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8
9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN BERNARDINO**

11 RONALD BROWNING, as an individual and
12 on behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 TEC Equipment, Inc., an Oregon Corporation;
16 TEC OF CALIFORNIA, INC., a California
Corporation; and DOES 1-100, inclusive,

17 Defendants.
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Case No. CIVSB2202461

Assigned for All Purposes to:
Hon. Joseph B. Widman
Dept. S36

**DECLARATION OF CHAD SAUNDERS
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: March 5, 2026
Time: 9:00 a.m.
Dept.: S36

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1 upon the separation of employment. Based on these general allegations, Plaintiff filed a class action
2 complaint against TEC on January 31, 2022. After notice to the LWDA and Defendants, and
3 exhausting administrative remedies, Plaintiff amended his complaint on May 17, 2022 to add a cause
4 of action under PAGA.

5 6. TEC has at all times denied Plaintiff's allegations and maintained its meal and rest
6 break and payroll policies and procedures comply with California law, and that it provided the class
7 members with the opportunity to take all required rest breaks or paid the required premiums when
8 necessary. Additionally, TEC contended its timekeeping and payroll policies accurately track and
9 pay for all hours worked by its employees, including sick hours, and at the correct rates of pay. TEC
10 similarly argued that there was no need for employees to use their cell phones or personal vehicles
11 for work purposes and accordingly no reimbursement is warranted. It also strongly contended the
12 case cannot be maintained as any kind of class or representative action, arguing for example that to
13 the extent class members missed meal and/or rest breaks, or that such breaks were non-compliant,
14 it was intermittent and infrequent and evidence of such missed breaks would be purely anecdotal,
15 and therefore individualized issues predominate and trial on a representative basis would be
16 unmanageable.

17 7. Once the case was at issue, the Parties initiated discovery, and after various meet and
18 confer discussions regarding discovery, potential law and motion, and case management, ultimately
19 agreed to attempt mediation. The Parties further agreed to extensive informal discovery to facilitate
20 an exchange of information necessary to engage in a meaningful mediation. Consequently,
21 Plaintiff's counsel reviewed payroll records, personnel policies/handbooks, meal and rest break
22 policies, personnel files, and paystubs and time records for around 20% of the putative class
23 members. Defendants also provided documents reflecting its wage and hour policies and practices,
24 and data regarding the total number of current and former employees, the estimated total amount of
25 workweeks and pay periods they worked, and average hourly pay rates, among other relevant data.
26 Plaintiff had that information reviewed and analyzed by Berger Consulting Group to assist with
27 evaluating things such as time allegedly lost to due rounding, meal period violation rates, etc., and
28 to prepare a damages model.

1 8. The Parties then engaged the Hon. Steven Denton (Ret.) and mediated with Judge
2 Denton in August 2023, which mediation proved unsuccessful. The Parties continued litigating and
3 the Court set a deadline for Plaintiff to file his class certification motion. The Parties eventually
4 agreed to continue settlement discussions and participated in a second mediation in April 2025 with
5 Daniel Turner, Esq., another highly respected neutral with extensive wage and hour and class action
6 experience. Throughout the day, the arms-length negotiations were hard-fought and adversarial as
7 the Parties exchanged extensive information on their legal and factual positions, and made numerous
8 offers and counter-offers. After a full day of negotiations, the Parties were able to reach an
9 agreement and thereafter jointly prepared the Settlement Agreement now before the Court for
10 approval.

11 **THE PROPOSED SETTLEMENT TERMS**

12 9. Under the settlement, TEC will pay the Gross Settlement Amount of \$175,000 into
13 a common fund. Reasonable attorney's fees of up to \$58,333.33 (1/3 of the GSA), litigation costs
14 of up to \$30,000, a modest enhancement award to Plaintiff of up to \$10,000, settlement
15 administration costs of no more than \$4,500, and \$10,000 for civil penalties under PAGA (of which
16 75%, or \$7,500, will go to the Labor & Workforce Development Agency, and 25%, or \$2,500 will
17 go to the PAGA Members) all will be paid from the Gross Settlement Amount. The remainder of
18 approximately \$82,167 will be allocated among the Participating Class Members based on their total
19 weeks worked during the Class Period. No portion of the Gross Settlement Amount will revert to
20 TEC.

21 10. The settlement provides for conditional certification of a settlement class including
22 all former non-exempt employees that worked for Defendants at any location in California at any
23 time during the Class Period (January 31, 2018, through April 23, 2025) and had unpaid sick pay as
24 a result of a miscalculation of their regular rate of pay. The Settlement Class consists of at least 48
25 individuals. The "PAGA Members" for purposes of PAGA include all persons who were employed by
26 Defendants in the State of California as non-exempt, hourly employees and who's employment ended during
27 the PAGA Period of May 17, 2021, to April 23, 2025.

28 11. This is a cash settlement that does not require Participating Class Members to submit

1 a claim form to receive their settlement share. Participating Class Members will receive their
2 settlement checks automatically via First Class U.S. Mail. Twenty percent of each settlement share
3 will be allocated to wages and the remaining eighty percent will be allocated to expenses
4 reimbursement, penalties and interest. TEC will pay any and all applicable employer-side payroll
5 taxes separately and in addition to the Gross Settlement Amount. Subject to the Court's approval,
6 any amounts not claimed (because a class member does not cash his or her settlement check) will
7 be forwarded to the State Controller's Unclaimed Property Fund.

8 12. Each Participating Class Member will receive a share of the Net Settlement Amount
9 based on his or her total weeks worked for TEC during the Class Period while employed in a non-
10 exempt position. Thus, each Class Member's Individual Settlement Payment will be calculated
11 using criteria typically used in determining appropriate amounts of alleged unpaid sick wages and
12 potential statutory penalties under applicable law. These methods are intended to ensure each Class
13 Member receives a portion of the available settlement funds corresponding to the relative value of
14 his or her potential claims. I estimate the average class settlement award will be approximately
15 \$1,295, and the average PAGA award will be about \$52.

16 13. Subject to the Court's approval the Parties agreed on Phoenix Settlement
17 Administrators ("Phoenix") as the Settlement Administrator. Phoenix is qualified and has significant
18 experience administering class action settlements, including numerous wage and hour matters.
19 Phoenix has agreed to cap its fees and costs at \$4,500. If the Court approves less than the above
20 amount, the difference will remain in the Net Settlement Amount for distribution to the Participating
21 Class Members.

22 14. The proposed Notice (Exhibit 2 hereto) sets out information about this case and
23 explains the basic settlement terms in plain language, and meets all requirements under California
24 Rules of Court 3.769(f) and 3.766(d). The Notice also sets forth the individualized information used
25 to calculate Individual Settlement Payments and each Class Member's estimated settlement award.
26 The Notice likewise details the procedures for Class Members to dispute their individual
27 information, for submitting an objection to the Settlement, and to request exclusion. In sum, the
28 Notice provides the Class Members with the information necessary to evaluate the Settlement and

1 provides fair opportunity to participate in, opt out of, or object to the proposed Settlement. Coupled
2 with the notice procedure, the proposed Notice provides the Class with the best notice practicable.

3 15. Class Members will have 45 days to dispute the information in their Notice used to
4 calculate their settlement award, and also have 45 days to submit any objections to the settlement or
5 to request exclusion. In the event a Class Member disputes their individual information, the
6 Settlement Administrator will review the Class Member's records as well as any additional
7 information submitted, and make a final determination.

8 16. All Participating Class Members will release TEC from all claims alleged in the
9 operative complaint, or that could have been brought based on the factual allegations in the operative
10 complaint during the Class Period. Plaintiff and the LWDA will release those PAGA claims alleged
11 in the PAGA notice to the extent alleged in the operative complaint. The Class and PAGA releases
12 are limited to the claims that were actually pleaded or could have been pleaded based on the alleged
13 facts in the operative complaint, and PAGA notice for the PAGA claims. Only Plaintiff is entering
14 into a full general release of all claims and waiver of Civil Code § 1542.

15 17. The settlement provides Defendant will not oppose a request for attorney's fees not
16 to exceed 1/3 of the Gross Settlement Amount, or \$58,333.33, nor will it oppose a request for
17 reimbursement of litigation costs and expenses of up to \$30,000. Defendants also will not oppose a
18 request for an enhancement award to Plaintiff of not more than \$10,000.00 in recognition of his time
19 spent on this matter, the risks he undertook on behalf of the class, the benefit conferred to the class,
20 and his agreement to provide a broad general release of all claims against Defendants, as set forth
21 in their respective declarations filed herewith. Plaintiff's counsel will provide the Court with
22 appropriate summaries and evidence of their efforts and time records in anticipation of the Final
23 Approval Hearing. If the Court approves less than the above amounts, the difference will remain in
24 the Net Settlement Amount for distribution to the Participating Class Members.

25 18. As noted, the Parties allocated \$10,000 from the GSA to resolution of Plaintiff's
26 alleged claims for PAGA civil penalties, and Plaintiff submits that amount is fair, reasonable and
27 adequate, and furthers PAGA's underlying purposes. As required by Labor Code section
28 2699(l)(2), my office gave notice of the settlement and the preliminary approval hearing to the

1 LWDA via its online portal.

2 **The Proposed Settlement Class Should Be Conditionally Certified**

3 19. In the present matter, conditional certification is proper since this matter satisfies
4 all requirements for class certification under Code of Civil Procedure section 382. First, the class
5 is both sufficiently numerous, consisting of at least 48 individuals, and ascertainable by reference
6 to TEC's personnel and payroll records.

7 20. Next, Plaintiff is an adequate class representative, as his claims do not conflict with
8 and are not antagonistic to the claims of other class members. For these reasons, Plaintiff contends
9 he is an adequate class representative.

10 21. Further, his claims are typical given he is a member of the class and his claims
11 arise from the same employment practices and course of conduct giving rise to the claims of the
12 other class members.

13 22. Next, common questions of law and fact predominate – particularly for purposes of
14 a settlement class – as the Class Members all were subject to the alleged failure to pay for sick pay
15 at the correct “regular rate.” Since the focus of the claims against TEC concerns the legality of
16 common policies applied uniformly to the entire class, common issues predominate over
17 individualized inquiries concerning liability. For instance, TEC's policy of paying for sick pay at
18 the base hourly rate instead of the regular rate is company-wide policy applied equally and
19 consistently to all class members, and this policy is either compliant with California law or it is
20 not. Regardless of that determination, it will decide liability for the class one way or another.

21 23. Resolving this matter as a class action is superior to other available means for the
22 fair and efficient adjudication of this controversy for multiple reasons, including inter alia: (a)
23 individual joinder of all members of the class is impractical, (b) class action treatment will permit a
24 large number of similarly situated persons to resolve their common claims in a single forum
25 simultaneously, efficiently, and without unnecessary duplication of effort and expense; and (c) the
26 damages suffered by many of the individual class members are relatively small and the expenses
27 and burden of individual litigation would make it difficult or impossible for them to seek redress on
28 their own.

1 **The Proposed Settlement Meets the Dunk Factors and is within the Range of Reasonableness**

2 24. Prior to mediation, the parties engaged in informal discovery to facilitate settlement
3 discussions. As a result, Plaintiff reviewed documents and information regarding TEC's payroll
4 practices, a sampling of pay stubs and time records for about 20% of the putative class, meal and
5 rest break policies, employee handbooks, etc., and information from Defendants regarding class
6 size and breakdown, work weeks, rates of pay, and other information used to formulate a damages
7 model. I'm confident we obtained sufficient information to enable them to understand the law and
8 facts of this case and make an informed decision regarding the proposed settlement and whether it
9 is in the best interests of the class.

