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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DANNY MARSANO, individually, and on
behalf of other members of the general public
similarly situated, and as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiff,

vs.

H AND H DRUG STORES, INC., a
California corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.: 22STCV17192

*[Assigned for all purposes to the Hon. Laura A.
Seigle, Dept. 17]*

**DECLARATION OF SEAN M. BLAKELY
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: October 21, 2024

Time: 9:00 a.m.

Dept.: 17

Complaint Filed: November 30, 2021

Trial Date: None Set

1 I, SEAN M. BLAKELY, declare as follows:

2 1. I am a Partner at Haines Law Group, APC, and co-counsel for the named Plaintiffs
3 Danny Marsano and Cindy Garcia (“Plaintiffs”) and the proposed Settlement Class in the above-
4 captioned matter. I am a member in good standing of the bar of the State of California and am
5 admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration
6 and could testify competently to them if called upon to do so.

7 2. I am a 2008 graduate of Southwestern Law School. I was admitted to the California
8 State Bar in September 2009. From December 2010 to September 2011, I worked as a Law Clerk
9 for Rose, Klein & Marias, a civil litigation firm in Long Beach, California. At Rose, Klein &
10 Marias I assisted trial attorneys in employment and personal injury cases. From September 2011
11 to May 2016, I worked as an associate at the employment law firm of Mahoney Law Group, APC
12 in Long Beach, California. The vast majority of my work at Mahoney Law Group, APC focused
13 on representing employees in wage and hour class actions. My work at Mahoney Law Group,
14 APC also included representing employees in individual claims for wrongful termination,
15 harassment, discrimination, and retaliation. Although non-exhaustive, the types of work I
16 performed at Mahoney Law Group, APC included: conducting client intakes performing pre-
17 filing research and analysis, drafting complaints, attending court hearings, corresponding with
18 opposing counsel, drafting and responding to written discovery, preparing for and taking and
19 defending depositions, analyzing payroll and timekeeping records and employee handbooks,
20 opposing motions for summary judgment, as well as a variety of other motions such as motions
21 for remand, demurrers and motions to dismiss, motions to strike, motions to compel, motions to
22 quash, and motions for class certification, drafting mediation briefs, attending mediations,
23 drafting long-form settlement agreements, drafting motions for preliminary and final settlement
24 approval, and overseeing the notice process.

25 3. Since November 8, 2016, I have worked at my current firm, Haines Law Group,
26 APC, where, in 2020, I became a Partner. I am currently responsible for managing over fifty (50)
27 active wage and hour class and representative actions in both state and federal court.

28 4. The following is a non-exhaustive list of wage and hour class actions in which I

1 have been appointed as class counsel and/or played a significant role in prosecuting the litigation,
2 and which have received final approval: *Santimateo v. Sun Healthcare Group, Inc., et al*, Case
3 No. BC471884, California Superior Court, Los Angeles County, Judge Jane L. Johnson presiding
4 (granted final approval of settlement on behalf of employees at rehabilitation facility involving
5 claims for unpaid wages and meal and rest period violations, and other claims, in which I was
6 approved at an hourly rate of \$325 for work performed in 2012-2013); *Teyuca v. Pacific Alliance*
7 *Medical Center, Inc.*, California Superior Court, Los Angeles County, Judge William F.
8 Highberger presiding (granting final approval of settlement on behalf of healthcare workers for
9 unpaid wages, meal and rest period violations, and other claims, in which I was approved at an
10 hourly rate of \$325 for work performed in 2012-2013); *Arteaga v. Command Center Security,*
11 *Inc.*, Case No. BC480496, California Superior Court, Los Angeles County, Judge John Shepard
12 Wiley, Jr. presiding (granting final approval of settlement on behalf of security guards involving
13 claims for unpaid overtime, meal and rest period violations, and other claims, in which I was
14 approved at an hourly rate of \$425 for work performed in 2012-2015); *Casadine v. Maxim*
15 *Healthcare Services, Inc.*, Case No. CV 12-10078-DMG (CWx), United States District Court,
16 Central District of California, Judge Dolly M. Gee presiding (granting final approval of settlement
17 on behalf of home health care employees involving claims for unpaid wages and other claims, in
18 which I was approved at an hourly rate of \$425 for work performed in 2012-2015); *Guzman v.*
19 *Andrew Lauren Interiors, Inc., et al.*, Case No. BC567757, California Superior Court, Los
20 Angeles County, Judge Elihu M. Berle presiding (granting final approval of settlement on behalf
21 of construction workers involving claims for unpaid wages, meal and rest period violation, and
22 other claims, in which I was approved at an hourly rate of \$425 for work performed in 2014-
23 2016); *Booker v. The Goodyear Tire and Rubber Company*, Case No. BC498399, California
24 Superior Court, Los Angeles County, Judge Amy Hogue presiding (granting final approval of
25 settlement on behalf of tire mechanics involving claims for unpaid wages, meal and rest period
26 violations, and other claims, in which I was approved at an hourly rate of \$425 for work performed
27 in 2013-2015); *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior
28 Court, Los Angeles County, Judge John Shepard Wiley, Jr. presiding (granting final approval of

1 settlement on behalf of IT support workers for overtime, meal and period, reimbursement, and
2 related violations, approved at hourly rate of \$475 for work performed in 2016 and 2017); *Galvan*
3 *v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California
4 Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of
5 settlement on behalf of non-exempt employees of a chemical manufacturing company involving
6 claims for unpaid overtime and waiting time penalties); *Razon v. TTM Technologies, Inc., et al.*,
7 Case No. 37-2016-00038326-CU-OE-CTL, California Superior Court, San Diego County, Judge
8 Gregory W. Pollack presiding (granting final approval of settlement involving claims for unpaid
9 overtime wages, wage statement violations, and meal period violations); *Blank v. Coty, Inc., et*
10 *al.*, Case No. BC624850, California Superior Court, Los Angeles County, Judge Williams F.
11 Highberger presiding (granting final approval of settlement involving claims for wage statement
12 violations, meal period violations, and other claims); *Morales v. Caremeridian, LLC, et al.*, Case
13 No. BC593191, California Superior Court, Los Angeles County, Judge William F. Highberger
14 presiding (granting final approval of settlement on behalf of direct support professionals
15 involving claims for unpaid wages, meal and rest period violations, wage statement violations,
16 and other claims); *Aguilar v. Act Fulfillment, Inc.*, Case No. RIC1616643, California Superior
17 Court, Riverside County, Judge Sharon J. Waters presiding (granting final approval of settlement
18 on behalf of non-exempt factory workers involving claims for meal period violations); *Sandoval*
19 *v. AMCOR Flexibles Inc.*, Case No. BC617499, California Superior Court, Los Angeles County,
20 Judge Kenneth R. Freeman presiding (granting final approval of settlement on behalf of
21 manufacturing employees involving claims for unpaid wages, meal period violations, rest period
22 violations, and waiting time penalties); *Le v. GBW Railcar Services, L.L.C.*, Case No.
23 RIC1612209, California Superior Court, Riverside County, Judge Sharon J. Waters presiding
24 (granting final approval of settlement on behalf of non-exempt employees of a freight railcar
25 manufacturer involving claims for unpaid overtime and minimum wages, meal period violations,
26 and rest period violations); *Silva v. ADJ Products, LLC*, Case No. BC618581, California Superior
27 Court, Los Angeles County, Judge William F. Highberger presiding (granting final approval of
28 settlement involving claims for unpaid overtime and minimum wages, rest period violations,

wage statement violations, and waiting time penalties); *Lira v. Discus Dental, LLC, et al.*, Case No. CIVDS1620402, California Superior Court, San Bernardino County, Judge David Cohn presiding (granting final approval of settlement on behalf of non-exempt manufacturing employees involving claims for unpaid minimum and overtime wages, meal and rest period violations, and other claims); *Gonzales v. PathPoint*, Case No. BC657147, California Superior Court, Los Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf of non-exempt direct support professionals involving claims for meal and rest period violations and other claims); *Duran v. PRADA USA CORP.*, Case No. BC644319, California Superior Court, Los Angeles County, Judge Maren E. Nelson presiding (granting final approval of settlement on behalf of non-exempt commissioned salespersons involving claims for unpaid overtime wages, meal and rest period violations, failure to reimburse for necessary expenditures, and other claims); *Banegas v. UPM, Inc.*, Case No. BC644438, California Superior Court, Los Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf of non-exempt manufacturing employees involving claims for unpaid wages, meal and rest period violations, and other claims); *Palafox v. Pacific Line Clean-Up, Inc.*, Case No. 30-2017-00921632-CU-OE-CXC, California Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of settlement on behalf of non-exempt employees involving claims for unpaid overtime wages, meal and rest period violations, and other claims); *Janet Arroyo v. AST Sportswear, Inc., dba Bayside Apparel Manufacturing, Inc.*, Case No. 30-2017-00909663-CU-OE-CXC, California Superior Court, Orange County, Judge Glenda Sanders presiding (granting final approval of settlement on behalf of non-exempt garment employees involving claims for unpaid minimum wages, meal and rest period violations, and other claims); *Carlos Garcia v. Fabrica International, Inc.*, Case No. 30-2017-00949461-CU-OE-CXC, California Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of settlement on behalf of non-exempt manufacturing employees involving claims for unpaid minimum and overtime wages, meal and rest period violations, and statutory penalties); *Jonathan Leon v. Piercey West, Inc.*, Case No. BC656874, California Superior Court, Los Angeles County, Judge Amy D. Hogue presiding (granting final approval of settlement on behalf

1 of non-exempt commissioned salespersons and other employees involving claims for unpaid
2 wages, meal and rest period violations, unreimbursed business expenses, and other claims); and
3 *Matthew Tovar, et al. v. Rentokil North America, Inc.*, Case No. BC676386, California Superior
4 Court, Los Angeles County, Judge Daniel J. Buckley presiding (granting final approval of
5 settlement on behalf of non-exempt employees involving claims for unpaid overtime, meal and
6 rest break violations, and other claims); *Seungmin Samantha Lee v. Infor (US) Inc.*, Case No.
7 CGC-18-566393, California Superior Court, San Francisco County, Judge Ethan P. Schulman
8 presiding (granting final approval of settlement on behalf of sales development representatives
9 involving claims for unpaid overtime, meal and rest period violations, and penalty claims); *Tracy*
10 *Aguilar, et al. v. Aero Port Services, Inc.*, Case No. BC659234, California Superior Court, Los
11 Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf
12 of non-exempt employees involving claims for meal and rest period violations, and other claims);
13 *Carlos Perez, et al. v. Moss Bros. Auto Group, Inc., et al.*, Case No. RIC1709905, California
14 Superior Court, Riverside County, Judge Sunshine S. Sykes presiding (granting final approval of
15 settlement on behalf of non-exempt commissioned salespersons involving claims for unpaid
16 wages, meal and rest period violations, other claims); and *Julio Alfaro v. Orange Automotive*
17 *d/b/a Kia of Orange*, Case No. 30-2017-00945105-CU-OE-CXC, California Superior Court,
18 Orange County, Judge Randall J. Sherman presiding (granting final approval settlement on behalf
19 of non-exempt commissioned employees involving claims for unpaid wages, meal and rest period
20 violations, unreimbursed business expenses, and penalty claims).

21 5. I have also moved to certify and have received an order certifying a class action in
22 *Ontiveros v. Safelite Fulfillment, Inc., et al.*, Case No. CV 15-7118-DMG (RAOx), United States
23 District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six
24 classes of employees for rest period violations, wage statement violations, meal period violations,
25 and overtime and double-time violations); and *Vazquez v. Kraft Heinz Foods Company*, Case No.
26 16-CV-02749-WQH (BLM), United States District Court, Southern District of California,
27 Honorable William Q. Hayes, presiding (certifying unpaid wages classes, meal period classes,
28 wage statement class, and waiting time penalty class).

1 6. In each year from 2018-2023, Thomson Reuters recognized me as a Top Young
2 Attorney in Southern California in the annual Rising Star Edition of Super Lawyers. This is an
3 honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the age of forty
4 in Southern California each year.

5 7. As co-counsel for Plaintiffs and the proposed Settlement Class, I have been
6 intimately involved in this case since its inception and I believe that the proposed Settlement is
7 an excellent result for the Settlement Class.

8 8. Founded in 1977, Defendant H and H Drug Stores, Inc. (“H&H”) is a provider of
9 durable medical equipment and supplies. H&H delivers home medical equipment, including
10 wheelchairs, oxygen tanks, respiratory equipment, and other medical equipment, to patients
11 across Southern California. During the Class Period, H&H has operated locations in San
12 Bernardino, Glendale, La Crescenta, Fresno and Stockton.

13 9. On November 30, 2021, Plaintiff Marsano filed a Class Action Complaint against
14 H&H in San Bernardino Superior Court, alleging causes of actions for: (1) unpaid overtime; (2)
15 unpaid minimum wages; (3) failure to provide meal periods; (4) failure to authorize and permit
16 rest periods; (5) non-compliant wage statements and failure to maintain payroll records; (6) failure
17 to pay all wages due upon separation of employment; (7) failure to timely pay wages during
18 employment; (8) failure to reimburse business expenses; (9) unlawful business practices under
19 Business and Professions Code §§ 17200, *et seq.*; and (10) unfair business practices under
20 Business and Professions Code §§ 17200, *et seq.* On December 8, 2021, Plaintiff Marsano sent
21 his PAGA notice letter to the Labor & Workforce Development Agency (“LWDA”). Attached
22 hereto as **Exhibit B** is a true and correct copy of Plaintiff Marsano’s December 8, 2021 LWDA
23 Letter. On or about May 25, 2022, pursuant to stipulation by the Parties, this matter was
24 transferred to Los Angeles Superior Court. On August 29, 2023, Plaintiff Marsano filed a First
25 Amended Class Action Complaint and Enforcement Action under the Private Attorneys General
26 Act, adding a cause of action for civil penalties under the Private Attorneys’ General Act of 2004,
27 Labor Code Section 2698, *et seq.* On September 15, 2022, Plaintiff Garcia filed a Class Action
28 Complaint against H&H in San Bernardino Superior Court, alleging causes of actions for: (1)

meal period violations; (2) rest period violations; (3) failure to reimburse necessary business expenses; (4) minimum wage violations; (5) failure to pay all overtime wages; (6) waiting time penalties; and (7) unfair competition in violation of California Business & Professions Code § 17200 *et seq.* As part of the Settlement, the Parties stipulated to the filing of Plaintiffs’ operative Second Amended Class and Representative Action Complaint (“SAC”) in this Action, which added Plaintiff Garcia as named representative and certain factual allegations reflecting Plaintiff Garcia’s employment. The operative SAC was filed on April 16, 2024.

