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Attorneys for Plaintiff, the Class, and Aggrieved Employees

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

JOHN COOK, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

APPLE INC., a California corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No. 34-2021-00311177-CU-OE-GDS

(Assigned to the Hon. Lauri A. Damrell, Dept. 28)

**DECLARATION OF NICHOLAS
ROSENTHAL IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: September 1, 2023

Time: 9:00 a.m.

Dept.: 28

Reservation No. A-311177-001

Complaint Filed: November 17, 2021

FAC Filed: May 18, 2023

Trial Date: Not Set

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I, Nicholas Rosenthal, declare as follows:

1. I am an attorney at law duly admitted to practice before all courts in the State of
 nia and am a member of the law firm of the Diversity Law Group, P.C., one of the attorneys of
 for Plaintiff John Cook (“Plaintiff”) in the above-entitled action. I have personal knowledge of
 ters set forth herein, and if called upon as a witness to testify thereto, I could and would
 ently do so.

CASE SUMMARY

2. On November 8, 2021, Plaintiff filed a notice with the California Labor and
Force Development Agency (“LWDA”) alleging that Defendant violated Labor Code § 226,
nt to Labor Code § 2699 (“PAGA Notice”). The PAGA Notice alleged that Defendant failed
tify the correct total hours worked whenever overtime wages were paid, on wage statements
to employees. A true and correct copy of the LWDA letter submitted by Plaintiff is attached
as **Exhibit A**.

3. On November 17, 2021, Plaintiff filed a class action complaint against Defendant in the Superior Court of the State of California, County of Sacramento (the “Action”). The class action complaint alleges a single of action for violation of Labor Code § 226.

4. On January 13, 2022, Plaintiff filed a related action against Defendant in the Superior Court of the State of California, County of Sacramento, Case Number 34-2022-00313863 (the “PAGA Action”). The PAGA Action is a representative action complaint and alleges a cause of action for violation of Labor Code § 2698, et seq., predicated on an underlying violation of Labor Code § 226.

5. On May 18, 2023, Plaintiff filed a Joint Stipulation for Leave to File First Amended Complaint, in which the Parties agreed to allow Plaintiff to file a first amended complaint in the Court solely for the purpose of obtaining the Court's approval of the Parties' settlement agreement. The first amended complaint alleges two causes of action for violation of Labor Code §§ 226 and 269, et seq., and combines the allegations of the Action and the PAGA Action. On May 18, 2023, the Court signed the order granting the Parties' stipulation, and the first amended complaint was deemed filed. The first amended complaint is the operative Complaint ("Complaint"). As alleged

1 in the Complaint, Plaintiff seeks to represent the Class Members and other aggrieved employees.
2 Plaintiff further seeks damages, penalties, interest, attorneys' fees, and costs.

3 6. Following the filing of the Action and PAGA Action, the Parties agreed to participate
4 in private mediation. In connection with mediation, the Parties agreed to conduct informal discovery
5 to allow Plaintiff to assess the claims and liability, as well as analyze the maximum exposure of
6 damages and penalties. Defendant produced class data, including the number of putative class
7 members, sample wage statements, and the number of wage statements issued to putative class
8 members. This information allowed my office to conduct a full damage analysis.

9 MEDIATION

10 7. On January 4, 2023, the Parties engaged in an all-day mediation session with neutral
11 Tripper Ortman. After thorough investigation and evaluation of the facts and claims, and negotiations
12 with the assistance of Mr. Ortman, the Parties and their counsel reached a settlement and entered into
13 a memorandum of understanding. In resolution of Plaintiff's class and PAGA claims, the Parties
14 entered into the Joint Stipulation of Class Action and PAGA Settlement.

15 SUMMARY OF THE SETTLEMENT TERMS

16 8. The terms of the class-wide settlement are set forth in the Joint Stipulation of Class
17 Action and PAGA Settlement (the "Settlement Agreement"). A true and correct copy of the
18 Settlement Agreement is attached hereto as **Exhibit B**.

19 9. Dismissal of the PAGA Action without prejudice was entered on June 22, 2023.

20 10. The proposed Class consists of "all current and former California employees of
21 Defendant, who worked at Defendant's call center, which is located at Apple's Sacramento Campus,
22 who were paid overtime and/or double-time wages at any time from November 12, 2020, through
23 January 1, 2022." *See* Settlement Agreement ¶ 2.6. Class Members do not need to do anything should
24 they wish to receive their share of the settlement funds. If a Class Member does not wish to take part
25 in this settlement and be bound by the release, he or she must submit a Request for Exclusion. *Id.* ¶¶
26 7.2.4, 7.2.5.

27 11. The Settlement Agreement provides for Four Hundred Ninety-Five Thousand Dollars
28 (\$495,000.00) as the Gross Settlement Amount. Settlement Agreement ¶ 6.1. The Net Settlement

Amount, calculated after deduction of attorneys' fees, costs, Class Representative Service Award, payment of PAGA penalties to the LWDA, and Settlement Administration Costs, shall be distributed to Participating Class Members and Settlement Aggrieved Employees.

12. Participating Class Members who do not opt-out of the Settlement will be awarded a portion of the Net Settlement Amount on a pro-rata basis, based upon the number of pay periods worked during the Covered Period. Settlement Agreement ¶ 6.7.2.

13. Settlement Aggrieved Employees will receive a pro rata portion of the PAGA penalties, based upon the number of pay periods worked during the Covered Period. Settlement Agreement ¶ 6.7.3.

14. The notice need not be in any language other than English, as fluency in English was a required part of the work performed by the Class.

15. As part of the Settlement Agreement, Defendant does not object to Plaintiff's counsel's request for attorneys' fees up to 35% of the Gross Settlement Amount—*i.e.*, the sum of One Hundred Seventy-Three Thousand Two Hundred Fifty Dollars (\$173,250.00), plus up to Twenty Five Thousand Dollars (\$25,000.00) for reimbursement of litigation costs. Settlement Agreement ¶ 6.7.1. Also, as part of the Settlement Agreement, Defendant does not object to Plaintiff's request for a service award of Ten Thousand Dollars (\$10,000.00). *Id.* ¶ 6.2.

16. Finally, the Settlement Agreement provides for the payment to the Settlement Administrator for the administration of this current settlement. The Parties have received a quote from Phoenix Settlement Administrators for a fee of approximately Fourteen Thousand Dollars (\$14,000.00) to administer the settlement. *Id.* ¶ 6.5.1.

17. After deducting the amounts listed above, it is estimated that the Net Settlement Amount of \$252,750.00 will be distributed to the Class.

POTENTIAL STATUTORY AND CIVIL PENALTIES

18. I was able to estimate the potential damages and penalties based on the data and documents provided by Defendant, including the number of putative class members and number of wage statements issued during the Covered Period.

19. Based on the class data provided by Defendant, Plaintiff estimated that Defendant

1 would face potential liability of up to approximately \$3,129,050 for Plaintiff's class and PAGA claims
2 if Plaintiff succeeded at trial. This number is based upon an analysis of the data provided by
3 Defendant regarding the putative class. Specifically, the approximate damages/penalties for the class
4 claim is \$1,545,550 for Labor Code § 226(e) penalties for wage statement violations for employees
5 based on 15,835 wage statements issued during the Covered Period.

6 20. With respect to potential liability of Plaintiff's PAGA claim, Plaintiff estimated that
7 Defendant could face civil penalties of up to \$1,583,500 in PAGA penalties premised on 15,835 pay
8 periods.

9 21. Based thereon, the collective total amount of class and PAGA recovery is
10 approximately \$3,129,050.

11 22. Defendant denies liability as to all of Plaintiff's claims and raised several defenses that
12 presented risk. Defendant denies liability as to all of Plaintiff's claims and it has raised several
13 defenses that presented risk. Defendant contends that an employee would understand how to
14 determine their total hours worked when overtime was paid. Moreover, Defendant maintains that
15 Plaintiff cannot prove willfulness or injury, both of which are required for any assignment of penalties
16 under Labor Code Section 226(e). Defendant further contends that a large proportion of the class
17 signed an arbitration agreement containing a class action waiver.

18 23. Although Plaintiff believes in the merits of the alleged claims and maintains that there
19 is no reason for reducing PAGA penalties, Plaintiff is aware that Defendant may raise defenses to the
20 wage statement claims and that with respect to the reduction of PAGA penalties, it could be
21 persuasive to the Court. Thus, even if Plaintiff were to successfully prove his claims at trial, there is a
22 possibility that the Court may only award a small percentage of PAGA penalties, as the Court has
23 discretion to do so. Pursuant to Labor Code § 2699(e)(2), the Court can decline to award PAGA
24 penalties where "if, based on the facts and circumstances of the particular case, to do otherwise, would
25 result in an award that is unjust, arbitrary and oppressive, or confiscatory."

26 24. Under the facts of this case, I appreciate the risk that Defendant could present a
27 persuasive argument to reduce the amount of PAGA penalties at trial. For example, in *Fleming v.*
28 *Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011), while the plaintiff

1 ultimately prevailed in a PAGA trial predicated on a violation of Labor Code section 226(a), *i.e.*,
2 inaccurate wage statements, the Court assessed only 17% of the maximum penalties— and this was
3 after finding liability at trial. Similarly, Judge Carville of the Alameda Superior Court in the matter of
4 *Parr v. Golden State Overnight*, Alameda Superior Court Case No. RG12618103, assessed PAGA
5 penalties upon Defendant of approximately 7% of the total maximum penalties—again, this was only
6 after plaintiff had prevailed at trial. In one recent California Court of Appeal case, a trial court’s
7 reduction of PAGA penalties by 90% was upheld. *Carrington v. Starbucks*, 30 Cal. App. 5th 504, 529
8 (2018).

9 25. The Gross Settlement Amount was premised with these risks above in mind, associated
10 with the possibility of the Court significantly reducing Plaintiff’s PAGA penalties, along with other
11 attendant risks, even if Plaintiff were to prevail at trial.

12 26. Although Plaintiff believes that a class can be certified, Plaintiff also believes in the
13 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in
14 not prevailing on one or more of the causes of action or theories alleged in the operative Complaint,
15 the possibility of non-certification, and the potential for appeals.

16 27. Here, the Gross Settlement Amount is fair and reasonable as it is approximately 15.8%
17 of the potential recovery of Plaintiff’s class and PAGA claims if Plaintiff were to fully succeed at trial.

18 28. Based on my own independent investigation and evaluation, I am of the opinion that
19 settlement for the consideration and on the terms set forth in the Joint Stipulation of Class Action and
20 PAGA Settlement is fair, reasonable, and adequate and is in the best interests of the Class and
21 Defendant in light of all known facts and circumstances, and the uncertainty and risks to Plaintiff
22 involved in not prevailing on one or more of the causes of action or theories alleged in the operative
23 Complaint, the possibility of non-certification, and the potential for appeals.

24 **THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

25 29. From the inception of the case, Class Counsel has zealously represented the interests of
26 the Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
27 Representative.

28 30. The Settlement Agreement calls for the Net Settlement Amount (calculated after

1 deduction of attorneys' fees, costs, Class Representative Service Award, payment of PAGA penalties
2 to the LWDA, and Settlement Administration Costs) to be paid to Participating Class Members. Based
3 on an estimated Net Settlement Amount of \$252,750.00, Participating Class Members will be entitled
4 to recover, based on a raw average, approximately \$333.00.

5 31. The amount any Class Member will be entitled to recover will be greater or lower,
6 depending on the number of pay periods each respective Participating Class Member worked during
7 the Covered Period, with some entitled to receive more, and others less. This is fair, as it directly
8 allocates greater recovery to individual Class Members who have allegedly suffered greater harm. The
9 amount may also vary depending on the number of timely Requests for Exclusion received by the
10 Settlement Administrator.

