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Attorneys for Plaintiff ARNOLD SERRANO
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

ARNOLD SERRANO, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

COOL TIME, LLC, a California Corporation;
and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2021-00312356

*Assigned for All Purposes to Hon. Lauri A. Damrell,
Department 28*

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN SUPPORT
OF PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: August 4, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri A. Damrell

Filed: December 8, 2021

FAC Filed: February 10, 2022

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	Plaintiff's Itemized Costs
E	Proof of Submission of Proposed Settlement Agreement to LWDA
F	Summary of Plaintiff's Counsel's Hours

Dated: July 11, 2023

Shimoda & Rodriguez Law, PC

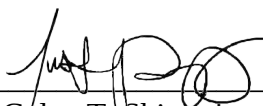
By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Renald Konini
 Attorneys for Plaintiff

EXHIBIT A

1 Galen T. Shimoda (Cal. State Bar No. 226752)
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17 Attorneys for COOL TIME, LLC

18 **SUPERIOR COURT OF CALIFORNIA**
19 **FOR THE COUNTY OF SACRAMENTO**

20 ARNOLD SERRANO, individually and on
21 behalf of all other similarly situated employees,

22 Plaintiff,

23 vs.

24 COOL TIME, LLC, a California Corporation ;
25 and DOES 1 to 100, inclusive,

26 Defendant.

Case No.: 34-2021-00312356

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: December 8, 2021
FAC Filed: February 10, 2022
Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the Plaintiff Arnold Serrano (“Plaintiff”), on behalf of himself, the Labor and
3 Workforce Development Agency, Class Members, and Aggrieved Employees, and Defendant Cool Time,
4 LLC (“Defendant”). This Agreement is subject to the terms and conditions set forth below and the approval
5 of the Court.

6 **1. DEFINITIONS**

7 The following terms, when used in this Agreement, have the following meanings:

8 1.1 “Action” means the above stated lawsuit, *Serrano v. Cool Time, LLC*, Sacramento County
9 Superior Court, Case No. 34-2021-00312356, filed December 8, 2021.

10 1.2 “Aggrieved Employee(s)” means all non-exempt employees who have, or continue to, work
11 for Defendant in California, from November 11, 2020, up to either (1) the Preliminary Approval Date, or
12 (2) sixty (60) days after this Agreement is signed, whichever is earlier. The estimated number of Aggrieved
13 Employees is 43.

14 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation
15 Regarding Class Action and PAGA Settlement and Release.

16 1.4 “Class Counsel” means Galen T. Shimoda, Justin P. Rodriguez and Renald Konini of
17 Shimoda & Rodriguez Law, PC.

18 1.5 “Class Member(s)” means all non-exempt employees who have, or continue to work, for
19 Defendant in California from December 8, 2017, up to either (1) the Preliminary Approval Date, or (2)
20 sixty (60) days after this Agreement is signed, whichever is earlier. The estimated number of Class
21 Members is 74.

22 1.6 “Class Period” means December 8, 2017 up to either (1) the Preliminary Approval Date, or
23 (2) sixty (60) days after this Agreement is signed, whichever is earlier.

24 1.7 “Class Representative” means Plaintiff Arnold Serrano.

25 1.8 “Class Representative's Released Claims” means all claims arising from, could have been
26 asserted, or related in any way to the Class Representative's employment with Defendant, under federal,
27 state, or local laws, and/or ordinances, or tort or contract theories, whether known or unknown, and whether
28 anticipated or unanticipated, including without limitation statutory, constitutional, contractual or common

1 law claims for lost wages, unpaid wages, emotional distress, punitive damages, special damages, damages,
2 unpaid costs, penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution, equitable
3 relief or other similar relief or claims. The Class Representative's Released Claims exclude claims for
4 workers' compensation, unemployment insurance benefits, or other claims that cannot be released as a
5 matter of law.

6 1.9 "Complaint" means the operative Complaint on file in the Action with the Court.

7 1.10 "Court" means the Sacramento County Superior Court.

8 1.11 "Defendant" means Cool Time, LLC.

9 1.12 "Defendant's Counsel" means MEDINA McKELVEY LLP.

10 1.13 "Enhancement Payment" means the amount approved by the Court to be paid to the Class
11 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
12 of Class Members, which is in addition to any Individual Settlement Amount paid to the Class
13 Representative as a Participating Class Member.

14 1.14 "Effective Date" means the Final Approval Date unless there is a timely objection lodged
15 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day
16 after a signed order approving this settlement has been filed provided no appellate proceeding having been
17 filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been
18 finally dismissed with no material change to the terms of this settlement and there is no right to pursue
19 further remedies or relief, whichever is later.

20 1.15 "Final Approval Date" means the date a signed order granting final approval of this
21 Agreement is filed with the Court.

22 1.16 "Gross Settlement Amount" is the sum of One Hundred Five Thousand (\$105,000.00).

23 1.17 "Individual Settlement Amount" means an individual Class Member's and Aggrieved
24 Employee's allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in
25 Sections 1.19, 1.23, 5.5, and 5.8.

26 1.18 "LWDA" means the California Labor and Workforce Development Agency.

27 1.19 "Net Settlement Amount" is the portion of the Gross Settlement Amount available for
28 distribution to Class Members, as described in this Agreement, after deduction of Class Counsel's

attorneys' fees and litigation costs, Settlement Administrator Costs, the PAGA Payment, and Enhancement Payment to the Class Representative.

1.20 "Notice of Settlement" means the document substantially in the form attached hereto as Exhibit 1.

1.21 "Notice Period" means sixty (60) calendar days from the initial mailing of the Notice of Settlement to Class Members and Aggrieved Employees.

1.22 "PAGA" means the Private Attorneys General Act.

1.23 "PAGA Payment" means the amount allocated from the Gross Settlement Amount towards resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

1.24 "PAGA Claim Period" means November 11, 2020, up to either (1) the Preliminary Approval Date, or (2) sixty (60) days after this Agreement is signed, whichever is earlier.

1.25 "Parties" mean Defendant and Plaintiff.

1.26 "Participating Class Member" means any and all Class Members who have not made any timely request to opt-out of the Agreement.

1.27 "Preliminary Approval Date" means the date a signed order granting preliminary approval of this Agreement is filed with the Court.

1.28 "QSF" means a Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Participating Class Members and/or Aggrieved Employees and from which the payments under this Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall remain the property of Defendant until the payments required under the Agreement are made.

1.29 "Qualifying Workweeks" are weeks worked by Class Members and/or Aggrieved Employees during the Class Period and/or PAGA Claim Period, respectively, in California. For Class Members, workweeks shall be defined as the total length of service (in days) in California during the Class Period divided by seven. For Aggrieved Employees workweeks shall be defined as the total length of service (in days) in California during the PAGA Claim Period divided by seven. The calculation of a Class Member's and/or Aggrieved Employee's workweeks and a determination as to whether a Class Member and/or Aggrieved Employee was actively employed in California in a particular workweek shall be construed from Defendant's records.

1 1.30 “Released Class Claims” means any and all class claims that are alleged in the Complaint,
2 and any additional wage and hour claims that could have been brought based on the facts alleged in the
3 Complaint, through the Class Period. This release excludes the release of claims not permitted by law.
4 The Released Class Claims exclude claims for workers’ compensation or unemployment insurance
5 benefits. This release will cover all Class Members who do not opt out.

6 1.31 “Released PAGA Claims” means any and all claims that were brought under the Private
7 Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the Complaint and any additional wage
8 and hour PAGA claims that could have been brought based on the facts alleged in the Complaint during
9 the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

10 1.32 “Released Parties” means Defendant, as well as Defendant's officers, shareholders,
11 directors, agents, employees, attorneys, and insurers.

12 1.33 “Settlement Administrator” means and refers to ILYM Group, Inc., the third-party entity
13 that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party administrator
14 agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The
15 Parties each represent that they do not have any financial interest in the Settlement Administrator.

16 1.34 “Settlement Administrator Costs” means the fees and expenses reasonably incurred by the
17 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
18 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
19 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees
20 associated with preparing, issuing and mailing any and all notices and other correspondence to Class
21 Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class
22 Members and/or Aggrieved Employees, Class Counsel, and Defendant's Counsel; all costs and fees
23 associated with computing, processing, reviewing, and paying the Individual Settlement Amounts, and
24 resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any,
25 making related payment to federal and state tax authorities, if any, and issuing tax forms relating to
26 payments made under the Agreement; all costs and fees associated with preparing any tax returns and any
27 other filings required by any governmental taxing authority or agency; all costs and fees associated with
28 preparing any other notices, reports, or filings to be prepared in the course of administering Individual

1 Settlement Amounts; and any other costs and fees incurred and/or charged by the Settlement Administrator
2 in connection with the execution of its duties under this Agreement.

3 **2. DESCRIPTION OF THE LITIGATION**

4 2.1 On or about November 11, 2021, Plaintiff sent notice to the LWDA to exhaust
5 administrative remedies under the PAGA for (1) Violation of Labor Code §§ 510, 1194; IWC Wage Order
6 5, § 3 (Failure to Pay Overtime Wage), (2) Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 5
7 § 4 (Failure to Pay Minimum Wages), (3) Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5,
8 §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premium in Lieu Thereof), (4) Violation of
9 Labor Code § 226.7 and Wage Order No. 5 § 12(A) (Failure to Provide Rest Periods or Pay Premium in
10 Lieu Thereof), (5) Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements),
11 (6) Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages), (7) Violation of Labor Code §
12 2802 (Failure to Pay Reimbursement for Expenses), (8) Violation of Labor Code §§ 558, 558.1 (Provision
13 Regarding Hours and Days of Work in Any Industrial Welfare Commission Order), and (9) Violation of
14 Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records) . The LWDA did not respond to the
15 notice within the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private
16 Attorneys General on all alleged PAGA claims.

