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Attorneys for Plaintiff and Proposed Plaintiffs Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

KRISTINA REYES, on behalf of herself and
all others similarly situated,

Plaintiff,

vs.

BACKPACK BOYZ LOS ANGELES, LLC;
LOS ANGELES INDUSTRY, INC., and
DOES 1-100, inclusive,

Defendants.

Case No.: 22STCV05435

CLASS and REPRESENTATIVE ACTION

**DECLARATION OF MATTHEW S.
DA VEGA IN SUPPORT OF MOTION**

Assigned For All Purposes to the Honorable
William Highberger (Dept. 10)

Date: December 20, 2022

Time: 10:00 a.m.

Location: Dept. 10 (Hon. William Highberger)

I, Matthew S. Da Vega, hereby declare as follows:

1. I make this Declaration based on personal knowledge. If called and sworn as a witness, I would testify competently as to the facts in this Declaration.

2. I am an attorney admitted to practice law in the State of California.

3. I am a named Partner at Da Vega Fisher Mechtenberg, LLP ("DFM LLP").

4. DFM LLP is lead and only counsel for the Plaintiffs in this Lawsuit. ("Class Counsel.")

5. I have been intimately involved in all aspects of this dispute and the resulting settlement. I make this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Settlement.

1 **I. SETTLEMENT AGREEMENT**

2 6. Attached hereto as **Exhibit 1** is a true and correct copy of the **Joint Stipulation of**
3 **Class Action Settlement Agreement and Release (“Settlement Agreement”)** executed between
4 the Parties. The Settlement Agreement includes the following draft exhibits for the Court’s
5 consideration:

6 **Exhibit A: Second Amended Complaint** (a Stipulation and Order
7 Requesting Plaintiff Leave to File this Second Amended Complaint, for settlement
8 purposes only, will be simultaneously filed and served with this Motion);

9 **Exhibit B: [Proposed] Preliminary Approval Order;**

10 **Exhibit C: Notice of Class Action Settlement;**

11 **Exhibit D: [Proposed] Final Approval Order and Judgment.**

12 **II. LEAD COUNSEL BACKGROUND**

13 7. I am a graduate of the University of California, Santa Barbara (1993) and the
14 University of San Francisco School of Law (1997). I became a member of the State Bar of
15 California in 1998. After passing the bar I started working in private practice as a Plaintiff’s
16 attorney. During my entire career I have always practiced as a Plaintiff’s lawyer representing
17 individuals or groups of individuals, specializing in employment, personal injury, mass torts, and
18 product defect matters. I have done so now for approximately 23 years. I first worked for
19 Brayton & Purcell in Novato, CA representing individuals injured from exposure to asbestos and
20 other toxins. I then worked for Lieff Cabraser Heimann & Bernstein in San Francisco
21 representing individuals in mass torts, product defect, and employment matters both individually
22 and in class actions, including wage and hour class claims. I then worked for the firm of Cappello
23 & Noel in Santa Barbara, again representing plaintiffs in individual and class actions, including
24 employment claims, lender liability, and antitrust matters. A case of particular note that I
25 performed a substantial amount of work on was the Unruh Civil Rights Act class action trial case
26 of *Jones, et. al. v. Wells Fargo Bank* (Los Angeles Superior Court, Case No. BC337821, March
27 23, 2011) in which the jury determined that Wells Fargo discriminated based on race, with respect
28

1 to 880 home loans for a total award to the class of \$3.52M. The Court also awarded nearly \$15M
2 in attorney's fees.

3 8. In 2012 I then started my own Plaintiff's firm, Da Vega Fisher Mechtenberg LLP
4 with partners, Matthew Fisher (UC Berkeley undergrad and USC School of Law) and Ted
5 Mechtenberg (Notre Dame undergrad and Washington University School of Law, St. Louis),
6 whom each have over 15 years of experience practicing law. We are experienced counsel in
7 matters such as this and have recently settled similar matters as lead counsel - *Salvatierra v.*
8 *Intuitive Surgical, Inc.*, Santa Clara County Superior Court, Case No. 2014-1-CV-272069 (2016)
9 (\$4.6M gross settlement for class of 208 misclassified class member employees for unpaid
10 overtime wages); *Gibbins/Leal v. Hismeh Enterprises, Inc.*, Ventura County Superior Court, Case
11 No. 56-2015-00468352 (2017) (\$1M gross settlement for class of 4000+ delivery driver members
12 reimbursements); *Sena v. Facebook, Inc.*, San Mateo County Superior Court, Case No. 16-CIV-
13 00496 (2018) (\$4.25M gross settlement for class of 952 class member employees for unpaid
14 overtime wages); *Fregoso v. Eat Club, Inc.*, Santa Clara County Superior Court, Case No. 18-CV-
15 330433 (2021) (\$900K gross settlement for class of 1815 class member employees for unpaid
16 overtime wages); *Magpiong v. CareLinx, Inc.*, San Mateo County Superior Court, Case No. 21-
17 CIV-03038 (2022)(\$1.9M gross settlement for a class of 2058 Nurses for under-paid overtime
18 wages and misclassification as independent contractors).

19 **III. PROCEDURAL HISTORY**

20 9. **February 14, 2022 (Original Complaint Filed and PAGA Notice Sent):** Plaintiff
21 sent and submitted her PAGA notice (LWDA-CM-868131-22) and also filed her class action suit
22 under CCP §382 to address Defendants' violations of California wage and hour laws. Plaintiff's
23 complaint alleged 8 causes of action, including:

- 24 1. Failure to Pay Overtime Wages,
- 25 2. Failure to Pay Minimum Wage,
- 26 3. Failure to Provide Meal Breaks,
- 27 4. Failure to Provide Rest Breaks,
- 28 5. Failure to Furnish Timely/Accurate Wage Statements,
6. Failure to Pay All Wages Due at Discharge in Timely Manner,
7. Failure to Reimburse Necessary Business Expenses,
8. Unlawful Business Practices.

1 **The Putative Class Definition:** Plaintiff originally defined the class as:
2 “All current and former California-based Cannabis Dispensary Employees who were
3 classified as “Independent Contractors” and worked for Defendants from February 14,
4 2018 until the entry of judgment.”

5 Plaintiff is a member of the proposed class and representative of other non-exempt
6 Cannabis Dispensary employees. Plaintiff believes this includes, but is not limited to,
7 Defendants’ non-exempt employees classified as “independent contractors” and working as
8 Budtenders, Cashiers, Inventory Managers, Joint Rollers, Managers, Floor Leads, Floaters,
9 Receptionists, and other non-exempt employees.

10 10. **March 24, 2022 (Parties Discuss Potential Class Mediation):** Plaintiff’s counsel
11 was contacted by Defense counsel (Tal Yeyni of Lewitt Hackman in Encino, California). The
12 parties discussed potential resolution of the class wide claims and started discussing potential
13 mediators. The parties eventually agreed upon using mediator Hon. Robert L. Dondero (Ret.) and
14 schedule the mediation for July 25, 2022.

15 11. **May 24, 2022 (First Amended Complaint Filed):** Plaintiff filed and served her
16 First Amended Complaint (“FAC”) with the addition of the 9th cause of action for violations of
17 the PAGA. This includes a claim for penalties under PAGA for misclassification of employees.

18 12. **July 25, 2022 (Date of Mediation Proceedings):** The Parties participated in an all
19 day mediation with JAMS Mediator Hon. Robert L. Dondero. At the mediation the Parties
20 reached a tentative settlement of the class and PAGA claims pending this Court’s approval. The
21 Parties executed an confidential MOU regarding settlement. The Parties then executed the long
22 form settlement in the form of a Joint Stipulation of Class Action Settlement and Release (see
23 DaVega Decl., Exhibit 1: Settlement Agreement).

24 **IV. CASE INVESTIGATION, DISCOVERY, NEGOTIATIONS and MEDIATION**

25 13. The Parties vigorously investigated and debated the claims asserted against
26 Defendants. Plaintiff’s Counsel began their investigation into the claims long before the case was
27 filed. Plaintiff’s Counsel interviewed and obtained discovery/documents from various current and
28 former non-exempt employees regarding their experiences working for Defendants. After the
29 Lawsuit was initiated, Parties’ Counsel engaged in serving written discovery, informal discovery,

1 discussions and negotiations before reaching this Settlement. Early in the litigation process the
2 Parties' Counsel began having regular discussions regarding the claims, discovery, production of
3 data, and the possibility of mediation/settlement.

4 **A. The Parties' Dispute the Merits of the Case**

5 14. Throughout the litigation, Defendants have denied Plaintiff's allegations, and
6 further have denied the case is appropriate for class certification. Further, in addition to generally
7 denying the allegations, Defendants have contended that the non-exempt employees were not
8 misclassified, that Defendants paid non-exempt employees correctly for all hours worked, non-
9 exempt employees regularly received compliant meal and rest breaks and did not work
10 through/during meal/rest breaks, and did not incur business expenses. Defendants also have
11 contended that to the extent any work hours were not paid correctly, which Defendants deny, all
12 such hours were worked in violation of Defendants' policies, and without Defendants' knowledge.
13 Defendants also contend Plaintiff and other Class Members were precluded from seeking claims
14 on a class basis due to compliant arbitration agreements they signed on hire. On the other hand,
15 Plaintiff alleges that all non-exempt employees, throughout the Class Period, were subject to the
16 same policy and practice promulgated by Defendants. Plaintiff alleges they were misclassified as
17 independent contractors, were paid only their flat regular rate for overtime hours as opposed to the
18 correct rate for overtime hours (i.e. 1.5 x - 2x regular rate), that non-exempt employees worked
19 through meal/rest periods and were not paid the one hour premium/regular rate for said violations,
20 and not reimbursed for necessary business related expenses (i.e. use of cell phones for work). As
21 part of the investigation into the claims, Class Counsel interviewed current and former non-
22 exempt employees and reviewed various documents and handbooks related to non-exempt
23 employees work for Defendants. This investigation was crucial to the Parties' dispute over both
24 the merits of the case, as well as with respect to the appropriate scope of the Class.

