” means Defendant and its respective present and former
18 parents, owners, subsidiaries and any affiliated or related persons or entities and each of their
19 respective officers, directors, employees, partners, shareholders, attorneys and agents and any
20 other successors, assigns or legal representatives.

21 31. “Request for Exclusion” means a timely letter submitted by a Class Member
22 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (a)
23 set forth the name, address, telephone number, and last four digits of the Social Security
24 Number of the Class Member requesting exclusion; (b) be signed by the Class Member; (c) be
25 returned by mail to the Claims Administrator at the specified address indicated in the Notice
26 Packet; (d) clearly state that the Class Member does not wish to be included in the Settlement;
27 and (e) be postmarked on or before the Response Deadline.

28 32. “Response Deadline” means the deadline by which Class Members must

1 postmark to the Claims Administrator valid Requests for Exclusion or postmark Notices of
2 Objection to the Settlement. With respect to Requests for Exclusion, the Response Deadline
3 shall be forty-five (45) calendar days from the initial mailing of the Notice Packet by the
4 Claims Administrator, unless the 45th day falls on a Sunday or Federal holiday, in which case
5 the Response Deadline will be extended to the next day on which the U.S. Postal Service is
6 open. The Response Deadline for Requests for Exclusion shall be extended fifteen (15)
7 calendar days for any Class Member who is re-mailed a Notice Packet by the Claims
8 Administrator in accordance with the Notice Procedure, unless the 15th day falls on a Sunday
9 or Federal holiday, in which case the Response Deadline will be extended to the next day on
10 which the U.S. Postal Service is open. With respect to Notices of Objection, the Response
11 Deadline shall be forty-five (45) calendar days from the initial mailing of the Notice Packet by
12 the Claims Administrator, unless the 45th day falls on a Sunday or Federal holiday, in which
13 case the Response Deadline will be extended to the next day on which the U.S. Postal Service
14 is open. The Response Deadline may also be extended by express agreement between Class
15 Counsel and Defendant. Under no circumstances, however, shall the Claims Administrator
16 have the authority to extend the deadline for Class Members to submit a Request for Exclusion
17 or Notice of Objection to the Settlement.

18 **TERMS OF AGREEMENT**

19 Plaintiff, on behalf of herself, the Class Members, the State of California (including the
20 LWDA), and Defendant agree as follows:

21 33. Filing of First Amended Complaint. As part of the settlement process, in
22 conjunction with the approval of the Settlement, Plaintiff will the First Amended Complaint
23 attached as **Exhibit B**.

24 34. Funding of the Class Settlement Amount. Defendant shall make a one-time
25 deposit of the Class Settlement Amount into a Qualified Settlement Account to be established
26 by the Claims Administrator. The Class Settlement Amount shall be used to pay: (a)
27 Individual Settlement Amounts; (b) the Class Counsel Award; (c) Claims Administration
28 Costs; (d) the PAGA Payment (which includes the LWDA Payment and the Aggrieved

Employee Payment); and (e) Class Representative enhancement payment. Defendant shall deposit the Class Settlement Amount within ten (10) business days after the Effective Date.

35. Class Counsel Award. Defendant agrees not to oppose or impede any application or motion by Class Counsel for attorneys' fees of not more than thirty-five percent (35%) of the Class Settlement Amount (Two Hundred Forty Five Thousand Dollars (\$245,000), and costs not to exceed Twenty Thousand Dollars (\$20,000.00), which shall be paid from the Class Settlement Amount.

36. Claims Administration Costs. The Claims Administrator shall be paid from the Class Settlement Amount for the reasonable costs of administration of the Settlement and distribution of payments from the Class Settlement Amount. The Claims Administration Costs are currently estimated to be Eight Thousand Dollars (\$8,000.00).

37. PAGA Payment. Subject to Court approval, the Parties agree that the amount of Forty Thousand Dollars (\$40,000.00) from the Class Settlement Amount shall be designated as the PAGA Payment for satisfaction of Plaintiff's and Aggrieved Employees' PAGA Claims. Pursuant to PAGA, seventy-five percent (75%), or Thirty Thousand Dollars (\$30,000.00), of the PAGA Payment shall be paid to the LWDA as the LWDA Payment and twenty-five percent (25%), or Ten Thousand Dollars (\$10,000.00), of the PAGA Payment shall be distributed to the Aggrieved Employees as their Aggrieved Employee Payment.

38. Class Representative Enhancement Payment. Subject to Court Approval, the Parties agree that the amount of Fifteen Thousand Dollars (\$15,000.00) from the Class Settlement Amount shall be designated as the Class Representative's enhancement payment for her time and effort in bringing and presenting the Action and for releasing her Released Class Claims and Released PAGA Claims, which Defendant shall not oppose.

39. Net Settlement Amount. The Net Settlement Amount shall be used to satisfy Individual Settlement Payments to Participating Class Members in accordance with the terms of this Agreement.

40. Acknowledgement of Potential Administration Cost Increases. The Parties hereby acknowledge that Claims Administration Costs may increase above the current

1 estimate of Eight Thousand Dollars (\$8,000.00) and that any such additional Claims
2 Administration Costs shall be taken out of the Class Settlement Amount. Any portion of the
3 estimated or designated Class Administration Costs which are not in fact required to fulfill the
4 total Class Administration Costs shall become part of the Net Settlement Amount.

5 41. Calculation of Class Settlement Amount. The Class Settlement Amount was
6 calculated with, and is premised on, the understanding that there were one hundred and ten
7 (110) putative Class Members at around the time of the Parties' mediation in November 2021
8 and shall not exceed one hundred and twenty-five (125) putative Class Members.

9 42. Individual Settlement Payment Calculations. Individual Settlement Payments
10 shall be calculated and apportioned from the Net Settlement Amount based on the total
11 number of workweeks the Class Member worked in a non-exempt position in California
12 during the Class Period. The Net Settlement Amount shall be divided by the total number of
13 workweeks worked by Participating Class Members, and each Participating Class Member
14 shall receive a proportional share of the Net Settlement Amount that corresponds to the
15 number of workweeks the Class Member worked during the Class Period.

16 43. Individual Aggrieved Employee Payments. Individual Aggrieved Employee
17 Payments shall be calculated and apportioned from the Aggrieved Employee Payment based
18 on the total number of workweeks the Aggrieved Employee worked in a non-exempt position
19 in California during the PAGA Period. The Aggrieved Employee Payment shall be divided by
20 the total number of workweeks worked by Aggrieved Employees, and each Aggrieved
21 Employee shall receive a proportional share of the Aggrieved Employee Payment that
22 corresponds to the number of workweeks the Aggrieved Employee worked during the PAGA
23 Period.