17 2.2 On or about December 8, 2021, Plaintiff filed a class action Complaint in Sacramento
18 County Superior Court on behalf of himself and Class Members alleging claims for (1) Violation of Labor
19 Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wage), (2) Violation of Labor Code
20 §§ 1194, 1197.1; IWC Wage Order 5 § 4 (Failure to Pay Minimum Wages), (3) Violation of Labor Code
21 §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premium
22 in Lieu Thereof), (4) Violation of Labor Code § 226.7 and Wage Order No. 5 § 12(A) (Failure to Provide
23 Rest Periods or Pay Premium in Lieu Thereof), (5) Violation of Labor Code §§ 226, 226.3 (Failure to
24 Provide Accurate Wage Statements), (6) Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final
25 Wages), (7) Violation of Labor Code § 2802 (Failure to Pay Reimbursement for Expenses), (8) Violation
26 of California Unfair Competition Law, Business & Professions Code §§ 17200 *et seq.* and violations of
27 California Labor Code §§ 226.7, 510, 512, and 1194. Plaintiff filed a First Amended Complaint on
28

1 approximately February 10, 2022 to add a PAGA cause of action based on the violations alleged in the
2 November 11, 2021 notice to the LWDA on behalf of himself and Aggrieved Employees.

3 2.3 Through informal discovery, Defendant and Defendant's Counsel provided Class Counsel
4 with copies of all applicable versions of its policies and procedures, employee handbooks, information on
5 Class Members including, but not limited to, Class Members' workweeks, dates of employment, total
6 number of Class Members, their rates of pay, and pay periods as well as timecard data and payroll reports
7 for a randomly selected sample of Class Members.

8 2.4 After Class Counsel received the data, the Parties engaged in informal settlement
9 negotiations, but were not able to come to a resolution. The Parties participated in lengthy negotiations.
10 At the conclusion of the negotiations, the Parties were able to come to a resolution. At all times, the Parties'
11 settlement negotiations have been non-collusive, adversarial, and at arm's length.

12 2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties, document
13 productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and the
14 detailed analysis of the records, including expert analysis, have permitted each side to assess the relative
15 merits of the claims and the defenses to those claims.

16 2.6 In the Action, Plaintiff contends that Defendant violated California law by: (1) failing to
17 pay overtime wages, (2) failing to pay minimum wages, (3) failing to provide meal periods or pay premiums
18 in lieu thereof, (4) failing to provide rest periods or pay premiums in lieu thereof, (5) failing to provide
19 accurate wage statements, (6) failing to timely pay all final wages, (7) failing to reimburse employees for
20 incurred expenses, (8) failing to maintain accurate records, (9) engaging in unfair competition, and (10)
21 committing PAGA violations. Defendant has denied each of Plaintiff's claims and Defendant has denied
22 that this Action is appropriate for class certification for anything other than settlement purposes. The
23 agreed upon Gross Settlement Amount was reached after evaluating the Parties' theories of potential
24 exposure for the underlying claims and the class data supporting these claims. The Parties also assessed
25 appropriate discounts to the potential liability based on Defendant's factual and legal contentions and
26 defenses.

27 2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery
28 and the information exchanged to date, are more than sufficient to assess the merits of the respective

Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel have concluded that it is desirable that the Action be settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

3. THE CONDITIONAL NATURE OF THIS AGREEMENT

3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis. If the Effective Date does not occur, or if the Court's approval of the settlement is reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or the Effective Date does not occur, Defendants do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

4. SCOPE OF THE CLASS

1 4.1 The scope of the class of individuals encompassed under the Agreement and subject to all
2 obligations and duties required under the Agreement, shall include all Class Members as defined in Section
3 1.5 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class
4 Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in
5 Section 7.5.1.

6 4.2 Only Participating Class Members and Aggrieved Employees are entitled to recover under
7 this Agreement.

8 4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and
9 wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name
10 did not appear on the class list provided to the Settlement Administrator prior to mailing, may submit a
11 data request to the Settlement Administrator. The data request must contain all of the following
12 information: (a) the full name and, if applicable, Social Security Number of the individual making the
13 request; (b) the name used by such employee as of the time his or her employment with Defendant ended;
14 (c) the individual's dates of employment with Defendant; and (d) a return address to which a response may
15 be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or
16 otherwise submitted to the Settlement Administrator such that it is received before the conclusion of the
17 Notice Period. Upon receipt of any data requests, the Settlement Administrator shall promptly (in no event
18 more than two business days) transmit the data requests to Defendant's Counsel and request that Defendant
19 review its records.

20 4.4 If Defendant agrees that the person listed in a data request is a Class Member and/or
21 Aggrieved Employee, the Settlement Administrator shall promptly mail a Notice of Settlement to the
22 person who submitted the data request, at the address designated for that purpose in the data request. All
23 provisions of this Agreement relating to the Notice of Settlement shall apply to Notice of Settlements sent
24 in response to data requests, and any person who submits a data request and is sent a Notice of Settlement
25 in response shall be treated by the Settlement Administrator as a Class Member and/or Aggrieved
26 Employee for all other purposes.

27 4.5 If Defendant does not agree that the person listed in a data request is a Class Member and/or
28 Aggrieved Employee, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute in

good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request dispute. Defendant's records shall control unless the individual submitting the data request provides persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendant's Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator. The Settlement Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve the dispute. The Settlement Administrator must resolve any dispute submitted to it within seven (7) calendar days after Defendant's Counsel and Class Counsel submit the dispute to the Settlement Administrator. The decision by the Settlement Administrator shall be final as between the parties, subject to Court review.

5. TERMS OF THE SETTLEMENT

The Parties agree as follows:

5.1 Gross Settlement Amount: In consideration and exchange for the releases described in Section 6, Defendant shall pay the Gross Settlement Amount (\$105,000.00). Funding of the Gross Settlement Amount shall occur within 21 calendar days after the Effective Date to be held in trust in a QSF by the Settlement Administrator. The Gross Settlement Amount includes payments to Participating Class Members, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering the Agreement (including Settlement Administrator Costs), and obtaining final approval of the Agreement, the Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary to satisfy Defendant's employer-side payroll tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage payments) on any monies distributed to Participating Class Members will be paid in addition to the Gross Settlement Amount.

5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the 35% threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to exceed \$4,000, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not exceed

the \$4,000 threshold. The Settlement Administrator will issue Class Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class Counsel shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the Gross Settlement Amount and shall not exceed \$10,000. The difference between any actual costs and the allocated \$10,000 shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for an Enhancement Payment to the Class Representative in an amount not to exceed Ten Thousand Dollars (\$10,000) to compensate for the risks, time, and expense of his involvement in the Action and securing the benefits of this Agreement for Class Members. The Enhancement Payment is in addition to the Individual Settlement Amount Plaintiff would otherwise be due under the Agreement as a Participating Class Member. Defendant has agreed to not oppose Class Counsel's request for an Enhancement Payment to Plaintiff so long as it does not exceed the amount stated herein. The Enhancement Payment will be designated as a non-wage payment and reported on an IRS Form 1099-MISC. In the event that the Court awards less than the Enhancement Payment amount requested, then any portion of the requested amount not awarded to the Class Representative shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

5.5 PAGA Payment: Five Thousand Dollars (\$5,000) of the Gross Settlement Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro rata basis as described below in Section 5.8. Any amount not approved by the Court for the allocated PAGA Payment shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or PAGA Payment allocated to Participating Class Members and/or Aggrieved Employees that were not claimed by

1 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be
2 donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine
3 of *cy pres*. No portion of the Gross Settlement Amount will revert to Defendant for any reason. Defendant
4 shall not be required to pay any interest on any unclaimed amounts that are donated to the *cy pres*
5 beneficiaries. Any interest that is generated on the unclaimed amounts shall also be donated to the *cy pres*
6 beneficiaries, but Defendant shall not be responsible for paying any interest that could have been generated
7 on the unclaimed amounts.

8 5.7 No Additional Benefits Contributions: All Individual Settlement Amounts paid to
9 Participating Class Members and Aggrieved Employees shall be deemed to be income solely in the year in
10 which such amounts were actually received. It is expressly understood and agreed that the receipt of such
11 Individual Settlement Amounts will not entitle any Participating Class Member or Aggrieved Employee to
12 any new or additional compensation or benefits under any company bonus or other compensation or benefit
13 plan or agreement in place during the period covered by the Agreement, nor will it entitle any Participating
14 Class Member Aggrieved Employee to any increased retirement, 401(k) and/or 403(b) benefits or matching
15 benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual Settlement
16 Amounts provided for in this Agreement are the sole payments to be made by Defendant to the Participating
17 Class Members and Aggrieved Employees in connection with this Agreement (notwithstanding any
18 contrary language or agreement in any benefit or compensation plan document that might have been in
19 effect during the period covered by this Agreement).