11 32. Additionally, the scope of the release is appropriately limited. As a condition of
12 participating in this settlement, Class Members release "all claims that were pled in the Class Action
13 Complaint or the First Amended Complaint for violation of Labor Code section 226(a)(2), based on
14 Defendant's alleged failure to accurately display the total hours worked on wage statements that reflect
15 the payment of overtime and/or double overtime wages, and that accrued during the Class Release
16 Period. The Released Class Claims include a release of statutory penalties, attorneys' fees, and costs."
17 ("Settled Class Claims"). Settlement Agreement ¶ 2.33. This release is appropriately limited, as it
18 only applies during the time period of November 12, 2020, through January 4, 2023, and only applies
19 to the claims alleged.

20 33. In addition, Settlement Aggrieved Employees (or Class Members who submit a valid
21 Request for Exclusion) shall waive and release "all claims for civil penalties or other remedies
22 recoverable under Labor Code section 2698, et seq. (PAGA), which were pled in the PAGA Action
23 Complaint, the First Amended Complaint and/or the LWDA Letter sent by Plaintiff, dated November
24 8, 2021, for violation of Labor Code section 226(a)(2), based on Defendant's alleged failure to
25 accurately display the total hours worked on wage statements that reflect the payment of overtime
26 and/or double overtime wages, and that accrued during the PAGA Release Period. The Released
27 PAGA Claims include a release of civil penalties, attorneys' fees, and costs" ("Settled PAGA
28 Claims"). Settlement Agreement ¶ 2.34. This release is appropriately limited, as it only applies during

1 the time period of November 8, 2020, through January 4, 2023, and only applies to the claims alleged.

2 34. I believe that Plaintiff and the Class could prevail at trial. However, I also believe in the
3 fairness of the settlement, which is based on factoring in the inherent risks in drawn-out litigation and
4 the specific risks that a class might not be certified and/or that Plaintiff could fail to establish liability.
5 Moreover, as Defendant adamantly denies that it should be liable for the full extent of the penalties,
6 there is a possibility that Plaintiff and the Class would be awarded fewer or no penalties at trial.

7 35. Thus, after taking into account sharply disputed legal issues involved in this litigation,
8 the risks associated with further prosecution, delays caused by potential appeals, and the substantial
9 benefits to be received pursuant to the Settlement Agreement, I believe that the proposed settlement is
10 fair, reasonable, and adequate and is in the best interests of the Class.

11 **ATTORNEY EXPERIENCE**

12 36. Class Counsel has a great deal of experience in wage and hour class action litigation
13 and has been approved as class counsel in a number of class actions. My co-counsel and I can and will
14 adequately represent the Class Members in this action. I have no conflicts with the Class and will
15 adequately represent the Class.

16 37. I have spent significant time researching and pursuing the claims that have been alleged
17 in this action. Based on my review of all the information, and based on my experience in class action
18 litigation, I believe this settlement to be fair, adequate, and reasonable.

19 38. Any remaining monies from uncashed settlement checks will be distributed to Warriors
20 to Work veteran employment program operated by the non-profit organization Wounded Warrior
21 Project. Plaintiff's counsel does not have any relationship or connection with or to the Wounded
22 Warrior Project.

23 39. I am one of the primary attorneys on this matter. My qualifications are as follows: I
24 received my JD from University of Southern California Gould School of Law in 2009. Upon
25 graduation, I practiced law as an associate at Seyfarth Shaw LLP, representing corporate clients in
26 both single-plaintiff and wage hour class actions. In 2014, I began as an associate at Diversity Law
27 Group.

28 40. I have handled a number of wage and hour matters including class actions and

multiple-plaintiff actions. I have been named as Class Counsel in a number of class actions that have been granted certification or preliminary or final approval by the Superior Courts of Los Angeles County, Orange County, Alameda County, and Monterey County, the United States District Court for the Central District of California, and the United States District Court for the Northern District of California. These cases include, but are not limited to: *Diller v. Under Armour Retail, Inc.*, Santa Clara County Superior Court Case No. 114-CV-265729, *Lopez v. Imperial Body Shop, Inc.*, Orange County Superior Court Case No. Case No. 30-2015-00816193-CU-OE-CXC, *Hughes v. Lincare, Inc., et al.*, Monterey County Superior Court Case No. M124764, *Pittman v. Martinez Steel Corporation*, San Bernardino County Superior Court Case No. CIVDS1823132, *Della Maggiora v. Watsonville Community Hospital*, Santa Cruz County Superior Court Case No. 18CV00191, *Randolph v. Pacific Racing Association*, Alameda County Superior Court Case No. RG18908139, *Morones v. Bimbo Bakeries USA, Inc.*, Sacramento County Superior Court Case No. 34-2018-00245481-CU-OE-GDS, *Foaad Hanna v. Equinix, LLC*, Santa Clara County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles County Superior Court Case No. BC720144; *Markham v. Quik Stop Markets, Inc.*, Santa Clara Superior Court Case No. 19CV341582; *Siron v. Raypak, Inc.*, Ventura Superior Court Case No. 56-2019-005279959-CU-OE-VTA; *Carter v. Kline Services, Inc.*, San Bernardino Superior Court Case No. CIVDS1828867, *Pascual v. Satellite Healthcare, Inc.*, Santa Clara County Superior Court Case No. 19CV345211; *Carrillo v. New Balance Athletics, Inc.*, Santa Clara County Superior Court Case No. 19CV352469; *Vogel v. Veolia North America, LLC*, Monterey County Superior Court Case No. 19CV001443; *Holman v. American Sugar Refining, Inc.*, Contra Costa County Superior Court Case No. MSC18-00415; *Chavez v. Converse, Inc.*, United States District Court – Northern District of California Case No. 15-cv-03746-NC, *Rodriguez v. Nike Retail Services, Inc.*, United States District Court – Northern District of California Case No. 5:14-CV-1508-BLF, *Gutierrez v. Spa Havens, LP*, San Diego Superior Court Case No. 37-2019-00057065-CU-OE-NC, *Cruzado v. Ontario T, Inc.*, San Bernardino Superior Court Case No. CIVSB2027249, *Diaz v. Acuity Brands Lighting, Inc.*, San Bernardino Superior Court Case No. CIVDS2015583, *Dunn v. Universal Plant Services, Inc.*, Solano County Superior Court Case No. FCS056134, *Martinez v. COGIR Management USA, Inc.*, San Joaquin County Superior Court Case No. STK-CV-UOE-2020-

0001215, *O'Connor v. Schwan's Consumer Brands, Inc.*, Sacramento County Superior Court Case No. 34-2019-00250574, and *Ray v. C&W Facility Services, Inc.*, San Bernardino Superior Court Case No. CIVSB2101321.

41. My co-counsel and I will adequately represent the Class Members in this action. Plaintiff's Counsel have and will zealously represent Plaintiff and the Class and pursue this lawsuit to its conclusion.

42. Any fee award issued by the Court will be split with 65 percent going Diversity Law Group and 35 percent going to Polaris Law Group.

43. I have no conflicts with the Class and will adequately represent the Class.

NOTICE TO THE LWDA

44. Concurrent with the filing of the Motion for Preliminary Approval of Class Action Settlement, my office uploaded the Motion and Settlement Agreement to the LWDA's website.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 10th day of August 2023, at Los Angeles, California.



Nicholas Rosenthal

EXHIBIT A

JOHN COOK

c/o DIVERSITY LAW GROUP, P.C.
515 S. FIGUEROA STREET, SUITE 1250
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 488-6555
FACSIMILE (213) 488-6554

November 8, 2021

VIA ONLINE FILING

California Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: Cook v. Apple Inc.

To Whom It May Concern:

This correspondence shall constitute as my written notice under Labor Code § 2699.3 of claims against my employer Apple Inc. (“Defendant” or “the Company”). Specifically, I allege as follows:

1. The Company violated Labor Code § 226 by failing to provide accurate and complete wage statements to myself and other similarly situated aggrieved employees. Specifically, the wage statements failed to identify the correct total hours worked whenever overtime wages were paid. Rather, it when overtime wages were paid, the wage statements shows less hours worked that what appears to have been worked. Therefore, the Company violated Labor Code § 226 as to myself and all other similarly aggrieved employees.

Please contact my attorney Larry W. Lee at the above address/phone number if you have any questions regarding this matter.

Sincerely,

DocuSigned by:

14F1A402BCFD47F...
John Cook

Cc: Apple Inc. (via certified mail)

EXHIBIT B

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
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Attorneys for Defendant APPLE INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

JOHN COOK, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

APPLE INC., a California corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No. 34-2021-00311177-CU-OE-GDS

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

Complaint Filed:	November 17, 2021
FAC Filed:	May 18, 2023
Trial Date:	Not Set

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

2 This Joint Stipulation of Class and Representative Action Settlement is made and entered into
3 between Plaintiff John Cook (“Plaintiff” or “Class Representative”), on behalf of himself and as a
4 representative of the Settlement Class (as defined below) and Defendant Apple Inc. (“Defendant” or
5 “Apple”) (Plaintiff and Defendant hereinafter are collectively referred to as the “Parties”) who are
6 parties to the above-captioned litigation.

7 **1. THE CONDITIONAL NATURE OF THIS STIPULATION**

8 1.1. This Joint Stipulation of Class and Representative Action Settlement (herein
9 “Stipulation” or “Settlement”), including all associated exhibits or attachments, is made for the sole
10 purpose of settling the above-captioned Action, which includes both the Class Action and the PAGA
11 Action as defined below. This Stipulation and the settlement it evidences are made in compromise of
12 disputed claims. Because this Action is being settled as a class action (“Class Settlement”), this
13 settlement must receive preliminary and final approval by the Court. See Cal. R. Ct. 3.769. The
14 settlement of the representative claim (“PAGA Settlement”) under the Private Attorneys General Act
15 (“PAGA”) is also subject to Court approval. See Cal. Lab. Code § 2699(1)(2). Accordingly, the
16 Settling Parties (as defined in Section 2.40) enter into this Stipulation and associated settlement on a
17 conditional basis. If the Court does not enter the Order of Final Approval in and of this Action and/or
18 the proposed Judgment does not become a Final Judgment in this Action for any reason, this
19 Stipulation (except for the obligations set forth in Section 3.5 and the confidentiality provisions set
20 forth in Section 7.3.4) shall be deemed null and void *ab initio*, it shall be of no force or effect
21 whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiation,
22 terms and entry of the Stipulation shall remain subject to the provisions of California Evidence Code
23 sections 1119 and 1152, and any other analogous rules of evidence that are applicable.

24 1.2. Defendant denies all claims as to liability, damages, penalties, interest, fees, and
25 restitution, and all other forms of relief as well as the class and representative allegations asserted in
26 the Action, as that term is defined in Section 2.1. Defendant has agreed to resolve the Action via this
27 Stipulation, but to the extent this Stipulation is deemed void or the Final Judgment does not occur,
28 Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and

1 allegations in the Action upon all procedural and factual grounds, as well as asserting any and all other
2 potential defenses or privileges. Class Representative and Class Counsel (as defined in Sections 2.13
3 and 2.9, respectively) agree that Defendant retains and reserves these rights, and agree not to argue or
4 present any argument, and hereby waive any argument that, based on this Stipulation, Defendant
5 cannot assert any and all potential defenses and privileges if the Action were to proceed.

6 **2. DEFINITIONS**

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

8 2.1. “Action” collectively means the “Class Action” and “PAGA Action.”

9 2.2. “Class Action” means the action, identified as *John Cook v. Apple Inc.*, Case No. 34-
10 2021-00311177-CU-OE-GDS, which was filed in the Superior Court of the State of California for the
11 County of Sacramento, on November 17, 2021.