24 44. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
25 Participating Class Members and the Individual Aggrieved Employee Payments made to the
26 Aggrieved Employees under this Settlement Agreement, as well as any other payments made
27 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
28 benefit plans to which any Class Member or Aggrieved Employee may be eligible, including,

1 but not limited to: welfare plans, benefit plans, ERISA plans, profit-sharing plans, bonus plans,
2 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other
3 welfare or benefit plan.

4 45. Claims Administration Process. The Parties agree to cooperate in the
5 administration of the settlement and to make all reasonable efforts to control and minimize the
6 costs and expenses incurred in administration of the Settlement.

7 46. LWDA Submissions. Class Counsel shall timely submit all materials that are
8 required to be submitted to the LWDA to effectuate this Settlement under Labor Code section
9 2699(l)(2).

10 47. Delivery of the Class List. Within fourteen (14) calendar days of Preliminary
11 Approval, Defendant shall provide the Class List to the Claims Administrator.

12 48. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving
13 the Class List from Defendant, the Claims Administrator shall mail a Notice Packet to all
14 Class Members and Aggrieved Employees via regular First-Class U.S. Mail, using the most
15 current, known mailing addresses identified in the Class List.

16 49. Confirmation of Contact Information in the Class List. Prior to mailing, the
17 Claims Administrator shall perform a search based on the National Change of Address
18 Database for information to update and correct for any known or identifiable address changes.
19 Any Notice Packets returned to the Claims Administrator as non-deliverable on or before the
20 Response Deadline shall be sent promptly via regular First-Class U.S. Mail to the forwarding
21 address affixed thereto and the Claims Administrator shall indicate the date of such re-mailing
22 on the Notice Packet. If no forwarding address is provided, the Claims Administrator shall
23 promptly attempt to determine the correct address using a skip-trace, or other search using the
24 name, address and/or Social Security number of the Class Member involved, and shall then
25 perform a single re-mailing. Those Class Members who receive a re-mailed Notice Packet
26 shall have between the latter of (i) an additional fifteen (15) calendar days, or (ii) the Response
27 Deadline to postmark a Request for Exclusion or objection.

28 50. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice

1 Packet will provide: (a) information regarding the nature of the Action; (b) a summary of the
2 Settlement's principal terms; (c) the Settlement Class definition; (d) each Class Member's
3 estimated Individual Settlement Payment and the method for calculating Individual Settlement
4 Payments; (e) the dates which comprise the Class and PAGA Periods; (f) instructions on how
5 to submit valid Requests for Exclusion or objections; (g) the deadlines by which the Class
6 Member must postmark Request for Exclusions or file and serve Notices of Objection to the
7 Settlement; and (h) the claims to be released, as set forth in Paragraphs 28 and 29.

8 51. Disputed Information on Notice Packets. Class Members shall have an
9 opportunity to dispute the information provided in their Notice Packets. To the extent Class
10 Members dispute their employment dates or the number of pay periods to which they have
11 been credited, Class Members may produce evidence to the Claims Administrator showing
12 that such information is inaccurate. The Claims Administrator shall decide the dispute.
13 Defendant's records will be presumed correct, but the Claims Administrator will evaluate the
14 evidence submitted by the Class Member and will make the final decision as to the merits of
15 the dispute.

16 52. Request for Exclusion Procedures. Any Class Member wishing to opt-out from
17 the Settlement Agreement must sign and postmark a written Request for Exclusion to the
18 Claims Administrator within the Response Deadline. The date of the postmark on the return
19 mailing envelope shall be the exclusive means to determine whether a Request for Exclusion
20 has been timely submitted. Requests for Exclusion must: (a) contain the name, address,
21 telephone number, and the last four digits of the Social Security number of the person
22 requesting exclusion; (b) be signed by the Class Member; (c) clearly state that the Class
23 Member does not wish to be included in the Settlement; (d) be returned by mail to the Claims
24 Administrator at the specified address indicated in the Notice Packet; and (e) be postmarked
25 on or before the Response Deadline. The date of the postmark on the return mailing envelope
26 shall be the exclusive means to determine whether a request for exclusion has been timely
27 submitted. A Class Member who does not request exclusion from the Settlement shall be
28 deemed a Class Member and will be bound by all terms of the Settlement, if the Settlement is

1 granted final approval by the Court. Aggrieved Employees may not opt out of the Aggrieved
2 Employee Payment or the release of the PAGA Claims in this Action.

3 53. Revocation of Settlement Agreement (by Defendant). If ten percent (10%) or
4 more of the Class Members submit valid Request for Exclusions and opt-out of the Settlement,
5 Defendant may rescind the Settlement and all actions taken in furtherance of it will be thereby
6 null and void. Defendant must exercise this right of rescission in writing to Class Counsel
7 within fourteen (14) calendar days after the Claims Administrator notifies the Parties of the
8 total number of Requests for Exclusions. If the option to rescind is exercised, Defendant
9 agrees that it will pay the Claims Administrator fees up to the date of Defendant's notice to the
10 Administrator if they choose to void the Settlement.

11 54. Escalator Provision. The settlement and Class Settlement Amount shall be
12 subject to an escalator provision, such that if the number of workweeks or Class Members
13 exceeds the representations made by Defendant (10,500 class workweeks and 110 Class
14 Members through November 1, 2022) by more than 5%, the Class Settlement Amount shall
15 increase proportionately with the greater increase. For example, if the class workweeks total
16 12,000 (a 14% increase) and 120 employees (9% increase), the Class Settlement Amount shall
17 increase by 14%.

18 55. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
19 Member who does not affirmatively opt-out of the Settlement Agreement by submitting a
20 timely and valid Request for Exclusion shall be bound by all of its terms, including those
21 pertaining to the Released Class Claims and Released PAGA Claims, as well as any Judgment
22 that may be entered by the Court if it grants final approval to the Settlement.

23 56. Objection Procedures. To object to the Settlement Agreement, a Class Member
24 must file a valid Notice of Objection with the Court and serve copies of the Notice of
25 Objection on the Parties before the Response Deadline. The Notice of Objection must be
26 signed by the Class Member and contain all information required by this Settlement
27 Agreement. The postmark date of the filing and service shall be deemed the exclusive means
28 for determining that the Notice of Objection is timely. Class Members who fail to object in the

manner specified above shall be deemed to have waived all objections to the Settlement and shall be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement Agreement. Class Members who file and serve timely notices of objection will have a right to appear at the Final Approval Hearing in order to have their objections heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement Agreement or appeal from the Order and Judgment. Class Counsel shall not represent any Class Members with respect to any such objections to this Settlement. Aggrieved Employees have no right to object to the PAGA Payment or the release of the PAGA Claims in this Action.

57. Certification Reports Regarding Individual and PAGA Settlement Payment Calculations. The Claims Administrator shall provide Defendant's counsel and Class Counsel a weekly report which certifies: (a) the number of Class Members who have submitted valid Requests for Exclusion; and (b) whether any Class Member has submitted a challenge to any information contained in their Notice Packet. Additionally, the Claims Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested.