20 5.8 Pro Rata Distribution Formula: Payment to Participating Class Members and Aggrieved
21 Employees of their Individual Settlement Amount will not require the submission of a claim form. A Net
22 Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for
23 approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Settlement
24 Administrator Costs, and the PAGA Payment. Each Class Member's share will be initially determined by
25 dividing their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of
26 all Class Members. That fraction will then be multiplied by the Net Settlement Amount to arrive at the
27 Class Member's individual share of the Net Settlement Amount. Any funds allocated to Class Members
28 under this formula who timely opt out of the Settlement will be redistributed to Participating Class

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2 donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine
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13 plan or agreement in place during the period covered by the Agreement, nor will it entitle any Participating
14 Class Member Aggrieved Employee to any increased retirement, 401(k) and/or 403(b) benefits or matching
15 benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual Settlement
16 Amounts provided for in this Agreement are the sole payments to be made by Defendant to the Participating
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23 approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Settlement
24 Administrator Costs, and the PAGA Payment. Each Class Member's share will be initially determined by
25 dividing their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of
26 all Class Members. That fraction will then be multiplied by the Net Settlement Amount to arrive at the
27 Class Member's individual share of the Net Settlement Amount. Any funds allocated to Class Members
28 under this formula who timely opt out of the Settlement will be redistributed to Participating Class

Members on a pro rata basis, *i.e.* each Participating Class Member's share will be determined by dividing their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of all Participating Class Members and that fraction will then be multiplied by the Net Settlement Amount to arrive at the Participating Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total Qualifying Workweeks within the PAGA Claim Period by the total Qualifying Workweeks by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share.

5.9 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to Participating Class Members and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties and wages. The Settlement Administrator shall calculate the employer's share of payroll taxes on the amounts paid to Participating Class Members as wages as well as calculating all required withholdings and deductions from said wage payments. The characterization of Individual Settlement Amounts to Participating Class Members and Aggrieved Employees are as follows:

5.9.1 20% of each Participating Class Members' Individual Settlement Amount shall be allocated for payment of disputed wages and shall be subject to required employer taxes. Participating Class Members shall receive an IRS Form W-2 for reporting of this portion of their Individual Settlement Amount.

5.9.2 80% of each Participating Class Members' Individual Settlement Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for which the Participating Class Members shall receive an IRS Form 1099-MISC.

5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for which the Aggrieved Employees shall receive an IRS Form 1099-MISC.

5.10 Participating Class Members and Aggrieved Employees shall be solely responsible for the reporting and payment of their share of any federal, state and/or municipal income or other taxes on

1 payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendant's
2 Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable,
3 including the treatment of such payments as not subject to withholding or deduction for payroll and
4 employment taxes. No party has made any representation to any of the other Parties as to the taxability of
5 any payments pursuant to this Agreement, including the payments to Participating Class Members, the
6 payments to Aggrieved Employees, the payments to Class Counsel, the payments to the Class
7 Representative, the payroll tax liability of Defendant, or the allocation of the Net Settlement Amount or
8 PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax
9 implications of any provision of this Agreement.

10 5.11 No Additional Contribution by Defendant: Defendant's monetary obligation under this
11 Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on
12 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
13 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless
14 expressly provided otherwise herein. However, in the event this agreement is deemed null and void as
15 described in Section 3 because the Court, in its independent determination, finds that the Agreement does
16 not meet the standards for settlement approval, then Defendant and Plaintiff shall be equally responsible
17 for the costs of the Settlement Administrator incurred between the date the Agreement was executed and
18 the date of such event.

19 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
20 only, certification of the class as defined in Section 1.5 and 4.1 is appropriate and the requisites for
21 establishing class certification have been met and are met.

22 5.13 Adequacy of Class Counsel and Class Representative: The Parties agree that, for purposes
23 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and
24 Aggrieved Employees.

25 **6. RELEASE**

26 6.1 Release of Claims by Participating Class Members: Upon the Effective Date, all
27 Participating Class Members will be deemed to fully, finally and forever release the Released Class Claims
28 as to all Released Parties. In addition, on the Effective Date, all Participating Class Members and their

1 successors in interest will be permanently enjoined and forever barred from prosecuting any of Released
2 Class Claims against any of the Released Parties.

3 6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved
4 Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all
5 Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in
6 interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA
7 Claims against any of the Released Parties.

8 6.3 Release by Plaintiff: Upon the Effective Date, Plaintiff will be deemed to fully, finally and
9 forever release the Released Class Claims, Released PAGA Claims, and Class Representative's Released
10 Claims as to all Released Parties. In addition, on the Effective Date, Plaintiff and any successors in interest
11 will be permanently enjoined and forever barred from prosecuting any of the Released Class Claims,
12 Released PAGA Claims, and Class Representative's Released Claims against any of the Released Parties.

13 **7. SETTLEMENT ADMINISTRATION**

14 7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible for:
15 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are
16 valid; 2) calculating estimated Individual Settlement Amounts and any and all taxes associated with the
17 Individual Settlement Amounts, including employer-side payroll taxes; 3) taking appropriate steps to trace
18 and locate any individual Class Members and Aggrieved Employee whose address or contact information
19 as provided to the Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement
20 to Class Members; 4) providing notification to the appropriate state and federal officials of this Agreement
21 as required under the law; 5) receiving, independently reviewing, and resolving any challenges (in
22 consultation with Class Counsel and Defendant's Counsel) from Class Members or Aggrieved Employees,
23 including any associated documentation, regarding their Qualified Workweek calculations; 6) receiving
24 and serving on Class Counsel, Defendant's Counsel, and the Court, copies of any written objections, and/or
25 any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and requests
26 for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9)
27 determining and paying the final amounts due to be paid under the Agreement after resolution of all
28 challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement Administrator Costs, PAGA

1 Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability
2 to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late opt-
3 outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual funds
4 from uncashed checks; 12) reporting to Class Counsel and Defendant's Counsel regarding the statistics of
5 the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of
6 forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of
7 total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable
8 Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the
9 number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes
10 received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final
11 statistics of the administration and compliance with all payment obligations under the Agreement; 14)
12 completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts to
13 Participating Class Members and Aggrieved Employees; and 15) carrying out other related tasks as
14 necessary to effectuate the terms of this Agreement and any Order of the Court. All disputes relating to
15 the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if
16 necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until
17 all payments and obligations contemplated by the Agreement have been fully executed.

18 7.2 Notice to Class Members and Aggrieved Employees: Defendant represents and warrants
19 that Class Members and Aggrieved Employees are able to read and write in English such that no translation
20 of the Notice of Settlement into another language is necessary. The Notice of Settlement will provide Class
21 Members and Aggrieved Employees with a summary of the terms and conditions of the Agreement, how
22 to participate in the settlement, how to object to the Agreement, how to dispute the individual's Qualifying
23 Workweeks, and how to opt-out from the Agreement. The Notice of Settlement will also inform Class
24 Members and Aggrieved Employees of the Gross Settlement Amount, Net Settlement Amount, proposed
25 attorneys' fees and costs allocations, any proposed Enhancement Payments, proposed Settlement
26 Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the class, the nature and
27 extent of the released claims, dates set for a fairness hearing and hearing on Class Counsels' motion for
28 attorneys' fees and costs. The Notice of Settlement shall include information regarding Class Member's

1 and Aggrieved Employee's estimated Individual Settlement Amount. The Notice of Settlement will
2 provide information on how to access electronic copies online of the Notice of Settlement, any motions for
3 approval of the Agreement, any motions for approval of attorneys' fees and costs, and any other documents
4 as the Court directs.

5 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
6 Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the name, last
7 known mailing address, last known telephone number, Social Security Number, last known email address
8 (if any), start and end date of employment (if any) of each Class Member and Aggrieved Employee, and
9 any other information the Settlement Administrator needs to effectuate notice to Class Members and
10 Aggrieved Employees as outlined herein. The Settlement Administrator shall review the data to determine
11 the number of Qualifying Workweeks for each Class Member and Aggrieved Employee. No later than
12 fourteen (14) calendar days after receipt of such address information, the Settlement Administrator will
13 perform a national change of address ("NCOA") search, update the addresses per the results of the NCOA
14 search, and then mail the Notice of Settlement, substantially in the form attached as Exhibit 1, to each Class
15 Member and Aggrieved Employee by first-class mail, postage prepaid. The Settlement Administrator shall
16 maintain all information received from Defendant confidential to itself, and Defendant's Counsel.
17 However, Class Counsel shall be able to review the breakdown of Qualified Workweeks and estimated
18 Individual Settlement Amounts for Class Members and Aggrieved Employees prior to mailing for quality
19 assurance provided the personal identifying information is redacted and/or omitted.

20 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
21 is returned to the Settlement Administrator as undeliverable on or before the conclusion of the Notice
22 Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5)
23 calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly
24 attempt to determine a correct address using a skip-trace, computer or other search using the name, address
25 and/or Social Security number of the individual involved, and shall then perform a single re-mailing within
26 five (5) calendar days to any more recent address found as a result of the search. Following each search
27 that does not result in a corrected address, for those Class Members who appear to be current employees
28 of Defendant at the time of the Preliminary Approval Date, the Settlement Administrator shall contact

1 Defendant's Counsel for assistance and Defendant shall cooperate in good faith with the Settlement
2 Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they
3 are active employees of Defendant. In the event the Notice of Settlement is forwarded to a new address
4 and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out,
5 a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-
6 mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are
7 followed and the Class Member does not timely and properly request to opt-out, the Class Member shall
8 be bound by all terms of the Agreement, including the releases contained in Section 6.

9 7.5 Responses to Notice of Settlement:

10 7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish to
11 exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The
12 request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or
13 she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be
14 excluded from the settlement; (c) identify the case name and number (i.e. Serrano v. Cool Time, LLC, Case
15 No. 34-2021-00312356); (d) be signed; and (e) be post-marked no later than the conclusion of the Notice
16 Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign the request
17 to opt-out. No request to opt-out may be made on behalf of a group of Class Members. The date of the
18 postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request
19 to opt-out has been timely submitted. Any Class Member who requests to opt-out of the Agreement will
20 not be entitled to any portion of the Net Settlement Amount nor will they have any right to object, appeal
21 or comment thereon. The name of any Class Member who submits a valid and timely opt out request will
22 be specifically identified in any proposed order granting final approval. Class Members who fail to submit
23 a valid and timely request to opt-out shall be bound by all terms of the Agreement and any order or final
24 judgment thereon. Regardless of whether an Aggrieved Employee opts out of being a Class Member, they
25 will still receive their share of the PAGA Payment as Aggrieved Employees cannot opt out of this
26 Agreement as it relates to the PAGA Payment or Released PAGA Claims.