10. Prior to settlement, the Parties engaged in extensive formal discovery, including written discovery propounded and responded to by both Parties in this Action and the *Garcia* Action. In connection with mediation, H&H produced timekeeping and payroll data for all putative class members. H&H also produced its employee handbook utilized during the Class Period as well as other written policies/procedures. In addition, H&H produced a detailed Class List which contained hire and termination (if applicable) dates as well as rates of pay for each putative class member. Plaintiffs hired a labor economist with a Ph.D. in economics to analyze the data produced to assist in calculating H&H’s potential exposure for each of Plaintiffs’ claims at issue. This discovery allowed the Parties to assess the merits and value of Plaintiffs’ claims, the chances of certification of Plaintiffs’ claims, and H&H’s potential defenses.

11. On January 12, 2024, the Parties participated in a full-day mediation with Louis Marlin, Esq., a highly experienced wage and hour class action mediator. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiffs’ claims, and the legal basis for the claims and defenses. The Parties did not reach a settlement at mediation; however, the Parties continued their negotiations over the following weeks with Mr. Marlin’s assistance and eventually reached a global class and PAGA settlement. During the months that followed, the Parties finalized the terms of the Settlement and executed the long-form Settlement Agreement now before the Court. A true and correct copy of the Class Action and PAGA Settlement Agreement and Class Notice is attached hereto as **Exhibit A**. The proposed Class Notice is attached as **Exhibit 1** to the Settlement Agreement. The Parties utilized the model Class Action and PAGA Settlement Agreement and Class Notice found on Los Angeles

Superior Court’s website. Attached hereto as **Exhibit C** is a true and correct copy of a redlined version comparing the Settlement Agreement and the model Class Action and PAGA Settlement Agreement and Class Notice.

12. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount:	\$1,950,000.00
• Minus Court-approved attorneys’ fees:	\$650,000.00
• Minus Court-approved verified costs (up to):	\$50,000.00
• Minus Court-approved Service Payments:	\$15,000.00
• Minus amount set aside as PAGA penalties:	\$50,000.00
• <u>Minus estimated Settlement Administration costs:</u>	<u>\$12,500.00</u>
• Net Settlement Amount (“NSA”):	\$1,172,500.00
• PLUS 25% “Individual PAGA Payments” to Aggrieved Employees:	\$12,500.00
Total Amount To Be Paid to Class Members/Aggrieved Employees:	<u>\$1,185,000.00</u>

13. Based on information from H&H, there are approximately 850 Settlement Class members. Therefore, the average Settlement Award from the NSA is projected to be approximately \$1,379.41. There are approximately 540 Aggrieved Employees who worked during the PAGA Period, which runs from June 25, 2022 through July 19, 2024. Therefore, the average Individual PAGA Payment is estimated to be approximately \$23.15.

14. Plaintiffs allege that H&H failed to provide compliant first meal periods to its non-exempt employees, such that first meal periods were often provided after the completion of five hours of work and were occasionally not provided at all due to work demands imposed by H&H. Plaintiffs also allege that H&H’s written meal period policies for a portion of the Class Period were deficient and did not contain explicit language regarding the timing of meal periods. Plaintiffs’ analysis of H&H’s timekeeping records reflected there were potentially approximately 223,893 non-compliant first meal periods. Plaintiffs contend that this figure includes approximately 51,698 shifts over 6.0 hours where they allege that H&H automatically deducted 30 minutes for a purported meal period (“auto-deduct” shifts). Plaintiffs further calculated that the average hourly rate of pay for Settlement Class Members during the Class Period at approximately \$18.17. Therefore, Plaintiffs estimated total maximum damages for first meal period violations at approximately \$4,068,136 (223,893 non-compliant first meal periods * \$18.17 average meal period premium). H&H counters that it has maintained compliant written meal period policies throughout the Class Period and has always provided compliant meal periods

1 in line with those policies. H&H also contends that under *Brinker*, it is only required to “provide”
2 the opportunity to take meal periods, not “ensure” meal periods are taken, and that it has always
3 done so. H&H also maintains that any short, missed, or late first meal periods were the result of
4 lawful employee waiver or choice and not due to any policy of practice of H&H, thereby
5 precluding liability. Lastly, H&H argues that that Plaintiffs’ meal period claims are not amenable
6 to class treatment due to Settlement Class Members’ varying job titles, departments, positions
7 and duties, and that individualized inquiries will be required to determine why each meal period
8 was taken late or short or missed by each employee, and whether there was a valid waiver, thereby
9 making class certification of this claim unlikely. Based on these defenses, Plaintiffs discounted
10 the maximum amount of first meal period violations by 40% for risk of non-certification and an
11 additional 50% for risk of losing on the merits or failing to recover the full amount sought, to
12 arrive at an estimated exposure of approximately \$1,220,441.

13 15. Plaintiffs also allege that Settlement Class Members were not always provided
14 with second meal periods when they worked shifts in excess of 10.0 hours. Plaintiffs’ analysis of
15 the timekeeping data showed that during the Class Period there were approximately 5,034 shifts
16 worked in excess of 10.0 hours that did not reflect a compliant second meal period. Therefore,
17 Plaintiffs calculated H&H’s maximum exposure for second meal period violations at
18 approximately \$91,468 (5,034 non-compliant second meal periods * \$18.17 average meal period
19 premium). With respect to second meal periods, H&H argues that Settlement Class Members
20 voluntarily waived their second meal periods on shifts over 10.0 hours but less than 12.0 hours as
21 they are entitled to do under Labor Code § 512 so that they did not need to stay at work for an
22 extra unpaid 30 minutes. H&H further argue that Plaintiffs’ second meal period exposure is
23 grossly inflated as Plaintiffs already seek a meal period premium for first meal period violations
24 on many shifts, and Plaintiffs cannot recover more than one meal period premium for each
25 workday. As with first meal periods, H&H argues this claim would not be certified as requiring
26 individualized inquiries into both the merits and damages Based on these defenses, Plaintiffs
27 discounted the maximum amount that the class could potentially recover by 55% for a risk of
28 non-certification, and an additional 75% for a risk of losing on the merits, or having exposure

1 reduced due to H&H's waiver argument, to arrive at an estimated exposure amount of
2 approximately \$10,290.

3 16. Plaintiffs allege that H&H failed to authorize and permit all legally compliant off-
4 duty rest periods. Specifically, Plaintiffs allege that due to H&H's strict delivery schedules and
5 workload, there was not always time for employees to take compliant off-duty rest periods.
6 Plaintiffs further contend that employees were not provided with a third rest period when they
7 worked shifts in excess of 10.0 hours. Based on Plaintiffs' expert's analysis of H&H's
8 timekeeping records, Plaintiffs estimate there were approximately 464,144 shifts in excess of 3.5
9 hours during the Class Period. Accordingly, Plaintiffs calculate H&H's maximum potential
10 exposure for rest period violations at approximately \$8,433,496 (464,144 rest period violations *
11 \$18.17 average rest period premium). H&H argues that it has always maintained and enforced
12 lawful rest period policies/practices during the Class Period, and has, in fact, authorized and
13 permitted all required rest periods to Settlement Class members. Additionally, H&H maintains
14 that any failure to take a rest period was the result of employee choice, rather than any policy or
15 practice of H&H. H&H also asserts this claim is not amenable to class treatment as individualized
16 inquiries would be required to determine which employees failed to take a rest period, and the
17 reasons why. These manageability concerns are especially present with respect to rest period
18 claims, H&H argues, given that rest periods are not recorded. Given these defenses, Plaintiffs
19 discounted this maximum amount by 75% for risk of non-certification and an additional 75% for
20 a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive
21 at an estimated realistic exposure of approximately \$527,093.

22 17. Plaintiffs allege that H&H failed to pay all overtime wages owed by not including
23 the value of all "On Call" and "Beeper" pay (when Delivery Technicians were assigned to be on
24 call but were not actually called in) into the "regular rate" of pay. Based Plaintiffs' review of the
25 payroll records, Plaintiffs estimate the total underpayment of overtime wages due to the alleged
26 regular rate miscalculations to be approximately \$80,798. However, H&H argues that it properly
27 included all forms of remuneration when calculating the regular rate of pay, and therefore, paid
28 all overtime wages to Settlement Class Members. H&H further argues that Settlement Class

Members received different types of pay throughout the Class Period depending on their job positions, creating substantive differences among the Settlement Class Members with respect to the incentives received, making class certification unlikely. In light of these defenses, Plaintiffs discounted the maximum exposure by 35% for the risk of non-certification, and an additional 45% for risk of losing on the merits, and/or not receiving the maximum amount sought, to arrive at an estimated exposure of approximately \$28,885.

18. Plaintiffs allege that H&H required Settlement Class Members to use their personal cellular phones for business purposes, including to communicate with co-workers and supervisors. Despite requiring Plaintiffs and Settlement Class Members to incur these expenses on a daily basis, Plaintiffs allege that H&H failed to reimburse Settlement Class Members for these necessary business expenses, in violation of Labor Code § 2802(a). Settlement Class Members worked approximately 22,941 aggregate months during the Class Period. Using a conservative estimate of \$20 per month in reasonable work-related personal cell phone use, Plaintiffs calculate H&H's liability for unreimbursed business expenses at approximately \$458,820 (\$20/month * 22,941 aggregate months). H&H argues that Settlement Class Members who worked within company offices were prohibited from using their personal cellular phones as part of their job duties and employees who worked as drivers were provided company-issued cell phones or had radios and were not authorized to use personal cell phones. H&H further argues that this claim would require individual inquiries into whether Settlement Class Members actually used their personal cellular phones for work purposes, how much expense they incurred, whether they submitted a request for reimbursement, and the reasonableness of that expense, thus precluding class certification. Based on these defenses, Plaintiffs discounted this maximum amount by 60% for risk of non-certification and an additional 70% for a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of approximately \$55,058.

19. Plaintiffs contend that H&H underpaid Settlement Class Members employed as Delivery Technicians due to H&H's allegedly unlawful on-call policies/practices, whereby H&H required Delivery Technicians to be on-call 24 hours per day for one week per month to respond

1 to after-hours “emergency” deliveries or pickups. Plaintiffs allege that H&H only paid a flat rate
2 of \$120.00 per week for “on-call” time, but that this amount did not compensate Delivery
3 Technicians for all of the time they spent driving to the office to pick up equipment for on-call
4 deliveries or for the time that the employees spent on standby waiting for a possible call. Delivery
5 Technicians worked approximately 9,362 aggregate weeks during the Class Period, or 2,160
6 aggregate months, with one on-call week per month, during the Class Period. Using a
7 conservative estimate of \$100 of unpaid time per month on-call for each Delivery Technician,
8 Plaintiffs calculate H&H’s liability for unpaid wages due to this policy at approximately \$216,000
9 (\$100/month * 2,160 aggregate months). H&H counters that it fully compensated Delivery
10 Technicians for this time with not only the \$125 on-call rate, but also a \$35 payment per on-call
11 delivery, which covers all of the compensable time for which Delivery Technicians were eligible.
12 H&H further asserts that Plaintiffs would be unable to certify this class given the individualized
13 inquiries as to whether Settlement Class Members were in fact not paid for all compensable time
14 “worked” while on call. Based on these defenses, Plaintiffs discounted this maximum amount by
15 50% for risk of non-certification and an additional 55% for a risk of being unsuccessful on the
16 merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure
17 of approximately \$48,600.

18 20. Plaintiffs allege that as a result of the unpaid minimum and overtime wages, as
19 well as the unpaid meal and rest period premium wages described above, H&H is liable for wage
20 statement penalties. Those penalties are calculated as \$50 for each “initial” violation and \$100
21 for each “subsequent” violation, with a maximum of \$4,000 per employee. Utilizing the “initial”
22 and “subsequent” violation rates resulted in a number greater than the \$4,000 cap per employee.
23 Plaintiffs, therefore, calculated potential wage statement exposure at approximately \$2,160,000
24 (540 employees * \$4,000 maximum penalty). H&H argues any alleged wage statement violations
25 were not “knowing and intentional,” and Plaintiffs cannot show that they or other employees
26 “suffer[ed] injury” due to the alleged wage statement violations, as required by Labor Code §
27 226(e) for the imposition of penalties. Further, H&H contends its wage statements always
28 accurately reflected hours worked and amounts paid as well as all other required information,

precluding liability for wage statement penalties. In light of these defenses, Plaintiffs discounted the maximum exposure by 65% for risk of non-certification, and by an additional 75% for risk of being unsuccessful on the merits, for an estimated realistic exposure of approximately \$189,000.