58. Distribution Timing of Individual and PAGA Settlement Payments. Within fifteen (15) calendar days after Defendant deposits the Class Settlement Amount, the Claims Administrator shall issue payments to: (a) Participating Class Members; (b) the LWDA; (c) the Aggrieved Employees; (d) Class Counsel; and (e) Class Representative. The Claims Administrator shall also issue a payment to itself for Court approved services performed in connection with the settlement.

59. Uncashed Settlement Checks. The Parties agree that California Civil Procedure Code § 384 is applicable to un-cashed or undeliverable settlement checks. Any settlement amount for checks sent to Class Members or Aggrieved Employees that are not cashed within 180 days of date of mailing shall be paid to the California's State Controller's Office to held in trust for such class members pursuant to California's Unpaid Property Law. In such event, those Class Members will nevertheless remain bound by the Settlement.

1 60. Certification of Completion. Upon completion of administration of the
2 Settlement, the Claims Administrator shall provide a written declaration under oath to certify
3 such completion to the Court and counsel for all Parties.

4 61. Administration Costs if Settlement Fails or is Delayed. If an objection to the
5 Settlement Agreement is filed with the Court, regardless of the ultimate outcome of any
6 appeals taken, or if the Settlement is voided, delayed, or rescinded, any costs incurred by the
7 Claims Administrator shall be paid equally by the Parties (half by Class Counsel and half by
8 Defendant), unless otherwise specified in this Agreement.

9 62. Treatment of Individual Settlement Payments and Aggrieved Employee
10 Payments for Tax Purposes. All Individual Settlement Payments will be allocated as follows:
11 80% to penalties and interest, which shall be reported by the Claims Administrator on an IRS
12 Form-1099, and 20% to wages, which shall be reported on an IRS Form W-2 by the Claims
13 Administrator. All Aggrieved Employee Payments will be allocated 100% to penalties, which
14 shall be reported by the Claims Administrator on an IRS Form-1099. Defendant shall be
15 separately responsible for funding the employer's share of payroll taxes.

16 63. Administration of Taxes by the Claims Administrator. The Claims Administrator
17 shall be responsible for issuing to Plaintiff, Participating Class Members, Aggrieved
18 Employees, Class Members who timely exclude themselves from the class settlement but
19 receive a portion of the PAGA Payment, and Class Counsel, any 1099 or other tax forms as
20 may be required by law for all amounts paid pursuant to this Settlement Agreement. The
21 Claims Administrator shall also be responsible for forwarding all penalties to the appropriate
22 government authorities.

23 64. Tax Liability. Defendant makes no representation as to the tax treatment or legal
24 effect of the payments called for hereunder, and Plaintiff, Participating Class Members, and
25 Aggrieved Employees are not relying on any statement, representation, or calculation by
26 Defendant or by the Claims Administrator in this regard. Plaintiff, Participating Class
27 Members, Aggrieved Employees, and Class Members also understand and agree that they will
28 be solely responsible for the payment of any taxes and penalties assessed on the payments

described herein and will defend, indemnify, and hold Defendant free and harmless from and against any claims resulting from treatment of such payments as non-taxable damages.

65. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

66. No Prior Assignments. The Parties and their counsel 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.

67. Release of Class Claims by Class Members. Upon the Effective Date and subject to Defendant's funding of the Class Settlement Amount and employer's share of payroll taxes, Plaintiff and Settlement Class members who do not opt out of the Settlement hereby release the Released Parties from any and all Released Class Claims.

68. Release of PAGA Claims by Aggrieved Employees and the State of California. Upon the Effective Date and subject to Defendant's funding of the Class Settlement Amount and employer's share of payroll taxes, Plaintiff and Aggrieved Employees (including those who opt out of the Settlement Class) release the Released Parties from any and all Released PAGA Claims.

69. Release of Claims by Plaintiff. Upon the Effective Date and subject to Defendant's full payment of the Class Settlement Amount and employer's share of payroll taxes, and as consideration for her enhancement payment, Plaintiff Brown shall be deemed to have fully, finally, and forever released the Released Parties from the Released Class Claims, Released PAGA Claims, and any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against the Released Parties, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, whether known or unknown, and whether anticipated or unanticipated, including unknown claims covered by Civil Code Section 1542, arising through the date of his signature hereon, for any type of relief, including, without limitation, claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief. These claims include, but are not limited to, the Released Claims, as well as any other claims under any provision of the California Labor Code or any applicable California Industrial Welfare Commission Wage Orders, and claims under local,

1 state, or federal discrimination statutes, including, without limitation, the California Fair
2 Employment and Housing Act, California Government Code §§ 12940 et seq.; the Unruh Civil
3 Rights Act, California Civil Code §§ 51 et seq.; the California Constitution; Title VII of the
4 Civil Rights Act of 1964, 42 U.S.C. §§ 2000 et seq.; the Americans with Disabilities Act, 42
5 U.S.C. §§ 12101 et seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C.
6 §§ 1001 et seq.; and all of their implementing regulations and interpretive guidelines. With
7 respect to these Released Claims as described in this Section, Plaintiff Brown shall be deemed
8 to have expressly waived and relinquished, to the fullest extent permitted by law, the
9 provisions, rights, and benefits she may otherwise have had pursuant to Section 1542 of the
10 California Civil Code, which provides as follows:

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

15 Notwithstanding Section 1542, Plaintiff understands and agrees that this Agreement shall act as
16 a release of all future claims that may arise from Plaintiff Brown's employment or separation
17 from employment with Defendant, or any other matters that existed between Plaintiff Brown
18 and the Released Parties up to the date of this Agreement, whether such claims are currently
19 known or unknown, and that Plaintiff intentionally waives any rights she may have under the
20 provisions of Section 1542, as well as under any other statutes or common law principles of
21 similar effect in the State of California or in any other state. However, Plaintiff's workers'
22 compensation claims against Defendant shall not be affected by this release (i.e., she may
23 continue to assert them).

24 70. Nullification of Settlement Agreement. In the event that (i) the Court does not
25 finally approve the Settlement as provided herein, or (ii) the Settlement does not become final
26 for any other reason, then this Settlement Agreement, and any documents generated to bring it
27 into effect, shall be null and void. Any order or judgment entered by the Court in furtherance
28 of this Settlement Agreement shall likewise be treated as void from the beginning.