10 25. Using that data, Plaintiff ran various calculations under different theories of
11 liability and estimated TEC's maximum exposure on the class claims at approximately
12 \$1,252,900, including approximately \$46,650 on the underpaid sick time/regular rate claims,
13 \$662,320 on the rest break claims, \$47,460 on the expense reimbursement claims, \$192,000 on the
14 wage statement claims, and \$304,475 on the waiting time penalty claims. '

15 26. We estimated these amounts as follows:

16 **Underpaid Sick Pay/Regular Rate Claim**

17 11,662 sick hours * \$4/hour avg. underpayment = **\$45,650**

18 **Rest Break Violations**

19 23,356 eligible shifts * 100% violation rate * \$28.37 avg. regular rate - **\$662,320**

20 **Expense Reimbursement**

21 4,760 work weeks * \$10/week reimbursement = **\$47,600**

22 **Wage Statement Violations**

23 48 employees (est.) * \$4,000/employee = **\$192,000**

24 **Waiting Time Penalties**

25 48 fmr empl'ees * (240 hours * \$26.43/hour avg. wage) = **\$304,475**

26 27. First, on the unpaid wage claims, Plaintiff alleged TEC failed to pay for sick time
27 pay at the employees' "regular rate of pay" as required under California law under Labor Code
28 § 246(l)(1). Here, Class Members received various forms of extra compensation such as

1 performance-based bonuses and, during pay periods where additional compensation was paid and
2 sick pay was used, and Plaintiff alleged Defendants failed to factor in the non-discretionary
3 remuneration into the regular rate of pay. Accordingly, per Plaintiff, this resulted in Class
4 Members being underpaid for their sick pay.

5 28. Plaintiff next alleged TEC failed to provide required rest breaks on a fully
6 compliant basis. Here, Plaintiff argued that Defendants' "de facto" violations where rest breaks
7 were missed completely or otherwise non-compliant. Defendants denied Plaintiff's contentions,
8 claiming it made rest breaks available to Class Members in compliance with California law.
9 Defendants contended their meal and rest break policies are lawful, that Class Members were
10 frequently reminded they were required to take all meal and rest breaks and that were able to do
11 so, Defendants argued the applicable rest break policies complied with California law, and that it
12 authorized and permitted employees to take all required breaks. Further, per Defendants, in light
13 of the fact that it is not required to maintain a record of rest periods, any evidence of failure to
14 authorize rest periods and/or discouragement from taking rest periods would be purely anecdotal
15 and individual issues would predominate on liability. This arguably would once again make a trial
16 unmanageable since each alleged missed rest break would have to be tested on a case by case
17 basis to determine compliance. Furthermore, while Plaintiff's complaint alleged meal break
18 violations, our discovery and investigation suggested minimal violations, and further that
19 Defendants paid thousands in premium pay for any violations that may have occurred.
20 Accordingly we allocated only nominal value to this claim for settlement purposes.

21 29. On the expense reimbursement claim, Plaintiff alleged that employees were
22 required to use their personal cell phones in order to communicate with supervisors and other
23 employees during work hours. However, Defendants did not reimburse Plaintiff and the class
24 members for this expense. Plaintiff also contended class members occasionally had to drive their
25 personal vehicles on company business, such as picking up truck parts for service/repair orders,
26 without reimbursement. On the other hand, Defendants argued there would be no conceivable
27 need for employees to use either their phones or vehicles for work purposes, and that any use of
28 employee phones, or personal vehicles, was purely for personal convenience and therefore not

1 reimbursable as a “reasonable and necessary” expense.

2 30. Plaintiff also alleged derivatively that, as a result of the above alleged violations,
3 Defendants failed to provide accurate wage statements and failed to timely pay all wages that were
4 due and owing upon separation of employment. Thus, should the primary claims fail, Plaintiff’s
5 derivative claims would also fail. Defendants also contended they would not be liable for waiting
6 time penalties because a “good faith dispute” exists over the payment of past wages. Further,
7 Defendants contended Plaintiff would have to prove that Defendants “willfully” failed to pay
8 Class Members appropriate wages due upon separation of employment. Defendants argued that
9 any failure to pay wages upon separation was not willful.

10 31. As far as potential PAGA liability, the PAGA Members theoretically are entitled to
11 penalties totaling upwards of \$1.3 million should Plaintiff prevail on all claims and establish
12 violations of the multiple Labor Code violations alleged for every single pay period at issue. As
13 with the class claims, Plaintiff discounted the potential PAGA penalties since the Court possesses
14 wide discretion to reduce such penalties, or to decline to award penalties at all. Accordingly, the
15 Parties allocated \$10,000 to PAGA penalties, which amount Plaintiff submits is reasonable under
16 the circumstances and in line with comparable settlements in other wage and hour class actions in
17 California. Additionally, the LWDA has been informed of the terms of the PAGA portion of the
18 settlement, and will be able to weigh in as necessary.

19 32. The settlement obviates the significant risk that this Court may find any kind of class
20 resolution unachievable or might deny certification of all or some of Plaintiff’s claims. Furthermore,
21 even if Plaintiff obtained certification of all or some of the claims, continued litigation would be
22 expensive as the parties pursued merits discovery, a probable motion to decertify, as well as trial
23 and possible appeals, and would substantially delay any recovery by the class with no assurance of
24 recovering significantly more than the proposed settlement. While Plaintiff is confident in the merits
25 of his claims, a legitimate controversy exists as to each cause of action. Plaintiff also recognizes
26 proving the amount of wages and penalties due each Class Member would be an expensive and
27 uncertain proposition.

28 33. Plaintiff and I discounted the value of the class claims consistent with the risks

1 discussed above, and carefully weighed the likelihood of the class receiving substantially greater
2 benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very real and
3 substantial risks – settlement on the proposed terms and without prolonged and costly litigation
4 was in the best interests of the class. The overall \$175,000 recovery represents a significant
5 percentage of Defendants’ potential exposure and, given the risks addressed above, a total
6 recovery for the class of \$175,000, which will result in average award of some \$1,295 per class
7 member, is a significant result well within the range of reasonableness considering all potential
8 outcomes, and it will provide direct monetary awards to all Class Members without further delay.

9 **CROSNER LEGAL'S QUALIFICATIONS**

10 34. I received a Bachelor of Arts in Philosophy from the University of Maryland
11 Baltimore County in 2001 and a Juris Doctor from New College of California School of Law in
12 2008. While a law student, I completed 600 hours of public interest law apprenticeship, at Legal
13 Services for Children, Disability Rights California, and as a Certified Legal Intern with the Bay
14 Area Legal Aid Housing Clinic. I have been a member of the California Bar since 2008. Since
15 2009, I have been a class action attorney, practicing mainly in the area of California wage and
16 hour law, with the firms of Hoffman & Lazear, Kralowec Law P.C., Sundeen Salinas & Pyle, and
17 Hunter Pyle Law. I joined Crosner Legal in May 2021 as a Senior Associate Attorney. In this role
18 I routinely draft complaints and discovery, brief motions, appear before California courts for law
19 and motion and settlement hearings, lead mediation negotiations, and draft settlement approval
20 documents. I also regularly communicate with class members, co-counsel, and opposing counsel. I
21 have represented thousands of employees in both state and federal courts, involving class actions
22 and PAGA claims, and I have assisted in obtaining millions of dollars for employees during my
23 years of practice.

24 35. I have been approved as Class Counsel by numerous courts throughout California,
25 including in the following cases: *Alonzo, et al. v. First Transit, Inc.* (Los Angeles Superior Court
26 case no. BC433932; settled for \$2 million); *Sadiq v. Greatwide Dedicated Transport II, LLC*
27 (Alameda County Superior Court case no. RG15789114; settled for \$762,500); *Kostyuk v.*
28 *Golden State Overnight Delivery Service, Inc.* (Alameda County Superior Court case no.

1 RG14727191; settled for \$1.25 million); *Newcomb, et al. v. J.B. Hunt Transport, Inc.* (Alameda
2 County Superior Court case no. RG16815734; settled for \$750,000); *Hooper v. URS Midwest,*
3 *Inc.*, (San Bernardino Superior Court Case No. CIV DS1607489; settled for approximately \$3
4 million); *Brooks, et al. v. Chariot Transit, Inc.* (San Francisco Superior Court case no. CGC-16-
5 554398; settled for \$750,000); *Austin, et al. v. Foodliner, Inc.* (Northern District of California,
6 case number 16-cv-07185-HSG; settled for \$1.2 million); *Castro, et al. v. ABM Industries, Inc.,*
7 *et al.* (Northern District of California, case number 17-cv-03026-YGR; settled for \$5.4 million);
8 *Benton v. Northern California InAlliance* (Sacramento County Superior Court, case number 34-
9 2021-00293036; settled for \$650,000); *French v. Lonza, Inc.* (Los Angeles County Superior
10 Court, case number 21STCV08097; settled for \$556,500); *McKinnie v. Iron Mountain Secure*
11 *Shredding, Inc., et al.* (Los Angeles Superior County Superior Court, case number
12 21STCV05707; settled for \$1.5 million); and *Bland v. Marin Airporter* (Marin County Superior
13 Court, case number CIV 2003640; settled for \$450,000).

14 36. Zach Crosner is a 2010 graduate of University San Diego School of Law, and has
15 some 15 years of experience as a practicing attorney, all of which have focused on litigation of
16 employment, labor law, consumer, and class action claims. Following graduation, he
17 immediately began working for a nationally recognized plaintiff's complex litigation firm,
18 CaseyGerry, where he had the fortune of working directly with past presidents of the consumer
19 attorneys and recipients of trial attorneys of the year awards. He also worked for former
20 CAALA and CLAY trial attorney of the year recipient, attorney Conal Doyle, as his sole
21 associate attorney. During his tenure at these firms, he focused on advocating for the rights of
22 consumers and employees in class action litigation, civil rights and employment litigation,
23 catastrophic injuries, insurance bad faith and appellate litigation.

24 37. In 2013, Mr. Crosner founded the law firm of Crosner Legal, P.C. which since its
25 inception has focused almost exclusively on wage and hour class actions and other labor and
26 employment law cases representing plaintiffs. Currently, over ninety percent (90%) of his
27 practice is dedicated exclusively to the prosecution of wage and hour class actions, and Crosner
28 Legal is currently responsible as lead counsel or co-lead counsel for prosecuting well over fifty

1 (50) wage and hour class actions and/or PAGA representative actions in both federal and state
2 courts throughout California.

3 38. Mr. Crosner currently is an executive board member of the Wage and Hour
4 Committee and the Legislative Committee for the California Employment Lawyers Association;
5 a member of the Grassroots Advocacy Team for the National Employment Lawyers Association;
6 Wage and Hour Committee member and Class Action Committee member for the National Trial
7 Lawyers; a member of the American Association for Justice; and member of the Pound Civil
8 Justice Institute. He was selected for 2018-20 by Super Lawyers as a “Southern California
9 Rising Star” for employment and labor law.

10 39. Brandon Brouillette is a 2009 graduate of Loyola Law School, Los Angeles. Prior
11 to attending law school, he attended the University of Southern California and received a
12 *bachelors of science* in Business Administration in 2006. He has been a Partner at Crosner Legal
13 since February 1, 2023. Prior to joining Crosner Legal, he was a Senior Associate and Team
14 Director of a Wage and Hour Litigation Team at Capstone Law APC, which he originally joined
15 as an associate attorney in May 2016.