21. As a further result of the unpaid wages and unpaid meal and rest period premium wages described above, Plaintiffs allege that H&H failed to comply with its final pay obligations set forth in Labor Code §§ 201-203. H&H's records reflected approximately 338 former Settlement Class members who were eligible for waiting time penalties. Based on an hourly rate of \$18.17, Plaintiffs estimated the average waiting time penalty per former employee to be \$4,361 ($\$18.17 * 8 \text{ hours per day} * 30 \text{ days}$). Therefore, Plaintiffs calculated H&H's maximum exposure for potential waiting time penalties to be approximately \$1,474,018 (338 separated employees * \$4,361 average waiting time penalty). H&H argues that it possesses strong, good-faith defenses to Plaintiffs' underlying claims, thus precluding recovery of waiting time penalties, which are only available for the "willful" failure to pay wages. H&H further asserts that Plaintiffs' waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. To account for these defenses, Plaintiffs discounted the maximum exposure by 65% for the risk of non-certification, and an additional 75% for risk of losing on the merits, and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of approximately \$128,977.

22. As a result of the foregoing Labor Code violations, Plaintiffs allege that H&H is liable for civil penalties under the PAGA. Plaintiffs estimated a maximum total PAGA exposure at approximately \$2,809,600 (28,096 "initial" violations * \$100 "initial" penalty). Since Plaintiffs' PAGA claim is derivative of Plaintiffs' underlying wage claims, H&H asserts the PAGA claim would fail with those claims. H&H further maintains that, given its good-faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find H&H liable for any of Plaintiffs' claims. Therefore, Plaintiffs discounted the maximum figure by 80% for risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and an additional 85% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately \$84,288.

23. Using these estimated figures for each of the claims described above, Plaintiffs predicted that the potential recovery for the Settlement Class would be approximately \$2,292,632. The proposed Settlement of \$1,950,000 therefore represents approximately 85% of the reasonably forecasted recovery for the Settlement Class.

24. Although the Parties engaged in significant formal and informal discovery prior to mediation, the Parties still had significant formal discovery to complete had the matter not settled. This would have required expenditure of substantial time and resources by both Parties that would have very likely spanned several years. Even if Plaintiffs were to certify the classes, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. This Settlement avoids those risks and the accompanying expense.

25. Class Counsel will also apply for an attorneys' fees award of one-third of the Gross Settlement Amount, which is currently estimated to be \$650,000.00, and up to \$50,000.00 in verified costs reimbursement. Plaintiffs submit the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class Counsel has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting legal research, propounding and responding to formal discovery requests, conducting extensive informal discovery related to mediation, analyzing Settlement Class members' timekeeping and payroll records and other data and documents with the help of a retained expert, creating a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the final approval papers, and attending the Final Approval hearing.

26. Plaintiffs will apply for Class Representative Service Payments at the time of seeking final approval of the proposed class action settlement in the amount of \$7,500 to each Plaintiff, for a total of \$15,000.00, for their service to the Settlement Class. As will be fully briefed

1 at the time of final approval, Plaintiffs' requested Service Payments are intended to recognize the
2 time and effort Plaintiffs expended on behalf of the Settlement Class, including providing
3 substantial factual information and documents to Class Counsel, discussing the claims and
4 theories at issue in the litigation, actively participating in the prosecution of Plaintiffs' claims,
5 responding to written discovery, as well as the significant risks Plaintiffs undertook by agreeing
6 to serve as the named plaintiffs in this case, and the fact that Plaintiffs agreed to a general release
7 of all claims subject to a waiver of Civil Code § 1542.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct. Executed on July 15, 2024, at El Segundo, California.

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11 Sean M. Blakely
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EXHIBIT A

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs Danny Marsano and Cindy Garcia (collectively, “Plaintiffs”) and defendant H and H Drug Stores, Inc. (“Defendant”). The Agreement refers to Plaintiffs and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Actions” means the Plaintiff Marsano’s lawsuit alleging wage and hour violations against Defendant captioned *Marsano v. H and H Drug Stores, Inc.*, initiated on November 30, 2021, and pending in Superior Court of the State of California, County of Los Angeles, Case Number 22STCV17192, as well as Plaintiff Garcia’s lawsuit alleging wage and hour violations against Defendant, initiated on September 15, 2022, and pending in the Superior Court of the State of California, County of San Bernardino, Case Number 22STCV17192.
- 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity Plaintiff has selected to administer the Settlement. Defendant has agreed not to object to the appointment of Phoenix Settlement Administrators to administer the settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all non-exempt employees employed by Defendant in the State of California at any time during the PAGA Period.
- 1.5. “Class” means all non-exempt employees employed by Defendant in the State of California at any time during the Class Period.
- 1.6. “Class Counsel” means Capstone Law APC and Haines Law Group APC.
 - 1.6.1. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Actions.
- 1.7. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.8. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including

- a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- 1.9. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
 - 1.10. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English and Spanish in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
 - 1.10.1. “Class Period” means the period from November 30, 2017 through the earlier of July 19, 2024 or the date the court grants Preliminary Approval of the settlement.
 - 1.11. “Class Representatives” means Plaintiffs Danny Marsano and Cindy Garcia.
 - 1.12. “Class Representative Service Payments” means the payment to the Class Representatives for initiating the Actions and providing services in support of the Actions.
 - 1.13. “Court” means the Superior Court of California, County of Los Angeles.
 - 1.14. “Defendant” means named Defendant H and H Drug Stores, Inc.
 - 1.15. “Defense Counsel” means Vedder Price (CA), LLP.
 - 1.16. “Effective Date” means the date by when the Settlement is approved and the Court’s Judgment becomes final and no longer subject to timely post-judgment motion or appeal (“Judgment”). The Court’s Judgment “becomes final” upon the latter of: (i) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Court’s Judgment (this time period shall not be less than 60 calendar days after the Court’s Judgment is entered); (ii) the date affirmance of an appeal of the Judgment becomes final under the California Code of Civil Procedure and California Rules of Court; or (iii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Judgment (“Effective Date”).
 - 1.17. “Final Approval” means the Court’s order granting final approval of the Settlement.
 - 1.18. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
 - 1.19. “Final Judgment” means the Judgment Entered by the Court upon Granting Final

Approval of the Settlement.

- 1.20. "Gross Settlement Amount" means \$1,950,000.00, which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payments, and the Administrator's Expenses.
- 1.21. "Individual Class Payment" means the Participating Class Member's pro-rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.22. "Individual PAGA Payment" means the Aggrieved Employee's pro-rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.23. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.24. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.25. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.26. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.27. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
 - 1.27.1. "PAGA Period" means the period from June 25, 2022 through the earlier of July 19, 2024 or the date the court grants Preliminary Approval of the settlement.
- 1.28. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 1.29. "PAGA Notice" means Plaintiff Marsano's December 8, 2021 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.30. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees

(\$12,500) and the 75% to LWDA (\$37,500) in settlement of PAGA claims.

- 1.31. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.32. "Plaintiffs" means Danny Marsano and Cindy Garcia, the named plaintiffs in the Action.
- 1.33. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.34. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.35. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.
- 1.36. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.
- 1.37. "Released Parties" means: Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, divisions, assigns, subsidiaries, affiliates, joint ventures, fiduciaries, and each of these entities' past, present, or future direct or indirect officers, directors, members, agents, attorneys, representatives, and employees.
- 1.38. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.39. "Response Deadline" means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.40. "Settlement" means the disposition of the Action effected by this Agreement and the Final Judgment.
- 1.41. "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On November 30, 2021, Plaintiff Marsano commenced this Action by filing a Complaint alleging causes of action against Defendant for: (1) Unpaid Overtime

Wages; (2) Unpaid Minimum Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Non-Compliant Wage Statements and Failure to Maintain Payroll Records; (6) Failure to Pay All Wages Due Upon Separation of Employment; (7) Failure to Timely Pay Wages During Employment; (8) Failure to Reimburse Business Expenses; (9) Unlawful Business Practices Under Business and Professions Code §§ 17200, *et seq.*; and (1) Unfair Business Practices Under Business and Professions Code §§ 17200, *et seq.* On August 29, 2023, Plaintiff Marsano filed a First Amended Complaint alleging an additional cause of action against Defendant for Enforcement of Labor Code § 2698 *et seq.* (“PAGA”). On September 15, 2022, Plaintiff Garcia commenced an Action by filing a Complaint alleging causes of action against Defendant for: (1) meal period violations; (2) rest period violations; (3) failure to reimburse employees for necessary business expenditures; (4) minimum wage violations; (5) failure to pay all overtime wages; (6) waiting time penalties; and (7) unfair competition. On April 16, 2024, Plaintiffs filed a Second Amended Complaint in the Marsano Action to add Cindy Garcia as a named plaintiff and class representative. The Second Amended Complaint is the operative complaint in the Action (the “Operative Complaint”). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

- 2.2. On January 12, 2024, the Parties participated in an all-day mediation with Louis Marlin, Esq. Although the Parties did not reach a settlement at mediation, the Parties continued their negotiations and eventually reached a global class and PAGA settlement.
- 2.3. Prior to mediation, Plaintiffs obtained, through formal and informal discovery, Plaintiffs’ personnel files, various wage and hour policy documents, and timekeeping and payroll records for the entire putative class. Plaintiffs’ investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.4. The Court has not granted class certification.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant agrees to pay \$1,950,000.00 and no more as the Gross Settlement Amount, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount and payroll taxes prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

- 3.2.1 To Plaintiffs: Class Representative Service Payments to each Class Representative of not more than \$7,500 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as Participating Class Members). Defendant will not oppose Plaintiffs' requests for Class Representative Service Payments that do not exceed \$7,500. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves the Class Representative Service Payments less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payments.
- 3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3), which is currently estimated to be \$650,000, and a Class Counsel Litigation Expenses Payment of not more than \$50,000. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiffs and Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee Payment or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assume full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and hold Defendant and the Released Parties harmless, and indemnify Defendant and the Released Parties, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$12,500 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$12,500, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4 To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of

Workweeks worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each Participating Class Member's Workweeks.

- 3.2.4.1 Tax Allocation of Individual Class Payments: 40% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 60% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
- 3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments: Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro-rata basis.
- 3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$50,000 to be paid from the Gross Settlement Amount, with 75% (\$37,500) allocated to the LWDA PAGA Payment and 25% (\$12,500) allocated to the Individual PAGA Payments.
 - 3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$12,500) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period, and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
 - 3.2.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4 SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to

effect and perform under this Agreement. The Administrator will not provide class contact information to Class Counsel. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, Defendant and its counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

- 4.2 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.
- 4.3 Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.3.1 The Administrator will issue checks for the Individual Class Payments and Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.3.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The

Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. On the Effective Date, Plaintiffs and Class Members, will release claims against all Released Parties as follows:

5.1 Plaintiffs' Release. Plaintiffs Danny Marsano and Cindy Garcia, and each of them, and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns hereby waive, release, acquit and forever discharge Defendant, and its parents, subsidiaries, affiliates and related entities or companies, including all predecessor companies, and all past and present owners, officers, directors, shareholders, partners, members, managing agents, employees, agents, insurers, attorneys, heirs, successors and assigns (hereinafter the "Released Parties"), from any and all claims, actions, charges, complaints and causes of action (hereinafter collectively referred to as "claims") of whatever nature, whether known or unknown, which exist or may exist on Employee's behalf against the Released Parties arising at any time up to the date of this Agreement, including but not limited to the allegations asserted in the Demand Letter; any and all claims based on contract (whether written, oral, express or implied), tort, wrongful termination, public policy, personal injury, emotional distress, invasion of privacy, defamation, libel, slander, fraud, misrepresentation, quantum meruit, or any other common law claims; any and all claims for wages, salary, bonuses, commissions, overtime pay, premium pay, meal period payments, rest break payments, vacation pay, severance pay, benefits, contributions, or any other claims for compensation of any kind; any and all claims under any federal, state and/or local whistleblower statute, regulation, ordinance or law, including without limitation the California Whistleblower Protection Act (Labor Code §§ 1102.5 – 1105); any and all claims for damages (including general, special, compensatory, consequential, liquidated or punitive damages), back wages, future wages or front pay; any and all claims for costs, expenses, attorneys' fees, interest, civil penalties, statutory penalties, criminal penalties, waiting time penalties, or any other available monetary remedy, damage, award or amount (including any claims for penalties available to Employee as an "aggrieved employee" under the California Private Attorneys' General Act ("PAGA"), Labor Code §§ 2698, et seq., without any impact whatsoever on the rights

and remedies of other “aggrieved employees” or the LWDA); and any and all claims arising under any federal, state, city or other governmental statute, law, regulation or ordinance relating to employment or prohibiting discrimination, retaliation and/or harassment, including but not limited to (as amended), Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Equal Employment Opportunity Act of 1972, the Americans with Disabilities Act, the Family and Medical Leave Act, the California Labor Code and any applicable Wage Order, the California Business and Professions Code, the California Family Rights Act, and the California Fair Employment and Housing Act covering discrimination, harassment, equal pay, reasonable accommodation, and/or retaliation in employment on any basis protected by law (“Plaintiffs’ Release”).

- 5.1.1 Plaintiffs’ Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs’ Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

Plaintiffs understand and agree that claims or facts in addition to or different from those which are now known or believed by them to exist may hereafter be discovered. It is Plaintiffs’ intention to settle fully and release all claims they now have against the Released Parties, whether known or unknown, suspected or unsuspected. The Class Representative Service Payments will be paid to Plaintiffs specifically in exchange for the general release of the Released Parties from all claims, including those specified in this paragraph and a covenant not to sue the Released Parties. Notwithstanding the above, the general release by Plaintiffs shall not extend to claims for workers’ compensation benefits, claims for unemployment benefits, or other claims that may not be released by law.

- 5.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all claims arising during the Class Period that were alleged, or could have been pled, based on the facts stated in the Operative Complaint, including without limitation claims under California Labor Code sections 201, 202, 203, 204, 222.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1199, 2802, 2804, 2810.5, as well as IWC Wage Order Nos. 4, 7, and 9, and the California Business and Professions Code Section 17200 based on alleged violations of the foregoing statutes and Wage Order sections, as well as all claims arising under the foregoing California Labor Code statutes based on the primary rights of those statutes.
- 5.3 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on

behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties arising during the PAGA Period that were alleged, or could have been pled, based on the facts stated in the Operative Complaint and the PAGA Notice, including without limitation PAGA claims predicated on California Labor Code sections 201, 202, 203, 204, 222.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1199, 2802, 2804, and 2810.5 based on the primary rights of those statutes. It is understood that individuals who are Aggrieved Employees will not have the opportunity to opt out of, or object, to the Released PAGA Claims. Further, the Class Members and Aggrieved Employees are bound by the Released PAGA Claims regardless of whether they cash their Individual Settlement Payment checks.