1 71. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court
2 to request the Preliminary Approval of the Settlement Agreement, and the entry of a
3 Preliminary Approval Order for: (a) conditional certification of the Settlement Class for
4 settlement purposes only; (b) preliminary approval of the proposed Settlement Agreement; (c)
5 authorizing the filing of the First Amended Complaint attached hereto as **Exhibit B**; and (d)
6 setting a date for a Final Approval/Settlement Fairness Hearing. Class Counsel will provide
7 the Motion for Preliminary Approval to counsel for Defendant's review at least two (2)
8 business days prior to filing with the Court. The Preliminary Approval Order shall provide for
9 the Notice Packet to be sent to all Class Members as specified herein. In conjunction with the
10 Preliminary Approval Hearing, Plaintiff shall submit this Settlement Agreement, which sets
11 forth the terms of this Settlement, and will include the proposed Notice Packet, which shall
12 include the proposed Notice of Class Action Settlement document, attached as **Exhibit A**.

13 72. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of
14 the deadlines to postmark Requests for Exclusion or Notices of Objections to the Settlement
15 Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing
16 shall be conducted to determine the Final Approval of the Settlement Agreement along with
17 the amounts properly payable for: (a) Individual Settlement Payments; (b) the PAGA
18 Payment; (c) the Class Counsel Award; (d) all Claims Administration Costs; and (e) Class
19 Representative enhancement payment. Class Counsel will be responsible for drafting all
20 documents necessary to obtain final approval. Class Counsel will provide the Motion for Final
21 Approval to counsel for Defendant's review at least two (2) business days prior to filing with
22 the Court. Class Counsel will also be responsible for drafting the attorneys' fees and costs
23 application to be heard at the Final Approval Hearing.

24 73. Continued Jurisdiction. Upon final approval of the Settlement by the Court or
25 after the Final Approval/Settlement Fairness Hearing, the Court shall have continuing
26 jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the
27 terms of the Settlement; (b) settlement administration matters; and (c) such matters as may be
28 appropriate under Court rules or as set forth in this Agreement.

1 74. Exhibits Incorporated by Reference. The terms of this Agreement include the
2 terms set forth in any attached Exhibits, which are incorporated by this reference as though
3 fully set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement.

4 75. Confidentiality. The Parties and their counsel agree that they will not issue any
5 press releases, initiate any contact with the press, respond to any press inquiry, or have any
6 communication with the press about the fact, amount, or terms of the Settlement, other than to
7 state upon inquiry, “The matter has been resolved.” In addition, the Parties and their counsel
8 agree that they will not engage in any advertising or distribute any marketing materials relating
9 to the Settlement of this Action, including but not limited to any postings on any websites
10 maintained by Class Counsel. Any communication about the Settlement to Class Members
11 prior to the Court approved mailing will be limited to a statement that a settlement has been
12 reached and the details will be communicated in a forthcoming Court approved notice.
13 Nothing herein will prohibit Class Counsel from communicating with Class Members and
14 posting publicly filed Court documents on Class Counsel’s website after the Court approved
15 mailing.

16 76. Entire Agreement. This Settlement Agreement and any attached Exhibits, the
17 Memorandum of Understanding, and the Individual Settlement Agreements constitute the
18 entirety of the Parties’ settlement terms as it relates to the Released Class Claims and Released
19 PAGA Claims.

20 77. Amendment or Modification. This Settlement Agreement may be amended or
21 modified only by a written instrument signed by counsel for all Parties or their successors-in-
22 interest.

23 78. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
24 warrant and represent they are expressly authorized by the Parties whom they represent to
25 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
26 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to
27 execute any other documents required to effectuate the terms of this Settlement Agreement.
28 The Parties and their counsel will cooperate with each other and use their best efforts to effect

1 the implementation of the Settlement. If the Parties are unable to reach agreement on the form
2 or content of any document needed to implement the Settlement, or on any supplemental
3 provisions that may become necessary to effectuate the terms of this Settlement, the Parties
4 may seek the assistance of the Court to resolve such disagreement.

5 79. Binding on Successors and Assigns. This Settlement Agreement shall be binding
6 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
7 defined.

8 80. California Law Governs. All terms of this Settlement Agreement and Exhibits
9 hereto shall be governed by and interpreted according to the laws of the State of California.

10 81. Execution and Counterparts. This Settlement Agreement is subject only to the
11 execution of all Parties. However, the Agreement may be executed in one or more
12 counterparts. All executed counterparts and each of them, including facsimile and scanned
13 copies of the signature page, shall be deemed to be one and the same instrument provided that
14 counsel for the Parties shall exchange among themselves original signed counterparts.
15 Electronically generated signatures (e.g., DocuSign signatures) shall have the same legal effect
16 as an ink signature and shall be valid and fully enforceable.

17 82. Acknowledgement that the Settlement is Fair, Adequate, Reasonable, and
18 Advances the Policies Underlying PAGA. The Parties believe this Settlement Agreement is a
19 fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after
20 arm's-length negotiations and in the context of adversarial litigation, taking into account all
21 relevant factors, present and potential. The Parties also believe this Settlement Agreement
22 advances the public policy underlying PAGA. The Parties further acknowledge that they are
23 each represented by competent counsel and that they have had an opportunity to consult with
24 their counsel regarding the fairness and reasonableness of this Agreement.

25 83. Invalidity of Any Provision. Before declaring any provision of this Settlement
26 Agreement invalid, the Court shall first attempt to construe the provision as valid to the fullest
27 extent possible consistent with applicable precedents so as to define all provisions of this
28 Settlement Agreement valid and enforceable.

1 84. Plaintiff's Waiver of Right to Be Excluded. Plaintiff agrees to sign this
2 Settlement Agreement and, by signing this Settlement Agreement, is hereby bound by the
3 terms herein. For good and valuable consideration, Plaintiff further agrees that she shall not
4 request to be excluded from the Settlement Agreement. Any such request for exclusion by
5 Plaintiff shall be void and of no force or effect. Efforts by Plaintiff to circumvent the terms of
6 this paragraph shall be void and of no force or effect.

7 85. Appeals. Either party may appeal any court order that materially alters the
8 Settlement Agreement's terms.

9 86. Class Action Certification for Settlement Purposes Only. The Parties agree to
10 stipulate to class action certification only for purposes of the Settlement. If, for any reason, the
11 Settlement is not approved, the stipulation to certification will be void. The Parties further
12 agree that certification for purposes of the Settlement is not an admission that class action
13 certification is proper under the standards applied to contested certification motions and that
14 this Settlement Agreement will not be admissible in this or any other proceeding as evidence
15 that either (i) a class action should be certified, or (ii) Defendant is liable to Plaintiff or any
16 Class Member, other than according to the Settlement's terms.