25 **B. Document and Data Discovery and Expert Analysis**

26 15. Plaintiff and Defendants informally exchanged extensive documents and multiple
27 data points on the class (i.e. data for all class members of class period including job titles, wages
28 rates, shifts worked, length of shifts, shift dates, start/end dates, shift pay, etc.) which at the time

of filing includes approximately **93 Class Members**. Plaintiff retained experts Desmond, Marcello & Amster - Valuation and Litigation Consultants (www.dmavalue.com) (“Plaintiff’s Expert”), to examine the data for mediation. Based on analysis of the data, Plaintiff made various assessments of the data, overtime hours/incorrect pay rates, meal/rest breaks violations, misclassification penalties, unpaid business expense reimbursements, and calculated the potential damages. Further, Plaintiff’s Counsel provided Defendants with Plaintiff’s position as to a calculation of damages at mediation. Those expert calculations estimate Defendants’ potential liability for alleged:

- (1) Under-paid overtime wages at approximately \$2,506;
- (2) Meal Break damages at \$69,325 (and \$157,200 in PAGA penalties/premiums);
- (3) Rest Break damages at \$70,073 (and \$160,800 in PAGA penalties/premiums);
- (4) Misclassification Penalties at \$2.32 million;
- (5) Waiting time Penalties at \$278,362;
- (6) Wage Statement Violations at \$83,250;
- (7) Minimum Wage Violations at \$25,100,
- (8) Unreimbursed expenses at \$23,050 (and \$82,900 in PAGA penalties);
- (9) Total Liability = \$3.27 million (of which \$3.11 million is penalties)**

The putative Class Members worked approximately 7,281 shifts. If you take the Estimated Net Settlement Amount of approximately \$163,250 divided by 7,281 shifts it equals \$22.42 per shift (the average hourly rate of all class members is \$15.77/hour). Further, the minimum work days per Class Members was 1 shift, while the maximum was 259 shifts. The overall average was 78 shifts per Class Member, and the overall median was 64 shifts per Class Member.

C. Mediation and Settlement

16. On July 25, 2022 the Parties engaged in a full day of mediation with the experienced employment and class action mediator Hon. Robert Dondero (Ret.). After exchanging data, documents, and evidence the Parties met for a full-day mediation via Zoom video conference with Plaintiff’s counsel in-person with Plaintiff. The mediation was attended by Plaintiff’s Counsel and the class representative, Kristina Reyes, Defense counsel, and Defendants’

1 representatives. The Parties ultimately executed a confidential memorandum of understanding
2 (“MOU”) at the mediation, which included a term to settle the class claims for the Gross
3 Settlement Amount of **\$350,000 (Three Hundred and Fifty Thousand Dollars)**, subject to Court
4 approval. The Parties then later finalized the terms of the settlement in a long form Joint
5 Stipulation of Class Action Settlement and Release.

6 **V. CLASS REPRESENTATIVE’S SERVICE TO THE CLASS**

7 17. Plaintiff Kristina Reyes was the driving force behind this class action. Plaintiff
8 played a critical role in retaining Matthew Da Vega and Matthew Fisher of Da Vega Fisher
9 Mechtenberg LLP and providing information regarding her legal claims to make them successful.
10 Plaintiff has experience as a non-exempt Cannabis Dispensary employee and knew other putative
11 class members that in turn provided additional information in support of the legal claims. With
12 their help Plaintiff’s counsel was able to gather additional evidence, and contact additional
13 putative class members. Together, the Plaintiff worked dozens of hours to help Plaintiff’s counsel,
14 sacrificing her personal time and reputation to make the case successful.

15 18. In fact Plaintiff’s counsel spoke to other witnesses who were afraid to participate in
16 litigation for fear that it might result in damage to their careers. Plaintiff and witnesses feared that
17 by initiating or participating a class action lawsuit might risk their future job opportunities.
18 Despite this Plaintiff stepped up and worked diligently in support of the case. Plaintiff have had
19 numerous meetings and telephone conversations with Class Counsel to aid in the initial
20 investigation, factual development, mediation, and resolution of this case. She also reached out to
21 and communicated with other non-exempt employees about their work for Defendants, and
22 encouraged by Plaintiff, other non-exempt employees contacted Class Counsel to provide
23 information about their time at Defendants. In sum, the Settlement could never have been
24 achieved without Plaintiff’s service on behalf of the Class.

25 **VI. KEY TERMS OF THE SETTLEMENT**

26 19. The Settlement provides for a significant settlement payment to each Class
27 Member. In exchange, Class Members will release claims, which were asserted or could have
28 been asserted in the Lawsuit based on the facts alleged in support of the class and PAGA claims.

1 **A. Definition of the Settlement Class**

2 20. Under the Settlement Agreement, the “Class” is defined as follows:

3 The “Class”:

4 “All current and former non-exempt employees who worked for Defendants in the State of
5 California from February 14, 2018, through the date the Court grants preliminary approval
6 of the Settlement, including but not limited to individuals holding the job titles of
7 Budtenders, Cashiers, Inventory Managers, Joint Rollers, Managers, Floor Lead, Floater,
8 and Receptionist.” (Settlement Agreement §1.1)

9 “Class Period” refers to the period of time from February 14, 2018 through the date the
10 Court grants preliminary approval of the Settlement. As a practical matter, there were no
11 shifts worked by any Class Member prior to March 10, 2021.” (Settlement Agreement
12 §1.7)

13 “Settlement Class” is defined to mean those Class Members who have not “opted out” of
14 the Class Settlement by submitting a timely and valid Request for Exclusion. (Settlement
15 Agreement §1.35).

16 **B. \$350,000 Gross Settlement Amount**

17 21. The Settlement provides for Defendants to make a maximum payment of **\$350,000**
18 **(Three Hundred and Fifty Thousand Dollars)** in settlement of all class and PAGA claims in the
19 case, including the Class Counsel Award, all Settlement Administration Costs, the PAGA Penalty
20 Amount, all settlement payments to Settlement Class Members, and the Class Representative
21 Enhancement Payment. (the “Gross Settlement Amount”) (Settlement Agreement §§1.16.; 2.1).

22 22. The “Individual Settlement Amount Calculations” payment to the Class Members
23 will be based on the approximate number of Shifts each Settlement Class Member worked during
24 the Class Period. The Settlement Administrator will determine the total number of Shifts worked
25 by all Class Members during the Class Period and then divide that Net Settlement Fund by the
26 number of Total Shifts to derive the “Shift Point Value”. Then for each Settlement Class Member
27 the Settlement Administrator shall multiply the number of their Shifts worked during the Class
28 Period by the Shift Point Value to determine each Settlement Class Members Individual
Settlement Amount and that amount shall be reported on an IRS Form 1099. (Settlement
Agreement § 7.1).

29 23. The portion of the Net Settlement Amount allocated to the Class shall be all-in and
settlement checks will be sent to all Settlement Class Members. Any settlement checks not

1 cashed after 180 days from the date of the class-wide distribution shall be void, and the Settlement
2 Administrator shall, as soon as practicable, forward the sums correlating to those checks and any
3 residual amounts returned to the Settlement Administrator to be paid out per guidelines in CCP
4 §384 to Cy Pres recipient the Legal Aid Society of Los Angeles County (<https://lafla.org/>), Ron
5 Olson Justice Center, 1550 W. 8th Street, Los Angeles, CA 90017. (Settlement Agreement §7.4).

6 **C. Released Claims**

7 24. *Released Claims:* Under the terms of the Settlement Agreement, upon Final
8 Approval by the Court, and subject to Defendants' deposit of the Gross Settlement with the
9 Settlement Administrator, Plaintiff and each Settlement Class Member shall be bound by the
10 Settlement, and, at the same time, will have released the Released Parties from the Released
11 Claims. The “Released Claims” with respect to the “Released Parties” (defined below) are, “any
12 manner of action, cause of action, claim, demand, right, suit, obligation, debt, contract, agreement,
13 promise, liability, or remedy of any nature whatsoever (including without limitation any damages,
14 charges, penalties, interest, losses, costs, expenses, and attorneys’ fees), whether in law or in
15 equity, under contract, tort or any other subject area, or under any statute, rule, regulation, order,
16 or law, whether federal, state, or local, on any grounds whatsoever, including without limitation
17 any and all alleged violations of the California Labor Code, the California Code of Regulations,
18 the Industrial Welfare Commission Wage Orders, the California Business & Professions Code,
19 and the Fair Labor Standards Act, that were pled or that could have been pled, and claims sought
20 or that could have been sought, based on or arising out of the factual allegations in the Complaint,
21 whether foreseen or unforeseen, fixed or contingent.” (Settlement Agreement §1.30)

22 25. The “Released Parties” means, “Backpack Boyz and any of their current and
23 former directors, officers, members, administrators, agents, insurers, beneficiaries, trustees,
24 employee benefit plans, representatives, partners, accountants, servants, employees, attorneys,
25 parents, subsidiaries, affiliates, divisions, branches, units, shareholders, investors, contractors,
26 successors, joint venturers, predecessors, related entities, and assigns, and all other individuals and
27 entities acting by, through, under and/or on behalf of Backpack Boyz. (Settlement Agreement
28

1 §1.31) The Settlement Agreement also provides Defendants with a general release from named
2 Plaintiff, including a Civil Code § 1542 waiver. (Settlement Agreement §2.6).