- 6. MOTION FOR PRELIMINARY APPROVAL.** Plaintiffs will prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals. Plaintiffs agree to deliver to Defendant a draft of the motion for preliminary approval at least 3 days prior to the filing for review.

6.1 Plaintiffs’ Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members and the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, and the Administrator. In their Declarations, Plaintiffs and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of Counsel. Class Counsel is responsible for expeditiously

finalizing and filing the Motion for Preliminary Approval no later than 16 court days prior to the hearing on the Motion for Preliminary Approval; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. Plaintiffs have selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. Defendant agrees not to object to the appointment of Phoenix Settlement Administrators as the Administrator. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Notice to Class Members.
- 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form

attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

- 7.4.3 Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If it is established through the review of Defendant's business records or documents submitted by the putative Class Member that such person should be included as a Class Member or Aggrieved Employee, the Administrator will send, via email or overnight delivery, a Class Notice requiring the person to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number.

To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment.
- 7.5.5 Challenges to Calculation of Workweeks. Each Class Member shall have 30 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. Absent evidence rebutting the accuracy of Defendant's records and data as they pertain to the number of Class Workweeks or PAGA Pay Periods (if any) to be credited to a disputing Class Member, Defendant's records will be presumed correct and determinative of the dispute. If a Class Member produces information or

documents to the contrary, the Administrator will evaluate the materials submitted by the Class Member and the Administrator will resolve and determine the number of eligible Workweeks that the disputing Class Member should be credited with under the settlement. The Administrator's determination of each Class Member's allocation of Workweeks or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall notify Defense Counsel and Class Counsel of all challenges to the calculation of Workweeks or Pay and the Administrator's determination of the challenges.

7.6 Objections to Settlement.

- 7.6.1 Only Participating Class Members may object to the class action components of the Settlement or this Agreement, including contesting the fairness of the Settlement, amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, or Class Representative Service Payments.
- 7.6.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 30 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).
- 7.6.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.7 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

- 7.7.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- 7.7.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain

their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

- 7.7.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, the number of Requests for Exclusion (whether valid or invalid) received, objections received, the number of challenges to Workweeks or Pay Periods received and resolved. (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion..
- 7.7.4 Administrator’s Declaration. Not later than 5 days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of the Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), and the number of written objections.. The Administrator will supplement its declaration as needed or requested by the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- 7.7.5 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Defendant represents that there were 72,915 workweeks at the time of the mediation. If at the earlier of July 19, 2024 or preliminary approval of the settlement, the number of workweeks has increased by 10% or more (i.e., there are 80,207 or more workweeks), the Gross Settlement Amount will increase on a proportional basis for any amount in excess of the 10% (i.e., if there was a

12% increase in the number of workweeks, Defendant shall increase the Gross Settlement Amount by 2%).

9. **DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
10. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Class Counsel shall provide drafts of the documents to Defense Counsel not later than 3 days prior to the filing of the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in good faith to resolve any disagreements concerning the Motion for Final Approval. The Parties will file a joint stipulation and proposed order to dismiss Defendant's cross complaint concurrently with the filing of the motion for final approval.
 - 10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
 - 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
 - 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights or obligations

under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payments or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason, the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant

reserves all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 12.2 Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

- 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8 No Tax Advice. Neither Plaintiffs, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds,

Plaintiffs shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs: Capstone Law APC

Robert Drexler
Robert.Drexler@CapstoneLawyers.com
Molly DeSario
Molly.DeSario@CapstoneLawyers.com
Jonathan Lee
Jonathan.Lee@CapstoneLawyers.com
1875 Century Park East, Suite 1000
Los Angeles, California 90067

Haines Law Group, APC
Paul K. Haines
phaines@haineslawgroup.com
Sean M. Blakely
sblakely@haineslawgroup.com
Alexandra R. McIntosh
amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245

To Defendant: Vedder Price (CA), LLP

Cheryl A. Sabnis
csabnis@vedderprice.com
Sheryl L. Skibbe
sskibbe@vedderprice.com
1925 Century Park East, Suite 1900
Los Angeles, California 90067

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Date: 6/6/2024

Danny Marsano



PLAINTIFF

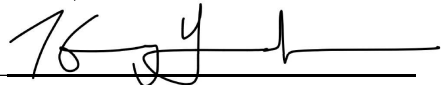
Date: _____

Cindy Garcia

PLAINTIFF

Date: 6/5/24

DEFENDANT H AND H DRUG
STORES, INC.

By: 

Type text here

Date: 6/6/2024

CAPSTONE LAW, APC



Robert Drexler
Molly DeSario
Jonathan Lee
Attorneys for Plaintiffs

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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Date: _____

Danny Marsano

PLAINTIFF

Date: 06/05/24

Cindy Garcia


Cindy Garcia (Jun 5, 2024 18:35 CDT)

PLAINTIFF

Date: _____

DEFENDANT H AND H DRUG
STORES, INC.

By: _____

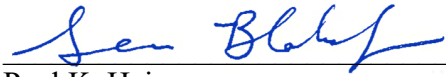
Date: _____

CAPSTONE LAW, APC

Robert.Drexler
Molly DeSario
Molly.DeSario
Jonathan Lee
Attorneys for Plaintiffs

Date: June 5, 2024

HAINES LAW GROUP, APC



Paul K. Haines

Sean M. Blakely

Alexandra R. McIntosh

Attorneys for Plaintiffs

Date: _____

VEDDER PRICE (CA), LLP

Cheryl A. Sabnis

Sheryl L. Skibbe

Attorneys for Defendant

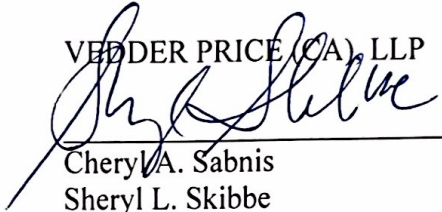
Date: _____

HAINES LAW GROUP, APC

Paul K. Haines
Sean M. Blakely
Alexandra R. McIntosh
Attorneys for Plaintiffs

Date: June 5, 2024

VEDDER PRICE (CA), LLP



Cheryl A. Sabnis
Sheryl L. Skibbe
Attorneys for Defendant

EXHIBIT 1

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING
DATE FOR FINAL COURT APPROVAL**

Marsano v. H and H Drug Stores, Inc., Case No. 22STCV17192

***The Superior Court for the State of California authorized this Notice. Read it carefully!
This notice is being sent in English and Spanish. It's not junk mail, spam, an advertisement, or
solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against H and H Drug Stores, Inc (“Defendant” is used herein as a placeholder) for alleged wage and hour violations. The Action was filed by former employees Danny Marsano and Cindy Garcia (“Plaintiffs”) and seeks payment of (1) back wages and other relief for a class of hourly employees (“Class Members”) who worked for Defendant during the Class Period (November 30, 2017 to ____); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly employees who worked for Defendant during the PAGA Period (June 25, 2022 to ____) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$ ____ (less withholding) and your Individual PAGA Payment is estimated to be \$ ____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked ____ workweeks** during the Class Period and **you worked ____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendant.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendant, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is _____	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice.

You Can Participate in the _____ Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former employees of Defendant. Plaintiffs allege that Defendant violated certain California labor laws by failing to pay overtime wages, minimum wages, wages due upon termination and reimbursable expenses, and failing to provide meal periods, rest breaks and accurate itemized wage statements. Based on the same claims, Plaintiffs also have asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) (“PAGA”). Plaintiffs are represented by attorneys in the Action:

Robert Drexler, Molly DeSario, and Jonathan Lee of Capstone Law APC, and Paul K. Haines, Sean M. Blakely, and Joel M. Gordon of Haines Law Group, APC (“Class Counsel.”)

Defendant strongly denies Plaintiffs’ allegations and contends that it properly paid its employees all wages due, reimbursed all reasonable and necessary business expenses, properly provided meal and rest breaks and accurate wage statements and contends that it did not violate California labor laws or PAGA because it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendant or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendant participated in a mediation and continued to negotiate to a settlement. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims. Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued

litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendant Will Pay \$1,950,000 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payments, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than 14 days after the Effective Date.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$ 650,000 (one-third (33.33)% of the Gross Settlement to Class Counsel for attorneys' fees and up to \$50,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$7,500, each, to Plaintiffs Cindy Garcia and Danny Marsano as Class Representative Awards for filing the Action, working with Class Counsel, and representing the Class. A Class Representative Award will be the only monies Plaintiffs will receive other than Plaintiffs' Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$12,500 to the Administrator for services administering the Settlement.
 - D. Up to \$50,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross

Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendant are asking the Court to approve an allocation of 40% of each Individual Class Payment to taxable wages (“Wage Portion”) and 60% to interest, etc. (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you do not cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check are sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.
8. Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re- mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and Defendant has fully funded the Gross Settlement (and separately paid all employer payroll taxes), Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all claims arising during the Class Period that were alleged, or could have been pled, based on the facts stated in the Operative Complaint and ascertained in the course of the Action, including without limitation claims under California Labor Code sections 201, 202, 203, 204, 222.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1199, 2802, 2804, 2810.5, as well as IWC Wage Order Nos. 4, 7, and 9, and the California Business and Professions Code Section 17200 based on alleged violations of the foregoing statutes and Wage Order sections, and PAGA claims based on alleged violations of the foregoing statutes and Wage Order sections; as well as all claims arising under the listed California Labor Code statutes based on the primary rights of those statutes. Except as set forth in Section 6.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and Defendant has paid the Gross Settlement (and separately paid the employer-side payroll

taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Defendant, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

11. The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties arising during the PAGA Period that were alleged, or reasonably could have been pled, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice and ascertained in the course of the Action, including without limitation PAGA claims predicated on California Labor Code sections 201, 202, 203, 204, 222.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1199, 2802, 2804, and 2810.5 based on the primary rights of those statutes. It is understood that individuals who are Aggrieved Employees will not have the opportunity to opt out of, or object, to the Released PAGA Claims. Further, the Class Members and Aggrieved Employees are bound by the Released PAGA Claims regardless of whether they cash their Individual Settlement Payment checks.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$12,500 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks and Pay Periods based

on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's Counsel. The Administrator's decision is final. You cannot appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who does not opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as Marsano v. H and H Drug Stores, Inc., and include your identifying information (full name, address, telephone number, and approximate dates of employment for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Defendant are asking the Court to approve. At least 16 business days before the _____ Final Approval Hearing, Class Counsel and Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs is requesting as the Class Representative Service Awards. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website

<http://www.phoenixclassaction.com> or the Court's website
<https://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil>.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval or Motion for Fees, Litigation Expenses and Service Award may wish to object. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action Marsano v. H and H Drug Stores, Inc. and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but do not have to, attend the Final Approval Hearing on _____ at (time) in Department 17 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to Phoenix Settlement Administrators's website at <http://www.phoenixclassaction.com>. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. 22STCV17192. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Name of Attorney: Robert Drexler, Molly DeSario, Jonathan Lee

Email Address: info@HHLawsuit.com

Name of Firm: Capstone Law APC

Mailing Address: 1875 Century Park East, Suite 1000, Los Angeles, California 90067

Telephone: 1 (855) 414-6133

Name of Attorney: Paul K. Haines, Sean M. Blakely, Joel M. Gordon

Email Address: phaines@haineslawgroup.com, sblakely@haineslawgroup.com,
jgordon@haineslawgroup.com

Name of Firm: Haines Law Group, APC

Mailing Address: 2155 Campus Drive, Suite 180, El Segundo, California 90245

Telephone: (424) 292-2350

Settlement Administrator:

Phoenix Settlement Administrators

P.O. Box 7208

Orange, CA 92863

[EMAIL ADDRESS]

Telephone: (800) 523-5773

Fax: (949) 209-2503

www.phoenixclassaction.com

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund (https://www.sco.ca.gov/search_upd.html) for instructions on how to retrieve the funds

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT B

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

December 8, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Danny Marsano v. H and H Drug Stores, Inc.*

Dear PAGA Administrator:

This office represents Danny Marsano in connection with his claims under the California Labor Code. Mr. Marsano was an employee of H and H Drug Stores, Inc. ("H & H").

The employer may be contacted directly at the address below:

H AND H DRUG STORES, INC.
3604 SAN FERNANDO ROAD
GLENDALE CA 91204

Mr. Marsano intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Marsano seeks relief on behalf of himself, the State of California, and other persons who are or were employed by H & H as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

H & H employed Mr. Marsano as an hourly paid, non-exempt Delivery Technician from approximately November 2017 to May 2021. During his employment, Mr. Marsano typically worked ten (10) to twelve (12) hours per day and five (5) days per week. By the end of his employment, Mr. Marsano was compensated approximately \$18.00 per hour. His job duties included, without limitation, delivering or picking up medical devices and equipment to or from hospitals, individuals, and rehabilitation facilities and providing technical instructions to clients.

H & H committed one or more of the following Labor Code violations against Mr. Marsano, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

H & H’s Company-Wide and Uniform Payroll and HR Practices

H & H Drug Stores, Inc. is a California corporation and a provider of high-quality durable medical equipment and supplies to the Southern California communities under the business name Western Drug Medical Supply. Upon information and belief, H & H maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Glendale, California, for all non-exempt, hourly paid employees working for H & H in California, including Mr. Marsano and other aggrieved employees. At all relevant times, H & H issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Marsano and other aggrieved employees, regardless of their location or position.