27 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes to
28 object to this Agreement or otherwise to be heard concerning this Agreement shall send their written

1 objections to the Settlement Administrator and also serve copies of the objections on Class Counsel and
2 Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny
3 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's
4 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
5 the reasons for the objection(s), including any supporting documentation; (d) identify the case name and
6 number (*i.e.* Serrano v. Cool Time, LLC, Case No. 34-2021-00312356) (e) be signed; and (f) be post-
7 marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4.
8 The Notice of Settlement will inform the Class Member that they should also file a notice of intent to
9 appear with the Court and serve the notice on Class Counsel and Defendant's Counsel, if they intend to
10 appear at the final approval hearing.

11 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
12 Workweeks on the Notice of Settlement shall contact the Settlement Administrator. The dispute must (a)
13 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c)
14 be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
15 timeline stated in Section 7.4. The Settlement Administrator shall promptly (in no event more than two
16 business days) forward all such disputes to Defendant's Counsel and request that Defendant reviews the
17 dispute. Defendant's records shall presumptively control unless the Class Member can produce
18 documentation evidencing other periods of employment worked. If Defendant agrees with submitted
19 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with
20 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that
21 Class Member's Individual Settlement Amount. If Defendant disagrees with the submitted information,
22 Defendant's Counsel will promptly advise Class Counsel of the dispute, which includes turning over any
23 documentation submitted by the Class Member as part of the dispute. Defendant's Counsel and Class
24 Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class
25 Counsel being advised of the dispute. Each dispute that Defendant's Counsel and Class Counsel cannot
26 timely resolve shall be resolved by the Settlement Administrator, subject to Court review.

27 7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
28 objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement

1 Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the
2 deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure
3 the deficiency shall be the end of the Notice Period or 10 calendar days from the date of the deficiency
4 letter, whichever is later.

5 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
6 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
7 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
8 Counsel or Defendant's Counsel to provide notice of the proposed Agreement.

9 7.7 Settlement Administrator Declaration Regarding Notice Period: Within fourteen (14)
10 calendar days after the conclusion of the Notice Period, the Settlement Administrator shall provide Class
11 Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete
12 and detailed report regarding the statistics and responses of settlement administration to date and all the
13 Settlement Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

14 7.8 Settlement Administrator Payments to Participating Class Members, Class Counsel and
15 Plaintiff: Within seven (7) calendar days after the Effective Date and the Court's determination of the
16 amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to
17 Plaintiff, the PAGA Payment, and Settlement Administrator Costs, the Settlement Administrator shall
18 calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class
19 Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these
20 calculations Class Counsel and Defendant's Counsel. Defendant shall wire the Gross Settlement Amount
21 and applicable employer-side payroll taxes necessary to fund the Settlement as described in Section 5.1 to
22 the Settlement Administrator within twenty-one (21) calendar days after the Effective Date to be to be held
23 in trust in a QSF. Within seven (7) calendar days after Defendant funds the settlement, the Settlement
24 Administrator shall deliver payment of Class Counsels' attorney's fees and costs, the Enhancement
25 Payment payable to Plaintiff, the 75% portion of the PAGA Payment payable to the LWDA, Settlement
26 Administrator Costs, and payment to Participating Class Members and/or Aggrieved Employees as
27 required under this Agreement and approved by Court.
28

1 7.8.1 The Settlement Administrator shall wire the Court-approved attorneys' fees and
2 costs to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide
3 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
4 after the Final Approval Date.

5 7.8.2 The Settlement Administrator shall send a check by mail for the Court-approved
6 Enhancement Payment to the Class Representative, care of Class Counsel unless another method is
7 requested by Class Counsel.

8 7.8.3 Only Participating Class Members and Aggrieved Employees will receive their
9 Individual Settlement Amount.

10 7.8.4 The Settlement Administrator shall remit and report the applicable portions of the
11 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this
12 Agreement. Defendant agree to reasonably cooperate with the Settlement Administrator to the extent
13 necessary to determine the amount of the payroll tax payment required.

14 7.9 Settlement Check Expiration and Uncashed Checks: The Settlement Administrator shall
15 issue Individual Settlement Amounts to Participating Class Members and Aggrieved Employees in the
16 form of a check, which shall become null and void if not deposited within one hundred eighty (180)
17 calendar days of issuance. After one hundred eighty (180) calendar days of issuance, the checks shall be
18 voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The
19 Settlement Administrator shall deliver these funds within fourteen (14) calendar days after the check
20 cashing deadline.

21 7.10 Settlement Administrator Declaration Regarding Compliance and Settlement
22 Administration: Within twenty-one (21) calendar days after the last day for Participating Class Members
23 and Aggrieved Employees to cash their settlement checks, the Settlement Administrator shall provide Class
24 Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete
25 and detailed report regarding the settlement administration documenting that all payments under the
26 Agreement have been made, that the Court's final approval order has been complied with, and that all the
27 obligations of the Settlement Administrator have been completed.

28 **8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE**

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund settlement	Within 21 calendar days after the Effective Date
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement

Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will provide comments and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from Class Counsel. With regard to the final approval documents, a similar one-week maximum review and response time shall be observed by the Parties. The Parties will request that the Court's preliminary approval of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA Settlement.

9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2) Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily appointing

1 Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement
2 administration services to be provided by the Settlement Administrator; 6) Preliminarily approving the
3 proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment of
4 reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)
5 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
6 approved as fair, reasonable and adequate as to the Class Members.

7 9.1.2 Defendant shall not oppose Plaintiff's motion for approval of the proposed
8 Agreement.

9 9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during
10 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
11 appropriate to assure effective communication to individual Class Members of information about their
12 rights and obligations under this Agreement.

13 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
14 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
15 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
16 Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the
17 Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results
18 of the Claim Administrator's mailings including tracing and re-mailing efforts.

19 9.2.1 Class Counsel and Defendant shall work in good faith to draft a mutually agreeable
20 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment. The
21 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment shall
22 include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable
23 and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an
24 Enhancement Payment to the Class Representative; 3) Approving Class Counsel's application for an award
25 of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4) Approving the Settlement
26 Administrator Costs; and 5) Providing that the Court will retain jurisdiction to oversee administration and
27 enforcement of the terms of the Agreement and the Court's orders.
28

9.2.2 Following entry of the Court's order granting final approval of the Agreement, the Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following:

1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class Counsel will assist the Settlement Administrator as needed or requested in the process of identifying and locating Participating Class Members and Aggrieved Employees entitled to payments under the Agreement and assuring delivery of such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each other and assist the Settlement Administrator as needed or requested in completing the distribution of any residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with the Settlement Administrator, will certify to the Court completion of all payments required to be made by this Agreement.

9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment.

9.4 Notice to LWDA: Plaintiff will provide notice to the Labor and Workforce Development Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

10. MISCELLANEOUS TERMS

10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date, 20% or more of the Class Members have submitted proper and timely requests to opt-out in accordance with the provisions of the Agreement, Defendant may rescind the Agreement and all actions taken in its furtherance will be thereby null and void. Defendant must exercise this right of rescission, in writing, to Class Counsel, within seven (7) calendar days after the Settlement Administrator notifies the Parties of the total number of opt-outs. If the option to rescind is exercised, then any Settlement Administrator Costs shall be paid by Defendant. Defendant has represented that there are no more than 2,339 workweeks during the Class Period (as calculated through March 15, 2022). In the event the number of workweeks during the Class Period is more than 2,806.8 (*i.e.*, greater than 20% more than 2,339), then the Gross Settlement Amount shall be increased proportionally by the workweeks in excess of 2,339, multiplied by the pay period value. Alternatively, Defendant may, at its discretion, adjust the end of the release period to an earlier date in order to ensure that the number of released workweeks during

1 the Class Period does not exceed 2,806 workweeks. Additionally, Defendant reserves the right to work
2 with the settlement administrator to identify dates of employment that may include periods of
3 inactivity, such as vacation time, sick time, or extended leaves of absence in order to deduct these times
4 periods from the dates of employment for each Class Member in order to most accurately identify
5 actual and unique workweeks for each Class Member.

6 10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
7 THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT
8 OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND
9 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
10 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
11 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
12 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
13 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
14 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
15 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
16 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
17 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
18 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
19 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
20 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX
21 PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
22 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
23 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX
24 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
25 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
26 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY
27 THIS AGREEMENT.

1 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
2 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
3 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
4 and discharged in this Agreement.

5 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
6 signing this Agreement Defendant is waiving any rights to appeal from the Court's approval of the
7 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
8 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

9 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
10 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
11 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

12 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment will
13 be entered according to this Agreement. The Parties stipulate and agree that the Sacramento County
14 Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil
15 Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of the
16 Agreement after default by the other party may recover reasonable attorney's fees and costs related thereto.

17 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
18 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution
19 of such other documents and the taking of such other action as may reasonably be necessary to fulfill the
20 terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
21 contemplated by this Agreement and any other efforts that may become necessary by Court order, or
22 otherwise, to effectuate this Agreement and the terms set forth herein.

23 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendant of
24 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
25 be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the
26 Complaint, the representative character of the Action, the validity of any of the claims that were or could
27 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of Defendant
28 in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by Defendant

1 of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or any other
2 person, and Defendant specifically disclaim any liability, culpability, negligence, or wrongdoing toward
3 Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this Stipulation with
4 the intention to avoid further disputes and litigation.