3 **D. Attorneys' Fees and Incurred Expenses**

4 26. Under the terms of the Settlement Agreement, Class Counsel will move for
5 reasonable attorney's fees, not exceeding one-third (33%), **\$115,500 (One Hundred and Fifteen**
6 **Thousand and Five Hundred Dollars)**, of the Gross Settlement Amount (\$350,000). (Settlement
7 Agreement § 2.2). Class Counsel will also seek reimbursement of reasonable expenses incurred
8 by Class Counsel in connection with the Lawsuit, not exceeding **\$25,000 (Twenty-Five**
9 **Thousand Dollars)**. (*Id.*) The Court need not rule on Class Counsel's fees and expenses now; a
10 formal application will be filed prior to and to be heard at the same date and time as the Final
11 Approval Hearing. As will be explained in detail in the application, the requested fees and costs
12 are eminently reasonable considering the amount of time and expenses incurred by Class Counsel
13 in this case. In that application for fees and costs Class Counsel will provide a lodestar cross
14 check and itemization of costs so that the court can see the requests are reasonable.

15 **E. PAGA Penalty Amount, LWDA Payment, and Settlement Administrator**

16 27. **\$35,000 (Thirty-Five Thousand Dollars)** of the Gross Settlement Fund is
17 allocated to be paid for the resolution of potential PAGA claims (the "PAGA Penalty Amount").
18 (Settlement Agreement §1.27). Pursuant to PAGA, 75% of that amount, **\$26,250 (Twenty-Six**
19 **Thousand Two Hundred and Fifty Dollars)**, is to be paid to the California Labor and
20 Workforce Development Agency (the "LWDA Payment") and 25% to the Class Members, **\$8,750**
21 **(Eight Thousand Seven Hundred and Fifty Dollars)**, (the "PAGA Group Amount").
22 (Settlement Agreement §§1.20, 1.25, 1.26). Prior to the Final Approval/Fairness Hearing, Class
23 Counsel will apply to the Court for payment from the Gross Settlement Fund to compensate the
24 Settlement Administrator – CPT Group, Inc. - for fees and costs associated with the
25 administration of the settlement (not exceeding **\$10,000 [Ten Thousand Dollars]**)(the
26 "Settlement Administration Costs"). (Settlement Agreement §§ 1.2, 1.3).

27 **F. Class Representative Enhancement Payment**

28. Pursuant to the terms of the Settlement, Class Counsel will seek an Enhancement Payment of **\$10,000 (Ten Thousand Dollars)** for the Class Representative. (Settlement Agreement §§1.8, 2.3). The Court need not rule on the Class Representative Enhancement Payment now; a formal application will be filed prior to the Final Approval/Fairness Hearing. As will be explained in detail in the application, the requested Enhancement Payment is reasonable and justified based on the significant time, effort and risks the Class Representative incurred in bringing this case on behalf of the Class, as well as the substantial benefits the resulting Settlement provides the Class. The proposed Class Representative Enhancement Payment represents only .02% of the total Gross Settlement Amount and will not significantly reduce the awards of the Class Members. Public policy strongly supports service awards to plaintiffs in employment class actions, and they are routinely granted by courts in this state and around the country. Such awards compensate plaintiffs for the efforts and risks they have undertaken on behalf of the Class, without which no settlement would be possible. And, they provide an incentive for other employees to bring cases that vindicate the public interest in the lawful payment of wages.

CONCLUSION

29. Based on my extensive experience in this type of litigation and thorough familiarity with the factual and legal issues in this case, I have reached the firm conclusion that the proposed Settlement is an excellent result for the Class and is in the Class Members' best interest.

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

DATED: October 27, 2022

DA VEGA | FISHER | MECHTENBERG LLP

Math S.D.

By: _____

Matthew S. Da Vega
Attorneys for Plaintiff and Class

REYES v. BACKPACK BOYZ
STIPULATION OF CLASS ACTION SETTLEMENT and RELEASE

EXHIBIT 1
**(STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE)**

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1 “Parties”). Except as otherwise specified, defined terms shall have the meanings set forth in the
2 Recitals and Section 1 of this Agreement.

3 RECITALS

4 A. Plaintiff initiated the above-captioned lawsuit by filing a Class Action
5 Complaint against Defendants on or about February 14, 2022, in the Superior Court for the
6 County of Los Angeles (“Court”), Case No. 22STCV05435 (the “Action”). Plaintiff filed a
7 First Amended Representative and Class Action Complaint against Defendants on or about
8 May 24, 2022 (“First Amended Complaint”). The First Amended Complaint asserted causes of
9 action for alleged (1) failure to pay overtime wages, citing California Labor Code sections 204,
10 510, 1194, 1198, 1199 and applicable Wage Orders; (2) failure to pay minimum wage, citing
11 California Labor Code sections 1182.12, 1194, 1197, 1197.1 and applicable Wage Orders; (3)
12 failure to provide meal breaks, citing California Labor Code sections 226.7 and 512 and
13 applicable Wage Orders; (4) failure to provide rest breaks, citing California Labor Code
14 section 226.7 and applicable Wage Orders; (5) failure to provide timely and accurate wage
15 statements, citing California Labor Code sections 226 and 1174; (6) failure to pay all wages
16 due at termination – waiting time penalties, citing California Labor Code sections 201, 202 and
17 203; (7) failure to reimburse necessary business expenses, citing California Labor Code section
18 2802; (8) unlawful and/or unfair business practices under California Business & Professions
19 Code section 17200, et seq. (“UCL”); and (9) violation of the Private Attorney General Act
20 (“PAGA”), California Labor Code section 2698, et seq. Plaintiff’s First Amended Complaint
21 asserted these claims on behalf of an alleged class of independent contractor Cannabis
22 Dispensary Employees working in California and sought alleged unpaid or underpaid
23 compensation, including for regular and overtime hours, restitution, liquidated damages,
24 statutory and civil penalties, attorneys’ fees, costs, and interest.

25 B. Thereafter, Plaintiff and Defendants engaged in formal and informal discovery,
26 including the exchange of documents and data, including without limitation information
27 regarding all shifts worked by, and amounts paid to, Class Members during the relevant period.
28

1 C. On July 25, 2022, the Parties participated in an all-day mediation before Hon.
2 Robert Dondero (Ret.), a well-respected mediator with significant experience mediating
3 employment wage-and-hour class actions. After a full day of mediation, the Parties agreed to
4 the material terms of this Agreement, which were documented in a signed Memorandum of
5 Understanding (“MOU”).

6 D. At all times, Defendants have denied and continue to deny any wrongdoing and
7 deny that they committed, threatened, or attempted to commit, any of the wrongful acts or
8 violations of law or duty alleged in the First Amended Complaint or the Action, and instead
9 contend that Defendants have acted properly and lawfully. Defendants also deny that Plaintiff or
10 any of the Class Members are entitled to any form of wages, damages, penalties, interests,
11 attorneys’ fees, costs, or any relief whatsoever (at law or at equity) based on the conduct alleged
12 in the First Amended Complaint or the Action. In addition, Defendants maintain that they have
13 meritorious defenses to the claims alleged in the First Amended Complaint and the Action, and
14 that they were prepared to vigorously defend the Action. Nonetheless, taking into account the
15 uncertainty and risks inherent in litigation, Defendants have concluded that defense of the claims
16 asserted in the First Amended Complaint and the Action would be burdensome and expensive,
17 and that it is desirable and beneficial to fully and finally settle and terminate the Action in the
18 manner and upon the terms and conditions set forth in this Agreement.

19 E. Plaintiff believes that the claims asserted in the Action have substantial merit.
20 Nonetheless, Plaintiff and her counsel, Matthew S. Da Vega and Matthew Fisher of Da Vega
21 Fisher Mechtenberg LLP (“Class Counsel”), recognize and acknowledge the expense and length
22 of continued prosecution of the Action against Defendants through trial and any subsequent
23 appeals. Plaintiff and Class Counsel have also taken into account the uncertain outcome and
24 risks of litigation, especially in complex actions, as well as the difficulties and delays inherent in
25 such litigation. Based on their evaluation, Class Counsel have concluded that the terms and
26 conditions of this Settlement Agreement are fair, reasonable, and adequate to the Class, and that
27 it is in the best interests of the Class to settle the claims alleged in the First Amended Complaint
28 and the Action pursuant to the terms and provisions of this Settlement Agreement.

G. This Agreement is made and entered into by and between Plaintiff, individually and on behalf of all others alleged to be similarly situated, and Defendants, and is subject to the terms and conditions hereof and the Court's approval. The Parties expressly acknowledge that this Agreement is entered into solely for the purpose of compromising significantly disputed complex claims and that nothing herein is an admission of liability or wrongdoing by Defendants. The Agreement's provisions, and all related drafts, communications and discussions, cannot be construed as or deemed to be evidence of an admission or concession of any point of fact or law by any person or entity and cannot be offered or received into evidence or requested in discovery in this Action or any other action or proceeding as evidence of an admission or concession. If for any reason the Agreement is not approved by the Court, the Agreement and the MOU will be of no force or effect.

22 | 1. DEFINITIONS.

25 **1.1** “Class” shall refer to the following group of individuals: “All current and former
26 non-exempt employees who worked for Defendants in the State of California from February 14,
27 2018, through the date the Court grants preliminary approval of the Settlement, including but not
28 limited to individuals holding the job titles of Budtenders, Cashiers, Inventory Managers, Joint

1 Rollers, Managers, Floor Lead, Floater, and Receptionist.” “Class Member(s)” refers to a
2 member(s) of the Class.

3 **1.2** “Settlement Administrator” means CPT Group, Inc., the third-party class action
4 settlement administrator mutually agreed to by the Parties for the purposes of administering this
5 Settlement. The Parties will each ensure and represent that they do not have any financial
6 interest in the Settlement Administrator or otherwise have a relationship with the Settlement
7 Administrator that could create a conflict of interest.

8 **1.3** “Settlement Administration Costs” means the costs payable to the Settlement
9 Administrator for all fees and expenses reasonably and necessarily incurred as a result of
10 administering this Settlement, including, but not limited to, the cost of providing notice of the
11 proposed settlement to the Class, the cost of administering the settlement and any settlement
12 fund created as a result of this Agreement. The Settlement Administration Costs are estimated to
13 **not exceed Ten Thousand Dollars (\$10,000)** and shall be payable from, and not in addition to,
14 the Gross Settlement Amount.