Upon information and belief, H & H maintains a centralized Payroll department at its corporate headquarters in Glendale, California, which processes payroll for all non-exempt, hourly paid employees working for H & H in California, including Mr. Marsano and other aggrieved employees. Further, H & H issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Marsano and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, H & H utilized the same methods and formulas when calculating wages due to Mr. Marsano and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

H & H willfully failed to pay all overtime wages owed to Mr. Marsano and other aggrieved employees. During the relevant time period, Mr. Marsano and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of ten (10) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

¹ These facts, theories, and claims are based on Mr. Marsano’s experience and counsel’s review of those records currently available relating to Mr. Marsano’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Marsano reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

First, during the relevant period, H & H had a company-wide rotating “on-call” policy, whereby it scheduled Mr. Marsano and other aggrieved employees to work “on-call” weeks. During an “on-call” week, Mr. Marsano and other aggrieved employees had to be available 24 hours per day and seven (7) days per week to respond to calls for after-hours “emergency” or rush deliveries or pickups. H & H issued company cellular phones to Mr. Marsano and other aggrieved employees which they were required to keep on them and respond to immediately while working an “on-call” week. When scheduled to be “on-call,” Mr. Marsano and other aggrieved employees were in essence on controlled standby for H & H because they could not use that time freely for their own purposes and were forced to put their lives on hold. For example, Mr. Marsano refrained from making plans altogether while “on-call” because he knew that he had to drop whatever he was doing at a moment’s notice if he received a call. H & H paid Mr. Marsano and other aggrieved employees a flat rate of \$120.00 per week during an “on-call” week, plus time they spent at the clients’ locations delivering or picking up equipment. However, H & H failed to pay Mr. Marsano and other aggrieved employees for their travel time to and from the client locations or for the remainder of time during which they were not free to use their time for their own purposes.

Second, H & H has, systematically, and on a company-wide basis, scheduled and dispatched its delivery drivers to complete time-sensitive deliveries, which included traveling to various locations, unloading equipment and supplies from the vehicle, completing delivery paperwork, and instructing patients and/or caregivers regarding the operation and maintenance of delivered equipment, without building in sufficient time to allow for 30-minute meal periods, such that Mr. Marsano and other aggrieved employees were prevented from taking all timely, uninterrupted 30-minute meal periods, and were also forced to work off-the-clock during their meal periods to complete their assigned routes. Deliveries could take longer than the time H & H allotted for them, such that Mr. Marsano and other aggrieved employees were unable to take compliant meal periods. In conjunction with varying delivery durations, travel time between delivery locations could take longer than anticipated due to traffic conditions, which further impeded Mr. Marsano and other aggrieved employees from taking compliant meal periods. And, upon information and belief, H & H had no mechanism in place to permit Mr. Marsano and other aggrieved employees to take meal periods when the schedule was thrown off because one or more of their deliveries took longer than the scheduled time, or if travel time between appointments was extended by traffic conditions. H & H also had a practice of failing to schedule meal periods, which further caused Mr. Marsano and other aggrieved employees to not be relieved of their duties for compliant meal periods. In addition, even when Mr. Marsano and other aggrieved employees were able to take their meal periods, H & H pressured them to eat their meals while driving between customer sites. Thus, Mr. Marsano and other aggrieved employees performed work during meal periods and received no compensation for this time.

Third, H & H had, and continues to have, a company-wide policy and/or practice of requiring employees to use company mobile devices and/or personal cellular phones to communicate with dispatch and supervisors at all times, including during unpaid meal periods. H & H expected that Mr. Marsano and other aggrieved employees respond to calls and text messages promptly to discuss work-related matters. For example, Mr. Marsano had his meal periods interrupted by calls from dispatch to discuss deliveries and other work-related matters. However, H & H did not compensate Mr. Marsano and other aggrieved employees for the time they spent communicating with dispatch and supervisors regarding work-related issues during meal periods while off-the-clock.

Fourth, on information and belief, because H & H frowned upon employees accruing meal period penalties, H & H’s management pressured Mr. Marsano and other aggrieved employees to clock out for meal periods on their timesheets regardless of whether they had received a compliant meal period

or not, in order to strictly limit meal penalties that would need to be paid by H & H. Alternatively, H & H's management would adjust employees' time records to reflect compliant meal periods or would automatically deduct 30-minute meal periods from Mr. Marsano's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted. Thus, H & H did not record all hours worked during meal periods, and Mr. Marsano and other aggrieved employees performed work during meal periods for which they were not paid.

H & H knew or should have known that as a result of these company-wide practices and/or policies, Mr. Marsano and other aggrieved employees were performing their assigned duties off-the-clock and/or during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Marsano and other aggrieved employees worked shifts of eight (8) hours or more a day or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Marsano and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, H & H did not pay Mr. Marsano and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, H & H paid Mr. Marsano and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, H & H failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Marsano and other aggrieved employees worked overtime and received these other forms of pay, H & H failed to pay all overtime wages by paying a lower overtime rate than required.

For example, H & H paid Mr. Marsano and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Mr. Marsano's and other aggrieved employees' wage statements as "Beeper." During pay periods that Mr. Marsano and other aggrieved employees were paid overtime wages, H & H did not incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Marsano's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, H & H paid Mr. Marsano and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. H & H's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Marsano and other aggrieved employees on a company-wide basis.

H & H's failure to pay Mr. Marsano and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Marsano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the

employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

First, H & H systematically, and on a company-wide basis, required Mr. Marsano and other aggrieved employees to work “on-call” weeks during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though Mr. Marsano and other aggrieved employees were subject to H & H’s control during an “on-call” shift, H & H did not pay Mr. Marsano and other aggrieved employees at least minimum wages for all hours that they were suffered or permitted to work. Additionally, H & H failed to pay Mr. Marsano and other aggrieved employees for their travel time to and from the client locations when they responded to calls after-hours.

Further, as stated above, due to H & H’s policies and/or practices of assigning heavy workloads while allowing insufficient time to complete driving routes, failing to schedule meal periods, requiring employees to take their meal periods while driving, and requiring employees to respond to calls at all times, Mr. Marsano and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal period. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, H & H’s management pressured employees to clock out for meal periods, adjusted employee time records to reflect compliant meal periods, and/or automatically deducted 30-minute meal periods from Mr. Marsano’s and other aggrieved employees’ time records even when meal periods were missed, short, and/or interrupted. Thus, H & H systematically failed to pay Mr. Marsano and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Moreover, H & H maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, H & H was in control of scheduling the date and time for the testing, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. For example, H & H gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the drug testing and/or physical examinations for the sole benefit of H & H. Other aggrieved employees were required to travel in their personal vehicles or obtain alternate transportation and spend time undergoing the requisite testing and/or examinations. However, H & H did not compensate other aggrieved employees for the time they spent traveling to and undergoing the mandatory drug testing and/or physical examinations.

Thus, H & H did not pay at least minimum wages for all hours worked by Mr. Marsano and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, H & H did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, H & H regularly failed to pay at least minimum wages to Mr. Marsano and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198. Mr. Marsano and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, H & H had, and continues to have, a company-wide policy and/or practice of assigning heavy workloads and scheduling time-sensitive deliveries while allowing insufficient time for the drivers to actually complete the deliveries, which resulted in a lack of meal period coverage and prevented Mr. Marsano and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, H & H had company-wide practices and/or policies of failing to schedule meal periods, pressuring employees to eat their meals while driving between customers' sites, and requiring employees to use company mobile devices and/or personal cellular phones to communicate with dispatch and supervisors during meal periods, which further caused Mr. Marsano and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Marsano frequently worked through part or all of his meal periods, in order to complete his deliveries within H & H's management's expectations. When Mr. Marsano was able to take a meal period, he was often required to drive while eating or respond to phone calls and text messages from dispatch about deliveries. Thus, as a result of H & H's policies and/or practices, Mr. Marsano and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether.

H & H also did not provide Mr. Marsano and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Marsano worked shifts in excess of ten (10) or more hours per day but was never provided a second 30-minute meal period. Mr. Marsano and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, H & H knew or should have known that, as a result of these policies, Mr. Marsano and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. H & H further knew or should have known that H & H did not pay Mr. Marsano and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, or missed.

As set forth above, on information and belief, because H & H frowned upon employees accruing meal period penalties, H & H's management pressured Mr. Marsano and other aggrieved employees to clock out for meal periods on their timesheets regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by H & H. Alternatively, H & H's management would adjust employees' time records to reflect compliant meal periods or would automatically deduct 30-minute meal periods from Mr. Marsano's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted.

Moreover, H & H engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Marsano and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that H & H did pay Mr. Marsano and other aggrieved employees premium pay for missed, late, and interrupted meal periods, H & H did not pay Mr. Marsano and other aggrieved employees at the correct rate of pay for premiums because H & H systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, H & H failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Marsano and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, H & H regularly failed to authorize and permit Mr. Marsano and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. H & H maintained and implemented, on a company-wide basis, a non-compliant written rest period policy that prevented Mr. Marsano and other aggrieved employees from taking compliant rest periods. H & H's non-compliant policy fails to correctly state the timing of when rest periods must occur. The policy states, in relevant part: "Please note, there is one break period for every four hours worked. One in the morning and one in the afternoon. Employees

cannot take more than the allowed time, or more than two breaks per day.” However, under California law, an employee is entitled to rest periods for every four (4) hours worked or major fraction thereof. Thus, H & H’s written rest period policy is non-compliant on its face, as it fails to authorize and permit employees to take a first rest period for shifts between 3.5 and 6 hours, a second rest period for shifts between 6 and 10 hours, a third rest period for shifts between 10 and 14 hours, and so on.

Additionally, as with meal periods, H & H’s company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Marsano and other aggrieved employees from being able to take rest periods. H & H also failed to schedule rest periods, which, coupled with H & H’s failure to provide adequate rest period coverage, further led to Mr. Marsano and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, as stated, Mr. Marsano and other aggrieved employees were required to respond to communications from dispatch or management on their company mobile devices and/or personal cellular phones at all times, including during rest periods.

Furthermore, H & H maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Marsano and/or other aggrieved employees remain on the premises during their rest periods. Because Mr. Marsano and/or other aggrieved employees were restricted from leaving H & H’s premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, H & H effectively maintained control over Mr. Marsano and/or other aggrieved employees during rest periods.

As a result of H & H’s practices and policies, Mr. Marsano and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Marsano regularly had to forego rest periods altogether, due to H & H’s policy of assigning heavy workloads and failing to provide sufficient rest period coverage.

H & H has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Marsano and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that H & H did pay Mr. Marsano and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, H & H did not pay Mr. Marsano and other aggrieved employees at the correct rate of pay for premiums because H & H failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, H & H failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Marsano and other aggrieved employees are entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. H & H has not provided Mr. Marsano and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an

employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, H & H has knowingly and intentionally provided Mr. Marsano and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, H & H issued uniform wage statements to Mr. Marsano and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, H & H violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because H & H did not record the time Mr. Marsano and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), H & H did not list the correct amount of gross wages and net wages earned by Mr. Marsano and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, H & H failed to accurately list the total number of hours worked by Mr. Marsano and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9)).

Additionally, because H & H did not calculate Mr. Marsano's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, H & H did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, H & H failed to list the correct amount of net wages in violation of section 226(a)(5). H & H also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, and/or meal and rest premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." At all relevant times, and in violation of

Labor Code section 1174(d), H & H willfully failed to maintain accurate payroll records for Mr. Marsano and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, H & H failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Marsano and other aggrieved employees, in violation of section 1198. Also, as stated, H & H engaged in a company-wide practice and/or policy of falsifying Mr. Marsano’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Marsano and other aggrieved employees. Furthermore, in light of H & H’s failure to provide Mr. Marsano and other aggrieved employees with second 30-minute meal periods to which they were entitled, H & H kept no records of meal start and end times for second meal periods.

Because H & H failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Marsano and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Marsano and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Marsano and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, H & H willfully failed to pay Mr. Marsano and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

Mr. Marsano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

H & H willfully failed to pay Mr. Marsano and other aggrieved employees who are no longer employed by H & H the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving H & H's employ.

Mr. Marsano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, H & H implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo a mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, upon information and belief, H & H had a company-wide policy requiring that all employees travel to a specified medical facility using their own personal vehicles to undergo drug testing and/or physical examinations. At all times, H & H was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

Other aggrieved employees were required to travel in their own personal vehicles to designated medical facilities and spend time undergoing H & H's mandatory drug test and/or physical examination. However, H & H did not compensate other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. H & H's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory physical examinations and/or drug testing is in violation of California Labor Code section 222.5.

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, Mr. Marsano and other aggrieved employees were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but H & H failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Marsano was required to use his personal cellular phone to navigate to customer sites and to converse with his supervisors and dispatch about work-related matters via calls and/or text messages. Even when H & H later provided Mr. Marsano and other aggrieved employees with company mobile devices, H & H continued to call Mr. Marsano on his personal cellular phone whenever his company phone was turned off or when he was otherwise unavailable during his meal periods and/or outside of his shifts. Although H & H required Mr. Marsano and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, H & H failed to reimburse them for these costs.

Additionally, during the relevant time period, H & H had a company-wide policy and/or practice of requiring other aggrieved employees to travel in their own personal vehicles or alternate transportation to medical facilities to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. H & H maintained and implemented a company-wide policy of requiring employees to travel to a medical facility using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, H & H was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. H & H gave other aggrieved employees strict instructions to obtain drug testing, and other aggrieved employees underwent the testing for the sole benefit of H & H. Although H & H required other aggrieved employees to undergo drug testing and/or physical examinations, H & H failed to reimburse them for their travel expenses.

H & H could have provided Mr. Marsano and other aggrieved employees with the actual tools for use on the job, such company mobile devices and company vehicles, to be used for fulfilling work-related tasks. Or, H & H could have reimbursed employees for their mobile device usage, mileage, and travel expenses. Instead, H & H passed these operating costs off onto Mr. Marsano and other aggrieved employees. At all relevant times, Mr. Marsano did not earn at least two (2) times the minimum wage.