12 2.3. “PAGA Action” means the above captioned action, identified as *John Cook v. Apple*
13 *Inc.*, Case No. 34-2022-00313863-CU-OE-GDS, which was filed in the Superior Court of the State of
14 California for the County of Sacramento, on January 13, 2022.

15 2.4. “CA Complaint” means the complaint filed in the Class Action in the Superior Court of
16 the State of California for the County of Sacramento, on November 17, 2021.

17 2.5. “PAGA Complaint” means the complaint filed in the PAGA Action in the Superior
18 Court of the State of California for the County of Sacramento, on January 13, 2022.

19 2.6. “Settlement Class” means all current and former California employees of Defendant,
20 who worked at Defendant’s call center, which is located at Apple’s Sacramento Campus, who were
21 paid overtime and/or double-time wages at any time from November 12, 2020, through January 1,
22 2022.

23 2.7. “Settlement Class Member” means each person eligible to participate in this Settlement
24 who is a member of the Settlement Class defined above.

25 2.8. “Aggrieved Employees” or “Aggrieved Employee Group” mean all current and former
26 California employees of Defendant, who worked at Defendant’s call center, which is located at
27 Apple’s Sacramento Campus, who were paid overtime and/or double-time wages at any time from
28 November 8, 2020, through January 1, 2022.

2.9. “Class Counsel” means Larry W. Lee, Kristen M. Agnew, and Nicholas Rosenthal of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group.

2.10. “Class Data” means the following information for each Settlement Class Member and Aggrieved Employee in Excel spreadsheet format provided by Defendant to the Settlement Administrator (as defined below): name, last known address, telephone number, Social Security number, the number of pay periods during which overtime or double-time wages were earned during the period of November 12, 2020, through January 1, 2022, and the number of pay periods during which overtime or double-time wages were earned during the period of November 8, 2020, through January 1, 2022.

2.11. “Class Notice” shall mean the Notice of Proposed Class Action Settlement attached hereto as **Exhibit A**.

2.12. “Class Release Period” means the time period from November 12, 2020, through January 4, 2023.

2.13. “Class Representative” means Plaintiff John Cook.

2.14. “Court” shall mean the Superior Court of the State of California for the County of Sacramento.

2.15. “Defendant’s Counsel” means Kent J. Sprinkle, M. Leah Cameron, and Desiree J. Ho of CDF Labor Law LLP.

2.16. “Effective Date” shall be forty-five (45) calendar days following Final Judgment.

2.17. “Enhancement Payment” means the amount approved by the Court, not to exceed Ten Thousand Dollars (\$10,000.00), to be paid to the Class Representative in recognition of his efforts and time on behalf of the Class.

2.18. “Final Approval Date” means the date on which the Court enters the Order of Final Approval and Judgment.

2.19. “Final Approval Hearing” means a hearing set by the Court for the purpose of: (i) determining the fairness, adequacy, and reasonableness of the Stipulation terms and associated Settlement pursuant to class action procedures and requirements; (ii) determining the amount of the award of attorneys’ fees and costs to Class Counsel; (iii) determining the amount of the Enhancement

1 Payment to the Class Representative; and (iv) entering the Order of Final Approval of the Settlement
2 and Judgment.

3 2.20. “Final Judgment” means the latest of the following dates: (i) if no Settlement Class
4 Member files an objection to the Settlement, or if a Settlement Class Member files an objection to the
5 Settlement which is subsequently withdrawn by the Settlement Class Member, then the date the Court
6 enters an Order of Final Approval of the Settlement and Judgment; (ii) if a Settlement Class Member
7 files an objection to the Settlement, then after the applicable date for appealing or otherwise seeking
8 appellate review of the Court’s Order of Final Approval of the Settlement has passed, and no appeal or
9 request for review is filed; and (iii) if an appeal or request for review is filed, the date of final
10 resolution of that appeal (including any requests for rehearing and/or petitions for writ of certiorari)
11 resulting in the final judicial approval of the Settlement.

12 2.21. “First Amended Complaint” or “FAC” means the First Amended Complaint filed as
13 part of the settlement of the Action and only for the purpose of effectuating this settlement, as further
14 explained in Paragraph 3.4.

15 2.22. “Gross Settlement Amount” is the amount of Four Hundred Ninety-Five Thousand
16 Dollars (\$495,000.00), which is an all-in amount with no reversion of any amount to Defendant and
17 which represents the maximum amount payable in this Settlement by Defendant, which includes
18 attorneys’ fees and litigation costs, costs of settlement administration by the Settlement Administrator,
19 Enhancement Payment to the Class Representative, payment in the amount of Twenty Thousand
20 Dollars (\$20,000.00) for PAGA penalties (the “PAGA Settlement Amount”), and the amounts payable
21 to the Settlement Class.

22 2.23. “Individual Class Payment” means the amount due to each Participating Settlement
23 Class Member under the terms of this Stipulation and as calculated by the Settlement Administrator
24 pursuant to Sections 6.7.2 and 7.4.3. Individual Class Payments to Participating Settlement Class
25 Members represent non-economic damages, penalties, and interest and do not represent any wages.

26 2.24. “Individual PAGA Payment” means the amount due to each Aggrieved Employee
27 under the terms of this Stipulation and as calculated by the Settlement Administrator pursuant to
28 Sections 6.7.3 and 7.4.3. Individual PAGA Payments to Aggrieved Employees represent statutory and

1 civil penalties alone and do not represent any wages.

2 2.25. “Judgment” means the judgment to be executed and filed by the Court pursuant to this
3 Stipulation along with the Order of Final Approval of the Settlement.

4 2.26. “Net Settlement Amount” is the portion of the Gross Settlement Amount eligible for
5 distribution of Individual Class Payments to Participating Settlement Class Members and shall be the
6 amount remaining after deduction of Class Counsel’s attorneys’ fees and litigation costs,
7 Enhancement Payment to the Class Representative, Settlement Administration Costs, and the payment
8 of PAGA penalties.

9 2.27. “PAGA Release Period” means the time period from November 8, 2020, through
10 January 4, 2023.

11 2.28. “PAGA Settlement Amount” means the payments made under the Labor Code Private
12 Attorneys General Act of 2004, which shall be Twenty Thousand Dollars (\$20,000.00). 75% of the
13 PAGA Settlement Amount, or Fifteen Thousand Dollars (\$15,000.00), will be disbursed to the
14 California Labor & Workforce Development Agency (“LWDA”), and the remaining 25%, or Five
15 Thousand Dollars (\$5,000.00), will be paid to Aggrieved Employees.

16 2.29. “Participating Settlement Class Member” means each person who is a member of the
17 Settlement Class who does not submit a timely and valid Request for Exclusion. All Participating
18 Settlement Class Members will become bound by the Judgment including the Released Class Claims
19 and Released PAGA Claims (if applicable) if the Final Judgment occurs.

20 2.30. “Preliminary Approval Date” means the date the Court approves this Stipulation, and
21 the exhibits thereto, and enters an Order providing for mailing of the Class Notice to Settlement Class
22 Members, an opportunity to submit timely objections to the Settlement, and setting a hearing on the
23 fairness of the terms of Settlement, including approval of the Enhancement Payment, and attorneys’
24 fees and costs.

25 2.31. “Qualified Pay Periods” means the number of pay periods during which a Settlement
26 Class Member worked overtime or double-time during the period of November 12, 2020, through
27 January 1, 2022.

28 2.32. “Qualified Settlement Fund” or “QSF” means the fund established by the Settlement

1 Administrator for the benefit of Settlement Class Members and from which the Settlement Payments
2 shall be paid.

3 2.33. “Released Class Claims” shall mean all claims that were pled in the Class Action
4 Complaint or the First Amended Complaint for violation of Labor Code section 226(a)(2), based on
5 Defendant’s alleged failure to accurately display the total hours worked on wage statements that
6 reflect the payment of overtime and/or double overtime wages, and that accrued during the Class
7 Release Period. The Released Class Claims include a release of statutory penalties, attorneys’ fees,
8 and costs.

9 2.34. “Released PAGA Claims” shall mean all claims for civil penalties or other remedies
10 recoverable under Labor Code section 2698, *et seq.* (PAGA), which were pled in the PAGA Action
11 Complaint, the First Amended Complaint and/or the LWDA Letter sent by Plaintiff, dated November
12 8, 2021, for violation of Labor Code section 226(a)(2), based on Defendant’s alleged failure to
13 accurately display the total hours worked on wage statements that reflect the payment of overtime
14 and/or double overtime wages, and that accrued during the PAGA Release Period. The Released
15 PAGA Claims include a release of civil penalties, attorneys’ fees, and costs.

16 2.35. “Releasees” means Apple, its parents, owners, respective directors, officers,
17 shareholders, partners, managers, parent companies, predecessors, successors, affiliates, divisions,
18 subsidiaries, franchises, assigns, agents, current and former employees, representatives, attorneys,
19 related entities, insurers, and all persons and entities acting by, through, under, or in concert with any
20 of them.

21 2.36. “Request for Exclusion” means the document that a Settlement Class Member must
22 complete and timely submit in order to be excluded from the Settlement.

23 2.37. “Response Deadline” means forty-five (45) days after the Settlement Administrator
24 mails the Class Notice to Settlement Class Members, which is the last date on which Settlement Class
25 Members may: (a) submit a Request for Exclusion; (b) submit written objections to the Settlement; or
26 (c) dispute the information contained in the Class Notice.

27 2.38. “Settlement Administration Costs” shall mean the amount approved by the Court to be
28 paid to the Settlement Administrator as described in Section 6.5.

2.39. “Settlement Administrator” shall mean ILYM Group, Inc.

2.40. “Settling Parties” shall mean Plaintiff and Defendant.

2.41. “Stipulation” or “Settlement” shall mean this Joint Stipulation of Class and Representative Action Settlement, signed by the Parties and their respective counsel.

2.42. “Total Qualified Pay Periods” means the aggregate number of Qualified Pay Periods for all Settlement Class Members during the period of November 12, 2020, through January 1, 2022.

3. DESCRIPTION OF THE LITIGATION

3.1. On November 8, 2021, Plaintiff sent a letter to the LWDA providing notice under PAGA of alleged violations of Labor Code section 226 by Defendant, based on the contention that Plaintiff and other aggrieved employees in California were not provided accurate itemized wage statements. On November 17, 2021, Plaintiff filed a complaint in the Superior Court of the State of California for the County of Sacramento alleging a class claim based on Defendant’s alleged violations of Labor Code section 226. The putative class alleged in the CA Complaint is all current and former California employees of Defendant, who worked at Defendant’s call center, who were paid overtime and/or double-time wages at any time from November 12, 2020, through the present.

3.2. On January 13, 2022, Plaintiff filed a separate representative action complaint in the Superior Court of the State of California for the County of Sacramento for civil penalties pursuant to the PAGA. The representative action is predicated on Defendant’s alleged underlying violations of Labor Code section 226.

3.3. On January 4, 2023, the Parties participated in private mediation with third-party neutral Tripper Ortman, Esq. At the mediation, the Parties discussed a resolution of Plaintiff’s claims on a class and PAGA representative basis. Following mediation, the Parties accepted a mediator’s proposal that memorialized the Gross Settlement Amount and other material terms of the Settlement. At all times, the Parties’ settlement negotiations have been non-collusive, adversarial, and at arm’s length. The Parties agree that the above-described investigation and evaluation, as well as discovery and information exchanged prior to and during the settlement negotiations, are more than sufficient to assess the merits of the Parties’ respective positions and to compromise the issues on a fair and equitable basis.