17 87. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
18 dispute that has arisen between them and to avoid the burden, expense, and risk of continued
19 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies,
20 that they have violated any federal, state, or local law; violated any regulations or guidelines
21 promulgated pursuant to any statute or any other applicable laws, regulations, or legal
22 requirements; breached any contract; violated or breached any duty; engaged in any
23 misrepresentation or deception; or engaged in any other unlawful conduct with respect to its
24 employees. Neither this Agreement, nor any of its terms or provisions, nor any of the
25 negotiations connected with it, shall be construed as an admission or concession by Defendant
26 of any such violations or failures to comply with any applicable law. Except as necessary in a
27 proceeding to enforce the terms of this Agreement, this Agreement and its terms and
28 provisions shall not be offered or received as evidence in any action or proceeding to establish

1 any liability or admission on the part of Defendant or to establish the existence of any
2 condition constituting a violation of, or a non-compliance with, federal, state, local, or other
3 applicable law.

4 88. Captions. The captions and section numbers in this Agreement are inserted for
5 the reader's convenience, and in no way define, limit, construe, or describe the scope or intent
6 of the provisions of this Agreement.

7 89. Waiver. No waiver of any condition or covenant contained in this Agreement or
8 failure to exercise a right or remedy by any of the Parties hereto shall be considered to imply
9 or constitute a further waiver by such party of the same or any other condition, covenant, right,
10 or remedy.

11 90. Enforcement Actions. In the event that one or more of the Parties institutes any
12 legal action or other proceeding against any other Party or Parties to enforce the provisions of
13 this Settlement or to declare rights and/or obligations under this Settlement, the successful
14 Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable
15 attorneys' fees and costs, including expert witness fees incurred in connection with any
16 enforcement actions.

17 91. Mutual Preparation. The Parties have had a full opportunity to negotiate the
18 terms and conditions of this Agreement. Accordingly, this Agreement shall not be construed
19 more strictly against one party than another merely by virtue of the fact that it may have been
20 prepared by counsel for one of the Parties, it being recognized that, because of the arm's-
21 length negotiations between the Parties, all Parties have contributed to the preparation of this
22 Agreement.

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

28 \\\

93. All Terms Subject to Final Court Approval & Procedures if Settlement Not Approved. All terms described in this Settlement Agreement herein shall be subject to final Court approval. If the Court does not grant preliminary or final approval of the Settlement Agreement, as drafted, the Parties jointly agree to continue negotiations in good faith for a period of 45 days to explore whether a negotiated resolution can be achieved that would garner Court approval.

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

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

SIGNATURES

READ CAREFULLY BEFORE SIGNING

03 / 16 / 2023
Dated: March , 2023

Plaintiff Holly Brown

By: HK
Holly Brown

SIGNATURES CONTINUE ON FOLLOWING PAGE

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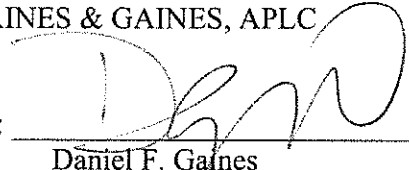
Dated: March __, 2023

Defendant Parker Building Supply-USLBM
LLC

By: _____
_____, on behalf of
Defendant Parker Building Supply-USLBM
LL

APPROVED AS TO FORM AND CONTENT

Dated: March 16, 2023

GAINES & GAINES, APLC
By: 
Daniel F. Gaines
Counsel for Plaintiff

Dated: March __, 2023

JACKSON LEWIS, P.C.
By: _____
Arthur K. Cunningham
Kevin Ha
Counsel for Defendant

4883-8361-9332, v. 1

1 Dated: March 15, 2023

Defendant Parker Building Supply-USLBM
LLC

2
3 By:  _____

4 _____, on behalf of
5 Defendant Parker Building Supply-USLBM
LL

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7 **APPROVED AS TO FORM AND CONTENT**

8 Dated: March __, 2023

GAINES & GAINES, APLC

9
10 By: _____

11 Daniel F. Gaines
Counsel for Plaintiff

12 Dated: March __, 2023

JACKSON LEWIS, P.C.

13
14 By:  _____

15 Arthur K. Cunningham
16 Kevin Ha
Counsel for Defendant

17
18 4883-8361-9332, v. 1

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT
Holly Brown v. Parker Building Supply-USLBM LLC.
San Bernardino Superior Court, Case No. CIV SB 2200451
(Complaint Filed January 6, 2022)

You are not being sued. This notice affects your rights. Please read it carefully

To: All persons who are or were employed in California by Parker Building Supply-USLBM LLC as non-exempt employees at any point from January 6, 2018 through December 31, 2022 (“Class Member(s)”).

All person who are or were employed in California by Parker Building Supply-USLBM LLC as non-exempt employees at any point from October 29, 2020 through December 31, 2022 (“Aggrieved Employee(s)”).

**PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHTS
YOU MAY BE ENTITLED TO MONEY FROM THIS SETTLEMENT**

You have received this Notice because records of Parker Building Supply-USLBM LLC (the “Company” or “Defendant”), indicate that you are or were employed by the Company in the State of California during the time period from January 6, 2018 through December 31, 2022 as an hourly-paid or non-exempt employee.

You do not need to take any action to receive payment under the settlement reached in the Action and your legal rights may be affected.

This Notice is designed to advise you of your rights and options, such as how you can object to or request to be excluded from the settlement, if you so choose.

I. INTRODUCTION

A proposed class action settlement (the “Settlement”) of the above-captioned action (the “Action”) pending in the San Bernardino Superior Court (the “Court”), has been reached by the parties and has been granted preliminary approval by the Court supervising the Action.

A final settlement hearing will be held on [REDACTED], 2023 at [REDACTED] to determine whether the Settlement should be granted final approval. The records of the Company show that you were employed by the Company in California, in a position listed above, at any time between January 6, 2018, and December 31, 2022 (“Class Period”) and, therefore, are a Class Member in this Action. As a Class Member, you may be entitled to money under the Settlement and, unless you “opt out” of the Settlement, your legal rights may be affected. The purpose of this Notice is to: (1) describe the Action, (2) inform you of the terms of the Settlement, and (3) inform you of your rights and options in connection with the Settlement.

II. SUMMARY OF THE ACTION

Plaintiff Holly Brown, an ex-employee at the Company, allege in the Action that, within the Class Period, the Company violated certain provisions of the California Labor Code and the Business & Professions Code by failing to pay premiums for missed meal and/or rest breaks, not timely pay wages during employment or on termination, not providing compliant wage statements, and failing to provide suitable seating. Plaintiff alleges that these violations resulted in the underpayment of wages to Class Members. Plaintiff also seeks civil and statutory penalties related to these claims. Plaintiff seeks to maintain a class and representative action for ger claims on behalf of herself and on behalf of all persons who have been employed by Defendant as hourly-paid non-exempt employees within the Class Period.

Defendant denies that it violated the law in any way as described in the lawsuit. Nothing in this Notice, or the Settlement itself, or any actions to carry out the terms of the Settlement mean that Defendant admits any fault, guilt, negligence, wrongdoing or liability whatsoever.

The Court granted preliminary approval of the Settlement on [REDACTED], 2023 on behalf of a settlement class defined as:

All current and former hourly-paid or non-exempt employees of Defendant who worked in the State of California at any time between January 6, 2018, and December 31, 2022.