16 40. Since being admitted to the California State Bar in 2010, his entire legal career has
17 been dedicated to protecting employee and consumer rights through the prosecution of class action
18 and representative actions filed on behalf of plaintiffs in class actions and statewide representative
19 actions. Throughout his career he has managed or co-managed more than 100 class action and
20 PAGA representative cases, from initial filing of the complaint through final resolution. In
21 particular, he has served as class counsel in several certified class action cases, including:

- 22 a. *Party City Wage and Hour Cases*, JCCP4781 (class counsel for certified class of non-
23 exempt hourly employees who worked for Defendants in California)
- 24 b. *Lewis v. Express Messenger Systems*, Los Angeles Superior Court Case No. BC501521
25 (class counsel for certified class of last-mile delivery drivers who were alleged to be
26 misclassified as independent contractors)
- 27 c. *Ramirez-Vivar v. Grifols Diagnostic Solutions, Inc., et al.*, Alameda County Superior
28 Court, Case No. RG21099519 (class counsel for certified classes of non-exempt hourly

employees who worked for Defendants in California)

d. *Jones v. LA Live*, Los Angeles County Case No. BC687908 (class counsel for certified issue classes consisting of hourly employees who worked at Staples Center and Nokia Theater)

41. He has been selected as a Super Lawyers ‘Rising Star’ every year since 2016 through 2022, which is a recognition that is provided to only 2.5% of active lawyers practicing within the State of California.

42. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class action settlements while serving as lead class counsel in recent years, including but not limited to a \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America, Inc.*, Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252 (Sacramento Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017 (*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a \$1.8 million wage and hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc. dba American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and hour class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160 JGB (C.D. Cal.)), a \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million wage and hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-CV-04864-YGR (N.D.Cal.)); a \$7.25 million wage and hour class action settlement in 2020 in *Avina, et al. v. First Alarm Security & Patrol, Inc.*, Case No. 18CV323753 (Santa Clara Cty. Super Ct.); a \$2.2 million wage and hour class action settlement in 2021 (*Ghorchian, et al. v. West Hills Hospital, et al.*, Case No. LS029737 (Los Angeles Cty. Super. Ct.)); a \$2.85 million dollar wage and hour settlement in 2021 (*Valencia v. The Original Mowbray’s Tree Service, Inc.*, Case No. CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1 million wage and hour class action settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super. Ct.)), a \$1.4 million wage and hour class action settlement in 2023 in *Correa, et al. v. FedEx*

1 *Supply Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.), a \$2.38 million
2 wage and hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case
3 No. 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million wage and hour class action
4 settlement in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino
5 Cty. Super. Ct.); \$1.015 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo*
6 *Autism Therapy*, Case No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a \$1.15 million
7 wage and hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*,
8 Case No. 21STCV18512 (Los Angeles Cty. Super. Ct.); a \$1.5 million wage and hour class action
9 settlement in *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty. Super.
10 Court); a \$1.3 million wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*, Case
11 No. 20STCV06618 (Los Angeles Cty. Super. Court); a \$1.925 million wage and hour class
12 settlement in 224 in *Lo v. Cyberpower, Inc.*, Case No. 21STCV31479 (Los Angeles Cty. Super.
13 Ct); a \$1.19 million dollar wage and hour class action settlement in 2024 in *Herrera v. Signature*
14 *Flight Support LLC*, Case No. 22STCV18367 (Los Angeles Cty. Super. Ct.); a \$2.65 million wage
15 and hour class action settlement in 2024 in *Shilevinatz v. Airport Terminal Services*, Case No.
16 CIVSB2229072 (San Bernardino Cty. Super Ct.); a \$1 million wage and hour class action
17 settlement in 2025 in *Hernandez v YZER, LLC*, Case No. 23CV025345 (Alameda Cty. Superior
18 Ct); a \$1.2 million PAGA-only settlement in 2025 in *Denault v. Lewis Management Corp.*, Case
19 No. CIVSB2107487 (San Bernardino Cty. Super. Ct.); a \$3.9 million wage and hour class action
20 settlement in 2025 in *Bolanos et al. v. Newport Fab*, Case No. 30-2022-01280696-CU-OE-CXC
21 (Orange Cty. Super. Ct.); and a \$5,093,537.50 wage and hour class action settlement in 2025 in
22 *Deaver, et al. v Blue Diamond Growers*, Case No. 34-2022-00316490-CU-OE-GDS (Sacramento
23 Cty. Super. Ct.). a \$5,600,000 wage and hour class action settlement in 2025 in *Goodwin et al. v*
24 *Save Mart*, Case No. STK-CV-UOE-2023-0002062 (San Joaquin Cty. Super. Ct.); a \$1,300,000
25 wage and hour class action settlement in 2025 in *Perez v Qantas Airways Ltd*, Case No.
26 23STCV18974 (Los Angeles Cty. Super. Ct.); and a \$1,650,000 wage and hour class action
27 settlement in 2025 in *Williams et al v. Bluetriton Brands* Case No. CIVSB2325920 (San
28 Bernardino Cty. Super. Ct.).

1 43. For the foregoing reasons, it is respectfully requested that the Court approve the
2 settlement.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct. Executed this 4th day of February, 2026, at Los Angeles, California.

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7 Declarant
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Exhibit 1

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

RONALD BROWNING, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

v.

TEC Equipment, INC., an Oregon
Corporation; TEC OF CALIFORNIA,
INC., a California Corporation; and DOES
1-100, inclusive,

Defendants.

Case No.: CIVSB2202461

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

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE

This Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Ronald Browning (“Plaintiff” or “Class Representative”), as an individual and on behalf of all others similarly situated, and Defendants TEC Equipment, Inc. and TEC of California, Inc. (“Defendants”) (collectively with Plaintiff, the “Parties”).

DEFINITIONS

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

1. “Action” means *Browning v. TEC Equipment, Inc., et al.*, No. CIVSB2202461 (San Bernardino County Superior Court).

2. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Action, and all out-of-pocket costs incurred and to be incurred by Class Counsel in the Action, including but not limited to expert/consultant fees, investigation costs, court filing fees, service fees, and costs associated with documenting the Settlement, providing any notices required as part of the Settlement or Court order, securing the Court’s approval of the Settlement, administering the Settlement, and obtaining entry of a Judgment terminating the Actions. Class Counsel will request attorneys’ fees not in excess of one-third (1/3) of the Gross Settlement Amount, or Fifty-Eight Thousand Three Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$58,333.33). The Attorneys’ Fees and Costs will also mean and include the additional reimbursement of any costs and expenses associated with Class Counsel’s litigation and settlement of the Actions, up to Thirty Thousand Dollars (\$30,000), subject to the Court’s approval. Defendants have agreed not to oppose Class Counsel’s request for fees and reimbursement of costs as set forth above.

3. “Class Counsel” means Zachary Crosner, Brandon Brouillette, and Chad Saunders of Crosner Legal, P.C.

4. “Class List” means a complete list of all Class Members that Defendants will diligently and in good faith compile from their records and provide to the Settlement Administrator and Class

Counsel within ten (10) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in Microsoft Office Excel and will include each Class Member's full name; most recent mailing address and telephone number; Social Security number or Taxpayer Identification Number; dates of employment; the respective number of Workweeks that each Class Member worked during the Class Period and PAGA Period; and any other relevant information needed to calculate settlement payments.

5. "Class Member(s)" or "Settlement Class" means all of Defendants' former non-exempt employees that worked at any location in California at any time during the Class Period and had unpaid sick pay as a result of a miscalculation of their regular rate of pay.

6. "Class Notice" means the Notice of Class Action Settlement, substantially in the form attached as Exhibit A.

7. "Class Period" means the period from January 31, 2018, through April 23, 2025.

8. "Class Representative Enhancement Payment" means the amount to be paid to Plaintiff in recognition of his effort and work in prosecuting the Action on behalf of Class Members, and for his general release of claims. Subject to the Court granting final approval of this Settlement Agreement and subject to the exhaustion of any and all appeals, Plaintiff will request Court approval of a Class Representative Enhancement Payment of up to Ten Thousand Dollars (\$10,000).

9. "Court" means the San Bernardino County Superior Court.

10. "Defendants" means Defendants TEC Equipment, Inc. and TEC of California, Inc.

11. "Effective Date" shall mean the date when all of the following events have occurred: (1) the Class Action Settlement Agreement has been executed by all Parties, Class Counsel and Defendants' Counsel; (2) the Court has approved the Class Action Settlement Agreement; and (3) the time for any appeal of the Court's approval order has expired.

12. "Final Approval" means the date on which the Court enters an order granting final approval of the Settlement Agreement.

13. "Gross Settlement Amount" means the Gross Settlement Amount of One Hundred Seventy-Five Thousand Dollars (\$175,000), to be paid by Defendants in full satisfaction of all Released Class Claims and Released PAGA Claims, which includes all Individual Settlement Payments, Attorneys' Fees and Costs, the Class Representative Enhancement Payment, the PAGA Settlement Amount, and

1 Settlement Administration Costs. In no event will Defendants be liable for more than the Gross Settlement
2 Amount except as otherwise explicitly set forth herein. There will be no reversion of the Gross Settlement
3 Amount to Defendants. Defendants will be separately responsible for any employer payroll taxes required
4 by law, including the employer FICA, FUTA, and SDI contributions, which shall not be paid from the
5 Gross Settlement Amount.

6 14. "Individual Settlement Payment" means each Participating Class Member's and PAGA
7 Member's respective shares of the Net Settlement Fund and PAGA Fund.

8 15. "Net Settlement Fund" means the portion of the Gross Settlement Amount remaining after
9 deducting the Attorneys' Fees and Costs, the Class Representative Enhancement Payment, the PAGA
10 Settlement Amount, and Settlement Administration Costs. The Net Settlement Fund will be distributed to
11 Participating Class Members. There will be no reversion of the Net Settlement Fund to Defendants.

12 16. "Non-Participating Class Member" means any Class Member who opts out of the Class
13 portion of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

14 17. "Notice of Objection" means a Class Member's valid and timely written objection to the
15 Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the objector's full name,
16 signature, address, and telephone number, (b) a written statement of all grounds for the objection
17 accompanied by any legal support for such objection; (c) copies of any papers, briefs, or other documents
18 upon which the objection is based; and (d) a statement whether the objector intends to appear at the final
19 fairness hearing.

20 18. "PAGA Members" means all persons who were employed by Defendants in the State of
21 California as non-exempt, hourly employees and who's employment ended during the PAGA Period.

22 19. "PAGA Period" means the period from May 17, 2021, to April 23, 2025.

23 20. "PAGA Settlement Amount" means the amount that the Parties have agreed to pay to the
24 Labor and Workforce Development Agency ("LWDA") and PAGA Members in connection with
25 Plaintiff's claim under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698,
26 *et seq.*, "PAGA") ("PAGA Settlement"). The Parties have agreed that Ten Thousand Dollars (\$10,000) of
27 the Gross Settlement Amount will be allocated to the PAGA Settlement. Pursuant to PAGA, Seventy-Five
28 Percent (75%), or Seven Thousand Five Hundred Dollars (\$7,500), of the PAGA Settlement Amount will

1 be paid to the California Labor and Workforce Development Agency (“Labor and Workforce
2 Development Agency Payment”), and Twenty-Five Percent (25%), or Two Thousand Five Hundred
3 Dollars (\$2,500) (“PAGA Fund”), of the PAGA Settlement will be disbursed to PAGA Members, and
4 regardless whether they request to be excluded from the Settlement Class.