15 **1.4** “Class Counsel” means Matthew S. Da Vega and Matthew Fisher of Da Vega
16 Fisher Mechtenberg LLP.

17 **1.5** “Class Counsel Award” means the amount awarded by the Court pursuant to this
18 Agreement to Class Counsel for reasonable attorneys’ fees and reimbursement of litigation costs
19 and expenses incurred in connection with the litigation and resolution of this Action, including,
20 but not limited to, costs associated with documenting the Agreement, securing the Court’s
21 approval of the Agreement, administering the Agreement, obtaining entry of the judgment in the
22 Action, and expenses for any experts or consultants. The Class Counsel Award shall be paid
23 from, and not in addition to, the Gross Settlement Amount.

24 **1.6** “Class List” means a list of the Class Members formatted in Microsoft Office
25 Excel and shall include each Class Member’s full name; mailing address and telephone number
26 last known to Defendants; Social Security number; and estimated number of shifts worked
27 during the Class Period. The Settlement Administrator will treat the Class List as confidential,
28

1 and the Class List shall not be used for any purpose other than as set forth herein. The Settlement
2 Administrator shall not disclose the Class List to Class Counsel or any other person or entity.

3 **1.7** “Class Period” refers to the period of time from February 14, 2018 through the
4 date the Court grants preliminary approval of the Settlement”. As a practical matter, there were
5 no shifts worked by any Class Member prior to March 10, 2021.

6 **1.8** “Class Representative Enhancement Payment” means the amount to be awarded
7 by the Court pursuant to this Agreement to be paid to Plaintiff in recognition of her effort and
8 work in prosecuting the Action on behalf of the Class Members and others similarly situated, and
9 the associated risks of acting as a class representative. The Class Representative Enhancement
10 Payment shall be reported on an IRS Form 1099 and shall be payable from, and not in addition
11 to, the Gross Settlement Amount.

12 **1.9** “Class Settlement” means the settlement and resolution of the Released Claims,
13 except the PAGA Release.

14 **1.10** “Complaint” means the original complaint filed on or about February 14, 2022,
15 the First Amended Complaint filed by Plaintiff on or about May 24, 2022, and the Second
16 Amended Complaint to filed pursuant to Section 3.1 of this Agreement to amend the class
17 definition to the one stated in Section 1.1, above (similar in form to the draft attached hereto as
18 **Exhibit A - Second Amended Complaint**); and to be filed at the same time as the Motion for
19 Preliminary Approval of the Class and PAGA settlement.

20 **1.11** “Defendants’ Counsel” shall mean Lewitt, Hackman, Shapiro, Marshall &
21 Harlan, ALC.

22 **1.12** “Effective Date” means 60 days after the date of the entry of the Final Approval
23 Order and Judgment if there are no valid objections to the Settlement. However, if a valid
24 objection is made and an appeal or other effort to obtain reconsideration or review has been
25 initiated, the “Effective Date” shall instead mean two (2) court days after the date that such
26 appeal is withdrawn, or such appeal or other reconsideration or review has been finally
27 concluded in favor of the Final Approval Order and Judgment and the Final Approval Order and
28

Judgment is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing en banc, petitions for certiorari, or otherwise.

1.13 “Estimated Net Settlement Fund” means the Gross Settlement Amount less the current estimated amounts for a Class Counsel Award (i.e., **\$115,500 in attorneys’ fees and \$25,000 in attorney costs**), the Settlement Administration Costs (i.e., **\$10,000**), the Class Representative Enhancement Payment (i.e., **\$10,000**), and the LWDA Payment (i.e., **\$26,250 [75%]** of the PAGA Penalty Award of \$35,000). The actual Net Settlement Fund will be determined pursuant to Section 1.21.

1.14 “Fairness Hearing” means the hearing at which the Court decides whether to enter the Final Approval Order and Judgment.

1.15 “Final Approval Order and Judgment” means an order finally approving the Settlement as being fair, reasonable and adequate and certifying the Class (substantially similar in form to draft attached hereto as **Exhibit D - Final Approval Order and Judgment**).

1.16 “Gross Settlement Amount” means a non-reversionary common fund in the amount of **Three Hundred and Fifty Thousand Dollars (\$350,000)**, which includes the Class Counsel Award to Class Counsel, all Settlement Administration Costs, the LWDA Payment, all settlement payments to Settlement Class Members, and the Class Representative Enhancement Payment.

1.17 INTENTIONALLY LEFT BLANK

1.18 “Individual Settlement Amount” means the amount paid in settlement hereunder to each Settlement Class Member as determined pursuant to the terms set forth in Section 7.1.

1.19 “LWDA” means the California Labor and Workforce Development Agency

1.20 “LWDA Payment” means seventy-five percent (75%) of the PAGA Penalty Amount or **Twenty Six Thousand Two Hundred and Fifty Dollars (\$26,250)**, to be paid to the LWDA.

1.21 “Net Settlement Fund” means the Gross Settlement Amount less the Class Counsel Award to Class Counsel, all Settlement Administration Costs, the Class Representative Enhancement Payment, the LWDA Payment, and the PAGA Group Amount. To the extent the

1 Court does not approve the full requested Class Counsel Award to Class Counsel, the Class
2 Representative Enhancement Payment, or Settlement Administration Costs, the Net Settlement
3 Fund will increase. Settlement payments to Settlement Class Members will come out of the Net
4 Settlement Fund.

5 **1.22** “Notice” or “Class Notice” means the notice of the proposed Settlement terms, as
6 approved by Class Counsel, Defendants’ Counsel and the Court, to be provided to Class
7 Members. The Class Notice must be substantially similar to the form attached as **Exhibit C -**
8 **Class Notice**, and contain: (a) information regarding the nature of the Action, (b) a summary of
9 the terms of the Agreement, (c) the definition of the Class, (d) the formula for calculating the Net
10 Settlement Fund (including the amounts sought for the Class Counsel Award, Class
11 Representative Enhancement Payment, Settlement Administration Costs and the LWDA
12 Payment) and Individual Settlement Amounts, (e) the individual Class Member’s estimated
13 number of shifts worked during the Class Period and Gross Allocated Amount (as defined in
14 Section 7.1), (f) the dates which comprise the Class Period, (g) instructions on how to submit a
15 Shift Dispute, Request for Exclusion (“Opt Out”), or Objection, and (h) the deadlines by which
16 Shift Disputes, Requests for Exclusion, or Objections to the Agreement must be submitted to the
17 Settlement Administrator.

18 **1.23** “Class Member(s)” means all current and former non-exempt employees who
19 worked for Defendants in the State of California from February 14, 2018 through the date the
20 Court grants preliminary approval of the Settlement, including but not limited to individuals
21 holding the job titles of Budtenders, Cashiers, Inventory Managers, Joint Rollers, Managers,
22 Floor Lead, Floater, and Receptionist. All Class Members will be credited with at least one (1)
23 Shift.

24 **1.24** “Objection” means a Class Member’s valid and timely written objection to the
25 Settlement Agreement. For the Objection to be valid, it must: (a) state the case name and number
26 of the Action, (b) contain the Class Member’s name, current mailing address, most current
27 telephone number, and last four digits of his or her Social Security number, (c) state the basis for
28 the objection, (d) be signed by the Class Member, (e) be submitted to the Settlement

1 Administrator at the address specified in the Class Notice; and (f) be submitted with proof of the
2 submission date (such as a U.S. Postal Service postmark or another delivery service date stamp)
3 on or before the Response Deadline. If the Class Member wishes to speak at the Fairness
4 Hearing, he or she should (although they are not required to) file a notice of intention to appear
5 with the Court and provide a copy of this notice and their Objection to counsel for both Parties.

6 **1.25** “PAGA Group” shall mean all Class Members.

7 **1.26** “PAGA Group Amount” means twenty-five percent (25%) of the PAGA Penalty
8 Amount (\$35,000), or **Eight Thousand Seven Hundred and Fifty Dollars (\$8,750)**, to be
9 distributed pro rata and paid to the PAGA Group by the Settlement Administrator pursuant to
10 Sections 7.2 and 7.3.

11 **1.27** “PAGA Penalty Amount” means **Thirty Five Thousand Dollars (\$35,000)** to be
12 paid to settle any and all claims for which penalties under PAGA may be sought or are otherwise
13 available, as set forth in Section 2.5 of this Agreement.

14 **1.28** “Preliminary Approval Order” means the Court order granting preliminary
15 approval of the Settlement Agreement. The proposed Preliminary Approval Order submitted to
16 the Court for its approval shall be substantially similar to the draft attached to this Settlement
17 Agreement as **Exhibit B - Preliminary Approval Order**.

18 **1.29** “QSF” means the “Qualified Settlement Fund” which is an interest-bearing
19 account designated and controlled by the Settlement Administrator as described in Section 2.1.

20 **1.30** “Released Claims” means any manner of action, cause of action, claim, demand,
21 right, suit, obligation, debt, contract, agreement, promise, liability, or remedy of any nature
22 whatsoever (including without limitation any damages, charges, penalties, interest, losses, costs,
23 expenses, and attorneys’ fees), whether in law or in equity, under contract, tort or any other
24 subject area, or under any statute, rule, regulation, order, or law, whether federal, state, or local,
25 on any grounds whatsoever, including without limitation any and all alleged violations of the
26 California Labor Code, the California Code of Regulations, the Industrial Welfare Commission
27 Wage Orders, the California Business & Professions Code, and the Fair Labor Standards Act,
28 that were pled or that could have been pled, and claims sought or that could have been sought,

1 based on or arising out of the factual allegations in the Complaint, whether foreseen or
2 unforeseen, fixed or contingent.

3 **1.31** “Released Parties” means Backpack Boyz and any of their current and former
4 directors, officers, members, administrators, agents, insurers, beneficiaries, trustees, employee
5 benefit plans, representatives, partners, accountants, servants, employees, attorneys, parents,
6 subsidiaries, affiliates, divisions, branches, units, shareholders, investors, contractors, successors,
7 joint venturers, predecessors, related entities, and assigns, and all other individuals and entities
8 acting by, through, under and/or on behalf of Backpack Boyz.