With regard to the PAGA Claims, all current and former non-exempt employees of Defendant who worked in

the State of California at any time between October 29, 2020 and December 31, 2022.

At that time, the Court also preliminarily approved Plaintiff to serve as the Class Representative, and the law firm of GAINES & GAINES, APLC to serve as Class Counsel.

III. SUMMARY OF SETTLEMENT TERMS

Settlement Amount. Defendant has agreed to pay an amount not to exceed \$700,000.00 (the “Class Settlement Amount”) to fully resolve the claims in the Action. This Class Settlement Amount includes, but is not limited to, all settlement payments to Class Members, Class Counsel’s attorneys’ fees and litigation expenses, all Settlement Administration expenses, payments to the California Labor and Workforce Development Agency (“LWDA”), and an enhancement payment to the Class Representative, as outlined below.

Settlement Administration and Other Payments. The Court has tentatively approved certain payments to be made from the Class Settlement Amount as follows, which will be subject to final Court approval:

- Settlement Administration. Payment to the Settlement Administrator not to exceed \$8,000.00 for the expense of notifying the Class Members of the Settlement, processing opt-outs submitted by Class Members, and distributing settlement payments.
- Attorneys’ Fees and Costs. Payment to Court-approved Class Counsel of reasonable attorneys’ fees not to exceed \$245,000.00 as reasonable compensation for the work Class Counsel performed in this Action, and will continue to perform through settlement finalization, together with reimbursement for litigation expenses actually incurred in connection with the Action, not to exceed \$20,000. Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.
- Enhancement Payment to Class Representatives. A service enhancement not to exceed \$15,000.00 to Class Representative Holly Brown to compensate her for service on behalf of the Class in initiating and prosecuting the action. This payment is in addition to whatever payment the Class Representative is otherwise entitled to receive as a Class Member.
- PAGA Payment. A payment of \$40,000 for the settlement of claims arising under the California Private Attorneys General Act (“PAGA”). 75%, or \$30,000, shall be paid to the California Labor and Workforce Development Agency. The remaining 25%, or \$10,000, will be distributed to non-exempt California employees who worked for Defendant from October 29, 2020 to December 31, 2022 (“Aggrieved Employees”), for the release of their claims arising under PAGA.

Each participating Class Member (those who do not opt out of the Settlement) and all Aggrieved Employees shall receive an “Individual Settlement Payment,” which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form) and is a portion of the PAGA Payment distributable to each Aggrieved Employee, regardless if they request exclusion from the class settlement or not.

Calculation of Individual Settlement Payments. The Individual Settlement Payments shall be calculated and apportioned from the Net Settlement Amount based on the total number of workweeks the Class Member worked in a non-exempt position in California during the Class Period. The Net Settlement Amount shall be divided by the total number of workweeks worked by Participating Class Members, and each Participating Class Member shall receive a proportional share of the Net Settlement Amount that corresponds to the number of workweeks the Class Member worked during the Class Period..

Calculation of Individual Aggrieved Employee Payments. The Individual Aggrieved Employee Payments shall be calculated and apportioned from the Aggrieved Employee Payment based on the total number of workweeks the Aggrieved Employee worked in a non-exempt position in California during the PAGA Period. The Aggrieved Employee Payment shall be divided by the total number of workweeks worked by Aggrieved Employees, and each Aggrieved Employee shall receive a proportional share of the Aggrieved Employee Payment that corresponds to the number of workweeks the Aggrieved Employee worked during the PAGA Period. Aggrieved Employees will receive their portion of the PAGA Payment regardless of their decision to opt out of the class settlement (i.e., Class Members who opt out will nevertheless receive their Individual Aggrieved Employee Payment).

Tax Matters. For tax purposes, each Individual Settlement Payment will be apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 80% as non-wage statutory damages and interest (reported on an IRS Form 1099, if required). The Individual Aggrieved Employee Payments will be apportioned 100% as non-wage penalties (reported on an IRS Form 1099, if required). All Individual Settlement Payments paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

Releases.

Upon the Effective Date and subject to Defendant's funding of the Class Settlement Amount and employer's share of payroll taxes, Plaintiff and Settlement Class members who do not opt out of the Settlement hereby release Defendant and its respective present and former parents, owners, subsidiaries and any affiliated or related persons or entities and each of their respective officers, directors, employees, partners, shareholders, attorneys and agents and any other successors, assigns or legal representatives (the "Released Parties") from any and all claims and/or causes of action, known or unknown, which accrued during the Class Period during employment in a non-exempt position in California, that are alleged, or that could have been alleged in the Action based on the facts set forth in the First Amended Complaint to-be-filed in the Action as part of the preliminary approval process (which will include direct class action claims under Labor Code sections 201-203, 226(a), 226.7, and 512 and under Business & Professions Code section 17200 *et seq.* predicated on the underlying Labor Code claims alleged) (the "Released Class Claims"). No PAGA claims are encompassed in the Released Class Claims.

Upon the Effective Date and subject to Defendant's funding of the Class Settlement Amount and employer's share of payroll taxes, Plaintiff and Aggrieved Employees (including those who opt out of the Settlement Class) release the Released Parties from any and all PAGA claims and/or causes of action, known or unknown, which accrued during the PAGA Period during employment in a non-exempt position in California, that are alleged in the to-be-filed First Amended Complaint on file in the Action, or that could have been alleged in the Action based on the facts set forth in the First Amended Complaint (the "Released PAGA Claims"). No Aggrieved Employee may opt out of the PAGA portion of the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an Order at or following the Settlement Hearing finally approving the Settlement.

IV. RIGHT TO CLAIM MONEY FROM THE SETTLEMENT

According to the records of Defendant, you worked [REDACTED] weeks while employed in a non-exempt position in California from January 6, 2018 to December 31, 2022 and you worked [REDACTED] weeks while employed in a non-exempt position in California from October 29, 2020 through December 31, 2022. Based on these weeks worked, you are entitled to an Individual Settlement Payment of approximately \$[REDACTED]. This amount is subject to change based on the final ruling of the Court.

If you believe the data listed above is incorrect, you may submit a challenge in writing to the Settlement Administrator indicating your belief as to the correct data. You must also send the Settlement Administrator any documents or other information that supports your challenge to the above information. The Settlement Administrator will use Defendant's records and any information you provide to resolve any dispute about your service data. All such challenges must be postmarked by [REDACTED], 2023 to be considered.