5 21. “Parties” means Plaintiff and Defendants collectively.

6 22. “Participating Class Members” means all Class Members who do not submit timely and
7 valid Requests for Exclusion.

8 23. “Plaintiff” means Plaintiff Ronald Browning.

9 24. “Preliminary Approval” means the date on which the Court enters an order granting
10 preliminary approval of the Settlement Agreement.

11 25. “Released Class Claims” means the release by Class Members (excluding those who opt
12 out therefrom) of the Released Parties from any and all claims that were asserted in the operative complaint
13 (filed May 17, 2022), or that could have arisen out of the allegations made in the operative complaint, for
14 the duration of the Class Period.

15 26. “Released PAGA Claims” means all claims for civil penalties under California Labor
16 Code §§ 2698, *et seq.*, that were brought or could reasonably have been brought based on the same facts
17 alleged in Plaintiff’s Operative Complaint and PAGA Notice during the PAGA Period.

18 27. “Released Parties” means Defendants and all its present and former parent companies,
19 subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, exempt employees,
20 agents, attorneys, insurers, successors and assigns, and any individual or entity which could be liable for
21 any of the Released Claims, and Defendants’ counsel of record in the Action.

22 28. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a
23 request to be excluded from the Settlement Class. The Request for Exclusion must: (a) set forth the name,
24 address, telephone number and last four digits of the Social Security Number of the Class Member
25 requesting exclusion; (b) be returned to the Settlement Administrator; (c) clearly state that the Class
26 Member does not wish to be included in the Settlement; and (d) be delivered or postmarked on or before
27 the Response Deadline. Class Members who are also PAGA Members may not opt out of the PAGA
28 portion of the Settlement Agreement.

29. “Response Deadline” means the deadline by which Class Members must postmark or deliver to the Settlement Administrator Requests for Exclusion, postmark or deliver disputes concerning the calculation of Individual Settlement Payments, or postmark or deliver Notices of Objection to the Settlement Administrator. The Response Deadline will be forty-five (45) calendar days from the initial mailing of the Class Notice by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a Sunday or State holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

30. “Settlement Administration Costs” means the costs payable from the Gross Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Gross Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs will be paid from the Gross Settlement Amount. Based on an estimated Settlement Class of approximately 48 Class Members, the Settlement Administration Costs are currently estimated to be \$4,500.00.

31. “Settlement Administrator” means Phoenix Settlement Administrators, or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

32. “Workweeks” means the number of days of employment for each Class Member during the Class Period, subtracting days on leave of absence (if any), dividing by seven (7), and rounding up to the nearest whole number. All Class Members will be credited with at least one Workweek during the Class Period, and all PAGA Members will be credited with at least one Workweek during the PAGA Period.

TERMS OF AGREEMENT

Plaintiff, on behalf of himself and the Settlement Class, and Defendants agree as follows:

33. Funding of the Gross Settlement Amount. Defendants will make a one-time deposit of the Gross Settlement Amount into a Qualified Settlement Account to be established by the Settlement

1 Administrator. Defendants will pay the employer's share of payroll taxes separately. After the Effective
2 Date, the Gross Settlement Amount will be used for: (a) Individual Settlement Payments; (b) the Labor
3 and Workforce Development Agency Payment; (c) the Class Representative Enhancement Payments; (d)
4 Attorneys' Fees and Costs; and (e) Settlement Administration Costs. Defendants will deposit the Gross
5 Settlement Amount and the employer's share of payroll taxes within thirty-five (35) calendar days after
6 the Effective Date ("Funding Date").

7 34. Attorneys' Fees and Costs. Defendants agree not to oppose or impede any application or
8 motion for attorneys' fees and costs by Class Counsel for Attorneys' Fees and Costs of not more than
9 Fifty-Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$58,333.33), plus the
10 reimbursement of all out-of-pocket costs and expenses associated with Class Counsel's litigation and
11 settlement of the Actions (including expert/consultant fees, investigations costs, etc.), not to exceed
12 Twenty Thousand Dollars (\$20,000), both of which will be paid from the Gross Settlement Amount.

13 35. Class Representative Enhancement Payment. In exchange for a general release, and in
14 recognition of his effort and work in prosecuting the Action on behalf of Class Members, Defendants agree
15 not to oppose or impede any application or motion for a Class Representative Enhancement Payment of
16 up to Ten Thousand Dollars (\$10,000) to Plaintiff. The Class Representative Enhancement Payment will
17 be paid from the Gross Settlement Amount and will be in addition to Plaintiff's Individual Settlement
18 Payment paid pursuant to the Settlement. Plaintiff will be solely and legally responsible to pay any and all
19 applicable taxes on the Class Representative Enhancement Payment. Plaintiff understands and agree that
20 this Settlement Agreement shall remain in full force and effect even if the full amount of Class
21 Representative Enhancement Payment sought by Plaintiff is not ultimately awarded by the Court.

22 36. Settlement Administration Costs. The Settlement Administrator will be paid for the
23 reasonable costs of administration of the Settlement and distribution of payments from the Gross
24 Settlement Amount, which is currently estimated to be \$4,500.00. These costs, which will be paid from
25 the Gross Settlement Amount, will include, *inter alia*, the required tax reporting on the Individual
26 Settlement Payments, the issuing of 1099 and W-2 IRS Forms, distributing Class Notices, calculating and
27 distributing the Gross Settlement Amount, and providing necessary reports and declarations.
28

1 37. PAGA Settlement Amount. Subject to Court approval, the Parties agree that the amount
2 of Ten Thousand Dollars (\$10,000) from the Gross Settlement Amount will be designated for satisfaction
3 of Plaintiff's PAGA claim. Pursuant to PAGA, Seventy-Five Percent (75%), or Seven Thousand Five
4 Hundred Dollars (\$7,500), of this sum will be paid to the LWDA and Twenty-Five Percent (25%), or Two
5 Thousand Five Hundred Dollars (\$2,500), will be paid to PAGA Members in proportion to the number of
6 Workweeks worked during the PAGA Period.

7 38. No Right to Exclusion or Objections to the PAGA Settlement. Because this settlement
8 resolves claims and actions brought pursuant to PAGA by Plaintiff acting as proxies and as Private
9 Attorney General of, and for, the State of California and the LWDA, the Parties agree that no PAGA
10 Member has the right to exclude himself or herself from the release of the Released PAGA Claims, and
11 all PAGA Members will receive their shares of the PAGA Fund. The Parties also agree that no PAGA
12 Member has the right to object to the PAGA Settlement Amount.

13 39. Net Settlement Fund. The entire Net Settlement Fund will be distributed to Participating
14 Class Members. No portion of the Net Settlement Fund will revert to or be retained by Defendants.

15 40. PAGA Fund. The entire PAGA Fund will be distributed to all PAGA Members. No
16 portion of the PAGA Fund will revert to or be retained by Defendants.

17 41. Individual Settlement Payment Calculations. Individual Settlement Payments will be
18 calculated and apportioned from the Net Settlement Fund and PAGA Fund based on the number of
19 Workweeks a Class Member worked during the Class Period and PAGA Period. Specific calculations of
20 Individual Settlement Payments will be made as follows:

21 41(a) Payments from the Net Settlement Fund. Defendants will calculate the total
22 number of Workweeks worked by each Class Member during the Class Period
23 and the aggregate total number of Workweeks worked by all Class Members
24 during the Class Period. To determine each Class Member's estimated
25 "Individual Settlement Payment" from the Net Settlement Fund, the Settlement
26 Administrator will use the following formula: The Net Settlement Fund will be
27 divided by the aggregate total number of Workweeks during the Class Period,
28 resulting in the "Workweek Value." Each Class Member's "Individual

1 Settlement Payment” will be calculated by multiplying each individual Class
2 Member’s total number of Workweeks by the Workweek Value. The Individual
3 Settlement Payment will be reduced by any required deductions for each
4 Participating Class Member as specifically set forth herein, including employee-
5 side tax withholdings or deductions. The entire Net Settlement Fund will be
6 disbursed to all Class Members who do not submit timely and valid Requests for
7 Exclusion. If there are any valid and timely Requests for Exclusion, the Settlement
8 Administrator shall proportionately increase the Individual Settlement Payment
9 for each Participating Class Member according to the number of Workweeks
10 worked, so that the amount actually distributed to the Settlement Class equals
11 100% of the Net Settlement Fund.

12 41(b) Payments from the PAGA Fund. Defendants will calculate the total number of
13 Workweeks worked by each PAGA Member during the PAGA Period and the
14 aggregate total number of Workweeks worked by all PAGA Members during the
15 PAGA Period. To determine each PAGA Member’s estimated “Individual
16 Settlement Payment,” the Settlement Administrator will use the following
17 formula: The PAGA Fund will be divided by the aggregate total number of
18 Workweeks during the PAGA Period, resulting in the “PAGA Workweek
19 Value.” Each PAGA Member’s “Individual Settlement Payment” will be
20 calculated by multiplying each individual PAGA Member’s total number of
21 Workweeks by the PAGA Workweek Value. The entire PAGA Fund will be
22 disbursed to all PAGA Members.

23 42. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
24 Participating Class Members under this Settlement, as well as any other payments made pursuant to this
25 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any
26 Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k)
27 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather,
28 it is the Parties’ intention that this Settlement Agreement will not affect any rights, contributions, or

amounts to which any Class Members may be entitled under any benefit plans.

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

44. Delivery of the Class List. Within ten (10) calendar days of Preliminary Approval, Defendants will provide the Class List to the Settlement Administrator and to Class Counsel.

45. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class List from Defendants, the Settlement Administrator will mail a Class Notice to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

46. Confirmation of Updated Contact Information in the Class Lists. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Class Notices returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will, within five (5) business days of receipt, be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security Number of the Class Member involved, and will then perform a single re-mailing. Those Class Members who receive a re-mailed Class Notice, whether by skip-trace or by request, will have either (a) an additional fifteen (15) calendar days or (b) until the Response Deadline, whichever is later, to submit a Request for Exclusion or an objection to the Settlement.

47. Class Notices. All Class Members will be mailed a Class Notice. Each Class Notice will provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal terms; (c) the Settlement Class and PAGA Member definitions; (d) the total number of Workweeks each respective Class Member and PAGA Member worked for Defendants during the Class Period and PAGA Period; (e) each Class Member's and PAGA Member's estimated Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (f) the dates which comprise the Class Period and PAGA Period; (g) instructions on how to submit Requests for Exclusion or Notices of Objection; (h) the

1 deadlines by which the Class Member must postmark or deliver Request for Exclusions, or postmark
2 Notices of Objection to the Settlement; and (i) the claims to be released.

3 48. Disputed Information on Class Notices. Class Members will have an opportunity to
4 dispute the information provided in their Class Notices. To the extent Class Members dispute their
5 employment dates or the number of Workweeks on record, Class Members may produce evidence to the
6 Settlement Administrator showing that such information is inaccurate. Defendants' records will be
7 presumed correct, but the Settlement Administrator shall contact the Parties regarding the dispute and the
8 Parties will work in good faith to resolve it. All disputes must be submitted by the Response Deadline and
9 will be decided within ten (10) business days after the Response Deadline.