9 **1.32** “Releasing Parties” means Plaintiff and all Class Members who do not timely
10 submit a valid Request for Exclusion (aka “Opt Out”), and each of their successors, assigns,
11 legatees, heirs, and personal representatives.

12 **1.33** “Request for Exclusion” (aka “Opt Out”) means a timely and valid written request
13 submitted by a Class Member indicating that they request to be excluded from the Class
14 Settlement. The Request for Exclusion must: (a) state the case name and number of the Action,
15 (b) set forth the name, address, and telephone number of the Class Member requesting exclusion;
16 (c) be signed by the Class Member; (d) be addressed to the Settlement Administrator; and (e) be
17 postmarked on or before the Response Deadline.

18 **1.34** “Response Deadline” means the deadline by which Class Members must submit
19 to the Settlement Administrator valid Shift Disputes, Requests for Exclusion, or Objections to
20 the Agreement. Shift Disputes, Requests for Exclusion and Objections to the Agreement must be
21 submitted with proof of the submission date (such as a U.S. Postal Service postmark or another
22 delivery service date stamp) on or before the Response Deadline. The Response Deadline shall
23 be forty-five (45) calendar days from the initial mailing of the Class Notice to Class Members
24 pursuant to Section 4. In the event of a re-mailed Class Notice, the Response Deadline will be
25 extended an additional fifteen (15) calendar days for that individual Class Member.

26 **1.35** “Settlement Class Member(s)” means a Class Member who has not “opted out” of
27 the Class Settlement by submitting a valid and timely Request for Exclusion.
28

1 **1.36** “Shift Dispute” means the written letter that a Class Member must submit to the
2 Settlement Administrator with proof of the submission date (such as a U.S. Postal Service
3 postmark or another delivery service date stamp) on or before the Response Deadline, if they
4 wish to dispute the number of Shifts credited to them. The Shift Dispute must: (a) state the case
5 name and number of the Action, (b) set forth the Class Member’s name, address, and telephone
6 number; (c) be signed by the Class Member; (d) include any documentary evidence showing that
7 the Shift information is inaccurate, and (e) be postmarked or submitted to the Settlement
8 Administrator on or before the Response Deadline.

9 **1.37** “Total Shifts” is the total number of Shifts worked by all Settlement Class
10 Members during the Class Period.

11 **2. Settlement Relief and Releases.**

12 **2.1 Gross Settlement Amount.**

13 **(a)** Defendants shall pay the Gross Settlement Amount (\$350,000),
14 into the QSF within five (5) business days after the Effective Date.

15 **(b)** The Parties agree that the QSF is intended to be a “Qualified
16 Settlement Fund” under Section 468B of the Code and Treas. Reg. §1.468B-1, 26 CFR §
17 1.468B-1, et seq., and will be administered by the Settlement Administrator as such. Among
18 other duties of the Settlement Administrator provided by this Settlement, the Settlement
19 Administrator shall open and administer a settlement account in such a manner as to qualify, and
20 maintain the qualification of, the account as a “Qualified Settlement Fund” under Section 468B
21 of the Code and Treas. Reg. §1.468B-1 and satisfy all federal, state and local income and other
22 tax reporting, return, and filing requirements with respect to the QSF. The Parties and the
23 Settlement Administrator shall treat the account as coming into existence as a Qualified
24 Settlement Fund on the earliest date permitted as set forth in 26 CFR §1.468B-1(j)(2)(i), and
25 such election statement shall be attached to the appropriate returns as required by 26 CFR
26 §1.468B-1(j)(2)(ii). The Parties agree to cooperate with the Settlement Administrator and one
27 another to the extent reasonably necessary to carry out the provisions of this section.
28

1 (c) The Gross Settlement Amount shall be used to pay all amounts
2 contemplated or required by this Agreement, including the Class Representative Enhancement
3 Payment to Plaintiff, Settlement Administration Costs to the Settlement Administrator, the Class
4 Counsel Award to Class Counsel, the PAGA Penalty Amount, and as described in Section 7.1, to
5 cover all payments to Settlement Class Members.

6 (d) The Settlement Administrator will calculate the amounts to be paid to
7 Settlement Class Members in accordance with the terms and provisions of this Agreement and in
8 accordance with applicable state and federal law (including tax regulations).

9 (e) No person or entity shall have any claim against Backpack Boyz,
10 Defendants' Counsel, any of the Released Parties, Plaintiff, Class Members, Class Counsel or
11 any Settlement Administrator based on distributions and payments made in accordance with this
12 Agreement.

13 **2.2 Class Counsel Award.** Subject to Court approval, Defendants agree not to object
14 to Class Counsel's request for **attorneys' fees of up to thirty-three percent (33%)** of the Gross
15 Settlement Amount (\$350,000) **or One Hundred and Fifteen Thousand Five Hundred**
16 **Dollars (\$115,500)** to cover all attorneys' fees. Plaintiff and Class Counsel agree to not seek an
17 award of greater than thirty-three percent (33%) of the Gross Settlement Amount (i.e., \$350,000)
18 for fees and that Defendants will not be obligated to pay any award in excess of thirty-three
19 percent (33%) of the Gross Settlement Amount. Subject to Court approval, Defendants agree not
20 to object to Class Counsel's request for **reasonable litigation costs of up to Twenty-Five**
21 **Thousand Dollars (\$25,000)**. Class Counsel will file any papers supporting the request for the
22 Class Counsel Award with the Court sixteen (16) court days before the Fairness Hearing. Class
23 Counsel shall provide the Settlement Administrator their current and valid Form W-9 within five
24 (5) business days of the Effective Date. If the Court approves the Settlement of this Action and a
25 payment of a Class Counsel Award, and so long as Class Counsel has timely provided the
26 Settlement Administrator with their current and valid Form W-9, Class Counsel shall be paid the
27 Class Counsel Award approved by the Court out of the QSF within ten (10) business days after
28 the Effective Date.

1 **2.3 Class Representative Enhancement Payment.** Plaintiff agrees not to petition the
2 Court for more than **Ten Thousand Dollars (\$10,000) for a Class Representative**
3 **Enhancement Payment.** While Defendants do not object to a reasonable Class Representative
4 Enhancement Payment, it takes no position on the propriety of the amount sought by Plaintiff.
5 Plaintiff will file any papers supporting the request for a Class Representative Enhancement
6 Payment with the Court at least sixteen (16) court days prior to the Fairness Hearing. Plaintiff
7 shall provide the Settlement Administrator a current and valid Form W-9 within five (5) business
8 days of the Effective Date. If the Court approves the Settlement of this Action and a Class
9 Representative Enhancement Payment, so long as Plaintiff has timely provided the Settlement
10 Administrator a current and valid Form W-9, the Settlement Administrator shall pay the Class
11 Representative Enhancement Payment awarded by the Court to Plaintiff from the QSF within ten
12 (10) business days after the Effective Date. Plaintiff acknowledges that she has obtained no tax
13 advice from Backpack Boyz or Defendants' Counsel, and that Backpack Boyz and Defendants'
14 Counsel have not made any representation concerning the tax consequences, if any, of the Class
15 Representative Enhancement Payment. Plaintiff agrees that she is solely responsible for the tax
16 consequences of the Class Representative Enhancement Payment.

17 **2.4 Reduction in Class Representative Enhancement Payment or the Class Counsel**
18 **Award.** In the event that the Court (or any appellate court) awards less than the amount requested
19 for the Class Counsel Award or the Class Representative Enhancement Payment, only the
20 awarded amounts shall be paid and shall constitute satisfaction of those obligations and full
21 payment thereunder, and any remaining or un-awarded portion of the requested Class Counsel
22 Award and/or the Class Representative Enhancement Payment shall be allocated to the
23 Settlement Class Members pursuant to the terms of Section 7. To the extent the Court does not
24 approve any or all of the amount of the Class Counsel Award and/or the Class Representative
25 Enhancement Payment, the Settlement shall remain binding, and this will not be a justification
26 for Plaintiff to withdraw from the Settlement. Plaintiff shall not have the right to revoke the
27 Settlement Agreement if the Court reduces or does not approve the requested Class Counsel
28 Award or Class Representative Enhancement Payment, although Plaintiff shall retain the right to

1 appeal any reduction of the Class Counsel Award. Any reduction of the amount of the Class
2 Counsel Award and/or the Class Representative Enhancement Payment by the Court or by an
3 appellate court shall not affect any of the Parties' other rights and obligations under this
4 Agreement.

5 **2.5 Payment and Allocation of the PAGA Penalty Amount. Thirty Five Thousand**
6 **Dollars (\$35,000)** (the PAGA Penalty Amount), representing 10% of the Gross Settlement
7 Amount (\$350,000), will be paid from the Gross Settlement Amount for the settlement, release
8 and discharge of any and all claims for which penalties under PAGA may be sought or could
9 otherwise be available to any member of the PAGA Group as stated in Section 2.8. Pursuant to
10 the express requirements of California Labor Code section 2699(i), the PAGA Penalty Amount
11 shall be allocated as follows: (i) **Twenty Six Thousand Two Hundred and Fifty Dollars**
12 **(\$26,250)** (75%) to be paid to the LWDA (the "LWDA Payment"); and (ii) **Eight Thousand**
13 **Seven Hundred and Fifty Dollars (\$8,750)** (25%) (the "PAGA Group Amount") for
14 distribution to the PAGA Group. The LWDA Payment and the PAGA Group Amount shall be
15 paid out of the QSF by the Settlement Administrator within ten (10) business days after the
16 Effective Date.