5 10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
6 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
7 third business day after mailing by United States certified mail, return receipt requested, addressed as
8 follows:

9 To Plaintiff and the Class:

10 Galen T. Shimoda
11 Justin P. Rodriguez
12 Renald Konini
13 Shimoda & Rodriguez Law, PC
14 9401 East Stockton Blvd., Suite 120
15 Elk Grove, CA 95624

16 To Defendant:

17 Brandon R. McKelvey
18 Douglas R. Leach
19 MEDINA McKELVEY LLP
20 925 Highland Pointe Drive, Suite 300
21 Roseville, California 95678
22 Telephone: (916) 960-2211
23 Facsimile: (916) 742-5488

24 10.10 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
25 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
26 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
27 party or its counsel participated in the drafting of this Agreement.

28 10.11 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys
acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover
any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except
as expressly provided in this Agreement.

1 10.12 No Modifications: This Agreement may be amended or modified only by a written
2 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
3 discharged except by performance in accordance with its terms.

4 10.13 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
5 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and
6 to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
7 to effectuate its terms and to execute any other documents required to effectuate the terms of this
8 Agreement.

9 10.14 Class Member Signatories: Because the Action has not yet been certified, and the Class
10 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
11 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
12 may be executed on behalf of all Class Members by the Class Representative.

13 10.15 Counterparts: This Agreement shall become effective upon its execution by all of the
14 undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement in
15 counterparts, and execution of counterparts shall have the same force and effect as if each had signed the
16 same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force and
17 effect of originals.

18 10.16 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
19 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the
20 rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with,
21 and governed by, the substantive laws of the State of California without giving effect to that State's choice
22 of law principles.

23 10.17 Headings and Captions: Section titles or captions contained in the Agreement are inserted
24 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
25 this Agreement, or any provision thereof.

26 10.18 No Retaliation or Discouragement: The Parties agree they will take no action that could be
27 construed as retaliation against any Class Members for participating or seeking to participate in this class
28 action settlement. The Parties will not discourage any class member from participating or seeking to

1 participate in this class action settlement. This is a material term of the Agreement and non-breaching
2 Parties will seek court intervention if this provision is breached.

3 10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the
4 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
5 Each party acknowledges that there is no representation, inducement, promise or agreement which has been
6 made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which
7 is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the
8 terms of this Agreement are fully understood and voluntarily accepted by the Parties.

9 10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the
10 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

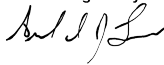
11 10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
12 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
13 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

14 10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this
15 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
16 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

17 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
18 attorneys, as of the day and year herein set forth.

19 **For Plaintiff:**

20 Date: 2/15/2023
21 _____

DocuSigned by:

2EEC0A176EDD485

22 ARNOLD SERRANO

23 **For Defendant:**

24 Date: _____
25 _____

26 By: _____
27 For COOL TIME, LLC
28

1 participate in this class action settlement. This is a material term of the Agreement and non-breaching
2 Parties will seek court intervention if this provision is breached.

3 10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the
4 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
5 Each party acknowledges that there is no representation, inducement, promise or agreement which has been
6 made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which
7 is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the
8 terms of this Agreement are fully understood and voluntarily accepted by the Parties.

9 10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the
10 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

11 10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
12 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
13 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

14 10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this
15 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
16 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

17 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
18 attorneys, as of the day and year herein set forth.

19 **For Plaintiff:**

20 Date: _____

21 _____
ARNOLD SERRANO

22 **For Defendant:**

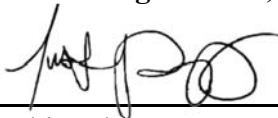
23 Date: 2/17/2023
24 _____

25 DocuSigned by:
26 *Paul Howard*
27 By: Paul Howard
28 For COOL TIME, LLC

1 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

2
3 Dated: February 17, 2023

4 By: 
5 Galen T. Shimoda
6 Justin P. Rodriguez
7 Renald Konini
8 Attorneys for Plaintiff, Class Members, and
9 Aggrieved Employees

10 APPROVED AS TO FORM

MEDINA MCKELVEY LLP

11 Dated: February 17, 2023

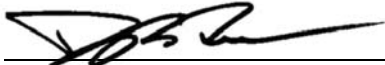
12 By: 
13 Brandon R. McKelvey
14 Douglas R. Leach
15 Attorneys for Defendant
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Exhibit 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

ARNOLD SERRANO, individually and on
behalf of all other similarly situated employees,

Plaintiff,

vs.

COOL TIME, LLC, a California Corporation;
and DOES 1 to 100, inclusive,

Defendant.

Case No. **34-2021-00312356**

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: All non-exempt employees who have or continue to work for Defendant in California from December 8, 2017 to _____ (the "Class Members").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Sacramento County Superior Court ("Court") granting Plaintiff's motion for preliminary approval of a Joint Stipulation of Regarding Class Action PAGA Settlement and Release ("Agreement" or "Settlement") as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Arnold Serrano ("Plaintiff" or "Class Representative"), and Defendant COOL TIME, LLC ("Defendant") on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant's records indicate you fall within the definition of "Class Member." Defendant's records also indicate that you worked _____ weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be _____. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On December 8, 2021, Plaintiff filed a Complaint against Defendant in the Sacramento County Superior Court of California on behalf of himself and Class Members. The term "Action" means this putative class action pending in Sacramento County Superior Court, Case No. 34-2021-00312356. The Class Period is all non-exempt employees who have, or continue to work, for Defendant in California from December 8, 2017, to _____ (the "Class Period").

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees. Plaintiff alleged that Defendant violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to provide meal periods or pay premiums in lieu thereof, 4) failing to provide rest periods or pay premiums in lieu thereof, 5) failing to provide accurate wage statements, 6) failing to timely pay all final wages, 7) failing to reimburse employees for incurred expenses, 8) failing to maintain accurate records, 9) engaging in unfair competition, and 10) committing PAGA violations. Defendant has denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continue to deny all allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all non-exempt employees who have, or continue to, work for Defendants in California, from December 8, 2017 to _____. The Agreement also applies to Aggrieved Employees, which are defined as all non-exempt employees who have, or continue to, work for Defendant in California, from November 11, 2020 to _____. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself ("opt out") from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of One Hundred Thousand Five Dollars (\$105,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount, attorneys' costs not to exceed \$4,000, Settlement Administrator Costs estimated not to exceed \$10,000, Class Representative's Enhancement Payment of Ten Thousand Dollars (\$10,000), and \$5,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$5,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment ("Individual Settlement Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 80% for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and 20% for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. The PAGA Claim Period is defined as November 11, 2020, up to _____. Defendant's records indicate that you worked _____ weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be _____. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than _____. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released any and all class claims that are alleged in the operative Complaint (including the First Amended Complaint), and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint, through the Class Period. This release excludes the release of claims not permitted by law. The Released Class Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the Complaint and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the Complaint during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include Defendant, as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from the being a Class Member if you request this by _____. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e.* *Serrano v. Cool Time, LLC*, 34-2021-00312356); (d) be signed; and (e) be post-marked no later than _____. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by _____, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not received their share of the Net Settlement Amount.

Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (i.e. *Serrano v. Cool Time, LLC*, 34-2021-00312356) (e) be signed; and (f) be post-marked no later than _____. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiff and Defendant at the addresses identified in Section VI of this notice.

If you have submitted a written objection as outlined above, you may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department ___, [address] on _____ at _____ to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representative's Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at the Settlement Administrator's website: [admin web address]. You can also contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Brandon R. McKelvey
Douglas R. Leach
Medina McKelvey LLP
925 Highland Pointe Drive, Suite 300
Roseville, CA 95678
Tel: 916-960-2211
On behalf of Defendant

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]
BY ORDER OF THE COURT**

EXHIBIT B

FILED BY FAX

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Shimoda & Rodriguez Law, PC
4 9401 East Stockton Boulevard, Suite 120
5 Elk Grove, CA 95624
6 Telephone: (916) 525-0716
7 Facsimile: (916) 760-3733

8 Attorneys for Plaintiff ARNOLD SERRANO,
9 individually and on behalf of all other similarly situated employees,

10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF SACRAMENTO**

12 ARNOLD SERRANO, individually and on
13 behalf of all other similarly situated
14 employees,

15 Plaintiff,

16 vs.

17 COOL TIME, LLC, a California Corporation;
18 and DOES 1 to 100, inclusive,

19 Defendants.

Case No. 34-2021-00312356

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Expenses
8. Unfair Competition
9. Private Attorneys General Act

DEMAND FOR JURY TRIAL

20 Plaintiff ARNOLD SERRANO ("Plaintiff"), on behalf of himself and all other similarly
21 situated employees, hereby files this First Amended Complaint against Defendants COOL TIME,
22 LLC, a California Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to
23 as "Defendants"). On information and belief, Plaintiff alleges the following:

FILED
Superior Court Of California,
Sacramento
02/10/2022
reanmigul
By _____, Deputy
Case Number:
34-2021-00312356

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1 **PARTIES**

2 5. ARNOLD SERRANO is an individual over the age of eighteen (18) and is a resident
3 of the State of California.

4 6. On information and belief, Plaintiff alleges COOL TIME, LLC, is now and/or at all
5 times mentioned in this Complaint was a California Corporation and the owner and operator of an
6 industry, business and/or facility doing business in the State of California.

7 7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
8 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
9 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
10 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
11 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within
12 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
13 Plaintiff.

14 8. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
15 were members of and/or engaged in a joint employment, joint venture, partnership and common
16 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
17 joint venture, partnership and common enterprise.