V. RIGHT TO OPT OUT

If you do not wish to participate in the Settlement of your claims, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive no money from the Settlement, and you will not be bound by its terms.** To opt out, you must submit a signed, written request to the Settlement Administrator for Exclusion ("Request for Exclusion") from the Settlement postmarked no later than [REDACTED], 2023. The Request for Exclusion must include (i) your name, address, telephone number, and social security number (last four digits) or employee ID number, (ii) your signature and date, and (iii) an express request to be excluded from the class. Written Requests for Exclusion from the Settlement that are postmarked after [REDACTED], 2023, or are unsigned by the Class Member, will be rejected, and Class Members submitting untimely Exclusions shall be bound by the Settlement and the Releases described above, but will not be considered Class Members and will not receive settlement payments. **Note that if you exclude yourself and you are an Aggrieved Employee, you will still receive a payment for PAGA penalties and be bound by the settlement of the PAGA claims.**

VI. RIGHT TO OBJECT

If you are a Class Member who has not opted out and believe that the Settlement should not be finally approved by the Court for any reason, you may object to the proposed Settlement. Objections may be in person at the Final Approval Hearing or, in writing. If in writing, the objection must state the basis for the objection, and be mailed to the Settlement Administrator at the below addresses on or before [REDACTED], 2023. All objections or other correspondence must state the name and number of the case, which is *Brown v. Parker Building Supply-USLBM*. (Case No. CIV SB 2200451), filed in the Superior Court of the State of California for the County of San Bernardino. To object to the Settlement, you must remain a member of the Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Class Counsel: DANIEL F. GAINES, ESQ. Email: daniel@gaineslawfirm.com ALEX P. KATOFISKY, ESQ. Email: alex@gaineslawfirm.com EVAN S. GAINES, ESQ. Email: evan@gaineslawfirm.com GAINES & GAINES, APLC 4550 E. Thousand Oaks Blvd., Suite 100 Westlake Village, CA 91362 Telephone: (818) 703-8985 Facsimile: (818) 703-8984	Counsel for Defendant: Arthur K. Cunningham, Esq. Email: Arthur.Cunningham@jacksonlewis.com Kevin Ha, Esq. Email: Kevin.Ha@jacksonlewis.com JACKSON LEWIS P.C. 200 Spectrum Center Drive, Suite 500 Irvine, CA 92618 Telephone: 949-885-1360
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If you wish, you may also appear at the Final Approval Hearing, detailed below. You have the right to appear either in person or through your own attorney at this hearing. If you or your attorney wish to speak at the hearing, you or your attorney must file a notice of appearance with the Court and serve counsel for all parties, above, on or before [REDACTED], 2023. Objections not previously filed in writing in a timely manner as described above will not be considered by the Court.

VII. HEARING ON THE SETTLEMENT

The Final Approval Hearing on the adequacy, reasonableness and fairness of the Settlement will be held on [REDACTED], 2023 at [REDACTED], in Department S17, in the San Bernardino Superior Court, San Bernardino Justice Center, 247 West Third Street, San Bernardino, CA 92415. The Hearing may be continued without further notice and may be conducted electronically through the video conferencing platform Zoom. Information regarding how to access hearings electronically can be found on the Court's website, <https://www.sb-court.org>. **You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.**

VIII. ADDITIONAL INFORMATION

This Notice is only a summary of the Action and the Settlement. Class Members should contact the Settlement Administrator at NAME, <<Address>>, <<Telephone Number>> with any concerns or questions regarding the Settlement. You may also refer to the pleadings, the Class Action Settlement Agreement and Release of Claims, and other papers filed in the Action, which may be inspected at the San Bernardino Superior Court, during regular business hours of each court day, or online through the Court's Public Access System.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT
OR THE JUDGE WITH QUESTIONS.**

EXHIBIT B

DANIEL F. GAINES, ESQ. SBN 251488
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Attorneys for Plaintiff Holly Brown, on behalf of herself and on behalf of all similarly situated individuals

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

HOLLY BROWN, on behalf of herself and all
“aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

PARKER BUILDING SUPPLY-USLBM
LLC, a Delaware limited liability company,
and DOES 1 through 10, inclusive,

Defendants.

CASE NO: CIV-SB-2200451

*Assigned to the Honorable Joseph T. Ortiz,
Dept. S17*

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

- 1. FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF (LABOR CODE § 226.7; IWC WAGE ORDER 4-2001)**
- 2. FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF (LABOR CODE §§ 226.7 AND 512; IWC WAGE ORDER 4-2001)**
- 3. KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE § 226(a), (e))**
- 4. FAILURE TO TIMELY PAY WAGES DUE AT SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)**
- 5. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200**
- 6. PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 226(a), 226.7, 512, AND 1198 AND PURSUANT TO LABOR CODE § 2699(a) FOR**

**VIOLATIONS OF LABOR CODE §§ 226.3
AND 558**

DEMAND FOR JURY TRIAL

Complaint Filed: January 6, 2022

Plaintiff HOLLY BROWN (“Plaintiff”), on behalf of herself and on behalf of all similarly situated individuals (the “Class” or “Plaintiff Class”), on behalf of the general public, and under the Labor Code Private Attorneys General Act of 2004, complains of PARKER BUILDING SUPPLY-USLBM LLC, a Delaware limited liability company, and/or any subsidiaries or affiliated companies (hereinafter referred to as “Defendants”), as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

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

2. For at least four (4) years prior to the filing of this action and continuing to the present (the “liability period”), Defendants have had consistent policies of failing to provide legally compliant rest and meal periods or compensation in lieu thereof to Class Members (as defined below); provide accurately itemized wage statements to Class Members; and to timely pay certain Class Members all wage due at the separation of their employment.

3. Plaintiff, on behalf of herself and members of the Class, brings this action pursuant to Labor Code §§ 201-202, 226(a), 226.3, 226.7, 512, 558, and 1198 seeking compensation for all unpaid wages, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

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

5. Plaintiff, on behalf of herself and all Aggrieved Employees pursuant to Labor Code §§ 2698 *et seq.*, seeks penalties for Defendants’ various violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiff and Class Members throughout the State of California, including San Bernardino County.

II.

PARTIES

A. Plaintiff

7. Plaintiff HOLLY BROWN was employed by Defendants from May 2019 through March 2021 as a non-exempt employee in San Bernardino County, California.

8. During her work with Defendants, Plaintiff was:

- a. Willfully denied rest and meal periods or compensation in lieu thereof;
- b. Willfully denied accurately itemized wage statements; and
- c. Willfully denied the timely payment of all wages upon separation of her employment.

B. Defendants

9. Defendant PARKER BUILDING SUPPLY-USLBM LLC is a Delaware limited liability company that employed Plaintiff and Class Members throughout the State of California, including San Bernardino County, California.

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

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

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

III.

CLASS ACTION ALLEGATIONS

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

THE CLASS

All persons who are or were employed in California by Defendants as non-exempt employees at any point from January 6, 2018 through December 31, 2022.