17 **2.6 Release of Claims by Plaintiff.** Upon the Effective Date, Plaintiff and each of her
18 successors, assigns, legatees, heirs, and personal representatives waive, release, forever
19 discharge, and will not pursue any manner of action, cause of action, claim, demand, right, suit,
20 obligation, debt, contract, agreement, promise, liability, or remedy of any nature whatsoever
21 (including without limitation any damages, charges, penalties, interest, losses, costs, expenses,
22 and attorneys' fees), whether in law or in equity, under contract, tort or any other subject area, or
23 under any statute, rule, regulation, order, or law, whether federal, state, or local, on any grounds
24 whatsoever, arising out of or relating to any acts, facts, omissions or obligations, whether known
25 or unknown, whether foreseen or unforeseen, fixed or contingent, against any or all of the
26 Released Parties. This release shall not apply to claims for workers' compensation benefits,
27 unemployment insurance benefits, pension or retirement benefits, or any other claim or right that
28 cannot be waived or released as a matter of law. In addition, Plaintiff, and each of Plaintiff's

successors, assigns, legatees, heirs, and personal representatives, expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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

Plaintiff agrees that this waiver is an essential and material term of this release and the settlement that underlies it and that without such waiver the settlement would not have been accepted.

2.7 Release of Claims by Class Members. Upon the Effective Date, all Releasing Parties shall waive and forfeit, and be deemed to have fully, finally and forever released and discharged all Released Claims against all Released Parties.

2.8 PAGA Release. Upon the Effective Date, Plaintiff, the PAGA Group and the LWDA shall waive, release, and forever discharge the Released Parties from any and all liabilities, claims or actions for civil penalties under PAGA (the California Private Attorneys General Act, California Labor Code section 2698, *et seq.*), including related attorneys fees, costs, and interest, for conduct or omissions during the Class Period based on or arising out of the factual allegations of the Complaint, including without limitation any and all claims under California Labor Code sections 201, 202, 203, 204, 204.2, 206, 206.5, 207, 208, 210, 212, 218.5, 218.6, 221, 223, 224, 226, 226.7, 226.8, 227, 227.3, 230, 230.1, 233, 246, 432.5, 510, 511, 512, 513, 551, 552, 558, 976, 1025, 1102.5, 1174, 1182.12, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1198.3, 1199, 1696.5, 2570.3, 2698, 2699, 2699.3, 2699.5, 2753, 2800, 2802, 2806, 6311, and 6399.7.

3. PRELIMINARY APPROVAL PROCESS.

3.1 Amended Complaint. On or about February 14, 2022, Plaintiff submitted a PAGA letter and draft complaint to the LWDA. The Parties agree that Plaintiff shall file a Second

1 Amended Complaint in the Action on behalf of herself and the Class and PAGA Group (as
2 defined in Sections 1.1 and 1.26), for purposes of this Settlement only (redefining the class per
3 Section 1.1), and that is substantially similar to the form attached hereto as **Exhibit A - Second**
4 **Amended Complaint** (the “Second Amended Complaint”). Plaintiff shall provide Defendants
5 with a copy of the draft Joint Stipulation for Leave to File a Second Amended Complaint and the
6 Second Amended Complaint at least five (5) court days prior to filing.

7 **3.2 Preliminary Approval Hearing.** As soon as practicable after this Agreement is
8 fully executed Plaintiff shall file a motion for preliminary approval (along with the Joint
9 Stipulation re Leave to File the Second Amended Complaint and Second Amended Complaint)
10 seeking an order from the Court for: (i) conditional certification of the Class for settlement
11 purposes only; (ii) preliminary approval of this Settlement Agreement; (iii) setting a date for the
12 Fairness Hearing; (iv) appointing Plaintiff as class representative for settlement purposes only;
13 and (v) appointing the law firm of Da Vega Fisher Mechtenberg LLP as Class Counsel for
14 settlement purposes only. Defendants will not oppose Plaintiff seeking conditional certification
15 of the Class for settlement purposes only. Plaintiff shall provide a copy of the Agreement to the
16 LWDA, pursuant to California Labor Code section 2699(l)(2), at the same time that it is
17 submitted to the Court.

18 **3.3 Preliminary Approval of Notice.** In conjunction with the motion for entry of the
19 Preliminary Approval Order, Plaintiff shall submit for Court approval the proposed Class Notice.
20 The Preliminary Approval Order shall also provide for the Class Notice to be sent to all Class
21 Members by the Settlement Administrator.

22 **3.4 Preliminary Approval Briefing.** Class Counsel shall draft the motion for
23 preliminary approval of the Settlement and provide Defendants with a copy of the draft
24 preliminary approval papers at least five (5) court days prior to filing so that Defendants may
25 provide any comments to the drafts. Defendants shall be permitted, but not required, to file its
26 own brief in support of the Preliminary Approval Order.

27 **4. NOTICE TO THE CLASS, OBJECTIONS, AND REQUESTS FOR EXCLUSION.**
28

1 **4.1 Delivery of the Class List.** Within ten (10) calendar days after entry of the
2 Preliminary Approval Order, Defendants shall provide the Class List to the Settlement
3 Administrator.

4 **4.2 Notice by First-Class U.S. Mail.** Within thirty (30) calendar days after entry of the
5 Preliminary Approval Order, the Settlement Administrator shall mail the Class Notice via First-
6 Class U.S. Mail to all Class Members for whom it has a valid U.S. Postal address. Each Class
7 Member's Class Notice shall include the number of Shifts with which the Class Member has
8 been credited.

9 **4.3 Updating of Contact Information in the Class List.** After receiving the Class List
10 and prior to mailing the Class Notice, the Settlement Administrator shall perform a search based
11 on the National Change of Address Database for information to update and correct for any
12 known or identifiable address changes. If the Settlement Administrator determines that a Class
13 Member has more than one address and it cannot reasonably determine which address is the
14 most current, the Settlement Administrator shall mail the Class Notice to all such addresses.

15 **4.4 Re-Mailing of Notice.** Any Class Notice returned to the Settlement Administrator
16 as non-deliverable on or before the Response Deadline shall be sent promptly via First-Class
17 U.S. Mail to the forwarding address affixed thereto. With respect to Class Notices returned to the
18 Settlement Administrator without a forwarding address, the Settlement Administrator shall make
19 an attempt to locate an address by way of skip-trace and promptly re-mail the returned Class
20 Notice via First-Class U.S. Mail.

21 **4.5 Shift Dispute Procedure.** To dispute the number of Shifts with which they have
22 been credited, a Class Member must timely submit a Shift Dispute to the Settlement
23 Administrator by the Response Deadline. The Shift Dispute may be submitted by U.S. Mail or
24 other delivery service. The submission date is deemed to be, in the case of submission by U.S.
25 Mail or other delivery service, the date the Shift Dispute is sent, as evidenced by the postmark or
26 other delivery service date stamp. Class Members who timely submit Shift Disputes may
27 produce evidence to the Settlement Administrator showing that the Shift information is
28 inaccurate. The Settlement Administrator shall decide the dispute. Defendants' records will be

1 presumed correct, but the Settlement Administrator will evaluate the evidence submitted by the
2 Class Member and will make the final decision as to the merits of the dispute. The Settlement
3 Administrator may ask Defendants to produce additional information regarding the Class
4 Member disputing their credited Shifts for the purpose of resolving the dispute. Defendants shall
5 strive to provide such information within five (5) business days of the Settlement
6 Administrator's request. It is understood and agreed that any decision by the Settlement
7 Administrator shall not operate to increase the Gross Settlement Amount.

8 **4.6** Request for Exclusion Procedures. Any Class Member wishing to opt out of the
9 Class Settlement must submit by U.S. Mail or other delivery service a written and signed
10 Request for Exclusion to the Settlement Administrator (at the address set forth in the Class
11 Notice) containing all the information required by Section 1.33 of this Agreement, on or before
12 the Response Deadline. The date the Request for Exclusion is sent, as evidenced by the postmark
13 or other delivery service date stamp, shall be the exclusive means to determine whether a
14 Request for Exclusion has been timely submitted. Class Members who submit a timely and valid
15 Request for Exclusion will not be bound by the Class Settlement and will have no standing to
16 object to the Settlement; however, they will be bound by the PAGA Release. As described in
17 Sections 7.2 and 7.3, all Class Members will be entitled to a pro rata share of the PAGA Group
18 Amount regardless of whether they opt out under this Section 4.6. If more than 10% of Class
19 Members timely and validly opt out of the Settlement, Defendants may elect to terminate the
20 Agreement. If Defendants terminate the Agreement under this provision, Defendants will bear
21 any of the already incurred costs of the third party settlement administration.

22 **4.7** Objection Procedures. To object to the Class Settlement or the Agreement, a
23 Settlement Class Member must submit a valid Objection, by U.S. Mail or other delivery service,
24 to the Settlement Administrator (at the address set forth in the Class Notice) on or before the
25 Response Deadline. The Objection must be signed by the Settlement Class Member and contain
26 all information required by Section 1.24 of this Agreement. The date the Objection is sent, as
27 evidenced by the postmark or other delivery service date stamp, shall be the exclusive means to
28 determine whether an Objection has been timely submitted. If a Class Member wishes to speak

1 at the Fairness Hearing, they should (but are not required to) file a notice of intention to appear
2 with the Court and provide a copy of the notice and their Objection to counsel for both Parties.
3 All Settlement Class Members will be permitted to appear and speak at the Fairness Hearing in
4 order to have an Objection heard by the Court. Class Members who fail to object in the manner
5 specified in this Agreement shall be deemed to have waived all objections to the Agreement and
6 shall be foreclosed from making any objections (whether by appeal or otherwise) to the
7 Settlement.

8 **4.8** Settlement Administration Reports. The Settlement Administrator shall provide
9 Defendants' Counsel and Class Counsel a weekly report which certifies the number of Class
10 Members who have submitted (i) Shift Disputes, (ii) Requests for Exclusion (including the
11 name(s) of Class Member(s) who submitted a request for exclusion), and (iii) Objections.
12 Additionally, within five (5) calendar days of the Response Deadline, the Settlement
13 Administrator will provide to Defendants' Counsel and Class Counsel a report containing the
14 above-mentioned information ("Final Response Report"). The Settlement Administrator will also
15 provide to counsel for both Parties any updated reports regarding the administration of the
16 Agreement as needed or requested by either Party individually, or by the Parties jointly, subject
17 to the terms of this Agreement.