18 9. Defendants, and each of them, now and/or at all times mentioned in this Complaint
19 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

20 10. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
21 wrongs, complaints, injuries and/or damages alleged in this Complaint.

22 **CLASS ALLEGATIONS**

23 11. Plaintiff brings the First through Eighth Causes of Action on behalf of himself and all
24 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.
25 The class which Plaintiff seeks to represent is composed of, and defined, as follows:

26 All non-exempt employees who have or continue to work for Defendants
27 in California from December 8, 2017 to the present.
28

1 12. This action has been brought and may be properly maintained as a class action,
2 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
3 defined community of interests in the litigation and the proposed class is easily ascertainable.

4 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
5 is impracticable under the circumstances of this case. While the exact number of class
6 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
7 Defendants have employed as many as fifty (50) individuals falling within the above
8 stated class definition throughout the State of California during the applicable statute of
9 limitations, who were subjected to the policies and practices outlined in this Complaint.
10 As such, joinder of all members of the putative class is not practicable.

11 (b) Common Questions Predominate: Common questions of law and fact exist as to all
12 members of the putative class and predominate over questions that affect only individual
13 members of the class. These common questions of law and fact include, without
14 limitation, the following:

- 15 (1) Whether Defendants paid Plaintiff and putative class members for all hours
16 worked;
- 17 (2) Whether Defendants paid Plaintiff and putative class members all overtime wages
18 they were owed;
- 19 (3) Whether Defendants failed to authorize and permit Plaintiff and putative class
20 members to take meal periods;
- 21 (4) Whether Defendants failed to authorize and permit Plaintiff and putative class
22 members to take rest periods;
- 23 (5) Whether Defendants failed to authorize and permit second meal periods and third
24 rest periods when Plaintiff and putative class members worked over 10 hours in a
25 day;
- 26 (6) Whether Defendants failed to pay Plaintiff and putative class members all
27 reimbursements owed;
- 28

1 (7) Whether as a result of Defendants' policies and practices Plaintiff's and putative
2 class members received all wages, due and owing, at the time of their termination
3 or separation; and

4 (8) Whether Defendants provided Plaintiff's and putative class members with wage
5 statements that complied with Labor Code section 226.

6 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
7 class. The putative class also sustained damages arising out of Defendants' common
8 course of conduct in violation of the law as complained of herein. Plaintiff and all
9 members of the putative class were not paid minimum wages for all hours worked, not
10 paid overtime for hours worked over eight (8) hours in a day and forty (40) hours in a
11 week, were not permitted uninterrupted meal and rest periods, and were denied
12 reimbursement for business related expenses. These policies and practices resulted in
13 unpaid minimum wages, unpaid overtime wages, unpaid sick time, meal and rest period
14 violations, wage statement violations, waiting time penalties, and unfair competition.
15 Additionally, Defendants issued Plaintiff and all members of the putative class wage
16 statements that did not comply with Labor Code section 226. As a result, Plaintiff and
17 each member of the putative class will have suffered the same type of harm and seek the
18 same type of recovery based on the same legal theories.

19 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
20 putative class. For all relevant times, Plaintiff resided in California and worked for
21 Defendants in California. Moreover, Plaintiff is an adequate representative of the
22 putative class as Plaintiff has no interests that are adverse to those of putative class
23 members. Additionally, Plaintiff has retained counsel who has substantial experience in
24 complex civil litigation and wage and hour matters.

25 (e) Superiority: A class action is superior to other available means for the fair and efficient
26 adjudication of the controversy since individual joinder of all members of the putative
27 class is impracticable. Class action treatment will permit a larger number of similarly
28 situated persons to prosecute their common claims in a single forum simultaneously,

1 efficiently, and without the unnecessary duplication of effort and expense that numerous
2 individual actions would engender. Further, as damages suffered by each individual
3 member of the class may be relatively small, the expenses and burden of the individual
4 litigation would make it difficult or impossible for individual members of the class to
5 redress the wrongs done to them, and an important public interest will be served by
6 addressing the matter as a class action. The cost to the court system of adjudication of
7 such individualized litigation would be substantial. Individualized litigation would also
8 present the potential for inconsistent or contradictory judgments.

9 13. Plaintiff is unaware of any difficulties that are likely to be encountered in the
10 management of this action that would preclude its maintenance as a class action.

11 GENERAL ALLEGATIONS

12 14. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 13 as though fully
13 set forth herein.

14 15. Plaintiff worked for Defendants as a maintenance manager for Defendants' apartment
15 complexes from approximately August 1, 2020 to August 13, 2021, making approximately \$20.00 per
16 hour. Plaintiff would frequently run errands for Defendants, including but not limited to driving his
17 personal vehicle to Home Depot to buy supplies, transferring other employees from various Cool Time,
18 LLC sites and driving himself from assigned sites. As maintenance managers, Plaintiff and similarly
19 situated employees were there to provide planned and emergency repairs to the apartment complexes to
20 keep the apartment complex and individual apartments in working condition.

21 16. Over the course of Plaintiff's employment with Defendants, his hours varied, however,
22 he often worked over eight (8) hours a day and forty (40) per week. In fact, it was Defendants' policy to
23 not provide Plaintiff and similarly situated employees overtime regardless of the number of hours they
24 worked. Defendants specifically instructed Plaintiff to only record forty (40) hours per week despite
25 working substantially more hours per week. Additionally, Defendants required Plaintiff to be on call
26 50% to 100% of all weekends without pay. Plaintiff estimates that he would work approximately four
27 (4) to six (6) hours per weekend day taking care of emergency "on-call" assignments. Defendants did
28 not offer Plaintiff any pay for being on-call nor for hours worked on weekends. Furthermore, Plaintiff

1 was told by Defendants that any overtime he is owed is offset by the fact that the company only charges
2 half of the rent typically required for him living on the premises.

3 17. In addition to failing to pay Plaintiff and similarly situated employees all overtime wages
4 due, Defendants also failed to pay Plaintiff and similarly situated employees' minimum wages for all
5 hours worked. Specifically, Plaintiff was only allowed to record up to forty (40) hours per week at an
6 hourly rate of \$20.00 per hour, totaling a net of \$800.00 per week. However, Plaintiff was actually
7 working approximately sixty (60) hours per week, which if paid at minimum wage would exceed
8 \$800.00 per week. Defendants knew that Plaintiff was on call on all evenings and for twenty-four (24)
9 hours per weekend day. Furthermore, Plaintiff and similarly situated employees often took work-related
10 phone calls and ran errands for Defendants before, during, and after their shifts. Defendants were aware
11 that Plaintiff and similarly situated employees were working off-the-clock but failed to compensate them
12 for this time.

13 18. Defendants further did not authorize and permit Plaintiff and similarly situated
14 employees to take uninterrupted meal and rest periods. Defendants specifically told Plaintiff that it was
15 required that Plaintiff answer telephone calls and texts at all times, including meal and rest breaks.
16 Plaintiff had to do this using his personal cell phone. Plaintiff was then required to attend to
17 assignments provided during these calls, thus, shortening or completely obliterating Plaintiff's meal and
18 rest breaks. This included a first meal period before the completion of the fifth hour of work and a
19 second meal period and third rest period on occasions when they worked more than ten (10) hours in a
20 day. Plaintiff estimates that he only took approximately 50% of his full thirty-minute meal breaks and
21 approximately 50% of his ten-minute rest breaks. Additionally, Defendants failed to pay Plaintiff and
22 similarly situated employees' meal and rest period premiums owed.

23 19. Defendants required Plaintiff to drive his personal vehicle for errands. Plaintiff regularly
24 drove four (4) to fourteen (14) miles to and from errands which Plaintiff required Defendants to
25 perform. Plaintiff also purchased gasoline to run mowing machines from his own pocket and was
26 denied reimbursement for such expenses. Even when Plaintiff asked for reimbursement for mileage
27 Defendants failed to sufficiently reimburse Plaintiff and similarly situated employees for their use of
28 personal cell phones for work purposes. Defendants required Plaintiff and similarly situated employees

1 to use a company application on their phone to communicate with Defendants and the tenants they
2 served on a routine basis. Despite this, Plaintiff and similarly situated employees were not paid for their
3 cellphone use. This did not compensate employees for their cell phone bills considering the time spend
4 on their phone for work purposes.

5 20. As a result of Defendants' failure to pay Plaintiff and similarly situated employees all
6 overtime wages, minimum wages, and meal and rest period premiums owed, the wage statements
7 Defendants issued were defective. Specifically, Defendants did not accurately list total hours worked,
8 wages due, and total missed meal and rest period premiums earned, and the corresponding rates of pay.

9 21. As a further result of Defendants' failure to pay Plaintiff and similarly situated employees
10 for all regular and overtime hours worked and failure to pay meal and rest period premiums, Defendants
11 failed to provide all final wages owed to Plaintiff and similarly situated employees within twenty-four
12 (24) hours of their termination or seventy-two (72) hours of their resignation.

13 **CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION**
15 **FAILURE TO PAY OVERTIME WAGES**
16 **(As to all Defendants)**

17 22. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 21 as though fully
18 set forth herein.

19 23. During the period Plaintiff was employed by Defendants, Defendants were required to
20 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
21 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
22 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 5, section (3)(A);*
23 *Cal. Lab. Code §§ 510, 1194.*

24 24. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
25 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
26 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
27 worked at their regular rate of pay.

28 25. Plaintiff and similarly situated employees were not exempt from overtime protections
employees under the California Wage Orders and Labor Code.

26. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

27. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 26 as though fully set forth herein.

28. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiff and similarly situated employees with at least California's applicable minimum for every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 5, section 4(A); Cal. Lab. Code § 1194.

29. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

30. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

31. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 30 as though fully set forth herein.

32. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

33. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 5, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

34. California Labor Code section 512 and Wage Order No. 5 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes.

1 However, if the total hours worked is no more than twelve (12) hours, the second meal period may
2 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
3 (1) hour of pay at their regular rate of compensation for each meal period not provided.

4 35. Defendants employed Plaintiff and similarly situated employees for periods of more
5 than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal
6 period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more
7 than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated
8 employees to take their first meal period before the completion of their fifth hour of work and failed
9 to allow Plaintiff and similarly situated employees to take their second meal period before the
10 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
11 rights to all meal periods throughout their employment.

12 36. Defendants further failed to pay Plaintiff and similarly situated employees the
13 applicable meal period premiums for any such missed meal breaks.

14 37. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
15 employees have been damaged as stated in the section below entitled "DAMAGES," which is
16 incorporated here to the extent pertinent as if set forth here in full.

17 **FOURTH CAUSE OF ACTION**
18 **REST PERIOD VIOLATIONS**
19 **(As to all Defendants)**

20 38. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 37 as though fully
21 set forth herein.

22 39. An employer must provide an employee a rest period in accordance with the
23 applicable Wage Order and California Labor Code section 226.7.

24 40. California Labor Code section 226.7 and Wage Order No. 5, section 12(A) require an
25 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
26 four (4) hours or a major fraction thereof.

27 41. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
28 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
they worked more than four (4) hours or a major fraction thereof.

42. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods.

43. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

**FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)**

44. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 43 as though fully set forth herein.

45. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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 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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

46. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime and double time hours worked and corresponding rates of pay, and gross and net wages earned. The

1 paystubs also did not accurately itemize Plaintiff's and similarly situated employees' total hours
2 worked due to Defendants' "on-call" policy which resulted in off-the-clock work. Plaintiff and
3 similarly situated employees were not able to promptly and easily determine their total hours worked
4 from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered
5 confusion over whether they received all wages owed and were prevented from effectively
6 challenging information on their wage statements.

7 47. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
8 employees have been damaged as stated in the section below entitled "DAMAGES," which is
9 incorporated here to the extent pertinent as if set forth here in full.

10 **SIXTH CAUSE OF ACTION**
11 **WAITING TIME PENALTIES**
12 **(As to all Defendants)**

13 48. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 47 as though fully
14 set forth herein.

15 49. An employer must pay an employee who is terminated all unpaid wages immediately
16 upon termination. *See* Cal. Lab. Code § 201.

17 50. An employer must pay an employee who resigns all unpaid wages within seventy-two
18 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

19 51. Plaintiff and similarly situated employees did not receive all wages, including minimum
20 and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or
21 within the required time after their separation from employment.

22 52. An employer who willfully fails to pay an employee wages in accordance with California
23 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
24 days. *See* Cal. Lab. Code § 203.

25 53. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
26 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff
27 and similarly situated employees were not paid all wages due at the time of separation, as it was their
28 policies that resulted in this under payment. Such conduct shows Defendants had knowledge of earned,

1 but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages
2 owed.

3 54. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
4 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
5 thirty (30) days for Defendants' failure to pay all wages due.

6
7 **SEVENTH CAUSE OF ACTION**
FAILURE TO REIMBURSE EXPENSES
8 **(As to all Defendants)**

9 55. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 54 as though fully
10 set forth herein.

11 56. California Labor Code section 2802(a) states that "An employer shall indemnify his or
12 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
13 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
14 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
15 unlawful."

16 57. Defendants required Plaintiff and similarly situated employees to use their personal
17 vehicles, personal cell phones and gasoline for work purposes but failed to reimburse them for such use.

18 58. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
19 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
20 the extent pertinent as if set forth here in full.

21 **EIGHTH CAUSE OF ACTION**
UNFAIR COMPETITION
22 **(As to all Defendants)**

23 59. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 58 as though fully
24 set forth herein.

25 60. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
26 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
27 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See
28 California Business and Professions ("B&P") Code § 17200.

61. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, and meal and rest period premiums, or reimbursed for business expenses, during their employment or any time thereafter.

62. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

63. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

64. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 63 as though fully set forth herein.

65. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages).
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 5, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

66. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

67. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

68. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:

- 1 a. Wages in an amount to be proven at trial;
- 2 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 3 section 1021.5;
- 4 5. As to the Fourth Cause of Action:
- 5 a. Wages in an amount to be proven at trial;
- 6 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 7 section 1021.5;
- 8 6. As to the Fifth Cause of Action:
- 9 a. Penalties as provided for in Labor Code section 226, including the greater of all
- 10 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
- 11 violation occurred and one hundred dollars (\$100.00) per employee for each
- 12 violation in the subsequent pay periods, but not to exceed four thousand dollars
- 13 (\$4,000.00);
- 14 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
- 15 226(e);
- 16 7. As to the Seventh Cause of Action:
- 17 a. An amount to be proven at trial;
- 18 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);
- 19 8. As to the Ninth Cause of Action:
- 20 a. For civil penalties as provided in the Labor Code for each enumerated
- 21 violation;
- 22 b. For those Labor Code sections where there is no civil penalty provided for their
- 23 violation, the default penalty provided in Labor Code section 2699(f): for any
- 24 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
- 25 period; For any subsequent violation, two hundred dollars (\$200) for each
- 26 aggrieved employee per pay period;
- 27 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 28

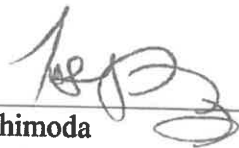
1 d. For any other remedies as allowed by law and/or deemed appropriate by the
2 Court;

3 9. For such other and further relief as this Court may deem just and proper,
4 including, but not limited to:

- 5 a. Wages as proved at trial;
6 b. Injunctive and Declaratory relief;
7 c. Attorney's fees and costs as provided for by law; and
8 d. Interest.

9
10
11 Dated: February 9, 2022

Shimoda & Rodriguez Law, PC

12
13
14 By: 

15 Galen T. Shimoda
16 Justin P. Rodriguez
17 Attorneys for Plaintiff
18
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27
28

1 *Serrano v. Cool Time, LLC*

2 *Sacramento County Superior Court of California 34-2021-00312356*

3 **PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21, Rule 2.150, and Rule 2.251**

5 I, Daisy Y. Chavez, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party
7 to the within above-entitled action.

8 On March 23, 2022, I served the following documents on the party below:

- 9
 - First Amended Complaint for Damages

10 Brandon R. McKelvey (SBN: 217002) 11 Douglas R. Leach (SBN: 325955) 12 Medina McKelvey LLP 13 925 Highland Pointe Drive, Suite 300 14 Roseville, Ca 95678 15 Phone Number: (916) 960-2211 16 Facsimile: (916) 742-5488 17 Email: brandon@medinamckelvey.com 18 doug@medinamckelvey.com	
--	--

16 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
17 processing of correspondence for mailing with the United States Postal
18 Service and that each day's mail is deposited with the United States Postal
19 Service that same day in the ordinary course of business. On the date set forth
20 above, I served the aforementioned document(s) on the parties in said action
21 by placing a true copy thereof enclosed in a sealed envelope with postage
22 thereon fully prepaid, for collection and mailing on this date, following
23 ordinary business practices, at Elk Grove, California, addressed as set forth
24 above.

21 [] [By Personal Service] By personally delivering a true copy thereof to the
22 office of the addressee above.

22 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s)
23 shown above. No error was reported by the e-mail service that I used.

24 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
25 personally delivered via the following overnight courier service: _____.

26 I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct, and that this declaration was executed on March 23, 2022, at Elk
28 Grove, California.

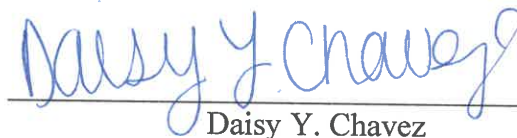

Daisy Y. Chavez

EXHIBIT C



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

November 11, 2021

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Serrano v. Cool Time, LLC*

Dear Labor Commissioner,

As counsel for Arnold Serrano ("Plaintiff"), I am writing to provide you and the following "employers" notice pursuant to California Labor Code section 2699.3:

Cool Time, LLC
8251 Alpine Avenue
Sacramento, California 95826

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Cool Time, LLC ("Defendant"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but are not limited to the following: all non-exempt employees working for Defendants in California over the applicable statutory period. Plaintiff is clearly entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Plaintiff worked for Defendants as a maintenance manager for Defendant's apartment complexes from approximately August 1, 2020 to August 13, 2021, making approximately \$20.00 per hour. Plaintiff would frequently run errands for Cool Time, LLC, including but not limited to driving his personal vehicle to Home Depot to buy supplies, transferring other employees from various Cool Time, LLC sites and driving himself from assigned sites. As maintenance managers, Plaintiff and Aggrieved Employees were there to provide planned and emergency repairs to the apartment complexes to keep the apartment complex and individual apartments in working condition.



Over the course of Plaintiff's employment with Defendants, his hours varied, however, he often worked over eight (8) hours a day and forty (40) per week. In fact, it was Defendants' policy to not provide Plaintiff and Aggrieved Employees overtime regardless of the number of hours they worked. Defendant specifically instructed Plaintiff to only record forty (40) hours per week despite actually working substantially more hours per week. Additionally, Defendants required Plaintiff to be on call 50% to 100% of all weekends without pay. Plaintiff estimates that he would work approximately four (4) to six (6) hours per weekend day taking care of emergency "on-call" assignments. Defendant did not offer Plaintiff any pay for being on-call nor for hours worked on weekends. Furthermore, Plaintiff was told by Defendant that any overtime he is owed is offset by the fact that the company only charges half of the rent typically required for him living on the premises.