10 49. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the
11 requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The
12 Settlement Administrator will mail the Class Member a cure letter within three (3) business days of
13 receiving the defective submission to advise the Class Member that his/her/their submission is defective
14 and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have
15 until (a) the Response Deadline or (b) fifteen (15) calendar days from the date of the cure letter, whichever
16 date is later, to postmark or deliver a revised Request for Exclusion. If the revised Request for Exclusion
17 is not postmarked or received within that period, it will be deemed untimely.

18 50. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
19 Settlement Agreement must deliver a written Request for Exclusion to the Settlement Administrator by
20 the Response Deadline. In the case of Requests for Exclusion that are mailed to the Settlement
21 Administrator, the postmark date will be the exclusive means to determine whether a Request for
22 Exclusion has been timely submitted.

23 51. Escalator. Defendants estimate that as of April 23, 2025, Class Members worked an
24 aggregate total of approximately 4,746 Workweeks during the Class Period. If the actual aggregate total
25 of Workweeks worked during the entire Class Period is greater than Ten Percent (10%) of this estimate,
26 then Defendants must either: (a) increase the Gross Settlement Amount proportionately for each
27 Workweek above the Ten Percent (10%) allowance (e.g., if the total number of Workweeks increases by
28 11%, the Gross Settlement Amount will increase by 1%); or (b) advance the end date of the Class Period

1 and PAGA Period to the last date on which the total number of Workweeks worked by Class Members in
2 aggregate during the Class Period is no greater than 5,220.

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

7 53. Releases by Participating Class Members. Upon the Funding Date, and except as to such
8 rights or claims as may be created by this Settlement Agreement, each Participating Class Member,
9 together and individually, on behalf of themselves and their respective former and present representatives,
10 agents, attorneys, heirs, administrators, successors and assigns, release Defendant and Released Parties
11 from all claims, rights, demands, liabilities, damages, penalties, rights, suits, debts, obligations, and causes
12 of action, whether known or unknown, that were alleged, or that reasonably could have been alleged, based
13 on the facts stated in the Operative Complaint and PAGA Notice, which arose during the Class Period,
14 which includes but is not limited to the following claims and/or causes of action against the Released
15 Parties: unpaid wages, including minimum wages, regular wages, overtime wages (including the
16 calculation of the regular rate of pay), double time wages, and prevailing wages/benefits; failure to
17 authorize and permit rest periods (including but not limited to payment of rest period premiums); failure
18 to provide meal periods (including but not limited to payment of meal period premiums); wage statement
19 violations, untimely wages during employment and wages due upon termination, reimbursement for all
20 necessary business-related expenses, all derivative claims, and California Labor Code sections 201, 202,
21 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1182.12, 1194, 1197.1, 1198, 2800, and 2802, the
22 applicable Industrial Welfare Commission Wage Orders, and Business and Professions Code section
23 17200 as it relates to the underlying Labor Code claims referenced above (“Released Class Claims”).
24 Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other
25 claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and
26 Housing Act, unemployment insurance, disability, social security, workers’ compensation or claims based
27 on facts occurring outside the Class Period.
28

1 54. Releases by PAGA Members. Upon the Funding Date, and except as to such rights or
2 claims as may be created by this Settlement Agreement, each PAGA Member, together and individually,
3 on their behalf and on behalf of their respective heirs, executors, administrators, agents, and attorneys, shall
4 fully and forever release and discharge all of the Released Parties, or any of them, from each of the
5 Released PAGA Claims during the PAGA Period including (1) any and all claims involving any alleged
6 failure to pay minimum wage; (2) any alleged failure to pay overtime wages; (3) any alleged failure to
7 provide compliant meal periods, or compensation in lieu thereof; (4) any alleged failure to provide
8 compliant rest breaks, or compensation in lieu thereof; (5) any alleged failure to indemnify/reimburse
9 necessary business expenses; (6) any alleged failure to pay wages due during employment and upon
10 separation; and (7) any alleged failure to provide compliant accurate itemized wage statements.

11 55. Release by Participating and Non-Participating Class Members Who Are PAGA
12 Members. All Participating Class Members and Non-Participating Class Members who are PAGA
13 Members are deemed to release, on behalf of themselves and their respective former and present
14 representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from
15 all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the
16 PAGA Period facts and Labor Code sections stated in the Operative Complaint and the PAGA Notice
17 (including but not limited to Labor Code sections 201, 202, 203, 204, 226, 226.7, 233, 246, 246.5, 510,
18 512, 558, 558.1, 1193.6, 1194, 1198, 2800, and 2802 and all applicable Wage Orders as to the foregoing
19 claims) (“Released PAGA Claims”). Even if a PAGA Member chooses to opt out of the Settlement, they
20 would still be bound by the Release of the PAGA claims herein.

21 56. Defendants’ Right to Rescind. Defendants will have, in their sole discretion, the right to
22 void and withdraw from the Settlement if, at any time prior to Final Approval: (a) Ten Percent (10%) or
23 more of Class Members opt out of the settlement; or (b) the combined Workweeks worked by Class
24 Members who timely submit Requests for Exclusion amounts to more than Twenty Percent (20%) of the
25 total Workweeks worked by all Class Members. Defendants must exercise this right of rescission in
26 writing to Class Counsel within thirty (30) calendar days after the Response Deadline. If the option to
27 rescind is exercised, then Defendants will be solely responsible for all Settlement Administration Costs
28 incurred to the date of rescission.

1 57. Objection Procedures. To object to the Settlement Agreement, a Class Member may either
2 postmark a valid Notice of Objection to the Settlement Administrator on or before the Response Deadline
3 and/or appear in person at the Final Approval Hearing. Class Members who fail to object either by
4 submitting a valid Notice of Objection or appearing in person at the Final Approval Hearing will be
5 deemed to have waived all objections to the Settlement and will be foreclosed from making any objections,
6 whether by appeal or otherwise, to the Settlement Agreement. At no time will any of the Parties or their
7 counsel seek to solicit or otherwise encourage Class Members to submit written objections to the
8 Settlement Agreement or appeal from the final approval order and judgment. Class Counsel will not
9 represent any Class Members with respect to any such objections to this Settlement. If a Class Member
10 timely submits both a Notice of Objection and a Request for Exclusion, the Request for Exclusion will be
11 given effect and considered valid, the Notice of Objection shall be rejected, and the Class Member shall
12 not participate in or be bound by the Settlement.

13 58. Certification Reports Regarding Individual Settlement Payment Calculations. The
14 Settlement Administrator will provide Defendants' counsel and Class Counsel a weekly report that
15 certifies the number of Class Members who have submitted valid Requests for Exclusion or objections to
16 the Settlement, and whether any Class Member has submitted a challenge to any information contained in
17 their Class Notice, including those received after the Response Deadline. Additionally, the Settlement
18 Administrator will provide to counsel for both Parties any updated reports regarding the administration of
19 the Settlement Agreement as needed or requested.

20 59. Distribution Timing of Individual Settlement Payments. Within ten (10) calendar days of
21 the Funding Date, the Settlement Administrator will issue payments to: (a) Participating Class Members
22 and PAGA Members; (b) the Labor and Workforce Development Agency; (c) Plaintiff; and (d) Class
23 Counsel. The Settlement Administrator will also issue a payment to itself for Court-approved services
24 performed in connection with the Settlement.

25 60. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment
26 checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for more
27 than one hundred and eighty (180) calendar days after issuance will be tendered to the State Controller's
28 Office, Unclaimed Property Division in the name of each Class Member who did not negotiate his or her

1 check, thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil
2 Procedure Section 384, subd. (b).

3 61. Certification of Completion. Upon completion of administration of the Settlement, the
4 Settlement Administrator will provide a written declaration under oath to certify such completion to the
5 Court and counsel for all Parties.

6 62. Treatment of Individual Settlement Payments. All Individual Settlement Payments will
7 be allocated as follows: (a) Twenty Percent (20%) of each Individual Settlement Payment will be allocated
8 as wages for which IRS Forms W-2 will be issued; and (b) Eighty Percent (80%) will be allocated as non-
9 wages for which IRS Forms 1099-MISC will be issued. Payments issued to PAGA Members from the
10 PAGA Fund will be treated as non-wages for which IRS Forms 1099-MISC will be issued.

11 63. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
12 will be responsible for issuing to Plaintiff, Participating Class Members, PAGA Members, and Class
13 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this
14 Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes and
15 penalties to the appropriate government authorities.

16 64. Tax Liability. The Parties make no representation as to the tax treatment or legal effect of
17 the payments called for hereunder, and Plaintiff, Participating Class Members, and PAGA Members are
18 not relying on any statement, representation, or calculation by Defendants or by the Settlement
19 Administrator in this regard.

20 65. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that
21 they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
22 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or
23 right herein released and discharged.

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

1 67. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to request
2 the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order
3 for: (a) conditional certification of the Settlement Class for settlement purposes only, (b) preliminary
4 approval of the proposed Settlement Agreement, (c) setting a date for a final fairness hearing. The
5 Preliminary Approval Order will provide for the Class Notice to be sent to all Class Members as specified
6 herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this Settlement
7 Agreement, and will include the proposed Notice of Class Action Settlement, attached as Exhibit A. Class
8 Counsel will be responsible for drafting all documents necessary to obtain preliminary approval.

9 68. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
10 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the
11 Court's permission, a final fairness hearing will be conducted to determine the Final Approval of the
12 Settlement Agreement along with the amounts properly payable for: (a) Attorneys' Fees and Costs; (b) the
13 Class Representative Enhancement Payment; (c) Individual Settlement Payments; (d) the Labor and
14 Workforce Development Agency Payment; (e) all Settlement Administration Costs. Class Counsel will
15 be responsible for drafting all documents necessary to obtain final approval. Class Counsel will also be
16 responsible for drafting the attorneys' fees and costs application to be heard at the final approval hearing.

17 69. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the Court
18 or after the final fairness hearing, the Parties will present the Judgment to the Court for its approval. After
19 entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (a)
20 the interpretation and enforcement of the terms of the Settlement, (b) Settlement administration matters,
21 and (c) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement
22 Agreement. A copy of the Judgment will be posted to the Settlement Administrator's website.

23 70. Release by Plaintiff. Upon the Funding Date, in addition to the claims being released by
24 all Participating Class Members, Plaintiff will release and forever discharge the Released Parties, to the
25 fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and not
26 asserted, which Plaintiff has or may have against the Released Parties as of the date of execution of this
27 Settlement Agreement. To the extent the foregoing release is a release to which Section 1542 of the
28 California Civil Code or similar provisions of other applicable law may apply, Plaintiff expressly waives

1 any and all rights and benefits conferred upon him by the provisions of Section 1542 of the California Civil
2 Code or similar provisions of applicable law which are as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
4 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
5 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
6 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
7 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
8 PARTY.

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

12 72. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
13 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
14 may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section 1625
15 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is to be
16 construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the
17 Parties agree that no such extrinsic oral or written representations or terms will modify, vary or contradict
18 the terms of this Settlement Agreement.

19 73. Amendment or Modification. No amendment, change, or modification to this Settlement
20 Agreement will be valid unless in writing and signed, either by the Parties or their counsel, and approved
21 by the Court.

22 74. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
23 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
24 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to
25 this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate
26 the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and
27 use their best efforts to affect the implementation of the Settlement. If the Parties are unable to reach
28 agreement on the form or content of any document needed to implement the Settlement, or on any
supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties
may seek the assistance of the Court to resolve such disagreement.

1 75. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
2 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

3 76. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto will
4 be governed by and interpreted according to the laws of the State of California.