Thus, H & H had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Marsano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

H & H failed to provide Mr. Marsano and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). H & H's failure to provide Mr. Marsano and other aggrieved employees with written notice of basic information regarding their employment with H & H is in violation of Labor Code section 2810.5.

Mr. Marsano and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." H & H, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Marsano's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Marsano seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Marsano, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against H & H for violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Marsano seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: H AND H DRUG STORES, INC. (via U.S. Certified Mail)

EXHIBIT C

~~MODEL~~ CLASS ACTION AND PAGA SETTLEMENT AGREEMENT
AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement ("Agreement") is made by and between plaintiff ~~(Plaintiff~~ plaintiffs Danny Marsano and Cindy Garcia (collectively, "Plaintiffs") and defendant ~~XYZ~~

(XYZ) ~~H and H Drug Stores, Inc.~~
(Defendant). The Agreement refers to Plaintiff ~~Plaintiffs~~ and XYZ ~~Defendant~~ collectively as "Parties," or individually as "Party."

1. DEFINITIONS.

- 1.1. ~~"Action"~~ "Actions" means the ~~Plaintiff's~~ Plaintiff Marsano's lawsuit alleging wage and hour violations against ~~XYZ~~ Defendant captioned

Marsano v. H and H Drug Stores, Inc., initiated on November 30, 2021, and pending in Superior Court of the State of California, County of Los Angeles, Case Number 22STCV17192, as well as Plaintiff Garcia's lawsuit alleging wage and hour violations against Defendant, initiated on September 15, 2022, and pending in the Superior Court of the State of California, County of San Bernardino, Case Number 22STCV17192.

- 1.2. "Administrator" means Phoenix Settlement Administrators, the neutral entity ~~the Parties have agreed to appoint~~ Plaintiff has selected to administer the Settlement. Defendant has agreed not to object to the appointment of Phoenix Settlement Administrators to administer the settlement.

- 1.3. "Administration Expenses Payment" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with Preliminary Approval of the Settlement.

- 1.4. "Aggrieved Employee" means ~~fe.g., a person~~ all non-exempt employees employed by ~~XYZ~~ Defendant in the State of California and classified as a who worked for XYZ at any time during the PAGA Period.

- 1.5. "Class" means ~~define class e.g., all persons~~ non-exempt employees employed by ~~XYZ~~ Defendant in the State of California and classified as who worked for XYZ at any time during the Class Period.

- 1.6. "Class Counsel" means Capstone Law APC and Haines Law Group APC.

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- ~~1.7.1.6.1.~~ “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the ~~Action~~Actions.
- ~~1.8.1.7.~~ “Class Data” means Class Member identifying information in ~~XYZ’s~~Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, ~~and~~ number of Class Period Workweeks and PAGA Pay Periods.
- ~~1.9.1.8.~~ “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- ~~1.10.~~ “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available

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1.9. sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be

1.10. mailed to Class Members in English ~~[with a Spanish translation, if applicable]~~ in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12.1.10.1. "Class Period" means the period from _____ to _____, ~~through the earlier of July 19, 2024 or the date the court grants Preliminary Approval of the settlement.~~

1.13. "Class Representative" means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.11. "Class Representatives" means Plaintiffs Danny Marsano and Cindy Garcia.

1.14.1.12. "Class Representative Service ~~Payment~~Payments" means the payment to the Class ~~Representative~~Representatives for initiating the ~~Action~~Actions and providing services in support of the ~~Action~~Actions.

1.15.1.13. "Court" means the Superior Court of California, County of Los Angeles.

1.16.1.14. "XYZDefendant" means named Defendant _____ ~~H and H Drug Stores, Inc.~~

1.17.1.15. "Defense Counsel" means _____ ~~Vedder Price (CA), LLP.~~

1.18. "Effective Date" means the date by when ~~both of the following have occurred:~~

1.16. (a) ~~Settlement is approved and the Court enters a Court's Judgment on its Order Granting Final Approval of the Settlement; and (b) the becomes final and no longer subject to timely post-judgment motion or appeal ("Judgment is final").~~ The Court's Judgment is "becomes final as" upon the latter of: (i) if no appeal is filed, the expiration date of the latest of time for the following occurrences: (a) if no Participating Class Member objects to filing or noticing of any appeal from, or other challenge to, the Settlement, the day the Court enters Court's Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day (this time period shall not be less than 60 calendar days after the deadline for filing a notice of appeal from the Judgment; or if a timely Court's Judgment is entered); (ii) the date affirmance of an appeal of the Judgment becomes final under the California Code of Civil Procedure and California Rules of Court; or (iii) the date of

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~~final dismissal of any appeal from the Judgment is filed, the day after the appellate or the final dismissal of any proceeding on review of any court affirms of appeal decision relating to the Judgment and issues a remittitur ("Effective Date").~~

~~1.19.1.17.~~ "Final Approval" means the Court's order granting final approval of the Settlement.

~~1.20.1.18.~~ "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.

~~1.21.1.19.~~ "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

~~1.22.~~ "Gross Settlement Amount" means \$~~_____~~1,950,000.00, which is the total amount ~~XYZ~~Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual

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- ~~1.20.~~ ~~PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service, ~~Payment~~Payments, and the Administrator's Expenses.~~
- ~~1.23.~~~~1.21.~~ "Individual Class Payment" means the Participating Class Member's pro-rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- ~~1.24.~~~~1.22.~~ "Individual PAGA Payment" means the Aggrieved Employee's pro-rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- ~~1.25.~~ "Judgment" means the judgment entered by the Court based upon the Final Approval.
- ~~1.26.~~~~1.23.~~ "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- ~~1.27.~~~~1.24.~~ "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- ~~1.28.~~~~1.25.~~ "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service ~~Payment~~Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- ~~1.29.~~~~1.26.~~ "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- ~~1.30.~~~~1.27.~~ "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for ~~XYZ~~Defendant for at least one day during the PAGA Period.
- ~~1.31.~~~~1.27.1.~~ "PAGA Period" means the period from _____ to _____, ⁱⁱⁱJune 25, 2022 through the earlier of July 19, 2024 or the date the court grants Preliminary Approval of the settlement.
- ~~1.32.~~~~1.28.~~ "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*).
- ~~1.33.~~~~1.29.~~ "PAGA Notice" means Plaintiff's _____ Plaintiff Marsano's December 8, 2021 letter to ~~XYZ~~Defendant and the LWDA ~~and Plaintiff's~~ letter to ~~XYZ and the LWDA~~ providing notice pursuant to Labor Code section 2699.3, subd.(a).

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~~1.34, 1.30.~~ "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$12,500) and the 75% to LWDA (\$37,500) in settlement of PAGA claims, () and the 75% to LWDA () in settlement of PAGA claims.

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~~1.35.1.31.~~ "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

~~"Plaintiff~~

~~1.36.1.32.~~ "Plaintiffs" means Danny Marsano and Cindy Garcia, the named ~~plaintiff~~plaintiffs in the Action.

~~1.37.1.33.~~ "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

~~1.38.1.34.~~ "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

~~1.39.1.35.~~ "Released Class Claims" means the claims being released as described in Paragraph ~~6.5.2~~ below.

~~1.40.1.36.~~ "Released PAGA Claims" means the claims being released as described in Paragraph ~~6.25.3~~ below.

~~1.41.1.37.~~ "Released Parties" means: ~~XYZ Defendant~~ and each of its former and present directors, officers, shareholders, owners, ~~members~~, attorneys, insurers, predecessors, successors, divisions, assigns ~~and~~ subsidiaries ~~and~~ affiliates ~~and~~ joint ventures, fiduciaries, and each of these entities' past, present, or future direct or indirect officers, directors, members, agents, attorneys, representatives, and employees.

~~1.42.1.38.~~ "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.

~~1.43.1.39.~~ "Response Deadline" means ~~fe.g., 60~~45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

~~1.44.1.40.~~ "Settlement" means the disposition of the Action effected by this Agreement and the Final Judgment.

~~1.45.1.41.~~ "Workweek" means any week during which a Class Member worked for ~~XYZ Defendant~~ for at least one day, during the Class Period.^{iv}

2. RECITALS

~~2.1.~~ On November 30, 2021, Plaintiff Marsano commenced this

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Action by filing a Complaint alleging causes of action against XYZ Defendant for _____
_____. ~~The:~~ (1) Unpaid Overtime Wages; (2) Unpaid Minimum Wages; (3) Failure to
Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Non-
Compliant Wage Statements and Failure to Maintain Payroll Records; (6) Failure to Pay
All Wages Due Upon Separation of Employment; (7) Failure to Timely Pay Wages
During Employment; (8) Failure to Reimburse Business Expenses; (9) Unlawful
Business Practices Under Business and Professions Code §§ 17200, *et seq.*; and (1)
Unfair Business Practices Under Business and Professions Code §§ 17200, *et seq.* On
August 29, 2023, Plaintiff Marsano filed a First Amended Complaint alleging an
additional cause of action against Defendant for Enforcement of Labor Code § 2698 *et*
seq. (“PAGA”). On September 15, 2022, Plaintiff Garcia commenced an Action by
filing a Complaint alleging causes of action against Defendant for: (1) meal period
violations; (2) rest period violations; (3) failure to reimburse employees for necessary
business expenditures; (4) minimum wage violations; (5) failure to pay all overtime
wages; (6) waiting time penalties; and (7) unfair competition. On April 16, 2024,
Plaintiffs filed a Second Amended Complaint in the Marsano Action to add Cindy
Garcia as a named plaintiff and class representative. The Second Amended Complaint is
the operative complaint in the Action (the “Operative Complaint.”) [On _____,
Plaintiff filed a [e.g., First Amended Complaint] alleging causes of action against XYZ
for _____. The [e.g., First Amended] Complaint is the operative complaint
in the Action (the “Operative

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~~3.2.~~ 3.2 ~~Payments from the Gross Settlement Amount.~~ The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

~~3.2.1.~~ To ~~Plaintiff~~ Plaintiffs: Class Representative Service ~~Payment~~ Payments to ~~the each~~ Class Representative of not more than ~~\$-7,500~~ (in addition to any Individual Class Payment ~~and any Individual PAGA Payment~~) the Class Representative is

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3.2.1 ~~Representatives are entitled to receive as a Participating Class Member).~~
~~XYZMembers).~~ Defendant will not oppose ~~Plaintiff's request~~ Plaintiffs' requests
for a Class Representative Service ~~Payment~~ Payments that ~~does do~~ not exceed
~~this amount~~ \$7,500. As part of the motion for Class Counsel Fees Payment and
Class Litigation Expenses Payment, ~~Plaintiff~~ Plaintiffs will seek Court approval
for any Class Representative Service Payments no later than ~~16 court~~ days
prior to the Final Approval Hearing. If the Court approves ~~the~~ Class
Representative Service ~~Payment~~ Payments less than the amount requested, the
Administrator will retain the remainder in the Net Settlement Amount. The
Administrator will pay the Class Representative Service ~~Payment~~ Payments
using IRS Form 1099. ~~Plaintiff assumes~~ Plaintiffs assume full responsibility and
liability for employee taxes owed on the Class Representative Service
~~Payment~~ Payments.

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3.2.2.3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than
~~%one-third (1/3)~~, which is currently estimated to be ~~\$~~ 650,000, and a
Class Counsel Litigation Expenses Payment of not more than ~~\$~~
~~XYZ~~50,000. Defendant will not oppose requests for these payments
provided that ~~they~~ do not exceed these amounts. ~~Plaintiff~~ Plaintiffs and/or
Class Counsel will file a motion for Class Counsel Fees Payment and Class
Litigation Expenses Payment no later than ~~16 court~~ days prior to the Final
Approval Hearing. If the Court approves a Class Counsel Fees Payment
and/or a Class Counsel Litigation Expenses Payment less than the amounts
requested, the Administrator will allocate the remainder to the Net Settlement
Amount. Released Parties shall have no liability to Class Counsel or any
other ~~Plaintiff's~~ Plaintiffs' Counsel arising from any claim to any portion any
Class Counsel Fee Payment and/or Class Counsel Litigation Expenses
Payment. The Administrator will pay the Class Counsel Fees Payment and
Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class
Counsel ~~assumes~~ assume full responsibility and liability for taxes owed on the
Class Counsel Fees Payment and the Class Counsel Litigation Expenses
Payment and ~~holds XYZ~~ hold Defendant and the Released Parties harmless,
and ~~indemnifies XYZ~~ indemnify Defendant and the Released Parties, from any
dispute or controversy regarding any division or sharing of any of these
Payments.

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3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
3.2.3 \$ 12,500 except for a showing of good cause and as approved by
the Court. To the extent the Administration Expenses are less or the Court
approves payment less than ~~\$12,500~~, the Administrator will retain the
remainder in the Net Settlement Amount.

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3.2.4. To Each Participating Class Member: An Individual Class Payment
calculated by (a) dividing the Net Settlement Amount by the total number of
Workweeks worked by all Participating Class Members during the Class Period.

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and
3.2.4 (b) multiplying the result by each Participating Class Member's Workweeks.
3.2.4.1. Tax Allocation of Individual Class Payments: % : 40%
of each Participating Class Member's Individual Class Payment will be
allocated to settlement of wage claims (the "Wage Portion"). The Wage
Portions are subject to tax withholding and will be reported on an IRS W-2
Form. The
% 60% of each Participating Class Member's Individual Class
Payment will be allocated to settlement of claims for [e.g., interest and
penalties] (the

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3.2.4.1 “Non-Wage Portion”).⁴⁴ The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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3.2.4.2.3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments: Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro-rata basis.

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3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$50,000 to be paid from the Gross Settlement Amount, with 75%

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3.2.5 (\$37,500) allocated to the LWDA PAGA Payment and 25% (\$12,500) allocated to the Individual PAGA Payments.