In addition to failing to pay Plaintiff and Aggrieved Employees all overtime wages due, Defendants also failed to pay Plaintiff and Aggrieved Employees' minimum wages for all hours worked. Specifically, Plaintiff was only allowed to record up to forty (40) hours per week at an hourly rate of \$20.00 per hour, totaling a net of \$800.00 per week. However, Plaintiff was actually working approximately sixty (60) hours per week, which if paid at minimum wage would exceed \$800.00 per week. Defendant knew that Plaintiff was on call on all evenings and for twenty-four (24) hours per weekend day. Furthermore, Plaintiff and Aggrieved Employees often took work-related phone calls and ran errands for Defendants before, during, and after their shifts. Defendants were aware that Plaintiff and Aggrieved Employees were working off-the-clock, but failed to compensate them for this time,

Defendants further did not authorize and permit Plaintiff and Aggrieved Employees to take uninterrupted meal and rest periods. Plaintiff specifically told Defendant that it was required that Plaintiff answer telephone calls and texts at all times, including meal and rest breaks. Plaintiff had to do this using his personal cell phone. Plaintiff was then required to attend to assignments provided during these calls, thus, shortening or completely obliterating Plaintiff's meal and rest breaks. This included a first meal period before the completion of the fifth hour of work and a second meal period and third rest period on occasions when they worked more than ten (10) hours in a day. Plaintiff estimates that he only took approximately 50% of his full thirty-minute meal breaks and approximately 50% of his ten-minute rest breaks. Additionally, Defendants failed to pay Plaintiff and Aggrieved Employees meal and rest period premiums owed.

Defendants required Plaintiff to drive his personal vehicle for errands. Plaintiff regularly drove four (4) to fourteen (14) miles to and from errands which Plaintiff required Defendant to perform. Plaintiff also purchased gasoline to run mowing machines from his own pocket and was denied reimbursement for such expenses. Even when Plaintiff asked for reimbursement for mileage Defendants failed to sufficiently reimburse Plaintiff and Aggrieved Employees for their use of personal cell phones for work purposes. Defendants required Plaintiff and Aggrieved



Employees to use a company application on their phone to communicate with Defendants and the tenants they served on a routine basis. Despite this, Plaintiff and Aggrieved Employees were not paid for their cellphone use. This did not compensate employees for their cell phone bills considering the time spend on their phone for work purposes.

As a result of Defendants' failure to pay Plaintiff and Aggrieved Employees all overtime wages, minimum wages, and meal and rest period premiums owed, the wage statements Defendants issued were defective. Specifically, Defendants did not accurately list total hours worked, wages due, and total missed meal and rest period premiums earned, and the corresponding rates of pay.

As a further result of Defendants' failure to pay Plaintiff and Aggrieved Employees for all regular and overtime hours worked and failure to pay meal and rest period premiums, Defendants failed to provide all final wages owed to Plaintiff and Aggrieved Employees within twenty-four (24) hours of their termination or seventy-two (72) hours of their resignation.

B. ALLEGATIONS AND CHARGES

Count 1 – Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count 2 – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 5, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendant they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.*, IWC Wage Order MW-2019; IWC Wage Order No. 5, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendant did not pay Plaintiff and Aggrieved Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.



Count 3 - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 5, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendant also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count 4 – Violation of Labor Code § 226.7 and Wage Order No. 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendant also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count 5 – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “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 . . .” For the reasons stated above, Defendant failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.



Count 6 – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including overtime and on-call hours, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count 7 – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendant failed to pay any reimbursements for mileage, purchases on behalf of Defendant and personal cell phone use by Plaintiff and Aggrieved Employees. This was in violation of the law.

Count 8 – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendant, by and through Defendant agents, violated Plaintiff and Aggrieved Employees’ rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Cool Time, LLC managers and supervisors were officers, directors, shareholders, and/or managing agents of Defendant responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count 9 – Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must



keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendant failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees' wage records and hours worked. This was against the law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By: _____

Galen T. Shimoda

GTS/jh

cc: Client via e-mail

1 *Serrano v. Cool Time, LLC*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Caitlyn A. Lopez, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On November 11, 2021, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

9
10 Cool Time, LLC
11 8251 Alpine Avenue
12 Sacramento, California 95826

13 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
14 and processing of correspondence for mailing with the United States Postal
15 Service and that each day's mail is deposited with the United States Postal
16 Service that same day in the ordinary course of business. On the date set forth
above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Elk Grove, California, addressed as set forth above.

17 [] [By Personal Service] By personally delivering a true copy thereof to the office
18 of the addressee above.

19 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service: _____.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing
21 is true and correct, and that this declaration was executed on November 11, 2021, at Elk Grove,
22 California.

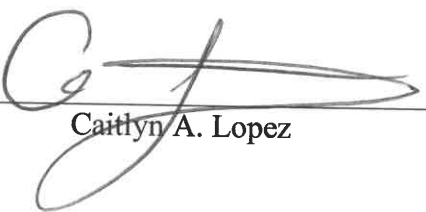
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Caitlyn A. Lopez
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EXHIBIT D

Date	Description	Amount
8/31/2021	Administration/Copy Fee - Phone, Fax, Scan, Copying, Lexis Legal Research Fees	\$500.00
11/12/2021	Payment to LWDA - PAGA Filing Fee	\$75.00
11/12/2021	Certified Mail - PAGA Letter to Employer	\$4.48
12/7/2021	Payment to Court - Complaint Fee Superior Court	\$435.00
12/7/2021	Service Fee to Court - Complaint	\$40.00
12/21/2021	ALS Service Fee - Cool Time Llc inv 170585	\$50.00
12/23/2021	Service Fee to Court - Notice of Deposing Complex Fee	\$40.00
12/23/2021	Payment to Court - Complex Fees	\$1,000.00
1/3/2022	Service Fee to Court - Proof of Service of Summons	\$40.00
1/14/2022	Service Fee to Court - Notice of Disassociation of Counsel	\$40.00
2/9/2022	Service Fee to Court - First Amended Complaint	\$40.00
10/3/2022	One Legal Service Fee - Notice of Association of Counsel	\$61.26
2/13/2023	One Legal Service Fee - Joint Stipulation Re CMC and Order	\$81.85
2/22/2023	One Legal Service Fee - Preliminary Approval Motion	\$354.92
Anticipated	One Legal Service Fee - Final Approval Motion	\$354.92
Anticipated	One Legal Service Fee - Supplemental Administrator Declaration	\$61.26
Anticipated	One Legal Service Fee - Case Management Statement	\$61.26
Anticipated	One Legal Service Fee - Compliance Declaration	\$61.26

Total: \$3,301.21

EXHIBIT E

EXHIBIT F

TASK CATEGORY

	GTS	JPR	RK	JH
<u>Pre-filing investigation, Pleadings, Admin Exhaustion, and Related Law & Motion.</u> Includes time spent during initial client meetings and review of claims and documents; Pre-filing investigation/research; Review of payroll records and prior filings against Defendant; Drafting pleadings, notices, administrative filings; Reviewing and responding to pleadings and court filings; Communications with opposing counsel regarding same, internal communications regarding same, and communications with client regarding same.	19	4.8	-	3.7
<u>Case Review, Management, and Strategy Meetings.</u> Includes time spent discussing general plan of action updates and strategies in weekly meetings; Research and analysis regarding claim elements and issues affecting representative litigation; Preparing for case management conferences and related meet/confer, drafting of statements, and attendance for hearings; Reviewing minute orders and general correspondence from the Court regarding case management and assignments; Research regarding trial plan and discovery schedule; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.	9.1	10.1	2.6	-
<u>Discovery (Pre-Mediation/Non-Mediation Related), Related Law & Motion, and Hearings.</u> Includes time spent preparing discovery requests, draft Belaire Notice, Protective Order, and Confidentiality Agreements; Research regarding discovery issues and objections; Document review and analysis; Seek out witnesses for interviews and obtaining declarations; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.	-	3.1		-
<u>Discovery / Investigation for Settlement Analysis.</u> Includes time spent preparing informal/formal discovery specifically geared towards direct negotiation discussions; reviewing informal productions, including data, analyses, documents, and public records; Review public records requests regarding prior labor commissioner filings and prior wage and hour Lawsuits; Perform damages analysis; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.	2.8	12.3		-
<u>Direct Settlement Negotiations.</u> Includes time spent drafting/revising demands with case analysis and accompanying exhibits; Review documents productions for potential exhibits; Legal research regarding claims; Review and Respond to Defendant's factual and legal counter arguments; Direct negotiations with opposing counsel; Communications with opposing counsel regarding same, internal communications at regarding same, communications with client regarding same.	7	17.9	1.5	-
<u>Drafting Settlement Agreements.</u> Includes time spent preparing long form agreement and exhibits, revisions relating thereto; Research regarding any approval procedures or issues regarding disputed terms; Solicit and review settlement administrator bids; Communications with opposing counsel regarding same, internal communications regarding, communications with client regarding same.	1.2	4.2	4.8	-
<u>Settlement Approval and Administration.</u> Includes time spent drafting motion for preliminary approval and supporting declarations and order; Class data and settlement calculation review; Speaking with Settlement Administrator regarding calculations, distributions, and final approval logistics; Pull filings for web address access and confirm all required filings posted; Review/revis class notice to conform with Court's orders; Review weekly reports from Settlement Administrator; Respond to Class Member calls and inquiries regarding the settlement; Draft Motion for Final Approval and supporting declarations, review and finalize exhibits relating thereto; Legal research regarding approval issues. Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same. Includes estimated 10 hours for JPR supervising final distributions and compliance with Court final approval order and attending compliance hearings.	18	26.8	35.8	-
TOTAL:	57.1	79.2	44.7	3.7