1 3.4. In order to effectuate the settlement of this Action and for purposes of this settlement
2 only, the Parties stipulate to request dismissal of the PAGA Action without prejudice and also to
3 request leave for Plaintiff to file a First Amended Complaint in the Class Action, which adds the
4 PAGA claims asserted in the PAGA Action. Defendant will be deemed to have denied all material
5 allegations of the First Amended Complaint and shall not be required to respond to the First Amended
6 Complaint unless (1) the Court denies with prejudice Plaintiff's Motion for Final Approval of the
7 Settlement, (2) the appropriate appellate court fails to uphold or affirm the Settlement, or (3) the
8 Settlement Agreement is otherwise terminated. If the Court does not approve this Stipulation and/or
9 there is no Final Judgment, litigation will resume in the Class Action and, with the exception of the
10 filing of the First Amended Complaint and the dismissal of the PAGA Action, the Parties will be
11 returned to their procedural status prior to full execution of the Settlement.

12 3.5. Contemporaneous with the filing of this Stipulation seeking court approval of the
13 Settlement, Class Counsel shall notify the LWDA of this Settlement pursuant to Labor Code section
14 2699(l)(1), and otherwise comply with the provisions of Labor Code section 2699(l).

15 **4. DEFENDANT'S DENIAL OF WRONGDOING OR LIABILITY**

16 Defendant denies any and all liability or wrongdoing of any kind with regard to any and all of
17 the claims alleged, and makes no concessions or admissions of liability of any kind, or that class or
18 representative action treatment is appropriate, warranted, or manageable. Defendant maintains that for
19 any purpose other than Settlement, the Action is not appropriate for class or representative action
20 treatment. Neither this Stipulation, nor any document referred to in it, nor any actions taken pursuant
21 to this Stipulation, is or should be construed as an admission by Defendant of any fault, wrongdoing,
22 or liability whatsoever. There has been no determination by any agency or court as to the merits of the
23 claims asserted by Plaintiff against Defendant. Nonetheless, Defendant has concluded that further
24 conduct of the Action would be protracted, and expensive, and that it is desirable that the Action be
25 fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation.
26 Defendant has also taken into account the uncertainty and risks inherent in any litigation. Defendant
27 has therefore determined that it is desirable and beneficial to it to settle the Action in the manner and
28 upon the terms and conditions set forth in this Stipulation.

1 **5. BENEFITS OF THE SETTLEMENT TO THE CLASS AND DEFENDANT**

2 5.1. Class Counsel have diligently pursued an investigation of Plaintiff's claims against
3 Defendant. Based on their own independent investigation and evaluation, Class Counsel are of the
4 opinion that settlement with Defendant for the consideration and on the terms set forth in this
5 Settlement is fair, reasonable, and adequate, and is in the best interest of the Class in light of all known
6 facts and circumstances, including the risk of significant delay and uncertainty associated with
7 litigation, various factual and legal defenses asserted by Defendant, the risk that the Class would not
8 be certified if Defendant opposed certification, the risk that a court would find that a PAGA trial
9 would not be manageable, and the risk that a court would not award penalties or would significantly
10 reduce penalties. In addition to the above, Class Counsel has weighed the monetary benefit provided
11 by the Settlement to the Class against the expenses and length of continued proceedings that would be
12 necessary to prosecute the Action against Defendant through further litigation, trial, and possible
13 appeals. Therefore, Class Counsel has determined that the settlement set forth in this Stipulation is in
14 the best interests of the Class.

15 5.2. Defendant and Defendant's Counsel also agree that the Settlement is fair and
16 reasonable given the uncertainty and risks and costs of further litigation because Defendant has
17 concluded that further conduct of the Action would be protracted, distracting, and expensive, and that
18 it is desirable that the Action be fully and finally settled in the manner and upon the terms and
19 conditions set forth in this Stipulation. Defendant has therefore determined that it is desirable and
20 beneficial to it to settle the Action in the manner and upon the terms and conditions set forth in this
21 Stipulation.

22 5.3. It is the Parties' intention that this Settlement shall constitute a full and complete
23 settlement and release of any and all Released Class Claims and Released PAGA Claims against
24 Releasees.

25 **6. OPERATIVE TERMS OF THE SETTLEMENT**

26 The Parties stipulate to the conditional certification of the Class as defined herein for
27 settlement purposes only. As set forth in Sections 7.3.2 to 7.3.4, this Stipulation will be void if this
28 Settlement is not approved by the Court. The Parties further stipulate that, for settlement purposes

only, Diversity Law Group, P.C. and Polaris Law Group may be appointed Class Counsel and that Plaintiff may be appointed Class Representative. Defendant's stipulation to this Settlement Class shall not be construed as an admission or acknowledgement of any kind that any class should be certified or given representative action treatment for any purpose other than settlement.

Additionally, the Parties to the Action agree as follows:

6.1. Gross Settlement Amount

Defendant shall pay the Gross Settlement Amount of Four Hundred Ninety-Five Thousand Dollars (\$495,000.00) to resolve the Action on a class-wide and representative action basis, as more fully described below. The Gross Settlement Amount is non-reversionary. The Gross Settlement Amount is an all-in amount that includes attorneys' fees and reasonable litigation costs (not to exceed 35% of the Gross Settlement Amount for attorneys' fees), costs of settlement administration by the Settlement Administrator, Enhancement Payment to the Class Representative (not to exceed \$10,000.00), payment of the PAGA Settlement Amount to the LWDA and Aggrieved Employees, and the settlement payments to the Settlement Class Members. With the exception of Section 6.6, Defendant will not be required to pay more than the Gross Settlement Amount to satisfy its obligations under the Settlement.

6.2. Class Representative's Enhancement Payment

Subject to Court approval, the Class Representative's Enhancement Payment will be in an amount not to exceed Ten Thousand Dollars (\$10,000.00). Because the Enhancement Payment represents a payment to the Class Representative for service to the Class Members, taxes will not be withheld from the Enhancement Payment. The Settlement Administrator will report the Enhancement Payment on an IRS Form 1099, and any other required tax forms, and will provide said form(s) to the Class Representative and to the pertinent taxing authorities as required by law. The Class Representative assumes full responsibility for paying all taxes, federal and state, if any, due as a result of the Enhancement Payment and agrees to indemnify Defendant for any such taxes owed by him. Any amount of Class Representative's Enhancement Payment that is not awarded by the Court shall be added to the Net Settlement Amount. The Class Representative shall also be entitled to recover his proportionate share of the Net Settlement Amount. Defendant reserves the right to oppose any

statements in any motion or application for an Enhancement Payment that disparage Apple.

6.3. Attorneys' Fees and Costs

Class Counsel shall apply to the Court for an award of attorneys' fees not to exceed 35% of the Gross Settlement Amount, or One Hundred Seventy-Three Thousand Two Hundred Fifty Dollars (\$173,250.00), plus reimbursement of reasonable court costs of up to Twenty-Five Thousand Dollars (\$25,000.00). Defendant will not oppose Class Counsel's request for attorneys' fees and reasonable court costs in accordance with the terms of this provision. Defendant reserves the right to oppose any statements in any application for attorneys' fees and costs that disparage Apple. In the event the Court awards less than the amount of requested fees and/or costs, any unapproved amounts shall be added to the Net Settlement Amount for distribution to Participating Settlement Class Members.

6.4. PAGA Settlement Amount

Twenty Thousand Dollars (\$20,000.00) of the Gross Settlement Amount will be allocated to the PAGA Settlement Amount for alleged PAGA civil penalties. Subject to Court approval, the Settlement Administrator will pay 75% of the PAGA Settlement Amount (i.e., \$15,000.00) to the LWDA for its share of the alleged PAGA penalties. The Settlement Administrator will pay the remaining 25% of the PAGA Settlement Amount (i.e., \$5,000.00) to Aggrieved Employees.

6.5. Settlement Administrator

6.5.1. The Settlement Administrator shall be ILYM Group, Inc. The fees and expenses reasonably incurred by the Settlement Administrator as a result of the procedures and processes required by this Stipulation (the "Settlement Administration Costs") shall be paid out of the Gross Settlement Amount and are estimated to be Fourteen Thousand Dollars (\$14,000.00). The Settlement Administration Costs shall include: all costs of administering the Settlement, including, but not limited to, all tax document preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees associated with preparing, issuing, and mailing any and all notices and other correspondence to Settlement Class Members; all costs and fees associated with communicating with Settlement Class Members, Class Counsel, and Defendant's Counsel; all costs and fees associated with computing, processing, reviewing, and paying the Individual Class Payments and Individual PAGA Payments, and resolving disputed claims; all costs and fees associated with

determining tax implications, if any, and issuing any required tax forms relating to payments made under the Settlement; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Individual Class Payments and Individual PAGA Payments; and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Stipulation. Should the amount charged by the Settlement Administrator be less than the \$14,000.00 estimate, the surplus shall be added back to the Net Settlement Amount.

6.5.2. The Parties agree that the Settlement Administrator shall establish a Qualified Settlement Fund (“QSF”) that is intended to be pursuant to Section 468B of the Code and Treas. Reg. § 1.468B-1, 26 CFR § 1.468B-1, *et seq.*, and will be administered by the Settlement Administrator as such. With respect to the QSF, the Settlement Administrator shall: (1) open and administer a settlement account in such a manner as to qualify and maintain the qualification of the QSF as a “Qualified Settlement Fund” under Section 468B of the Code and Treas. Reg. § 1.468B-1; (2) satisfy all federal, state, and local income and other tax reporting, return, and filing requirements, if any, with respect to the QSF; and (4) satisfy out of the QSF all fees, expenses, and costs incurred in connection with the opening and administration of the QSF and the performance of its duties and functions as described in this Agreement. The aforementioned fees, costs, and expenses shall be treated as and included in the costs of administering the QSF and as Settlement Administration Costs. The Parties each understand, agree and intend that the QSF will be taxed as a separate entity for purposes of all federal, state and local taxes, that they will treat the QSF on a basis consistent therewith, that the QSF will be characterized as the employer of all Settlement Class Members for purposes of determining all tax obligations associated with any and all payments out of the QSF, and the QSF will bear full responsibility for all taxes associated with it any payments to Settlement Class Members under the terms of this Stipulation. The Settlement Administrator shall be responsible for ensuring that all taxes associated with the Agreement are timely paid to the appropriate tax authorities and for the filing of all federal, state and local employment tax returns, other taxes associated with the payments to Settlement Class Members. As required by law, the Settlement Administrator shall be solely responsible for timely issuing any required IRS Form 1099 and complying with any tax obligations of the QSF under

1 federal, state and/or local law. To verify the Settlement Administrator's compliance with the
2 foregoing withholding and reporting requirements, as soon as administratively practicable, the
3 Settlement Administrator shall furnish Defendant's Counsel and Class Counsel with copies of all tax
4 returns and information returns filed by the Settlement Fund and a final accounting adequate to
5 demonstrate full compliance with all tax withholding, payment, and reporting obligations. In addition,
6 the Settlement Administrator shall timely make such elections as necessary or advisable to carry out
7 the provisions of this sub-paragraph. Such elections shall be made in compliance with the procedures
8 and requirements contained in applicable QSF regulations. It shall be the responsibility of the
9 Settlement Administrator to timely and properly prepare and deliver all necessary documentation for
10 signature, as may be required, and thereafter to cause the appropriate filing of such documentation to
11 occur. To the extent that, for any period of time, the Settlement Fund is not treated as a QSF by any
12 party for any purpose, the Settlement Administrator shall promptly notify Class Counsel and
13 Defendant's Counsel of that fact.

14 6.5.3. Neither Defendant, Defendant's Counsel, Plaintiff, or Class Counsel shall have
15 any responsibility or liability whatsoever with respect to the distribution of payments from the QSF,
16 the determination, administration, calculation or payment of claims, the payment, withholding,
17 reporting and/or filing of any taxes related to the QSF, the payment of any taxes, distribution of
18 residual settlement funds, or any losses incurred in connection with the foregoing. No person shall
19 have any claim against Plaintiff, Class Counsel, the Settlement Administrator, Defendant, or
20 Defendant's Counsel based upon the distributions made substantially in accordance with this
21 Agreement, the allocation of the payments from the QSF among Class Members hereunder, and/or
22 further orders of the Court.