5 77. Execution and Counterparts. This Settlement Agreement is subject only to the execution
6 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
7 executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned
8 copies of the signature page, will be deemed to be one and the same instrument.

9 78. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
10 Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this
11 Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account
12 all relevant factors, present and potential. The Parties further acknowledge that they are each represented
13 by competent counsel and that they have had an opportunity to consult with their counsel regarding the
14 fairness and reasonableness of this Settlement.

15 79. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement
16 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent
17 with applicable precedents so as to define all provisions of this Settlement Agreement valid and
18 enforceable.

19 80. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
20 certification for purposes of this Settlement only; except, however, that Plaintiff or Class Counsel may
21 appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court, and
22 either party may appeal any court order that materially alters the Settlement Agreement's terms.

23 81. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to
24 class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not
25 approved, the stipulation to certification will be void. The Parties further agree that certification for
26 purposes of the Settlement is not an admission that class action certification is proper under the standards
27 applied to contested certification motions and that this Settlement Agreement will not be admissible in this
28 or any other proceeding as evidence that either (a) a class action should be certified or (b) Defendants are

1 liable to Plaintiff or any Class Member, other than according to the Settlement's terms.

2 82. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute
3 that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering
4 into this Settlement, Defendants do not admit, and specifically deny, that they violated any federal, state,
5 or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other
6 applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty;
7 engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to
8 their employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the
9 negotiations connected with it, will be construed as an admission or concession by Defendants of any such
10 violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce
11 the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be offered or
12 received as evidence in any action or proceeding to establish any liability or admission on the part of
13 Defendants or to establish the existence of any condition constituting a violation of, or a non-compliance
14 with, federal, state, local or other applicable law.

15 83. Public Disclosures. Plaintiff and Class Counsel will not make any public disclosures of
16 any kind regarding the Settlement, including but not limited to postings on Class Counsel's websites and
17 postings on any social media sites/outlets prior to and after the Effective Date. Class Counsel will take all
18 steps necessary to ensure Plaintiff is aware of, and will encourage him to adhere to, the restriction against
19 any public disclosure regarding the Settlement. Class Counsel will not include or use the Settlement for
20 any marketing or promotional purposes, or for attempting to influence Defendants' business relationships,
21 either before or after the Motion for Preliminary Approval is filed. Following Preliminary Approval of the
22 Settlement, the Plaintiff and Class Counsel will not initiate any communications with the media or third
23 parties. If contacted by the media or third parties, Plaintiff and Class Counsel will only discuss information
24 publicly available. Class Counsel will take all steps necessary to ensure Plaintiff is aware of, and will
25 encourage them to adhere to, the restriction against initiating any media comment. Nothing herein will
26 restrict Class Counsel or Plaintiff from including publicly available information regarding this settlement
27 in future judicial submissions and submissions to LWDA regarding Class Counsel's qualifications and
28 experience and/or for purposes of obtaining approval of the Settlement and communicating with Class

Members regarding the terms of the Settlement.

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

85. Enforcement Actions. 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 and/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.

86. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms'-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

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

88. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.

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

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

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PLAINTIFF

Dated: 01 / 12 / 2026



Ronald Browning

DEFENDANTS TEC EQUIPMENT, INC. AND
TEC OF CALIFORNIA INC.

Dated: 1/22/26



By:
Its:

Dated: 01/12/2026

CROSNER LEGAL, P.C.



Chad Saunders
Attorneys for Plaintiff and the putative class

Dated: 01/23/2026

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



Scott K. Dauscher
Attorneys for Defendants

Exhibit 2

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

***Browning v. TEC Equipment, Inc., et al.*, Superior Court of the
State of California, County of San Bernardino, Case No. CIVSB2202461**

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT
ACT. PLEASE READ THIS CLASS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. After final approval by the Court, the payment will be mailed to you at the same address as this notice. In exchange for the settlement payment, you will release claims against the Defendants as detailed in Section 4 below. If your address has changed, you must notify the Administrator as explained in Section 6 below.
Exclude Yourself	To exclude yourself, you must send a written request for exclusion to the Administrator as provided below. If you request exclusion, you will receive no money from the Settlement and you will not be bound by the Settlement. Instructions are set forth in Section 7 below.
Object	Write to the Administrator about why you do not agree with the settlement or appear at the Final Approval Hearing to make an oral objection. Directions are provided in Section 8 below.
Final Approval Hearing	The Court will hold a Final Approval Hearing at _____ on _____, 2026, at the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, in Department S-36 before Hon. Joseph B. Widman. The hearing may be rescheduled by the Court without further notice to you.

Your options are further explained in this Class Notice. To exclude yourself from, or object to, the settlement, you must take action by certain deadlines. If you want the Settlement as proposed, you don't need to do anything to obtain your share of the Settlement. Defendants will not retaliate against you for any actions you take with respect to the Settlement.

1. Why did I get this Notice?

A proposed class action settlement (the "Settlement") of the above-captioned action pending in the Superior Court of the State of California, in and for the County of San Bernardino (the "Court") has been reached between Plaintiff Ronald Browning ("Plaintiff") and Defendants TEC Equipment, Inc. and TEC of California, Inc. ("Defendants") and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All Defendants' former non-exempt employees that worked at any location in California at any time during the Class Period and had unpaid sick pay as a result of a miscalculation of their regular rate of pay.

The "Class Period" is the period from January 31, 2018, through April 23, 2025.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Class Notice carefully as your rights may be affected by the Settlement.

2. What is the lawsuit about?

On January 31, 2022, Plaintiff commenced this lawsuit by filing a Complaint alleging causes of action against Defendants for: 1) Recovery of Unpaid Minimum Wages and Liquidated Damages; 2) Recovery of Unpaid Overtime Wages; 3) Failure to Provide Meal Periods or Compensation in Lieu Thereof; 4) Failure to Provide Rest Periods or Compensation in Lieu Thereof; 5) Failure to Timely Pay All Wages Due Upon Separation of Employment; (6) Failure to Reimburse Business Expenses; and 7) Unfair Competition. On May 17, 2022, Plaintiff filed a First Amended Complaint adding a cause of action under the California Private Attorneys General Act seeking civil penalties against Defendants for Labor Code violations.

Defendants deny and dispute all of Plaintiff's claims. Defendants further contend that the Action cannot be maintained as a class action.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>> and determined only that there is sufficient evidence to suggest that the proposed settlement is fair, adequate, and reasonable, and that any final determination of those issues will be made at the final approval hearing. The Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firm of Crosner Legal, P.C. as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an "all in" amount of One Hundred Seventy-Five Thousand Dollars (\$175,000) (the "Gross Settlement Amount") to fund the settlement of the Action. The Gross Settlement Amount includes all payments of Individual Class Payments, the Administration Expenses Payment, the Class Representative Service Payment, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. Any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages shall be separately paid by Defendants.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount as follows, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before Individual Class Payments are made to Participating Class Members:

- Settlement Administration Costs. Payment to the Administrator, estimated not to exceed \$4,500, for expenses, including without limitation expenses of notifying the Class

Members of the Settlement, processing opt outs, and distributing settlement funds and tax forms, and handling inquiries and uncashed checks.

- Class Counsel Fees and Costs Payment. Payment to Class Counsel of reasonable attorneys' fees not to exceed one-third of the Gross Settlement Amount, which is presently \$58,333.33, and an additional amount to reimburse actual litigation costs incurred by Class Counsel, not to exceed \$30,000. Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money) and has been paying all litigation costs and expenses.
- Service Payment. A Class Representative Enhancement Payment in an amount not to exceed Ten Thousand Dollars (\$10,000.00), or such lesser amount as may be approved by the Court, to compensate Plaintiff for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- LWDA PAGA Payment. A payment to the California Labor & Workforce Development Agency of \$7,500 for its portion of the PAGA Penalties.

Calculation of Individual Class Payments to Class Members. After all of the payments of the court-approved Enhancement Award, the Class Counsel fees and costs payment, the Settlement Administration Costs, and the LWDA PAGA Payment are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount", shall be distributed as Individual Class Payments to Participating Class Members (meaning those Class Members who do not opt out or exclude themselves from the Class). The Net Settlement Amount is estimated to be \$69,166.67. The Settlement Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member. The Individual Class Payment for each Participating Class Member will be 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. "Workweek" means any week during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day. The number of Workweeks will be based on Defendants' records, however, Class Members may challenge the number of Workweeks as explained below. Your estimated Individual Class Payment is set forth in Section 5 below.

Tax Matters. Twenty percent (20%) of each Individual Class Payment is in settlement of wage claims which are subject to wage withholdings and will be reported on IRS Form W-2. Eighty percent (80%) of each Individual Class Payment is in settlement of claims non-wages, expense reimbursement, interest and penalties, which are not subject to wage withholdings and will be reported on IRS Form 1099. The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members. Neither Class Counsel nor Defendants' Counsel intend anything contained in this Notice to constitute advice regarding taxes or taxability. Your tax issues are unique to you, and you may want to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Individual Class Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has

changed, you must contact the Administrator to inform them of your correct address to ensure you receive your payment.

4. What Do I Release Under the Settlement?

Released Class Claims. All Participating Class Members, on behalf of themselves and their respective former and present respective heirs, executors, administrators, agents, and attorneys, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, including unpaid wages, including minimum wages, regular wages, overtime wages (including the calculation of the regular rate of pay), double time wages, and prevailing wages/benefits; failure to authorize and permit rest periods (including but not limited to payment of rest period premiums); failure to provide meal periods (including but not limited to payment of meal period premiums); wage statement violations, untimely wages during employment and wages due upon termination, reimbursement for all necessary business-related expenses, all derivative claims, and California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1182.12, 1194, 1197.1, 1198, 2800, and 2802, the applicable Industrial Welfare Commission Wage Orders, and Business and Professions Code section 17200 as it relates to the underlying Labor Code claims referenced above. 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.

Released PAGA Claims. All Class Members who are PAGA Members are deemed to release, on behalf of themselves and their respective heirs, executors, administrators, agents, and attorneys, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice. Even if a PAGA Member chooses to opt out of the Settlement, they would still be bound by the Release of the PAGA claims.

This means that, if you do not timely and formally exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or any other Released Party about the Released Class Claims resolved by this Settlement. It also means that all of the Court's orders in the Actions will apply to you and legally bind you.

Released Parties. The Released Parties are: Defendants and all its present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, exempt employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be liable for any of the Released Claims, and Defendants' counsel of record in the Action.

5. How much will my payment be?

Your Individual Class Payment: Defendants' records reflect that you have <<____>> Workweeks during the Class Period. **Based on this information, your estimated Individual Class Payment is <<____>>**, minus applicable withholdings and deductions.

Your Individual PAGA Payment: Defendants' records reflect that you have <<____>> Pay Periods during the PAGA Period. **Based on this information, your estimated Individual PAGA Payment is <<____>>**.

If you wish to challenge the information set forth above, then you must submit a written dispute challenging the information along with supporting documents, to the Administrator at the address provided in this Notice no later than the 45 days after the mailing of this Notice. The deadline for submitting a dispute is _____. You may also fax the dispute to _____ or email the dispute to _____ by no later than the deadline. Any dispute should include credible written evidence and will be resolved by the Administrator.

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your share of the Settlement will be mailed automatically to the same address as this Class Notice. If your address is incorrect or has changed, you must notify the Administrator. The Administrator is: Phoenix Settlement Administration, [ADDRESS], (800) _____.