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

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

A. Numerosity

16. The potential members of the Class as defined are so numerous that joinder of all Class Members is impracticable. While the precise number of members of the Class has not been ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants currently employ, and during the relevant time periods employed, over 100 persons in the State of California who fall within the Class definition.

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

B. Commonality

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

- 4 a. Whether Defendants failed to properly provide rest periods or compensation in
5 lieu thereof to Plaintiff and Class Members, in violation of Labor Code § 226.7
6 and IWC Wage Order 4-2001;
- 7 b. Whether Defendants failed to properly provide meal periods or compensation
8 in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§
9 226.7 and 512, and IWC Wage Order 4-2001;
- 10 c. Whether Defendants failed to provide Plaintiff and Class Members with
11 accurately itemized wage statements, in accordance with Labor Code § 226(a)
12 and (e);
- 13 d. Whether Defendants failed to timely pay Plaintiff and Class Members all
14 wages due and owing at the separation of their employment, in violation of
15 Labor Code §§ 201-203; and
- 16 e. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
17 to Business & Professions Code § 17200 *et seq.*

18 **C. Typicality**

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

23 **D. Adequacy of Representation**

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

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28 \\

1 **E. Superiority of Class Action**

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

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

11 **IV.**

12 **CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION**

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

15 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

16 **(LABOR CODE § 226.7 AND IWC WAGE ORDER 4-2001)**

17 27. Plaintiff incorporates paragraphs 1 through 26 of this Complaint as though fully set
18 forth herein.

19 28. Plaintiff and Class Members are entitled to one hour of pay for each day that
20 Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and
21 IWC Wage Order 4-2001.

22 29. Defendants failed to pay proper premium wages to Plaintiff and Class Members who
23 were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 4-2001.
24 Plaintiff and Class Members were routinely unable to take a 10-minute rest period for every four (4)
25 hours of work or major fraction thereof, but were not paid premium wages of one hour's pay at the
26 correct rate for each missed rest period. Plaintiff and Class Members were not authorized to take
27 many of their first rest periods when they worked shifts over three and one-half hours in length, and
28 no second or third rest periods when they worked shifts over six and ten hours in length, respectively.

1 When they were able to take a rest period, they were not permitted to leave Defendants' premises and
2 were not free from their employer's control. This violates Labor Code § 226.7 and IWC Wage Order
3 No. 4-2001.

4 30. Pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001, Plaintiff seeks the
5 payment of all rest period compensation that she and Class Members are owed, according to proof.

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

7 **V.**

8 **SECOND CAUSE OF ACTION**

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

10 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

11 **(LABOR CODE §§ 226.7 AND 512 AND IWC WAGE ORDER 4-2001)**

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

14 32. Plaintiff and Class Members are entitled to one hour of pay for each day that
15 Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7
16 and 512 and IWC Wage Order 4-2001.

17 33. Defendants failed to pay proper premium wages to Plaintiff and other Class Members
18 who were denied proper meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage
19 Order 4-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, a
20 timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a
21 second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours,
22 but were not paid premium wages of one hour's pay at the correct rate for each missed first or second
23 meal period. When they were able to take a meal period, they were oftentimes late or short, in
24 violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001.

25 34. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001, Plaintiff seek
26 the payment of all meal period compensation that Class Members are owed for four years preceding
27 the filing of this Action, according to proof.

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

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

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

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

37. Defendants failed to issue Plaintiff and Class Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). As Plaintiff and Class Members were not paid all wages due, as stated above, the wage statements provided by Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9).

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

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

VII.

FOURTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203)

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

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

41. Defendants paid Plaintiff and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class Members were not paid all wages due and owing throughout the course of their employment, as detailed above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due and owing for the entirety of their employment. Furthermore,

1 Plaintiff was issued her final wages more than 72 hours after her resignation of employment. This
2 violates Labor Code §§ 201-202 and is alleged on behalf of Plaintiff and certain Class Members no
3 longer employed by Defendants.

4 42. More than 30 days have passed since Plaintiff and Class Members have left
5 Defendants' employ.

6 43. As a consequence of Defendants' willful conduct in not paying wages owed timely
7 upon separation of employment, Plaintiff and Class Members are entitled to up to 30 days' wages as
8 a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of
9 employment.

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

11 **VIII.**

12 **FIFTH CAUSE OF ACTION**

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

14 **UNFAIR COMPETITION PURSUANT TO**

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

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

18 45. This is a Class Action for Unfair Business Practices. Plaintiff, on their own behalf and
19 on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant
20 to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this
21 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public,
22 and Class Members. Plaintiff seek to enforce important rights affecting the public interest within the
23 meaning of Code of Civil Procedure § 1021.5.

24 46. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204,
25 and therefore have standing to bring this cause of action for injunctive relief, restitution, and other
26 appropriate equitable relief.

27 47. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
28 practices.

1 48. Wage and hour laws express fundamental public policies. Properly providing
2 employees with all wages due is a fundamental public policy of this State and of the United States.
3 Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor
4 standards, to ensure that employees are not required or permitted to work under substandard and
5 unlawful conditions, and to protect law-abiding employers and its employees from competitors who
6 lower their costs by failing to comply with minimum labor standards.

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

13 50. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
14 §17200 *et seq.* of the Business & Professions Code.

15 51. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
16 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
17 17200 *et seq.* of the Business & Professions Code.

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

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

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IX.

SIXTH CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201, 202, 226(a), 226.7, 512, AND 1198 AND PURSUANT TO LABOR CODE §
2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

54. Plaintiff incorporates paragraphs 1 through 53 of this Complaint as though fully set forth herein.

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

56. Plaintiff also seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.* for Defendants' failure to provide suitable seats to Plaintiff and all persons who are or were employed in California by Defendants as non-exempt employees at any point from October 29, 2020 through December 31, 2022 ("Aggrieved Employees"). Many job positions reasonably permit the use of seating, but Defendants did not provide it and Aggrieved Employees were not permitted to sit down during the course of their employment. This practice violates California Labor Code § 1198 and Wage Order 4-2001, § 14, which provides as follows: "(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties."

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

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 512, and 1198; and

b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 226.3 and 558.

58. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

59. On October 29, 2021, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of October 29, 2021. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees she seeks to represent request relief as described below.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§ 226.7 and 512;

2. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;

3. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members;

4. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;

5. An award of prejudgment and post-judgment interest;

6. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;

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

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

1 9. Such other and further relief as this Court may deem just and proper.

2 Dated: March 16, 2023

Respectfully submitted,

3
4 GAINES & GAINES
A Professional Law Corporation

5 By: _____
6 DANIEL F. GAINES
7 EVAN S. GAINES
Attorneys for Plaintiff

8
9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

11 Dated: March 16, 2023

Respectfully submitted,

12 GAINES & GAINES
A Professional Law Corporation

13
14 By: _____
15 DANIEL F. GAINES
16 EVAN S. GAINES
Attorneys for Plaintiff