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3.2.5.1.3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$12,500 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period, and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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3.2.5.2.3.2.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

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4.4 SETTLEMENT FUNDING AND PAYMENTS.

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4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, XYZ estimates there are Class Members who collectively worked a total of Workweeks, and of Aggrieved Employees who worked a total of PAGA Pay Periods.

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4.2. Class Data. Not later than {e.g., 15} days after the Court grants Preliminary Approval of the Settlement, XYZ Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. XYZ The Administrator will not provide class contact information to Class Counsel. Defendant has a continuing

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duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which XYZDefendant must send the Class Data

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4.1 to the Administrator, ~~the Parties~~ Defendant, and ~~their~~ its counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3.4.2 Funding of Gross Settlement Amount. XYZ Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay XYZ's Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than {14} days after the Effective Date.

4.4.4.3. — Payments from the Gross Settlement Amount. Within {14} days after XYZ Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.4.3.1 The Administrator will issue checks for the Individual Class Payments and ~~for~~ Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2.4.3.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are ~~returned~~ returned undelivered without USPS forwarding address. Within {7} days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

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~~4.4.3.~~ 4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks ~~to the California~~ to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

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~~Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).] [or to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipient") _____]. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.~~

~~4.4.4.4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate XYZ Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.~~

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~~6- 5. RELEASES OF CLAIMS. On the Effective on the date when XYZ fully funds the entire Gross Settlement Amount Date, Plaintiffs and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:~~

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~~6.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences [that occurred during the Class Period], including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, [or ascertained during the Action and released under 6.2, below]. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.~~

~~Plaintiff's 5.1 Plaintiffs' Release. Plaintiffs Danny Marsano and Cindy Garcia, and each of them, and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns hereby waive, release, acquit and forever discharge Defendant, and its parents, subsidiaries, affiliates and related entities or companies, including all predecessor companies, and all past and present owners, officers, directors, shareholders, partners, members, managing agents, employees, agents, insurers, attorneys, heirs, successors and assigns (hereinafter the "Released Parties"), from any and all claims, actions, charges, complaints and causes of action (hereinafter collectively referred to as "claims") of whatever nature, whether known or unknown, which exist or may exist on Employee's behalf against the Released Parties arising at any time up to the date of this Agreement, including but not limited to the allegations asserted in the Demand~~

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Letter; any and all claims based on contract (whether written, oral, express or implied), tort, wrongful termination, public policy, personal injury, emotional distress, invasion of privacy, defamation, libel, slander, fraud, misrepresentation, quantum meruit, or any other common law claims; any and all claims for wages, salary, bonuses, commissions, overtime pay, premium pay, meal period payments, rest break payments, vacation pay, severance pay, benefits, contributions, or any other claims for compensation of any kind; any and all claims under any federal, state and/or local whistleblower statute, regulation, ordinance or law, including without limitation the California Whistleblower Protection Act (Labor Code §§ 1102.5 – 1105); any and all claims for damages (including general, special, compensatory, consequential, liquidated or punitive damages), back wages, future wages or front pay; any and all claims for costs, expenses, attorneys’ fees, interest, civil penalties, statutory penalties, criminal penalties, waiting time penalties, or any other available monetary remedy, damage, award or amount (including any claims for penalties available to Employee as an “aggrieved employee” under the California Private Attorneys’ General Act (“PAGA”), Labor Code §§ 2698, et seq., without any impact whatsoever on the rights and remedies of other “aggrieved employees” or the LWDA); and any and all claims arising under any federal, state, city or other governmental statute, law, regulation or ordinance relating to employment or prohibiting discrimination, retaliation and/or harassment, including but not limited to (as amended), Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Equal Employment Opportunity Act of 1972, the Americans with Disabilities Act, the Family and Medical Leave Act, the California Labor Code and any applicable Wage Order, the California Business and Professions Code, the California Family Rights Act, and the California Fair Employment and Housing Act covering discrimination, harassment, equal pay, reasonable accommodation, and/or retaliation in employment on any basis protected by law (“Plaintiffs’ Release”).

6.1.1 5.1.1 Plaintiffs’ Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs’ Release, Plaintiff Plaintiffs expressly waiveswaive and relinquishesrelinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

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Plaintiffs understand and agree that claims or facts in addition to or different from those which are now known or believed by them to exist may hereafter be discovered. It is Plaintiffs' intention to settle fully and release all claims they now have against the Released Parties, whether known or unknown, suspected or unsuspected. The Class Representative Service Payments will be paid to Plaintiffs specifically in exchange for the general release of the Released Parties from all claims, including those specified in this paragraph and a covenant not to sue the Released Parties. Notwithstanding the above, the general release by Plaintiffs shall not extend to claims for workers' compensation benefits, claims for unemployment benefits, or other claims that may not be released by law.

6.2 5.2 Release by Participating Class Members ~~Who Are Not Aggrieved Employees~~: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from ~~(+)any and~~ all claims arising during the Class Period that were alleged, or ~~reasonably~~ could have been ~~alleged~~ pled, based on the Class Period facts stated in the Operative Complaint ~~[and ascertained in the course of the Action]]~~, including, e.g., ~~“(a) any and all claims involving any alleged failure to pay minimum wage; etc.]”~~. ~~Except without limitation claims under California Labor Code sections 201, 202, 203, 204, 222.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1199, 2802, 2804, 2810.5, as set forth in well as IWC Wage Order Nos. 4, 7, and 9, and the California Business and Professions Code Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims~~ 17200 based on facts occurring outside alleged violations of the foregoing statutes and Wage Order sections, as well as all claims arising under the Class Period; foregoing California Labor Code statutes based on the primary rights of those statutes.

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6.3 5.3 Release by ~~Non Participating Class Members Who Are~~ Aggrieved Employees: All ~~Non Participating Class Members who are~~ Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties arising during the PAGA Period that were alleged, or ~~reasonably~~ could have been ~~alleged~~ pled, based on the PAGA Period facts stated in the Operative Complaint ~~[,]]~~ and ~~the PAGA Notice [and ascertained in the course of the Action]]~~, including, e.g., ~~“(a) any and all without limitation PAGA claims involving any alleged failure predicated on California Labor Code sections 201, 202, 203, 204, 222.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1199, 2802, 2804, and 2810.5 based on the primary rights of those statutes. It is understood that individuals who are Aggrieved Employees will not have the opportunity to pay minimum wage; etc.]”~~ opt out of, or object, to the Released PAGA Claims. Further, the Class Members and Aggrieved Employees are bound by the Released PAGA Claims regardless of whether they cash their Individual Settlement Payment checks.

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~~7.6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly~~ Plaintiffs will prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals. Plaintiffs agree to deliver to Defendant a draft of the motion for preliminary approval at least 3 days prior to the filing for review.

~~7.1 XYZ's Declaration in Support of Preliminary Approval. Within _____ days of the full execution of this Agreement, XYZ will prepare and deliver to Class Counsel a signed Declaration from XYZ and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy-Pres Recipient. In their Declarations, Defense Counsel and XYZ shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.~~

~~7.2 Plaintiffs' Responsibilities. Plaintiff Plaintiffs~~ will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members ~~[and/or the proposed Cy-Pres];~~ and the nature and extent of any financial relationship with ~~Plaintiff~~ Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration

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6.1 from ~~Plaintiff~~Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, ~~and/or~~ the Administrator ~~and/or the proposed Cy Pres~~; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, and the Administrator and/or the Cy Pres Recipient. In their Declarations, ~~Plaintiff~~Plaintiffs and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

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7.36.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than ~~30~~16 court days after prior to the full execution of this Agreementhearing on the Motion for Preliminary Approval; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

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7.46.3 —Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

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8.7. SETTLEMENT ADMINISTRATION.

8.1 —Selection of Administrator. The PartiesPlaintiffs have jointly selected

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7.1 — Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, ~~Phoenix Settlement Administrators~~ agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. Defendant agrees not to object to the appointment of Phoenix Settlement Administrators as the Administrator. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

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8.27.2 —Employer Identification Number. The Administrator shall have and use its own

Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.

8.37.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

8.47.4 Notice to Class Members.

8.4.17.4.1 — No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, ~~PAGA Members~~ Aggrieved Employees, Workweeks, and Pay Periods in the Class Data.

8.4.27.4.2 — Using best efforts to perform as soon as possible, and in no event later than ~~{14}~~ days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice ~~[with Spanish translation, if applicable]~~ substantially in the form attached to this Agreement as Exhibit ~~—A~~. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and ~~for~~ Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

8.4.37.4.3 Not later than ~~{three (3)}~~ business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

8.4.47.4.4 — The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional ~~{14}~~ days beyond the ~~{60}~~ 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

8.4.57.4.5 — If the Administrator, ~~XYZ~~ Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include

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them as Class Members. ~~If it is established through the Parties agree,~~ review of Defendant's business records or documents submitted by the putative Class Member that ~~such persons will~~ person should be Class Members ~~entitled to the same rights included, as other~~ Class Members, ~~and Member or Aggrieved Employee,~~ the Administrator will send, via email or overnight delivery, a Class Notice requiring ~~them~~ the person to exercise options under this Agreement not later than ~~{14}~~ days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later,

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~~receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.~~

8.5.7.5 Requests for Exclusion (Opt-Outs).

~~8.5.17.5.1~~ — Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than ~~{60}~~45 days after the Administrator mails the Class Notice (plus an additional ~~{14}~~14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

~~8.5.27.5.2~~ — The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

~~8.5.3~~ — Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and

~~7.5.3~~ 6.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

~~8.5.47.5.4~~ Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment.

~~6.4 of this Agreement and are eligible for an Individual PAGA Payment.~~

~~8.6~~ Challenges to Calculation of Workweeks. Each Class Member shall have ~~{60}~~30 days

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after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the

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post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service ~~Payment~~Payments, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

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~~8.8.2~~ Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their

~~7.7.2~~ validity. Not later than ~~5~~ days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to ~~Class Counsel and~~ Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

~~8.8.37.7.3~~ Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, the number of Requests for Exclusion (whether valid or invalid) received, objections received, the number of challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

~~8.8.4~~ Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

~~8.8.57.7.4~~ Administrator’s Declaration. Not later than ~~14~~5 days before the date by which ~~Plaintiff is~~ Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of the Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), and the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the ~~Parties and/or the~~ Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

~~8.8.67.7.5~~ Final Report by Settlement Administrator. Within ~~10~~ days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least ~~15~~ days before any deadline set by the Court, the Administrator will prepare, and submit to

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Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

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~~9. CLASS SIZE ESTIMATES [and ESCALATOR CLAUSE]~~ Based on its records, XYZ estimates that, as of the date of this Settlement Agreement, (1) there are _____ Class Members and _____ Total Workweeks during the Class period and (2) there were _____ Aggrieved Employees who worked _____ Pay Periods during the PAGA Period.^{vii}

~~XYZ'S~~

~~8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.~~ Defendant represents that there were 72,915 workweeks at the time of the mediation. If at the earlier of July 19, 2024 or preliminary approval of the settlement, the number of workweeks has increased by 10% or more (i.e., there are 80,207 or more workweeks), the Gross Settlement Amount will increase on a proportional basis for any amount in excess of the 10% (i.e., if there was a 12% increase in the number of workweeks, Defendant shall increase the Gross Settlement Amount by 2%).

~~10.9.~~ **DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds % _____ 10% of the total of all Class Members, ~~XYZ~~ Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if ~~XYZ~~ Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, ~~XYZ~~ Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. ~~XYZ~~ Defendant must notify Class Counsel and the Court of its election to withdraw not later than ~~seven~~ days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

~~11.10.~~ **MOTION FOR FINAL APPROVAL.** Not later than ~~16~~ court days before the calendared Final Approval Hearing, Plaintiff ~~Plaintiffs~~ will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). ~~Plaintiff~~ Class Counsel shall provide drafts of ~~these~~ the documents to Defense Counsel not later than ~~seven~~ 3 days prior to the filing of the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval. The Parties will file a joint stipulation and proposed order to dismiss Defendant's cross complaint concurrently with the filing of the motion for final approval.

~~11.10.1~~ **Response to Objections.** Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than ~~that~~ ~~than~~ five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

~~11.210.2~~ **Duty to Cooperate.** If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously

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work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. ~~The Court's decision to award less than the amounts requested for the Class Representative Service~~ ~~Payment~~ ~~Payments~~, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment ~~and/or~~ Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

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~~11.3~~ ~~Continuing Jurisdiction of the Court.~~ The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and ~~for~~ Judgment, (ii) addressing

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10.3 settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

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11.410.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment ~~reflected~~ set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

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11.510.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service ~~Payment~~ Payments or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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12.11. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit ~~and~~ a proposed amended judgment.

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13.12. ADDITIONAL PROVISIONS.

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13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by ~~XYZ~~ Defendant that any of the allegations in the Operative Complaint have merit or that ~~XYZ~~ Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by ~~Plaintiff~~ Plaintiffs

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that ~~XYZ's~~Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason, the Court does not grant Preliminary Approval, Final Approval or enter Judgment, ~~XYZ~~Defendant reserves the right to contest certification of any class for any reasons, and ~~XYZ~~Defendant reserves all available defenses to the claims in the Action, and ~~Plaintiff reserves~~Plaintiffs reserve the right to move for class certification on any grounds available, and to contest ~~XYZ's~~Defendant's defenses. The Settlement, this Agreement and ~~Parties'~~Parties' willingness to

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~~12.1~~ settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

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~~13.2~~ Confidentiality Prior to Preliminary Approval. ~~Plaintiff~~ Plaintiffs, Class Counsel, ~~XYZ~~ Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency.