23 6.5.4. The Parties agree that Defendant and Settlement Administrator can confer
24 regarding the Class Data.

25 6.5.5. The actions of the Settlement Administrator shall be governed by the terms of
26 this Stipulation and any Orders from the Court.

27 6.5.6. In the event that either Defendant's Counsel or Class Counsel takes the position
28 that the Settlement Administrator is not acting in accordance with the terms of the Stipulation, such

1 Party shall meet and confer first with opposing counsel and/or, if necessary, with the Settlement
2 Administrator or the Court to attempt to resolve the issue.

3 6.6. Escalator Clause. The Gross Settlement Amount was calculated with, and is premised
4 on, Defendant's representation that there are approximately 15,835 wage statements reflecting the
5 payment of overtime or double-time wages during the period of November 8, 2020, and January 1,
6 2022. If the actual number of wage statements at issue exceeds 15,835 by more than ten percent
7 (10%), or 1,584, then the Gross Settlement Amount will increase in proportion to the increase in the
8 number of wage statements above ten percent. In other words, if the number of wage statements at
9 issue exceeds 15,835 by eleven percent (11%), then the Gross Settlement Amount will be increased
10 by one percent (1%).

11 6.7. Calculation of Settlement Payments

12 6.7.1. The Net Settlement Amount will consist of all funds remaining from the Gross
13 Settlement Amount after Class Counsel's fees and costs, settlement administrations costs, the class
14 representative enhancement, and payment to the LWDA and Aggrieved Employees are made. In total,
15 the Gross Settlement Amount is \$495,000.00. Attorneys' fees will be no more than \$173,250.00,
16 which is 35% of the Gross Settlement Amount. Class Counsel's costs will be no more than
17 \$25,000.00. The Settlement Administration Costs will be approximately \$14,000.00. The Class
18 Representative Enhancement Payment will be no more than \$10,000.00. The payment of PAGA
19 penalties to the LWDA and Aggrieved Employees will be \$20,000.00 (three quarters of which will go
20 to the LWDA). In total, the Net Settlement Amount will be at least \$252,750. The entire amount of
21 the Net Settlement Amount will be paid to Participating Settlement Class Members.

22 6.7.2. The Settlement Administrator will calculate the payments to Settlement Class
23 Members from the Net Settlement Amount based on the following formula for allocating the
24 settlement payments, which the Parties and their Counsel believe are reasonable and are designed to
25 provide a fair apportionment of the settlement funds to the Settlement Class:

26 a. Defendant will provide the Settlement Administrator with Class Data,
27 including the number of Qualified Pay Periods for each Settlement Class Member and the Total
28 Qualified Pay Periods for all Settlement Class Members during the period of November 12, 2020,

through January 1, 2022;

b. After the Final Judgment, the Settlement Administrator shall divide the Net Settlement Amount by the Total Qualified Pay Periods for all Settlement Class Members, thereby determining the individual Qualified Pay Period Value.

c. The Settlement Administrator will pay each Settlement Class Member the product of the number of Qualified Pay Periods for a Settlement Class Member multiplied by the Qualified Pay Period Value. This amount is the Individual Class Payment and will be paid automatically to Participating Settlement Class Members without the need for claim forms.

6.7.3. The Settlement Administrator will also calculate the payments to Aggrieved Employees from the PAGA Settlement Amount based on the following formula for allocating the settlement payments, which the Parties and their Counsel believe are reasonable and are designed to provide a fair apportionment of the settlement funds to the Aggrieved Employees:

a. Defendant will provide the Settlement Administrator with Class Data, including the individual number of pay periods each Aggrieved Employee worked overtime or double-time in California during the period of November 8, 2020, through January 1, 2022 (defined as “Individual PAGA Pay Periods”), and the aggregate number of pay periods all Aggrieved Employees worked overtime or double-time in California during the period of November 8, 2020, through January 1, 2022 (defined as “Total PAGA Pay Periods”);

b. After the Final Judgment, the Settlement Administrator shall divide the 25% portion of the PAGA Settlement Amount allocated to Aggrieved Employees by the Total PAGA Pay Periods described in Section 6.7.3.a above, thereby determining the individual PAGA Pay Period Value.

c. The Settlement Administrator will pay each Aggrieved Employee the product of the Individual PAGA Pay Periods described in Section 6.7.3.a above, multiplied by the PAGA Pay Period Value. This amount is the Individual PAGA Payment and will be paid automatically to Aggrieved Employees without the need for claim forms.

6.8. Tax Treatment. For tax purposes, 100% of all payments made to Settlement Class Members and Aggrieved Employees under this Settlement shall be treated as non-economic damages,

penalties, and interest that will not be subject to payroll taxes or tax withholding or any employer's share of federal or state payroll taxes (an IRS Form 1099 will be issued for such payment). Defendant, Defendant's Counsel, and Class Counsel make no representations, and it is understood and agreed that they have made no representations as to the taxability to any Settlement Class Members of any portions of the Individual Class Payments and Individual PAGA Payments, the payment of any costs or an award of attorneys' fees, or any payments to Class Representative. The Parties further understand that Class Representative and any Settlement Class Member who receives any Individual Class Payment and/or Individual PAGA Payment pursuant to this Stipulation shall be solely responsible for any and all tax obligations associated with such receipt. Class Representative and any Settlement Class Member who receives any Individual Class Payment and/or Individual PAGA Payment should consult with their tax advisors concerning the tax consequences of the Individual Class Payment and/or Individual PAGA Payment they receive under the Settlement.

6.9. Circular 230 Disclaimer. Each Party to this Stipulation acknowledges and agrees that: (1) no provision of this Stipulation, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) each Party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Stipulation, (b) has not entered into this Stipulation based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by either Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Stipulation.

6.10. Benefits Not Affected. Defendant will not use the Individual Class Payments or Individual PAGA Payments to calculate any additional benefits including, for example (but without

1 limitation), vacation, holiday pay, pension, or 401(k) plan contributions. The Individual Class
2 Payments and Individual PAGA Payments are not wages and do not represent any modification of
3 previously credited hours of service or other eligibility criteria under any employee pension or
4 employee welfare benefit plan sponsored by Defendant, and are not “compensation” for purposes of
5 determining eligibility for, or benefit accrual within, an employee pension benefit plan, an employee
6 welfare benefit plan, or other plan sponsored by Defendant, or its predecessors, subsidiaries, or
7 successors.

8 6.11. Participating Settlement Class Members’ Released Claims. Upon the Final Judgment,
9 each Participating Settlement Class Member and any person purporting to act on behalf of the State of
10 California as a representative of the Settlement Class shall be deemed to have fully, finally, and
11 forever released the Released Class Claims against the Releasees. This release will take effect
12 whether or not a Participating Settlement Class Member receives the Class Notice or his or her
13 Individual Class Payment or cashes or deposits any check for the Individual Class Payment.
14 Execution of this Settlement by the Class Representative is intended to effectuate a release by each
15 Participating Class Member, which includes any legal heirs and/or successors-in-interest of each
16 Participating Class Member. As to the Released Class Claims, Plaintiff, and each and every
17 Participating Class Member shall be deemed to have acknowledged and agreed that: (1) their claims
18 for payments and/or interest in the Action are disputed; and (2) the payments under Settlement
19 constitute full payment of any amounts allegedly due to them based on Released Class Claims.

20 6.12. Aggrieved Employees’ Released Claims. Upon the Final Judgment, each Aggrieved
21 Employee shall be deemed to have fully, finally, and forever released the Released PAGA Claims
22 against the Releasees. This release will take effect whether or not an Aggrieved Employee receives
23 the Class Notice or his or her Individual PAGA Payment or cashes or deposits any check for the
24 Individual PAGA Payment. There is no right to opt out of the Released PAGA Claims. Execution of
25 this Settlement by the Class Representative is intended to effectuate a release by each Aggrieved
26 Employee, which includes any legal heirs and/or successors-in-interest of each Aggrieved Employee.
27 As to the Released PAGA Claims, Plaintiff, and each and every Aggrieved Employee shall be deemed
28 to have acknowledged and agreed that: (1) their claims for payments and/or interest in the PAGA

1 Action are disputed; and (2) the payments under Settlement constitute full payment of any amounts
2 allegedly due to them based on Released PAGA Claims.

3 **7. NOTICE TO CLASS AND SETTLEMENT PROCEDURE**

4 7.1. Preliminary Approval

5 7.1.1. Class Counsel shall submit to the Court this Stipulation, and exhibits thereto,
6 for preliminary approval by the Court. Class Counsel will prepare and file the Preliminary Approval
7 motion papers and will send the Preliminary Approval motion papers to Defendant's Counsel for their
8 review and comment at least one week prior to their filing. The Court's preliminary approval of this
9 Settlement shall be embodied in a proposed order preliminarily approving the Settlement, jointly
10 prepared by Class Counsel and Defendant's Counsel and providing for the Class Notice (*see Exhibit*
11 *A*) to be mailed to the Settlement Class Members, and which will also set the date for the final
12 approval hearing.

13 7.2. Notice of Settlement

14 7.2.1. Within twenty-one (21) calendar days following the Preliminary Approval Date,
15 Defendant will send to the Settlement Administrator the Class Data. Upon receipt of the Class Data,
16 the Settlement Administrator shall check the names of Settlement Class Members with the U.S. Postal
17 Service National Change of Address Database and update any addresses with any new information
18 found regarding the location of those Settlement Class Members. The Settlement Administrator will
19 update the Class Data with the new contact information found pursuant to its obligations in this
20 paragraph or based on information provided by Settlement Class Members during the claims process.
21 The Class Data shall be used by the Settlement Administrator solely for the purpose of administering
22 the Settlement. The Class Data shall be kept confidential by the Settlement Administrator and none of
23 its contents shall be disclosed, shared with, or communicated to Class Counsel, except as required
24 under the Settlement.

25 7.2.2. Within fifteen (15) calendar days of receiving the Class Data from Defendant,
26 the Settlement Administrator will send the Court-approved Class Notice via first class mail to
27 Settlement Class Members using the Class Data Defendant provided to the Settlement Administrator
28 as updated by the Settlement Administrator as described in Section 7.2.1 above.

1 7.2.3. If any Class Notices are returned to the Settlement Administrator as
2 undeliverable, the Settlement Administrator shall run a skip-trace in order to ascertain the current
3 address of the Settlement Class Member. If no address is found, no further action is required. If an
4 address is ascertained, the Settlement Administrator shall re-mail the Class Notice within ten (10)
5 calendar days. If alternative addresses are obtained for a Settlement Class Member, the Settlement
6 Administrator shall send the Class Notice to up to three (3) alternative addresses.

7 7.2.4. Settlement Class Members will have forty-five (45) calendar days from the date
8 of mailing the Class Notice within which to submit a written objection to the Settlement by sending to
9 the Settlement Administrator a written objection as set forth in the Class Notice and provide notice of
10 any intent to appear at the Final Approval Hearing. All objections must be postmarked, emailed, or
11 faxed to the Settlement Administrator by the 45-day deadline. The Settlement Administrator shall
12 distribute all objections within one (1) business day of receipt to Class Counsel and Defendant's
13 Counsel. The Parties shall file all valid Objections with the Court within ten (10) business days of
14 receipt. Settlement Class Members who fail to serve timely written objections in the manner specified
15 above shall be deemed to have waived any objections and shall be foreclosed from making any
16 objection (whether by appeal or otherwise) to the Settlement, unless otherwise ordered by the Court.
17 Class Counsel and Defendant's Counsel may, at least (5) court days (or such other number of days as
18 the Court may specify) before the Final Approval Hearing, file responses to any written objections
19 filed with the Court. Class Counsel agrees that they will not solicit, encourage, or advise any
20 individual to object to the Settlement. Settlement Class Members who submit a timely Request for
21 Exclusion shall have no standing to file an objection to the Settlement, and any such objection will be
22 of no force and effect. Objecting Settlement Class Members need not appear to have their objection
23 considered. Settlement Class Members may appear in person at the final approval hearing to voice
24 their objections, if any, to the Settlement, whether or not they submit a written objection.