The Court will hold a Final Approval Hearing on _____ at _____ to decide whether to approve the Settlement. Please note the hearing could be rescheduled by the Court without further notice to you. If the Court approves the Settlement and there are no objections or appeals, the settlement payments will be mailed on approximately [DATE (45 days after Effective Date)]. If there are objections or appeals the payments will be delayed because resolving them can take time, usually more than a year. Please be patient.

Your settlement check must be cashed within 180 days after it is mailed. If your check is lost or misplaced, you should contact the Administrator immediately by phone to request a replacement ((800) _____). For any Class Member whose Individual Class 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.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Class or "opt out." **If you opt out, you will NOT receive your Individual Class Payment and you will not be bound by the release of Released Class Claims.**

To opt out of the Class, you must mail to the Administrator, by First Class Mail, a written, signed and dated request to opt-out postmarked no later than the Response Deadline which is _____ [forty-five (45) days after the mailing of the Notice]. You may also fax your request to opt out to _____ or email the dispute to _____ by no later than the Response Deadline. The Request for Exclusion should state in substance: "I wish to be excluded from the Class in the *Browning v. TEC Equipment, Inc.* lawsuit." The Request for Exclusion must state the Class Member's full name, address, telephone number, last four digits of social security number for verification purposes, the approximate dates of employment in California by Defendants, and the name and number of the case, which is *Browning v. TEC Equipment, Inc., et al.*, San Bernardino County Superior Court, Case No. CIVSB2202461. The request to opt-out must be completed and signed by you. No other person may opt-out for a living member of the Class.

The address for the Administrator is *Browning v. TEC Equipment, Inc.* Administrator, c/o Phoenix Settlement Administration, [ADDRESS]. Absent good cause found by the Court,

written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I don't agree with the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason may object to the proposed Settlement, the attorneys' fees, the costs and/or the service awards, either in writing or in person. Objections that are in writing should include the Class Member's name, current address, telephone number, and the dates of employment in California by Defendants, and describe why you believe the Settlement is unfair. All written objections or other correspondence should also state the name and number of the case, which is *Browning v. TEC Equipment, Inc., et al.*, San Bernardino County Superior Court, Case No. CIVSB2202461.

All written objections must be mailed to the *Browning v. TEC Equipment, Inc.* Administrator, c/o Phoenix Settlement Administration, [ADDRESS], no later than the Response Deadline which is _____ [forty-five (45) days after the mailing of the Notice]. You may also fax the dispute to _____ or email the dispute to _____ by no later than this Response Deadline.

Alternatively, Class Members may appear at the Final Approval Hearing on _____ at _____ to make an oral objection without submitting a written objection. The hearing may be rescheduled by the Court without further notice to you. If you need assistance, you may contact Class Counsel. Please check the Court's website for current information concerning appearances and how to attend Court proceedings remotely: <https://sanbernardino.courts.ca.gov/>.

To object to the Settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object and you will still be mailed a check for your Individual Class Payment. Absent good cause found by the Court, any Class Member who does not object in the manner provided in this Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

The addresses for Parties' counsel are as follows:

Class Counsel:

Chad Saunders
Brandon Brouillette
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (866) 276-7637
Fax: (310) 510-6429
Email: chad@crosnerlegal.com

Counsel for Defendants:

Scott K. Dauscher
Lauren S. Gafa
Conor E. Walsh
ATKINSON, ANDELSON, LOYA,
RUUD & ROMO
12800 Center Court Drive South, Suite 300
Cerritos, California 90703-9364
Telephone: (562) 653-3200
Fax: (562) 653-3333

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____ on _____, in Department S-36 of the Superior Court of California, County of San Bernardino, located at 247 West Third Street, San Bernardino, CA 92415. While the Court determined at preliminary approval that there is sufficient evidence to suggest the proposed settlement is fair, adequate, and reasonable, the Court will make a final determination on these issues at the Final Approval Hearing. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to approve the amount of attorneys' fees, costs and enhancement award to be awarded. If there are objections, the Court will consider them. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Administrator at _____ or write to *Browning v. TEC Equipment, Inc.* Administrator, c/o Phoenix Settlement Administration, [ADDRESS]; or contact Class Counsel.

This Notice summarizes the proposed settlement. More details are in the Class Action Settlement Agreement ("Agreement"). The Agreement, the Judgment and other relevant settlement documents will be posted on the Administrator's website for this settlement: <<_____>>. You may also get more details by examining the Court's file via the Public Access site for the California Superior Court for the County of San Bernardino (<https://cap.sb-court.org/search>) and entering the Case No. CIVSB2202461. The Agreement can be found in the Court file located at 247 West Third Street, San Bernardino, CA 92415, as Exhibit #1 to the Declaration of Chad Saunders, filed on _____.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed.
- If your check is lost or misplaced, you should contact the Administrator immediately to request a replacement.

Exhibit 3



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Managing Attorney
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office: (310) 496-5818
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January 31, 2022

VIA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

Victor Salvino
Agent for Service of Process for:
TEC Equipment, Inc.
14400 Randall Ave
Fontana, CA 92335

Victor Salvino
Agent for Service of Process for:
TEC of California, Inc.
14400 Randall Ave
Fontana, CA 92335

TEC Equipment, Inc.
Attn: Human Resources/ Legal Department
750 NE Columbia Boulevard
Portland, OR 97211

TEC Equipment, Inc.

Attn: Human Resources/ Legal Department
P.O. Box 11272
Portland, OR 97211

TEC of California, Inc.

Attn: Human Resources/ Legal Department
750 NE Columbia Boulevard
Portland, OR 97211

TEC of California, Inc.

Attn: Human Resources/ Legal Department
P.O. Box 11272
Portland, OR 97211

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; TEC Equipment, Inc.;
TEC of California, Inc.
Date: January 31, 2022

Subject: *Ronald Browning v. TEC Equipment, Inc., et al.*

Introduction

This office represents COMPLAINANT, Ronald Browning (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: TEC Equipment, Inc.; TEC of California, Inc. (hereinafter, these entities and its managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed by EMPLOYER within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by EMPLOYER within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process as provided to the California Secretary of State.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C. at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant

to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT's claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT's intent to seek civil penalties against EMPLOYER.

COMPLAINANT, on behalf of COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.2, 226.7, 245-248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.3, 1199, 2751, 2802, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of "employer" for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/ABC, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties

for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of employer(s) who violated COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, the above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

TEC Equipment, Inc., TEC of California, Inc., and its managing agents own, operate, or otherwise manage a truck and trailer dealership. While EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California labor law.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee for approximately seven and one half (7 ½) years until the termination of COMPLAINANT's employment, on or about July 20, 2021. COMPLAINANT worked for EMPLOYER during the relevant time period as a non-exempt, Parts Specialist and/or other similar title at EMPLOYER's facility located at 14400 Randall Avenue, Fontana, California 92335. COMPLAINANT typically worked shifts of at least nine and one half (9 ½) hours per day, at least five (5) days per week. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked; COMPLAINANT was also compensated with non-discretionary remuneration, for example, non-discretionary bonuses.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; and (14) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. IWC Wage Order 4-2001 and all applicable IWC Wage Orders, section 7 similarly requires employers

to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, EMPLOYER failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of EMPLOYER's time rounding and/or auto deduction policies and practices and other mandated off-the-clock work policies and practices, described herein.

EMPLOYER further failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER's failure to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control for unpaid meal periods, resulting in unpaid hours worked.

EMPLOYER further failed, and continues to fail, to record the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods.

EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES' work shifts.

Additionally, EMPLOYER failed, and continues to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.¹

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than

¹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

(10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, COMPLAINANT did not sign a meal period waiver throughout COMPLAINANT's employment by EMPLOYER.

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 4-2001 and all applicable IWC Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were instructed by their supervisors to clock out for meal periods but to continue working due to the need for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES to fill work orders/answer customer inquiries immediately/and/or attend to other work tasks requiring immediate attention. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted and/or cut short due to commentary from supervisors, and/or having the need for COMPLAINANT and NON-EXEMPT AGGRIEVED

EMPLOYEES to tend to work duties requiring immediate attention, including but not limited to, the need to fill work orders and/or respond to customer inquiries.

Despite failing to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of automatically deducting at least thirty minutes per shift for these missed/unlawful meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive compliant meal periods.

EMPLOYER implemented policies and practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal breaks. Based on information and belief, EMPLOYER had a uniform policy and practice of requiring COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to always be responsive to work-communication devices during their shifts, including during unpaid meal breaks. For example, COMPLAINANT's meal periods were consistently interrupted with phone calls from, e.g., his supervisor and/or the sales rep team placing orders that COMPLAINANT was required to respond to while COMPLAINANT was clocked out for purportedly off-duty meal periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to don and doff personal protective equipment during meal periods, thereby depriving them of a full thirty-minute meal period. At other times, COMPLAINANT continued working or completing work tasks during purported meal breaks.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to spend time booting up/logging into EMPLOYER's computer system so that they could clock back in to work following any meal periods, which said time spent booting up/logging into EMPLOYER's computer system was time spent under EMPLOYER control and thus should have been compensated but was not, thereby depriving NON-EXEMPT AGGRIEVED EMPLOYEES of a full thirty-minute meal period.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

EMPLOYER also failed to keep accurate records of the start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal period start and end times. Further, based on further information and belief, EMPLOYER illegally rounded the start and end times of employee meal periods resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on further information and belief, EMPLOYER did not have a written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the NON-

EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual and/or constructive knowledge that its time-rounding and auto-deduction policies and practices resulted in the denial of lawful meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Based on information and belief, per EMPLOYER's uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break.

EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a proper meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a proper meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, commission/piece-rate pay, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violation of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 4-2001 and all applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law.

Rest periods were consistently interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, lack of relief workers, the nature and constraints of COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES' job duties, and/or their need to fill work orders, respond to sales rep inquiries and/or other work tasks and/or commentary from supervisors pressuring them to skip rest breaks completely or otherwise take non-compliant rest breaks.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once the work orders were tended to, tasks were completed, and/or as time permitted.

EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest breaks. For example, COMPLAINANT was required to remain on the worksite premises during any rest periods and required to monitor a work communication device for incoming phone calls from management/sales representatives, as well as attend to customers/fill work orders/attend to other work tasks as needed, including during any purportedly duty-free rest periods. Thus, NON-EXEMPT AGGRIEVED EMPLOYEES remained under employer control during any rest periods, rendering said rest periods on duty and thus noncompliant with California rest period law. COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive legally compliant first, second, or third rest periods.

EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods.

Furthermore, EMPLOYER failed to pay a rest period premium for each day in which the NON-EXEMPT AGGRIEVED EMPLOYEE experienced a missed/improper rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. Based on information and belief, EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a proper rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, commission/piece-rate pay and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 4-2001 (and all applicable IWC Wage Orders), §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

EMPLOYER failed to compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER’s automatic deduction and time

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); IWC Wage Order 4-2001 (and all applicable IWC Wage Orders), §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

rounding policies, payment according to scheduled hours worked instead of actual time worked, mandated pre-shift/post-shift/ and/or other off-the clock work policies and/or practices and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods.

NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take off duty, thirty-minute, uninterrupted meal periods, often being forced to work through part or all their meal periods due to the need for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES to tend to work orders/other work tasks and/or commentary from supervisors pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to take non-compliant breaks or skip breaks completely, as alleged above.