18 **4.9** Notice Sufficient. The Parties agree not to engage in any other form of non-
19 Court-sanctioned notification or publicity relating to this Settlement or the Action.

20 **4.10** No Solicitation of Settlement Objections or Exclusions. The Parties agree that at
21 no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class
22 Members to submit Objections or Requests for Exclusion, or to appeal from the Court's Final
23 Approval Order and Judgment.

24 **4.11** Certification of Completion. The Settlement Administrator shall provide a written
25 declaration under oath certifying the completion of its notice-related tasks no later than twenty-
26 one (21) calendar days after the Response Deadline.

27 **5. FAIRNESS HEARING; JUDGMENT.**
28

1 **5.1 Fairness Hearing and Entry of the Final Approval Order and Judgment.** Upon
2 expiration of the deadlines to submit Shift Disputes, Requests for Exclusion, or Objections to the
3 Agreement as described above, a Fairness Hearing shall be conducted to determine whether the
4 Court should enter a Final Approval Order and Judgment, providing for, among other things,
5 payment of Individual Settlement Amounts to Settlement Class Members and the amounts
6 properly payable for (i) the Class Counsel Award; (ii) the Class Representative Enhancement
7 Payment; (iii) the PAGA Penalty Amount; and (iv) all Settlement Administration Costs. Plaintiff
8 shall request that the Fairness Hearing be held within one hundred twenty (120) calendar days
9 after entry of the Preliminary Approval Order, subject to the Court's availability.

10 **5.2 Judgment and Continued Jurisdiction.** Pursuant to California Rules of Court, Rule
11 3.769(h), upon final approval of this Agreement by the Court, the Parties shall present the
12 judgment to the Court for its approval. After entry of the judgment, the Court shall have
13 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
14 of the terms of the Agreement, (ii) Agreement administration matters, and (iii) such post-
15 judgment matters as may be appropriate under court rules or applicable law, or as set forth in this
16 Agreement.

17 **5.3 Settlement Terms Bind All Class Members Who Do Not Opt-Out.** Any Class
18 Member who does not affirmatively opt-out of the Class Settlement by submitting a timely and
19 valid Request for Exclusion shall be bound by all of the terms of the Agreement, including those
20 pertaining to the Released Claims, as well as any order that may be entered by the Court if it
21 grants final approval of this Agreement. Notwithstanding the submission of any timely and valid
22 Request for Exclusion, all Class Members (including the PAGA Group) will be bound by the
23 PAGA Release under the Final Approval Order and Judgment pursuant to *Arias v. Superior*
24 *Court*, 46 Cal. 4th 969 (2009).

25 **6. Nullification or modification of Agreement.**

26 **6.1 Defendants' Right to Revoke.** Defendants may terminate and withdraw from this
27 Agreement at any time prior to the date the Court's approval of the Agreement becomes "final"
28 (i.e., not subject to appeal or reconsideration) if: (a) the Agreement is construed in such a fashion

1 that Defendants are required to pay more than the Gross Settlement Amount (except as provided
2 in Section 6.2); (b) the Court makes an order inconsistent with any of the terms of this
3 Agreement including, but not limited to, certifying for settlement purposes a class or
4 representative action that is different from the Class defined in Section 1.1 or PAGA Group
5 defined in Section 1.26, or any modification relating to the release of all claims (except for an
6 order reducing the Class Counsel Award or the Class Representative Enhancement Payment); (c)
7 following the signing of this Agreement, any court certifies, whether on a conditional basis or
8 not, a class, collective, or representative action involving a claim covered by this Agreement; (d)
9 any government department or agency raises objections to the terms in the Agreement or
10 otherwise indicates that it intends to pursue remedies beyond those contemplated by the
11 Agreement; or (e) more than 10% of Class Members timely and validly opt out of the Class. If
12 Defendants terminate and withdraw under this provision, Defendants will bear any of the already
13 incurred Settlement Administration Costs. In the event that the basis for withdrawal is a Court
14 order as described in items (a) and (b) above, Defendants must provide written notice to Plaintiff
15 of its intent to terminate and withdraw within one (1) week of the date on which the clerk
16 provides notice of the filed offending order. Failure to provide timely notice will serve as a
17 waiver of the right to revoke under the circumstances described in item (a) or (b) above.

18 **6.2 Modification Based on Increase in Number of Class Members.** Defendants have
19 represented that there were approximately **93 Class Members as of July 25, 2022**. If the number
20 of Class Members increases by more than 10% (i.e., more than 9 class members) through the
21 date of the Preliminary Approval Order, then the Gross Settlement Amount shall be increased by
22 the same number of percentage points above 10% by which the actual number of Class Members
23 exceeds 93. For example, and for purposes of illustration only, if the number of Class Members
24 increases by 11% (1% over the 10% “grace”), the Gross Settlement Amount will increase by 1%.

25 **6.3 Action Status if Settlement Not Approved.** This Agreement is being entered into
26 for Settlement purposes only. In the event that [1] Defendants invokes its rights under Sections
27 4.6 or 6.1 of this Agreement, [2] the Court conditions its approval of either the Preliminary
28 Approval Order or the Final Approval Order and Judgment on any modifications of this

Agreement that are not acceptable to all Parties (including, but not limited to, any modification of the Class or the claims and penalties being released) except for any reduction of the Class Counsel Award or the Class Representative Enhancement Payment, [3] the Court does not approve the Settlement Agreement or enter the Final Approval Order and Judgment, or [4] the Court's approval of this Agreement does not become "final" for any reason, then this Agreement will be deemed null and void *ab initio*. In that event, (a) the Preliminary Approval Order, and/or Final Approval Order and Judgment, and all of its or their provisions will be vacated by its or their own terms, including, but not limited to, vacating conditional certification of the Class, conditional appointment of Plaintiff as a class representative and conditional appointment of Da Vega Fisher Mechtenberg LLP as Class Counsel, (b) the Action will revert to the status that existed before the execution date of the Memorandum of Understanding, and (c) no term or draft of the Memorandum of Understanding or this Agreement contemplated by it, or any part of the Parties' settlement discussions, negotiations or documentation will have any effect or be admissible into evidence for any purpose in the Action or any other proceeding. If the Court does not approve this Agreement or enter the Final Approval Order and Judgment for any reason, or if the Court's approval of this Agreement does not become "final" for any reason, Defendants shall retain all their rights to object to the maintenance of the Action as a class and/or representative action, and nothing in the Memorandum of Understanding or this Agreement contemplated by it or other papers or proceedings related to the Memorandum of Understanding or this Agreement contemplated by it shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class and/or representative action.

7. DISTRIBUTION.

7.1 Individual Settlement Amounts Calculations. The Individual Settlement Amount is based upon the approximate number of Shifts each Settlement Class Member worked as a Class Member during the Class Period. Individual Settlement Amounts shall be calculated and apportioned by the Settlement Administrator as follows:

1 **(a)** The Settlement Administrator shall determine the number of Shifts during
2 the Class Period for each Settlement Class Member and the Total Shifts based on the Class List
3 provided by Defendants.

4 **(b)** The Settlement Administrator shall divide the Net Settlement Fund by the
5 number of Total Shifts to derive the “Shift Point Value.”

6 **(c)** For each Settlement Class Member, the Settlement Administrator shall
7 multiply the determined number of Shifts they worked during the Class Period by the Shift Point
8 Value. The resulting figure shall be the “Individual Settlement Amount” for each such
9 Settlement Class Member. The Individual Settlement Amount(s) shall be reported on an IRS
10 Form 1099.

11 **7.2 Distribution of the PAGA Group Amount.** The Settlement Administrator shall
12 divide the PAGA Group Amount by the total number of PAGA Group members (i.e., the total
13 number of Class Members). The resulting figure shall be each Class Member’s pro rata share of
14 the PAGA Group Amount, and these share amounts shall be reported on an IRS Form 1099.

15 **7.3 Distribution Timing of Individual Settlement Amounts and the PAGA Group**
16 **Amount.** Individual Settlement Amounts shall be paid by check and mailed to Settlement Class
17 Members within ten (10) business days following the Effective Date. Class Member pro rata
18 shares of the PAGA Group Amount shall be paid by check and mailed to Class Members within
19 ten (10) business days following the Effective Date. If administratively feasible, the Settlement
20 Administrator will combine into one check a Settlement Class Member’s Individual Settlement
21 Amount and their pro rata share of the PAGA Group Amount.

22 **7.4 Uncashed Settlement Checks.** If any checks mailed to Settlement Class Members
23 remain uncashed after the expiration of 180 days, or an envelope mailed to a Settlement Class
24 Member is returned and no forwarding address can be located for the Settlement Class Member
25 after reasonable efforts have been made (including, but not limited to, skip tracing), then any
26 such funds shall be transmitted to the Settlement Administrator and distributed in accordance
27 with California Code of Civil Procedure section 384 to the following cy pres recipient: the Legal
28 Aid Society of Los Angeles County, <https://lafla.org/> (Ron Olson Justice Center, 1550 W. 8th

1 Street, Los Angeles, CA 90017). Settlement Class Member who fails to timely cash or deposit
2 their check(s) shall remain subject to the terms of the Settlement, including without limitation all
3 releases contained herein, and the Final Approval Order and Judgment from the Court,

4 **7.5** Effect of Cashing or Depositing Checks. The Complaint does not allege claims
5 under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (“FLSA”) and is thus not an FLSA
6 “action” under 29 U.S.C. § 216(b). The Parties agree this is an “opt-out” action under the
7 California Code of Civil Procedure that does not require an “opt-in” procedure to bind Class
8 Members to the terms of the Settlement, which includes the release of Released Claims as
9 defined in Sections 1.30 and 2.6. Nevertheless, and without prejudice to this position and without
10 changing the nature of this action, the Parties agree that Settlement Class Members who cash or
11 deposit an Individual Settlement Amount check are deemed to “opt-in” to the Settlement. Each
12 Individual Settlement Amount check to Settlement Class Members shall be affixed with the
13 following language as further notice: “By cashing or depositing this check, I confirm my consent
14 to the Settlement, which includes releasing claims under the Fair Labor Standards Act, 29 U.S.C.
15 § 201 et seq. (“FLSA”).”