25 7.2.5. Settlement Class Members will have forty-five (45) calendar days from the date
26 of mailing the Class Notice within which to opt out of and be excluded from the class portion of the
27 Settlement. Settlement Class Members who submit a timely Request for Exclusion will keep their
28 right to pursue claims as set forth in the Released Class Claims. To opt out, a Settlement Class

1 Member must submit a written request to opt out of the Settlement (“Request for Exclusion”) within
2 this 45-day deadline. Written Requests for Exclusion that are post-marked after the 45-day deadline
3 will be untimely, and Settlement Class Members submitting untimely Requests for Exclusion shall be
4 bound by the Settlement and its releases and will be Settlement Class Members for settlement
5 payment purposes unless this Court orders that the Request for Exclusion is timely. Class Counsel
6 agrees that they will not solicit, encourage, or advise any individual to opt out the Settlement. At least
7 twenty (20) calendar days prior to the Final Approval Hearing, the Settlement Administrator will
8 apprise Class Counsel and Defendant's Counsel of how many Settlement Class Members have timely
9 opted out. Settlement Class Members who also meet the criteria of Aggrieved Employees will release
10 the Released PAGA Claims as a result of this Settlement, regardless of whether a timely Request for
11 Exclusion is submitted. Aggrieved Employees may not opt out of the Released PAGA Claims.

12 7.2.6. Settlement Class Members will have an opportunity to dispute the
13 individualized information provided in their Class Notices. To the extent Settlement Class Members
14 dispute the number of pay periods during which overtime or double-time was worked, Settlement
15 Class Members may produce evidence to the Settlement Administrator showing that such information
16 is inaccurate by the Response Deadline. No Settlement Class Member may increase the size of his or
17 her settlement payment by arguing that Defendant’s records are incorrect without providing
18 documentation corroborating his or her position. The Settlement Administrator will decide the dispute
19 and its decision shall be final. Defendant shall receive notice about any Class Member disputes
20 regarding the number of pay periods during which overtime or double-time was worked, and
21 Defendant shall have the opportunity to provide additional relevant or responsive information or
22 records, should Defendant wish to do so, before the Settlement Administrator makes its decision.
23 After allowing Defendant to provide responsive information to any such disputes, the Settlement
24 Administrator shall provide Defendant with notice regarding how the Settlement Administrator
25 resolved such disputes. Defendant’s records will be presumed correct, but the Settlement
26 Administrator will evaluate the evidence submitted by the Settlement Class Member and will make the
27 final decision as to the merits of the dispute. All disputes will be decided by the Settlement
28 Administrator within fifteen (15) business days of the Response Deadline.

1 7.3. Final Approval

2 7.3.1. Prior to the Final Approval Hearing, Plaintiff will move the Court for entry of
3 the Order of Final Approval (and associated entry of Judgment): (a) finally approving the Class
4 Settlement as fair and adequate; (b) approving the PAGA Settlement; (c) approving Class Counsel's
5 application for an award of attorneys' fees and costs; (d) approving Class Representative's application
6 for a Enhancement Payment; (e) approving the payment of reasonable Settlement Administration
7 Costs; and (f) releasing and barring any Released Class Claims and Released PAGA Claims by
8 Participating Settlement Class Members and Aggrieved Employees. The Parties and their counsel
9 shall make all reasonable efforts to secure entry of the Order of Final Approval and Judgment. The
10 proposed Order of Final Approval, and the associated proposed Judgment shall be jointly prepared by
11 the Parties, and the Motion for Final Approval shall be sent to Defendant's Counsel for review and
12 comment at least five (5) business days before filing with the Court in connection with the Final
13 Approval Hearing.

14 7.3.2. Prior to the Final Approval Hearing, within the Motion for Final Approval,
15 Class Counsel shall include a request for Attorneys' Fees and Costs and seeking the proposed
16 Enhancement Payment to Class Representative as set forth in the Stipulation. Class Representative
17 and Class Counsel agree that they shall be responsible for justifying the amount of the Enhancement
18 Payment and attorneys' fees and costs to the Court, and they agree to submit, as appropriate, the
19 necessary materials to justify these payments. Defendant will not oppose the amount of the
20 Enhancement Payment and attorneys' fees and costs sought as long as they are consistent with the
21 Stipulation. If the Court (or any appellate court) awards less than the amount requested for attorneys'
22 fees and/or costs, or less than the amount requested for the Enhancement Payment for Class
23 Representative, only the awarded amounts shall be paid and shall constitute satisfaction of the
24 obligations of Defendant under this Stipulation, and the unawarded amounts shall be added to the Net
25 Settlement Amount for calculation of Settlement Class Members' total Individual Class Payments. If
26 an order by the Court or in any appellate proceeding results in an order materially modifying, setting
27 aside, or vacating any portion of the Stipulation, with the exception of any modification of the amount
28 of attorneys' fees or costs to be paid to Class Counsel, or the amount of the Enhancement Payment

1 paid to Class Representative, any Party adversely impacted by the order shall have the right, at its sole
2 discretion, to treat such order as an event voiding the Settlement and preventing Final Judgment. To
3 exercise this right, the Party must inform the other Party and the Settlement Administrator, in writing,
4 of the exercise of this right, within ten (10) business days of receiving notice of any order meeting the
5 conditions set forth above. Before either Party elects to exercise its right to treat such order as an
6 event permanently preventing Final Judgment, that Party must meet and confer in good faith with the
7 other party to determine if an agreement can be reached modifying this Settlement to the mutual
8 satisfaction of the Parties along with any necessary court approval.

9 7.3.3. If more than ten percent (10%) of the Settlement Class opt out of the
10 Settlement, Defendant shall have the right, but not the obligation, exercised in Defendant's sole
11 discretion, to cancel the Settlement and render it null and void. The Parties agree not to encourage any
12 Settlement Class Member to object to or opt out of the Settlement.

13 7.3.4. If Final Judgment does not occur, or if this Stipulation is terminated or canceled
14 pursuant to its terms, the Parties to this Stipulation shall be deemed to have reverted to their respective
15 status as of the date and time immediately prior to the full execution of this Stipulation, with the
16 exception that if any Settlement Administration Costs are due and payable, the Parties agree to split
17 those costs. In such an event, if the Stipulation is not approved by the Court substantially in the form
18 agreed to by the Parties, or if the Settlement set forth in the Stipulation is terminated, cancelled,
19 declared void, or fails to become effective in accordance with its terms, or if the Judgment does not
20 become a Final Judgment, or if the Final Approval Date does not occur, this Stipulation (except for
21 those provisions relating to non-admission, denial of liability set forth above, and the confidentiality
22 agreements entered into by the Parties) shall be deemed null and void, its terms and provisions shall
23 have no further force and effect with respect to the Parties and shall not be used in the Action or in any
24 other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with
25 the terms of the Stipulation shall be treated as vacated *nunc pro tunc*. Notwithstanding any other
26 provision of this Stipulation, no order of the Court, modification, or reversal on appeal of any order of
27 the Court, reducing the amount of any attorneys' fees or costs to be paid by Defendant to Class
28 Counsel, or reducing the amount of the Enhancement Payment paid to Class Representative, shall

1 constitute grounds for cancellation or termination of the Stipulation, or grounds for limiting any other
2 provision of the Judgment.

3 7.4. Funding and Distribution of the Settlement

4 7.4.1. Within seven (7) calendar days after Final Judgment, the Settlement
5 Administrator shall send Defendant's Counsel electronic wiring instructions for paying the Gross
6 Settlement Amount into the QSF set up, held, and controlled by the Settlement Administrator that
7 qualifies as a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1 *et seq.*

8 7.4.2. By the Effective Date, Defendant shall pay the Gross Settlement Amount to the
9 Settlement Administrator and the Settlement Administrator shall fund the QSF.

10 7.4.3. Within fifteen (15) business days after Defendant funds the QSF, the Settlement
11 Administrator shall issue and mail Individual Class Payments to Participating Settlement Class
12 Members and Individual PAGA Payments to Aggrieved Employees by checks which shall become
13 null and void if not deposited within 180 calendar days of mailing. If a Participating Settlement Class
14 Member and/or Aggrieved Employee fails to cash or deposit his/her settlement check within 180 days
15 of mailing, his/her Settlement payment shall be sent to the Unclaimed Property Fund at the California
16 State Controller in the name of the applicable Participating Settlement Class Member or Aggrieved
17 Employee. Participating Settlement Class Members and Aggrieved Employees who fail to cash their
18 check within 180 calendar days of mailing will still be bound by the Settlement including the Released
19 Class Claims and Released PAGA Claims, respectively.

20 7.4.4. Within fifteen (15) calendar days after Defendant funds the QSF, the Settlement
21 Administrator shall pay the Court-approved attorneys' fees and costs to Class Counsel or a trust
22 account designated by Class Counsel. Class Counsel shall provide to the Settlement Administrator,
23 with a copy to Defendant, the pertinent taxpayer identification number and IRS Form W-9 within
24 seven (7) calendar days after the Effective Date.

25 7.4.5. Within fifteen (15) calendar days after Defendant funds the QSF, the Settlement
26 Administrator shall send a check by mail for the court-approved Enhancement Payment to Class
27 Representative, care of Class Counsel.

28 7.4.6. Within fifteen (15) calendar days after Defendant funds the QSF, the Settlement

Administrator shall remit 75% of the PAGA Settlement Amount (*i.e.*, \$15,000.00) to the LWDA for its share of the alleged PAGA penalties.

8. MISCELLANEOUS PROVISIONS

8.1. Neither the acceptance nor the performance by Defendant of the terms of this Stipulation, nor any of the related negotiations or proceedings, is or shall be claimed to be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the Complaint, the appropriateness of class or representative action treatment, the validity of any of the claims that were or could have been asserted by Plaintiff and/or any Settlement Class Members or Aggrieved Employees in the Action, or of any liability or guilt of Defendant in the Action. Nothing in this Stipulation shall be construed to be or deemed an admission by Defendant of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Settlement Class Members, the Aggrieved Employees, or any other person, and Defendant specifically disclaims any liability, culpability, negligence, or wrongdoing toward each and all of them. Each of the Parties has entered into this Stipulation with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies.

8.2. Disputes Regarding Settlement. In the event that there are any disputes arising out of or relating to this Stipulation, the Parties will meet and confer in good faith in an effort to resolve any such dispute, and, if the Parties are unsuccessful, they will seek the assistance of Tripper Ortman, Esq. of Ortman Mediation and attempt to resolve such matters prior to submitting any disputes to the Court.

8.3. The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Settlement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other action as may reasonably be necessary to fulfill the terms of this Settlement. The Parties to this Settlement shall exercise reasonable efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by Court order, or otherwise, to effectuate this Settlement and the terms set forth herein.