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~~12.2~~ Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. ~~Plaintiff~~ Plaintiffs, Class Counsel, ~~XYZ~~ Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

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~~13.3~~ ~~12.3~~ No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

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~~13.4~~ ~~12.4~~ Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

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~~13.5~~ ~~12.5~~ Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by ~~Plaintiff~~ Plaintiffs and ~~XYZ~~ Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

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Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement

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12.6 the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

13.712.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

13.812.8 No Tax Advice. Neither ~~Plaintiff~~Plaintiffs, Class Counsel, XYZDefendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

13.912.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

13.1012.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

13.1112.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

13.1212.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

13.1312.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

13.1412.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by XYZDefendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, PlaintiffPlaintiffs shall destroy, all paper and electronic versions of Class Data received from XYZDefendant unless, prior to the Court's discharge of the

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Administrator's obligation, ~~XYZ~~Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

~~13.15~~12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

~~13.16~~12.16 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

~~13.17~~12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

~~To Plaintiff:~~

~~To XYZ:~~

To Plaintiffs: Capstone Law APC

Robert Drexler
Robert.Drexler@CapstoneLawyers.com
Molly DeSario
Molly.DeSario@CapstoneLawyers.com
Jonathan Lee
Jonathan.Lee@CapstoneLawyers.com
1875 Century Park East, Suite 1000
Los Angeles, California 90067

Haines Law Group, APC
Paul K. Haines
phaines@haineslawgroup.com
Sean M. Blakely
sblakely@haineslawgroup.com
Alexandra R. McIntosh
amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245

To Defendant: Vedder Price (CA), LLP
Cheryl A. Sabnis

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PLAINTIFF

PLAINTIFF

By:

Date: _____ CAPSTONE LAW, APC

Robert.Drexler
Molly.DeSario
Molly.DeSario
Jonathan Lee
Attorneys for Plaintiffs

Date: _____ HAINES LAW GROUP, APC

Paul K. Haines
Sean M. Blakely
Alexandra R. McIntosh
Attorneys for Plaintiffs

Date: _____ VEDDER PRICE (CA), LLP

Cheryl A. Sabnis
Sheryl L. Skibbe
Attorneys for Defendant

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**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING
DATE FOR FINAL COURT APPROVAL**

Marsano v. H and H Drug Stores, Inc., Case No. 22STCV17192

***The Superior Court for the State of California authorized this Notice. Read it carefully!
This notice is being sent in English and Spanish. It's not junk mail, spam, an advertisement, or
solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit ("Action") against _____ (abbreviate name; "XYZH and H Drug Stores, Inc" ("Defendant" is used herein as a placeholder) for alleged wage and hour violations. The Action was filed by a[n] [former] XYZ employee _____ ("Plaintiff employees Danny Marsano and Cindy Garcia" ("Plaintiffs"), and seeks payment of (1) back wages [and other relief] for a class of [e.g., hourly] employees ("Class Members") who worked for XYZ Defendant during the Class Period (_____ November 30, 2017, to _____); and (2) penalties under the California Private Attorney General Act ("PAGA") for all [e.g., hourly] employees who worked for XYZ Defendant during the PAGA Period (_____ June 25, 2022 to _____) ("Aggrieved Employees").

The proposed Settlement has two main parts: (1) a Class Settlement requiring XYZ Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring XYZ Defendant to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on XYZ's Defendant's records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be \$ _____ (less withholding) and your Individual PAGA Payment is estimated to be \$ _____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to XYZ's Defendant's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on XYZ's Defendant's records showing that **you worked _____ workweeks during the Class Period and you worked _____ workweeks during the PAGA Period**. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to

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~~Plaintiff~~Plaintiffs and ~~Plaintiff's~~Plaintiffs' attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires ~~XYZ~~Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against ~~XYZ~~Defendant.

If you worked for ~~XYZ~~Defendant during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

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(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against ~~XYZ~~Defendant.

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~~XYZ~~

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against XYZ Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.
The Opt-out Deadline is _____	You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims (defined below).
	You cannot opt-out of the PAGA portion of the proposed Settlement. XYZ must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).

complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether XYZ Defendant or Plaintiff is Plaintiffs are correct on the merits. In the meantime, Plaintiff Plaintiffs and XYZ hired an experienced, neutral mediator a retired judge

Defendant participated in an effort a mediation and continued to resolve the Action by negotiating an negotiate to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful a settlement. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff Plaintiffs and XYZ Defendant have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, XYZ Defendant does not admit any violations or concede the merit of any claims.

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~~Plaintiff Plaintiffs~~ and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: ~~(1) XYZDefendant~~ has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. ~~The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.~~

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

~~XYZ~~

1. ~~Defendant~~ Will Pay \$ ~~1,950,000~~ as the Gross Settlement Amount (Gross Settlement). ~~XYZDefendant~~ has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service ~~PaymentPayments~~, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, ~~XYZDefendant~~ will fund the Gross Settlement not more than ~~14~~ days after the Judgment entered by the Court become final. ~~The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealedEffective Date.~~

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, ~~PlaintiffPlaintiffs~~ and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- A. Up to \$ ~~650,000~~ (one-third (33.33)% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$ ~~50,000~~ for their litigation expenses. To date, ~~Class Counsel have worked and incurred expenses on the Action without payment.~~
- B. Up to \$ ~~7,500~~, each, to Plaintiffs ~~Cindy Garcia and Danny Marsano~~ as a Class Representative ~~AwardAwards~~ for filing the Action, working with Class Counsel, and representing the Class. A Class Representative Award will be the only monies ~~PlaintiffPlaintiffs~~ will receive other than ~~Plaintiff'sPlaintiffs'~~ Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$ ~~12,500~~ to the Administrator for services administering the Settlement.
- D. Up to \$ ~~50,000~~ for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

~~Participating Class Members have the right to object to any of these deductions. The~~

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Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross

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Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

4. ~~Taxes Owed on Payments to Class Members.~~ ~~Plaintiff~~Plaintiffs and ~~XYZ~~Defendant are asking the Court to approve an allocation of % 40% of each Individual Class Payment to taxable wages (“Wage Portion”) and % 60% to ~~fe.g., interest, etc.~~ (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. ~~Option 1: (XYZ)Defendant~~ will separately pay employer payroll taxes it owes on the Wage

4. ~~Portion.~~ ~~The Individual PAGA Payments are counted as penalties rather than wages for tax purposes.~~ The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.
~~Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.~~

Although ~~Plaintiff~~Plaintiffs and ~~XYZ~~Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you ~~have any questions about the tax consequences of the proposed Settlement.~~

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you ~~don’t~~do not cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller’s Unclaimed Property Fund in your name.

☐ ~~will be deposited with the California Controller’s Unclaimed Property Fund in your name.~~

☐ ~~will irrevocably lost to you because they will be paid to a non-profit organization or foundation (“Cy Pres”).~~

If the monies represented by your check ~~is~~are sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against ~~XYZ~~Defendant.

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You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against XYZDefendant based on the PAGA Period facts alleged in the Action.

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7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and XYZDefendant have agreed that, in either case, the Settlement will be void: XYZDefendant will not pay any money and Class Members will not release any claims against XYZDefendant.

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8. Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

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9. Participating Class Members' Release. After the Judgment is final and XYZDefendant has fully funded the Gross Settlement Option 1: (and separately paid all employer payroll taxes), Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against XYZDefendant or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

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The Participating Class Members will be bound by the following release:

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All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from ~~(+)any and~~ all claims arising during the Class Period that were alleged, or ~~reasonably~~ could have been ~~alleged~~, based on the ~~Class Period~~ facts stated in the Operative Complaint ~~{and ascertained in the course of the Action}~~, including, e.g., "(a) ~~any and all claims involving any without limitation claims under California Labor Code sections 201, 202, 203, 204, 222.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1199, 2802, 2804, 2810.5, as well as IWC Wage Order Nos. 4, 7, and 9, and the California Business and Professions Code Section 17200 based on alleged violations of the foregoing statutes and Wage Order sections, and PAGA claims based on alleged failure to pay minimum wage; etc.} violations of the foregoing statutes and Wage Order sections; as well as all claims arising under the listed California Labor Code statutes based on the primary rights of those statutes.~~ Except as set forth in Section 6.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

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10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and XYZDefendant has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against XYZDefendant, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against XYZDefendant or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

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11. The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties arising during the PAGA Period that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice and ascertained in the course of the Action, including, e.g., (a) any and all without limitation PAGA claims involving any alleged failure predicated on California Labor Code sections 201, 202, 203, 204, 222.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1199, 2802, 2804, and 2810.5 based on the primary rights of those statutes. It is understood that individuals who are Aggrieved Employees will not have the opportunity to pay minimum wage, etc., opt out of, or object, to the Released PAGA Claims. Further, the Class Members and Aggrieved Employees are bound by the Released PAGA Claims regardless of whether they cash their Individual Settlement Payment checks.

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4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$ 12,500 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in XYZ's Defendant's records, are stated in the first page of this Notice. You have until to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

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You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept XYZ's Defendant's calculation of Workweeks and/or Pay Periods based on XYZ's Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve

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Workweek ~~and~~ or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and ~~XYZ's~~ Defendant's Counsel. The Administrator's decision is final. You ~~ean't~~ cannot appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

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1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who ~~doesn't~~does not opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as _____,

Marsano v. H and H Drug Stores, Inc., and include your identifying information (full name, address, telephone number, and approximate dates of employment, ~~and social security number~~ for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what ~~Plaintiff~~Plaintiffs and ~~XYZ~~Defendant are asking the Court to approve. At least _____ 16 business days before the _____ Final Approval Hearing, Class Counsel and ~~or Plaintiff~~ Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount ~~Plaintiff~~Plaintiffs is requesting as ~~at the~~ Class Representative Service AwardAwards. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website

~~http://www.phoenixclassaction.com~~ or the Court's website
~~https://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil.~~

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval ~~and~~ or Motion for Fees, Litigation Expenses and Service Award may

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wish to object, ~~for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low.~~ **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action ~~–*Marsano v. H and H Drug Stores, Inc.*~~ and include your name, current address, ~~telephone number, and approximate dates of employment for Defendant and sign the objection.~~ Section 9 of this Notice has the Administrator’s contact information.

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telephone number, and approximate dates of employment for [XYZ] and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but ~~don't~~do not have to, attend the Final Approval Hearing on _____ at _____ (time), in Department [7]17 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, PlaintiffPlaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacourt-ww.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything XYZDefendant and PlaintiffPlaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____sPhoenix Settlement Administrators's website at _____http://www.phoenixclassaction.com. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/ecasesummary/ui/index.aspx>)asesummary/ui/index.aspx and entering the Case Number for the Action, Case No. _____22STCV17192. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Name of Attorney: Robert Drexler, Molly DeSario, Jonathan Lee

Email Address: info@HHLLawsuit.com

Name of Firm: Capstone Law APC

Mailing Address: 1875 Century Park East, Suite 1000, Los Angeles, California 90067

Telephone: 1 (855) 414-6133

Settlement Administrator:
Name of Company:

Email Address:

Name of Attorney: Paul K. Haines, Sean M. Blakely, Joel M. Gordon

Email Address: phaines@haineslawgroup.com, sblakely@haineslawgroup.com,
jgordon@haineslawgroup.com

Name of Firm: Haines Law Group, APC

Mailing Address: 2155 Campus Drive, Suite 180, El Segundo, California 90245

Telephone: (424) 292-2350

Settlement Administrator:

Phoenix Settlement Administrators

P.O. Box 7208

Orange, CA 92863

[EMAIL ADDRESS]

Telephone: (800) 523-5773

Fax Number: (949) 209-2503

www.phoenixclassaction.com

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10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund (https://www.sco.ca.gov/search_upd.html) for instructions on how to retrieve the funds

☐ you should consult the Unclaimed Property Fund _____ for instructions on how to retrieve the funds

☐ you will have no way to recover the money.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

[†]This Model Class Action and PAGA Settlement Agreement has been approved by the Court, the Complex litigation judges, and a 2022 Ad Hoc Wage and Hour Committee co-chaired by Judge David Cunningham and Judge Amy Hogue and comprised of 16 attorneys who regularly represent plaintiffs and defendants in wage and hour case. It is written for settlements of single plaintiff wage and hour actions asserting class claims and PAGA claims against a single employer (XYZ). The parties will need to revise this form if there are multiple plaintiffs or multiple defendants. For settlements of wage and hour class actions that do not include PAGA claims, please use the Model Class Action Settlement Agreement and Class Notice. THE COURT ASKS ALL COUNSEL USING THIS MODEL AGREEMENT TO ATTACH A REDLINED VERSION TO THEIR MOTIONS FOR APPROVAL SO THAT THE COURT CAN EASILY SEE EXACTLY HOW THE PARTIES HAVE MODIFIED THIS MODEL AGREEMENT.

^{††}Whether the "date of preliminary approval" yields a fair and adequate payment to Class Members may depend on whether the Class Members, in exchange for their releases of claims, receive consideration for time worked between the date when parties reached a settlement and the date of preliminary approval. The Parties' *Kullar* analysis must give the Court sufficient information to allow the Court to determine whether the Gross Settlement Amount "represents a reasonable compromise, given the magnitude and apparent merit of the claims being released,

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discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation.” (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 94–95, internal quotation marks omitted.)

ⁱⁱⁱ See endnote ii above.

^{iv} The Parties may need to tailor this language to pay periods or shifts depending on the facts of the case.

^v The Parties are free to negotiate a payment plan structure, if appropriate, and payment deadlines may fall earlier as necessary thereto.

^{vi} Note that this is not the only possible appropriate breakdown depending on the claims at issue in the case (e.g., a settlement that is solely a Labor Code Section 226(a) claim.)

^{vii} Insert negotiated terms, if any, addressing the possibility that XYZ’s estimates of class size, Workweeks or Pay Periods turn out to be understated such as an ADR clause imposing a duty to engage in good faith negotiations or mediation or an “escalator” clause memorializing XYZ’s promise to increase the Gross Settlement Amount in an agreed-upon proportion to the percentage by which the calculated class size, Workweeks, or Pay Periods exceeds XYZ’s estimates.

^{viii} Releases in Notice should track the releases in the Settlement Agreement.

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