EMPLOYER implemented a policy and/or practice of automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that NON-EXEMPT AGGRIEVED EMPLOYEES were working through part or all of these purported meal periods.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform pre-shift and post-shift off-the-clock work. For example, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not compensated for daily pre-shift time spent booting up EMPLOYER's computer prior to being able to log in to EMPLOYER's system to clock in for the start of their shifts, resulting in at least five (5) minutes of uncompensated work time each workday and thus the underpayment of minimum wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would again have to boot up the computer to clock back in following any meal periods, resulting in additional uncompensated work time and the further underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER's failure to pay for all time worked by virtue of its auto-deduction policies and practices, failure to provide off-duty 30-minute meal periods, and mandated off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or forty hours in a week.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its auto-deduction policies and practices and failure to provide off-duty meal periods and other mandated off-the-clock work described above resulted in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

Additionally, based on information and belief, EMPLOYER instituted a commission-based and or piece-rate-based compensation scheme that resulted in pay periods during which NON-EXEMPT AGGRIEVED EMPLOYEES were denied the minimum wage for all hours worked. EMPLOYER

paid NON-EXEMPT AGGRIEVED EMPLOYEES on a solely commissioned and or piece-rate basis, at least during some pay periods, during the relevant time period. However, based on information and belief, EMPLOYER failed to separately compensate for all non-commission/non-piece rate related activities/all non-productive time, including but not limited to, all rest breaks. EMPLOYER's failure to separately so compensate resulted in NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all hours worked in violation of California minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and Wage Order 4-2001 (and all applicable IWC Wage Orders), §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order 4-2001 (and all applicable IWC Wage Orders), §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record at all, the total number of hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's automatic deduction policies and practices for meal periods, payment according to scheduled hours worked rather than actual time worked/mandated pre-shift and post-shift off-the clock work (described above) as well as off-the-clock work completed during meal periods (described above), and other off-the-clock work described herein resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay any premium wage rate for hours worked beyond eight (8) hours in a day or beyond forty hours in a week.

⁴ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 4-2001 (and all applicable IWC Wage Orders), §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Based on information and belief, EMPLOYER failed to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California overtime laws.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, commission and/or piece rate pay and/or other non-discretionary pay into the regular pay rate(s) of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER failed to compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for off the clock work duties including but not limited to, time spent logging into EMPLOYER's electronic clock-in system, responding to work communications during uncompensated meal periods, and time spent donning and doffing of personal protective equipment during meal and rest periods, as well as at start and end of shifts.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and IWC Wage Order 4-2001 (and all applicable IWC Wage Orders), §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and Wage Order 4-2001 (and all applicable IWC Wage Orders), §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Violation of Labor Code Section 226.2: Labor Code section 226.2 requires an employer to pay employees compensated on a piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any piece-rate pay. This statute further requires an employer to include on the wage statements for these employees the total hours of compensable rest and recovery period, the total hours for other non-productive time, the rates of compensation for these hours, and the gross wages paid for these hours. In addition, the statute requires that employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

⁵ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); IWC Wage Order, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

During the relevant period, EMPLOYER failed to comply with Labor Code section 226.2. Specifically, based on information and belief, EMPLOYER failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES who were paid on a piece rate and or commission basis separately for the rest periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based on information and belief, EMPLOYER further failed to include the information on these employees' wage statements required by this statute.

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and shift start and end times/other required off-the-clock work described herein) and by failing to incorporate multiple rates of pay and or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

EMPLOYER further failed to provide notice of the correct sick leave amount balance available to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statement.

EMPLOYER failed to put them on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice.

In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the NON-EXEMPT AGGRIEVED EMPLOYEE throughout the relevant time period.

Throughout the relevant period, EMPLOYER failed to provide notice of sick leave amount balance left for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave.

But for this failure, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid but was not, as a result of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁶

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements EMPLOYER issued to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correct set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by the COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of the automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, mandated pre-shift and/or post-shift off-the-clock work policies and practices, all described in greater detail *supra*), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

EMPLOYER's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them.

⁶ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

On information and belief, EMPLOYER failed and continues to fail to provide notice of the correct sick leave amount balance available to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statement(s) of their sick leave balance(s).

Based on information and belief, EMPLOYER failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9). For example, based on information and belief, the wage statements provided to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES do not provide an accurate overtime rate because instead of multiplying the proper regular rate of pay by one and one-half, the wage statements provide at least two overtime rate categories (an "overtime" and "overtime premium" category) with each provide corresponding rates that are either the same as the regular rate or list no separate rate for the overtime requiring Plaintiff to perform extensive calculation using outside resources to determine what his pay rate was for each corresponding hour worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011). As described herein, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements.

As a result, the wage statements provided to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁷

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by, including but not limited to, failing to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for

⁷ See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

Temperature Violations: All Applicable IWC Wage Orders, Section 15: Labor Code section 1198 requires an employer to comply with the standard conditions of labor for California employees as set forth in Section 15 of the IWC Wage Orders, including the applicable Wage Order, which states:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F, a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68°.

(C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

(D) Federal and State energy guidelines shall prevail over any conflicting provision of this section. (See e.g., Cal. Code Regs., tit. 8, section 11090(15) California law requires an employer to endeavor to provide a safe and healthy workplace. (Cal. Code Regs., tit. 8, section 3203.) Further, California Labor Code section 6720 required the California Division of Occupational Safety and Health ("Cal/OSHA") to propose an indoor heat illness standard by January 1, 2019. (Lab. Code section 6720.) Cal/OSHA's draft standard applies its proposed regulations to "all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit when employees are present."

On various diverse dates during the one-year period preceding the filing of this NOTICE to the present, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were subjected to excessive heat and/or humidity resulting in temperatures equaling or exceeding 90° F and to excessive cold temperatures during colder times of the year, including temperatures of less than 68° in including but not limited to, the toilet rooms, resting rooms, and or change rooms during hours of use.

Furthermore, on various diverse dates during the one-year period preceding the filing of this NOTICE to the present, EMPLOYER failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with reasonable comfort by maintaining the indoor temperature within the range of industry standards by providing adequate air conditioning or heat and or proper ventilation. Based on information and belief, temperatures in EMPLOYER's warehouse facility where NON-EXEMPT AGGRIEVED EMPLOYEES worked were excessively cold in the winter and/or excessively hot in the summer due to EMPLOYER's practice of, including but not limited to, failing to provide adequate artificial air conditioning and/or heating and or fans within the

warehouse facility. COMPLAINANT is informed and believes and thereon alleges that on various diverse dates during the one-year period preceding the filing of this NOTICE, EMPLOYER also failed to maintain the temperature in toilet rooms, resting rooms, and change rooms during hours of use to no less than 68°.

These practices and policies resulted in EMPLOYER's failure to maintain temperature providing reasonable comfort in violation of Labor Code section 1198 and Section 15 of the IWC Wage Orders, including the applicable Wage Order.

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, temperature, and business expenses, result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is

terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, EMPLOYER provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES on the regular pay day without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and or were not timely provided with all owed vacation pay. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and or paid time off wages at the properly accrued rates.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁸

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and Wage Order 4-2001 (and all applicable IWC Wage Orders), section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction." An employer's failure to comply within this timeframe entitles a

⁸ (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee").

current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, EMPLOYER fails to produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, COMPLAINANT sent a request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to produce complete records or failed to produce any records at all within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject employer to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Failure to Provide Commission Agreements: Labor Code section 2751 requires that all commission contracts "be in writing and . . . set forth the method by which the commissions shall be computed and paid." Cal. Lab. Code section 2751(a) (2012). Under the statute, employers must also "give a signed copy of the contract to every employee who is a party [to the contract] and . . . obtain a signed receipt for the contract from each employee." Id. section 2751(b). It also provides that, where the parties continue to work under the terms of an expired contract, "the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party." Id. The stated purpose for amending Section 2751 was to "protect employees from fraud and abuse, as well as protect employers from unnecessary litigation resulting from vague oral contracts." Hearing on AB 1396 Before the S. Comm. on Labor and Industrial Relations, 2011-2012 Sess. (Cal. 2011).

Based on information and belief, EMPLOYER failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES who were compensated on a commission basis with proper written commission agreements, in violation of Labor Code section 2751.

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when 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 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. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

At all relevant times hereto, EMPLOYER shifted its costs of doing business onto COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, use of COMPLAINANT’s and other NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ mobile phone and data usage, as well as costs associated with the purchase and or maintenance of uniforms/clothing/ and/or vehicle-related expenses incurred on the job.

For example, COMPLAINANT was required to use his personal phone to respond to work-related inquiries from, including but not limited to, coworkers and/or supervisors. COMPLAINANT’s

supervisor as well as sales representatives/co-workers regularly contacted COMPLAINANT on his personal cell phone regarding work orders/to place customer orders. EMPLOYER also required COVID testing. Based on information and belief, EMPLOYER did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES for the cost of traveling and/or using a personal vehicle to and from a testing site. Based on information and belief, EMPLOYER also failed to reimburse NON-EXEMPT AGGRIEVED EMPLOYEES for the cost of obtaining a Covid test. Based on information and belief, EMPLOYER also failed to reimburse COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for mileage, and/or the use of his or her personal vehicle.

As such, EMPLOYER failed and continues to fail to compensate for vehicle-related expenses at the Internal Revenue Service (IRS) mandated per mile compensation for the relevant time period.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to, cell phone/data plan charges incurred as a result of being required to use their personal cell phones/other mobile communication devices for work related purposes, vehicle use and mileage, and/or costs associated with obtaining a covid test.

Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to purchase and or maintain their own uniforms/work clothing and or purchase personal protective equipment, such as, but not limited to, masks and/or gloves and/or steel-toed boots.

As a pattern and practice, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out orders by their employer and/or carrying out the duties assigned by their employers.

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Agreements/ Unlawful Criminal and Financial Background Checks:

Unlawful Financial and Criminal Background Checks:

The California Labor Code places certain procedural and substantive limits on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, et seq.) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, et seq.) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER required COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

EMPLOYER required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, et seq. and 15 U.S.C. section 1681, et seq., including but not limited to by failing to provide a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information (including but not limited to information relevant to applicants from different states), failing to provide a lawful purpose for the background check (by including but not limited to, failing to clearly and accurately disclosing that the background check may include anything pertaining to the applicant's character, general reputation, personal characteristics, and mode of living), failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report (by including but not limited to, failing to disclose the name, address, and telephone number of the third party preparing the report), and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER also violated Labor Code section 432.5.

Based on further information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, EMPLOYER knew that requiring COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to these unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By having COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES sign off on the illegal background and financial checks, EMPLOYER also violated Labor Code section 432.5 (stating that “no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law.”).

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law.

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law.

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California’s Fair Chance Act, and thereby violated Labor Code 432.5 by unlawfully requiring the AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to Wage Order 4-2001, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys’ fees, and costs. The civil penalties COMPLAINANT and other NON-EXEMPT AGGRIEVED

EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirement created by Labor Code §§ 2699, 2699.3(a), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Zachary Crosner
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: zach@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Zachary M. Crosner". The signature is written in a cursive, flowing style.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC



Alberto Villavicencio <alberto@crosnerlegal.com>

Thank you for submission of your PAGA Case.

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Mon, Jan 31, 2022 at 3:29 PM

To: "alberto@crosnerlegal.com" <alberto@crosnerlegal.com>

1/31/2022

LWDA Case No. LWDA-CM-865679-22

Law Firm : Crosner Legal

Plaintiff Name : Ronald Browning

Employer: TEC Equipment, Inc.

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Exhibit 4