8.4. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the date of receipt by email or first class mail, addressed as follows:

To the Settlement Class:

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
Diversity Law Group, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
kagnew@diversitylaw.com
nrosenthal@diversitylaw.com

William L. Marder (State Bar No. 170131)
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, California 95023
(831) 531-4214
(831) 634-0333 facsimile
bill@polarislawgroup.com

To Defendant:

Kent J. Sprinkle (State Bar No. 226971)
M. Leah Cameron (State Bar No. 274637)
Desiree J. Ho (State Bar No. 313250)
CDF Labor Law LLP
4660 La Jolla Village Drive, Suite 740
San Diego, CA 92122
Telephone: (858) 646-0007
ksprinkle@cdflaborlaw.com
lcameron@cdflaborlaw.com
dho@cdflaborlaw.com

8.5. Plaintiff and Class Counsel agree not to disclose the terms of this Settlement, including as set forth in the accepted mediator's proposal, until this Stipulation is filed in court. At any time, Plaintiff and Class Counsel shall not issue a press release, hold a press conference, publish information about the Settlement, this Stipulation, the Parties' mediator's proposal, on any website or other public medium or forum, or otherwise publicize the Parties' mediator's proposal, or this Stipulation (except for filing this Stipulation in Court and filing papers to obtain court approval of the Settlement). At any time, Plaintiff and Class Counsel agree not to respond to any press inquiries, except that the Parties have agreed to settle the matter (or are seeking approval of settlement) and refer the inquirer to the filed Stipulation. Class Counsel can discuss the Settlement with Settlement Class

Members who contact Class Counsel's office about the Settlement, but Class Counsel will not encourage Settlement Class Members who contact them to publicize the Settlement. Nothing shall prevent Class Counsel from responding to media inquiries related to objectors or intervenors to the proposed Settlement, but such responses shall not disparage Defendant.

8.6. Neither Class Counsel nor any other attorneys acting for, or purporting to act for, the Class, any individual Settlement Class Members, or Plaintiff, may recover or seek to recover any amounts for attorneys' fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except as expressly provided herein.

8.7. The Parties shall bear their own attorneys' fees and costs, except as provided herein.

8.8. Plaintiff represents that he has not participated in or encouraged the bringing of any claims against Defendant by any of Defendant's current or former employees that are not covered by the Released Class Claims and/or Released PAGA Claims. Class Counsel represents that they do not currently represent any person or persons who have filed any other pending claims, complaints, or grievances against Defendant and/or the Releasees, or who are considering filing any claims, complaints, or grievances against Defendant and/or the Releasees. Class Counsel also represents that Class Counsel has not used any information obtained from the Settlement to solicit or assist any other persons or attorneys to commence a claim or proceeding against Defendant.

8.9. This Stipulation upon its full execution constitutes the entire settlement agreement between the Parties hereto and no representations, warranties, or inducements have been made to any Party concerning the Stipulation or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. Except as otherwise provided herein, each Party shall bear his or its own costs. Defendant's complete obligations are detailed herein, and the Parties agree and understand that there shall be no injunctive relief included as part of any term of the Settlement.

8.10. This Stipulation may not be changed, altered, or modified, except in writing signed by the Parties hereto and approved by the Court. This Stipulation may not be discharged except by performance in accordance with its terms or by a writing used by the Parties hereto.

8.11. If any provision of this Stipulation or the application thereof is held invalid, such

1 invalidation shall not affect other provisions or applications of this Stipulation (except as otherwise
2 expressly provided herein) and to this end the provisions of this Stipulation are declared to be
3 severable (except as otherwise provided).

4 8.12. This Stipulation shall be binding upon and inure to the benefit of the Parties hereto and
5 their respective heirs, trustees, executors, administrators, successors, and assigns.

6 8.13. Because the members of the Settlement Class are so numerous, the Parties agree that it
7 is impossible or impractical to have each Settlement Class Member sign this Stipulation. It is agreed
8 that, for purposes of seeking approval of this class action Settlement, this Stipulation may be executed
9 on behalf of Settlement Class Members by Class Counsel.

10 8.14. This Stipulation shall become binding upon its execution by all of the undersigned,
11 subject to Court approval as provided herein. The Parties may execute this Stipulation in counterparts,
12 and execution of counterparts shall have the same force and effect as if all Parties had signed the same
13 instrument.

14 8.15. The rights and obligations of the Parties hereunder shall be construed and enforced in
15 accordance with, and shall be governed by, the laws of the State of California, without regard to
16 principles of conflict of laws.

17 8.16. The Court shall retain jurisdiction with respect to the implementation and enforcement
18 of the terms of the Stipulation, pursuant to California Code of Civil Procedure § 664.6 and the
19 California Rules of Court, and all Parties hereto submit to the jurisdiction of the Court for purposes of
20 implementing and enforcing the Settlement embodied in the Stipulation. Any action to enforce this
21 Stipulation shall be commenced and maintained only in the Court. To the extent any Party seeks to
22 enforce the terms of this Settlement or this Stipulation in Court, the prevailing party to any such action
23 shall be entitled to recover reasonable attorneys' fees and costs associated with any such enforcement
24 action.

25 8.17. Paragraph titles or captions contained in the Stipulation are inserted as a matter of
26 convenience and for reference, and in no way define, limit, extend, or describe the scope of this
27 Stipulation, or any provision thereof.

28 8.18. This Stipulation shall be construed and interpreted as if all of its language were

1 prepared jointly by the Parties. No language in this Stipulation shall be construed against a Party on
2 the ground that such Party drafted or proposed that language.

3 8.19. Each attorney signing below represents that he or she has been authorized to execute
4 this Stipulation on behalf of the attorney's respective client(s). Class Counsel, on behalf of the
5 Settlement Class, represents that, after consultation with and approval by Class Representative, Class
6 Counsel is expressly authorized by Class Representative to take all appropriate action required or
7 permitted to be taken by the Settlement Class pursuant to the Stipulation to effect its terms, and also is
8 expressly authorized to enter into any modifications or amendments to the Stipulation on behalf of the
9 Settlement Class, which Class Counsel deems appropriate. Similarly, Defendant's Counsel represents
10 that it is expressly authorized to take all appropriate action required or permitted to be taken by
11 Defendant pursuant to the Stipulation to effect its terms, and also is expressly authorized to enter into
12 any modifications or amendments to the Stipulation on behalf of Defendant which it deems
13 appropriate.

14 IN WITNESS WHEREOF, this Joint Stipulation of Class and Representative Action
15 Settlement is executed by the Parties and their duly authorized attorneys, as of the day and year herein
16 set forth.

17 **IT IS SO STIPULATED.**

18 DATED: May 31, 2023

PLAINTIFF JOHN COOK

19 By DocuSigned by:
20 John Cook
21 John COOK ID: ADA9FC86-BF63-4A7F-AE3B-53CF93F8FA0C

22 DATED: May __, 2023

DEFENDANT APPLE INC.

23 By _____
24 Kwang Kim
25 Senior Director, Employment Law
26 Apple Inc.
27
28

1 prepared jointly by the Parties. No language in this Stipulation shall be construed against a Party on
2 the ground that such Party drafted or proposed that language.

3 8.19. Each attorney signing below represents that he or she has been authorized to execute
4 this Stipulation on behalf of the attorney's respective client(s). Class Counsel, on behalf of the
5 Settlement Class, represents that, after consultation with and approval by Class Representative, Class
6 Counsel is expressly authorized by Class Representative to take all appropriate action required or
7 permitted to be taken by the Settlement Class pursuant to the Stipulation to effect its terms, and also is
8 expressly authorized to enter into any modifications or amendments to the Stipulation on behalf of the
9 Settlement Class, which Class Counsel deems appropriate. Similarly, Defendant's Counsel represents
10 that it is expressly authorized to take all appropriate action required or permitted to be taken by
11 Defendant pursuant to the Stipulation to effect its terms, and also is expressly authorized to enter into
12 any modifications or amendments to the Stipulation on behalf of Defendant which it deems
13 appropriate.

14 IN WITNESS WHEREOF, this Joint Stipulation of Class and Representative Action
15 Settlement is executed by the Parties and their duly authorized attorneys, as of the day and year herein
16 set forth.

17 IT IS SO STIPULATED.

18
19 DATED: May 31, 2023

PLAINTIFF JOHN COOK

DocuSigned by:
By John Cook
John COOK

20
21 July 6
22 DATED: May 6, 2023

DEFENDANT APPLE INC.

By Kwang Kim
Kwang Kim
Senior Director, Employment Law
Apple Inc.

1 DATED: May 31, 2023

DIVERSITY LAW GROUP

2 By 

Larry W. Lee

3 Kristen M. Agnew

Nicholas Rosenthal

4 Attorneys for Plaintiff John Cook and the
Proposed Class

5
6 DATED: May 31, 2023

POLARIS LAW GROUP

7 By 

8 William L. Marder

Attorneys for Plaintiff John Cook and the
Proposed Class

9
10 June
DATED: May 21, 2023

CDF LABOR LAW

11 By 

12 Kent J. Sprinkle

13 M. Leah Cameron

14 Desiree J. Ho

Attorneys for Defendant Apple Inc.

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

John Cook v. Apple Inc.

Case No. 34-2021-00311177-CU-OE-GDS

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

«Barcode»

«BarcodeString»

SIMID «SIMID»

ATTN: «FirstName» «LastName»

«Address1» «Address2»

«City» «Abbrev» «Zip»

**YOU ARE ESTIMATED TO RECEIVE
APPROXIMATELY**

**\$«MERGED_EstSettAmnt_CALC»THROUG
H THIS CLASS ACTION**

SETTLEMENT BASED UPON [REDACTED]

**ELIGIBLE PAY PERIODS (as explained
in Section 5 below)**

To: All current and former California employees of Defendant, who worked at Defendant's call center, which is located at Apple's Sacramento Campus, who were paid overtime and/or double-time wages at any time from November 12, 2020, through January 1, 2022 ("Class Members").

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.
YOU MAY BE ENTITLED TO RECEIVE MONEY FROM THIS PROPOSED SETTLEMENT.

TO BE ELIGIBLE TO RECEIVE YOUR SHARE, YOU DO NOT NEED TO DO ANYTHING.

This Notice is Court approved. This is not a solicitation from an attorney.

1. WHY DID I GET THIS NOTICE?

You received this Notice because a proposed settlement (the "Settlement") has been reached of class and representative action lawsuits entitled *John Cook v. Apple Inc.*, currently pending in the Superior Court of the State of California for the County of Sacramento, Case No. 34-2021-00311177-CU-OE-GDS (the "Lawsuit"). Records show that you are a member of the proposed Settlement Class ("Class Member"). Because the proposed Settlement would affect your legal rights as a Class Member, the Court ordered that this Notice be sent to you.

The Notice provides you with a brief description of the Lawsuit, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement, see Section 16, below.

2. WHAT IS THIS LAWSUIT ABOUT?

Plaintiff John Cook ("Class Representative") filed a lawsuit against Apple Inc. ("Apple") on November 17, 2021, alleging that Class Members received wage statements that did not accurately identify the total hours worked whenever overtime wages were paid. The Lawsuit does not allege that Class Members were paid incorrectly. For this alleged violation, the Class Representative sought monetary relief and statutory and civil penalties under the Labor Code. Plaintiff filed a separate representative action lawsuit on January 13, 2022, for violation of the Private Attorneys General Act of 2004 ("PAGA"). The PAGA lawsuit was subsequently incorporated into the class action lawsuit.

Apple denies the allegations in the Lawsuit and is prepared to defend the action vigorously. By entering into this proposed Settlement, Apple is not admitting any violation or liability in any way to the Class Representative or to Class Members. The Court has not made any rulings on the merits of the Lawsuit.

3. WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons sue on behalf of other people who may have similar claims. The person suing and those he/she seeks to represent, together are called the class or class members. A certified class action allows the Court to resolve

the claims of all the class members who choose not to exclude themselves from the class. A class member is bound by the determination or judgment entered in the case, whether the class wins or loses, and may not file his or her own lawsuit on the same claims that were decided in the class action. A class member is also covered by any settlement reached in the case. A class action allows one court to resolve all of the issues in a lawsuit for all the class members who choose not to exclude themselves from the class.

In this Lawsuit, John Cook, an employee of Apple, is the Class Representative or Named Plaintiff, and asserts claims on behalf of himself and the putative class. Apple is the Defendant. The Class Representative has reached a proposed class-wide Settlement with Apple, including a settlement of the PAGA claim. The Court has not made any rulings on whether the Lawsuit may proceed as a class action aside from the proposed class action Settlement.

4. WHO IS INCLUDED IN THE SETTLEMENT CLASS?

All current and former California employees of Defendant, who worked at Defendant's call center, which is located at Apple's Sacramento Campus, who were paid overtime and/or double-time wages at any time from November 12, 2020, through January 1, 2022, and who do not opt out of the Lawsuit, are included in the proposed Settlement.

5. WHAT ARE THE TERMS OF THE SETTLEMENT?

The proposed Settlement will resolve all claims for issuing improperly itemized wage statements pursuant to California Labor Code section 226 and PAGA.

The proposed Settlement represents a compromise of highly disputed claims. Nothing in the proposed Settlement is intended to or will be construed as an admission by Apple that the claims in the Lawsuit have merit or that Apple has any liability to the Class Representative or to the Class Members on those claims. The Court has made no ruling on the merits of the Lawsuit.

The Parties have agreed to settle the case for a maximum of \$495,000.00 ("Gross Settlement Amount"). Under the terms of the proposed Settlement, the following payments have been agreed to: (1) attorneys' fees not to exceed \$173,250.00; (2) all documented litigation costs to Class Counsel, in amounts set by the Court, not to exceed \$25,000.00; (3) a service payment to the Class Representative John Cook for services in the Lawsuit, in an amount not to exceed \$10,000.00; (4) settlement administration costs not to exceed \$12,000.00; and (5) \$15,000.00 will be paid to the California Labor and Workforce Development Agency ("LWDA") and \$5,000 to the Aggrieved Employees representing the portion of the Gross Settlement Amount that is allocated as payment for civil penalties in connection with Plaintiff's PAGA claims alleged in this matter. The amount of money remaining after these payments, which is approximately \$259,750, is the amount that will be distributed to Class Members who do not opt-out of the proposed Settlement. The amount will be distributed based on the number of pay periods during which each Class Member worked overtime or double-time in California from November 12, 2020, through January 1, 2022. This amount is known as the "Net Settlement Amount."

If the proposed Settlement is finally approved, the Settlement Administrator will determine each eligible Class Member's settlement payment by dividing the Net Settlement Amount by the total number of pay periods during which Class Members worked overtime or double-time in California from November 12, 2020, through January 1, 2022, resulting in a dollar value per eligible pay period, and then multiplying this value to the number of pay periods each Class Member worked overtime or double-time in California during the same period. Class Members will be paid from the Net Settlement Amount. If you want to dispute the number of eligible pay periods identified on the first page of this Notice, you must inform the Settlement Administrator in writing and provide supporting documents postmarked on or before *****, 2023. The Settlement Administrator will make a final, non-appealable decision on the dispute as to the number of eligible wage statements after seeking input from counsel for the Parties.

6. HOW DOES THE SETTLEMENT AFFECT MY RIGHTS?

If the proposed Settlement is finally approved, the Court will enter a Final Order and Judgment.

Upon such Final Order and Judgment, you will release the following claims, and will be barred from prosecuting any and all such claims against Apple:

All claims that were pled in the Class Action Complaint or the First Amended Complaint for violation of Labor Code section 226(a)(2), based on Defendant's alleged failure to accurately display the total hours worked on wage statements that reflect the payment of overtime and/or double overtime wages, and that accrued during the Class Release Period (the "Released Class Claims"). The Released Class Claims include a release of statutory penalties, attorneys' fees, and costs.

Further, if you meet the criteria of an Aggrieved Employee, you will also release all claims for civil penalties or other remedies recoverable under Labor Code section 2698, *et seq.* (PAGA), which were pled in the PAGA Action Complaint, the First Amended Complaint and/or the LWDA Letter sent by Plaintiff, dated November 8, 2021, for violation of Labor Code section 226(a)(2), based on Defendant's alleged failure to accurately display the total hours worked on wage statements that reflect the

payment of overtime and/or double overtime wages, and that accrued during the Class Release Period (the “Released PAGA Claims”). The Released PAGA Claims include a release of civil penalties, attorneys’ fees, and costs.

“Aggrieved Employees” are defined as all current and former California employees of Defendant, who worked at Defendant’s call center, which is located at Apple’s Sacramento Campus, who were paid overtime and/or double-time wages at any time from November 8, 2020, through January 1, 2022.

The Judgment will resolve the claims to the extent provided in the Settlement Agreement and will permanently bar all Class Members who do not opt out from prosecuting any and all such claims against Apple. You will remain bound by the Settlement, and you cannot sue, continue to sue or be a part of any other lawsuit about the Released Claims. It also means that all of the Court’s orders will apply to you and legally bind you.

The precise definitions of the capitalized terms in this Notice can be found in the Joint Stipulation of Class and Representative Action Settlement, which can be viewed at the Courthouse (Superior Court of California, County of Sacramento, located at 720 9th Street, Sacramento, California 95814) during normal business hours.

7. WHAT DO I NEED TO DO TO RECEIVE A SETTLEMENT PAYMENT?

You do not need to do anything to participate in the proposed Settlement. If the proposed Settlement is finally approved, the Settlement Administrator will mail out settlement payments pursuant to the schedule provided in the Settlement Agreement. Class Counsel has been appointed and approved by the Court to represent you for settlement purposes only.

NOTE: It is your responsibility to keep a current address on file with the Settlement Administrator to ensure that your settlement payment will be sent to the correct address. If you fail to keep your address current, you may not receive your settlement payment.

8. WHAT IF I DON’T WANT TO PARTICIPATE IN THIS SETTLEMENT?

You have the right to request exclusion or opt out from the proposed Settlement. To do so, you must submit a written Request for Exclusion to the Settlement Administrator at the following address: *John Cook v. Apple Inc.*, c/o *****, *****. Requests for Exclusion must: (1) contain your name, signature, address, telephone number, and the last four digits of your Social Security number; (2) clearly state that you do not wish to be included in the proposed Settlement; (3) be returned to the Settlement Administrator at the specified address; and (4) be postmarked on or before *****, 2023.

If you timely request to be excluded from the proposed Settlement, you will not receive any payment under the Settlement and will not be bound by the Released Class Claims. Unless you timely request to be excluded from the proposed Settlement, you will be sent a settlement payment and you will be bound by the Judgment upon final approval of the Settlement, including the Released Class Claims described in this Notice. Aggrieved Employees may not opt out of the Released PAGA Claims. Class Counsel will not represent your interests if you request to be excluded.

9. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

If you do not request to be excluded, you may object to any of the terms of the proposed Settlement before the Final Approval Hearing in writing and/or in person at the Final Approval Hearing. If the Court rejects your objection and approves the proposed Settlement, you will still be bound by the terms of the Settlement, and you will also be sent a settlement payment. To object in writing, you must mail a written objection stating the grounds for your objection with the Settlement Administrator at the address in Paragraph 17.

Your written objection should be mailed on or before *****, 2023. All objections should state the case number and title. Additionally, all objections should identify that this matter is being heard in Department 28 of the Superior Court of California, County of Sacramento, and should provide the date and time of the final approval hearing: *****, 2023, at ***** a.p.m. However, even if you do not file an objection, you may still appear at the Final Approval Hearing to comment on the proposed Settlement if you do not submit a timely Request for Exclusion.

10. WHAT IF I DO NOT EXCLUDE MYSELF FROM THIS SETTLEMENT?

The proposed Settlement, if finally approved by the Court, will bind all Class Members who do not request to be excluded from the Settlement whether or not they cash their settlement payment checks. Final approval of the proposed Settlement will bar any Class Member who does not request to be excluded from the Settlement from hereafter initiating a lawsuit or proceeding regarding the Released Class Claims and Released PAGA Claims against the Releasees during the period of November 12, 2020, through January 4, 2023.

11. WILL THE CLASS REPRESENTATIVE BE COMPENSATED FOR BRINGING THIS LAWSUIT?

John Cook will request a service award of up to \$10,000.00 for his service as Class Representative and for his efforts in bringing the Lawsuit. The Court will make the final decision as to the amount to be paid to the Class Representative.

12. DO I HAVE A LAWYER IN THIS CASE?

The Court has ordered that the interests of the Class Representative and the Class Members for settlement purposes are represented by:

Larry W. Lee
Kristen Agnew
Nicholas Rosenthal
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

William L. Marder
POLARIS LAW GROUP
501 San Benito Street, Suite 200
Hollister, CA 95023
Telephone: (831) 531-4214
Facsimile: (831) 634-0333

(collectively, "Class Counsel"). Class Members will not be separately charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

13. HOW WILL THE LAWYERS BE PAID?

Class Counsel will be requesting from the Court an amount not to exceed \$173,250.00 for their attorneys' fees and litigation costs not exceeding \$25,000.00. The actual amount awarded to Class Counsel will be determined by the Court.

14. WHAT IS THE FINAL APPROVAL HEARING?

The Court has preliminarily approved the proposed Settlement and will hold a hearing to decide whether to give final approval to the proposed Settlement. The purpose of the Final Approval Hearing will be for the Court to determine whether the proposed Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Class Members; to consider the award of attorneys' fees and expenses to Class Counsel; and to consider the request for a service award to the Class Representative.

15. WHEN AND WHERE IS THE FINAL APPROVAL HEARING?

The Court will hold the Final Approval Hearing on *****, 2023 at ***** a./p.m., in Department 28 of the Superior Court for the State of California, County of Sacramento, which is located at 720 9th Street, Sacramento, California 95814 ("Final Approval Hearing"). The Final Approval Hearing may be continued without further notice to the Class Members. If the Settlement is not approved by the Court or does not become final for some reason, the Lawsuit may continue, and no settlement payments will be made.

You may attend the Final Approval Hearing, but it is not necessary for you to appear in order to receive your share of the Settlement. You have the right to attend the Final Approval Hearing without counsel or to be represented by your own counsel at your own expense. At the hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement. However, if you have requested exclusion from the proposed Settlement, you may not object or speak at the Final Approval Hearing. If you plan to attend the Final Approval Hearing, you may contact Class Counsel to confirm the date and time.

16. WILL I BE TAXED ON THE SETTLEMENT PAYMENT?

For tax purposes, 100% of all settlement payments made to Class Members under the proposed Settlement shall be treated as non-economic damages, penalties, and interest that will not be subject to payroll taxes or tax withholdings. An IRS Form 1099 will be issued for each settlement payment, as necessary. Neither of the Parties nor their respective counsel make any representations as to the taxability to any Class Members of any portions of the settlement payments or other consideration. Class Members who receive any settlement payment should consult their tax advisors concerning the tax consequences of the settlement payments they receive pursuant to the proposed Settlement.

17. HOW DO I GET MORE INFORMATION?

To obtain a copy of the Joint Stipulation of Class and Representative Action Settlement (which defines the capitalized terms used in this Notice and provides a brief summary of what has happened in the Lawsuit), the operative Complaint filed in the Lawsuit, and other filed documents related to the Lawsuit and this proposed Settlement, go to *****. You may also contact the Clerk's Office at the Superior Court for the State of California, County of Sacramento during normal business hours. The Courthouse is located at 720 9th Street, Sacramento, California 95814.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at the address and telephone number listed below, toll free. Please refer to the *Cook/Apple* Settlement.

Cook v. Apple Inc.

c/o *****

(877) *****

You may also contact the attorneys for the Class, whose names and contact information is listed above in Section 12.

18. WHAT IF MY INFORMATION CHANGES?

If this Notice was sent to the wrong address or if, after you receive this Notice, you change your postal address or telephone number, it is your responsibility to inform the Settlement Administrator of your updated information.

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK
OF THE COURT OR THE JUDGE**