16 **8. MISCELLANEOUS PROVISIONS.**

17 **8.1** Cooperation. The Parties shall cooperate fully with one another in seeking
18 approval of the Court of this Settlement and to use their respective best efforts to consummate
19 the Settlement and cause the Preliminary Approval Order and Final Approval Order and
20 Judgment to be entered and to become final. The Parties therefore agree to cooperate in good
21 faith to promptly prepare, execute and finalize all Settlement-related documents, seek all
22 necessary Court approvals, and do all other things necessary to consummate the Settlement. No
23 Party to this Agreement shall seek to evade his, her, or its good faith obligations to seek approval
24 and implementation of this Settlement by virtue of any ruling, order, governmental report or
25 other development, whether in the Action, in any other litigation or otherwise that hereafter
26 might occur and might be deemed to alter the relative strengths of the Parties with respect to any
27 claims or defenses or their relative bargaining power with respect to negotiating.

1 **8.2 Further Assurances.** The Parties must execute and deliver any additional papers,
2 documents and other assurances, and must do any other acts reasonably necessary, to perform
3 their obligations under this Settlement Agreement and to carry out its expressed intent. The
4 Parties and their counsel will cooperate with each other and use their best efforts to effect the
5 implementation of this Agreement. If the Parties are unable to reach agreement on the form or
6 content of any document needed to implement this Agreement, or on any supplemental
7 provisions that may become necessary to effectuate the terms of this Agreement, the Parties may
8 seek the assistance of the Court to resolve such disagreement.

9 **8.3 Extension of Postmark Deadlines Falling on a Sunday or Federal Holiday.** If the
10 last day for a Class Member to submit any document under this Agreement falls on a Sunday or
11 Federal holiday, the deadline will be extended to the next day on which the U.S. Postal Service is
12 open.

13 **8.4 Exhibits Incorporated by Reference.** The terms of this Agreement include the
14 terms set forth in any attached Exhibit, which are incorporated by this reference as though fully
15 set forth herein. Any Exhibit to this Agreement is an integral part of the Settlement.

16 **8.5 Confidentiality.** Plaintiff and Class Counsel will keep the Settlement Agreement
17 and related documents, and their settlement negotiations (including, but not limited to, the
18 negotiations in the course of mediation), confidential and will not disclose that information to
19 any third party until such time as Plaintiff files the motion seeking entry of the Preliminary
20 Approval Order. Plaintiff and Class Counsel will make no comments of any kind regarding the
21 Settlement Agreement to the press/media, or for purposes of advertising. Plaintiff and Class
22 Counsel agree that they will not issue any press releases or post any statements regarding the
23 Settlement Agreement on any websites or initiate any contact with the media. If Plaintiff and/or
24 Class Counsel are contacted by the media, or any other third party, regarding the Settlement
25 Agreement, they may only advise that the Action has been amicably resolved and refer them to
26 the public filings in the Action. Plaintiff and Class Counsel agree that they will not disclose the
27 terms of the Settlement Agreement on any websites or in any other materials not necessary for
28 the facilitation of the Settlement Agreement. Plaintiff and Class Counsel shall retain the right to

1 discuss the Settlement Agreement with the Parties and the Class. Plaintiff and Class Counsel
2 agree to maintain the confidentiality of any non-public information exchanged pursuant to the
3 Parties' stipulated protective order and that they will not disclose any settlement or mediation
4 privileged communications. Plaintiff and Class Counsel also agree and acknowledge that any
5 breach of this Section 8.5 may cause irreparable harm or damage to Defendants that is difficult
6 to ascertain, and thus Plaintiff and Class Counsel agree that any breach of this Section 8.5 shall
7 give Defendants the right to obtain injunctive or other applicable equitable relief, in addition to
8 any other remedies available in law or equity.

9 **8.6 Non-Disparagement.** Plaintiff further agrees that she shall not commit any act or
10 make any statement that is, or could reasonably be interpreted as, detrimental to the business,
11 reputation, or good will of Defendants, including making any negative or disparaging statements
12 about its business, or its officers, directors, agents, and/or other personnel (past and present), its
13 employment policies and practices, operations, products, or services, either as fact or opinion.
14 Plaintiff acknowledges the terms of this Agreement shall not preclude her from providing
15 truthful testimony if mandated by subpoena or court order to do so, or pursuant to any request
16 from a government agency. Further, Plaintiff acknowledges the terms of this Settlement
17 Agreement shall not preclude her from advocating in favor of Court approval of the Settlement.

18 **8.7 Grammar.** The neuter form of a pronoun shall be considered to include within its
19 meaning the masculine and feminine forms of the pronoun, and vice versa.

20 **8.8 No Conflict Intended.** Any inconsistency between this Settlement Agreement and
21 the attached exhibits will be resolved in favor of this Settlement Agreement.

22 **8.9 Headings and Formatting of Definitions.** The various headings used in this
23 Settlement Agreement are solely for the Parties' convenience and may not be used to interpret
24 this Settlement Agreement. The headings and the formatting of the text in the definitions do not
25 define, limit, extend, or describe the Parties' intent or the scope of this Settlement Agreement.

26 **8.10 Interim Stay of Proceedings.** The Parties agree to refrain from further litigation of
27 the Action, except such proceedings necessary to implement and obtain entry of the Final
28 Approval Order and Judgment. The Parties shall jointly seek to stay all dates and deadlines in the

1 Action pending final approval of this Stipulation. The Parties further agree that the mutual,
2 voluntary cessation of litigation shall terminate if the motion for entry of the Preliminary
3 Approval Order or the Final Approval Order and Judgment are denied by the Court.

4 **8.11 No Injunctive Relief Against Defendants.** As part of this Settlement Agreement,
5 Defendants shall not be required to enter any consent decree, nor shall Defendants be required to
6 agree to any provision of injunctive relief.

7 **8.12 Waiver of Appeal.** Plaintiff and Class Counsel agree to waive appeals of an order
8 granting final approval of this Settlement Agreement or entering judgment in this Action so long
9 as such order is consistent with the material terms of this Agreement.

10 **8.13 Class List.** Within seven (7) months after the Effective Date and completion of
11 the administration, or in the event the Settlement is terminated pursuant to Section 4.6 or 6.1, all
12 originals, copies, documents, transcriptions, iterations, or drafts of the Class List or any portion
13 thereof, including any updated Class Member contact information obtained via, e.g., the National
14 Change of Address database, shall be returned to Defendants by the Settlement Administrator.

15 **8.14 Entire Agreement.** This Agreement and any attached Exhibit constitutes the
16 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
17 agreements may be deemed binding on the Parties.

18 **8.15 Amendment or Modification.** This Agreement may be amended or modified only
19 by a written instrument signed by counsel for all Parties or their successors-in-interest and if
20 after entry of the Preliminary Approval Order, as approved by the Court.

21 **8.16 Real Party in Interest.** In executing this Settlement Agreement, the Parties warrant
22 and represent that they, including Plaintiff in her representative capacity on behalf of the Class,
23 PAGA Group and all others alleged to be similarly situated, are the only persons having any
24 interest in the claims asserted in the Action. Neither these claims, nor any part of these claims,
25 have been assigned, granted, or transferred in any way to any other persons.

26 **8.17 Authorization to Enter Into Agreement.** Counsel for all Parties warrant and
27 represent they are expressly authorized by the Party whom they represent to negotiate this
28 Agreement and to take all appropriate action required or permitted to be taken by such Parties

1 pursuant to this Agreement to effectuate its terms, and to execute any other documents required
2 to effectuate the terms of this Agreement.

3 **8.18 Voluntary Agreement.** The Parties have negotiated the settlement at arms-length
4 and in good faith, with assistance from Judge Robert Dondero (Ret.) of JAMS, a respected
5 mediator, and have executed this Settlement Agreement knowingly, voluntarily, and without
6 duress or undue influence.

7 **8.19 Dispute Resolution.** The Parties agree to cooperate in good faith to mutually
8 select a mediator with wage and hour class action experience to resolve any and all disputes that
9 may arise in connection with interpreting the terms of this Settlement Agreement. Defendants
10 and Class Counsel shall split equally and pay for any mediator fees and costs associated with
11 seeking mediator assistance pursuant to this Section 8.19. Under no circumstances shall any
12 mediator fees or costs incurred pursuant to this Section 8.19 be taken out of the Gross Settlement
13 Amount.

14 **8.20 Cooperation and Drafting.** The Parties have cooperated in the drafting and
15 preparation of this Agreement. Hence, in any construction made to this Agreement, the same
16 shall not be construed against any of the Parties.

17 **8.21 Change of Time Periods.** All time periods and dates described in this Settlement
18 Agreement are subject to the Court's approval. These time periods and dates may be changed by
19 the Court or by the Parties' written agreement without notice to the Class.

20 **8.22 Binding on Successors and Assigns.** This Agreement shall be binding upon and
21 inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators,
22 successors and/or assigns.

23 **8.23 California Law Governs.** All terms of this Agreement and Exhibits hereto shall be
24 governed by and interpreted according to the laws of the State of California.

25 **8.24 Execution and Counterparts.** This Agreement may be executed in counterparts
26 which shall be deemed to be part of one original, and facsimile and electronic image copies of
27 signatures (including by PDF, DocuSign, or any electronic signature complying with the U.S.
28 federal ESIGN Act of 2000) or other transition method shall be equivalent to original signatures.

1 **8.25 Enforceability.** The Parties intend this to be a binding, enforceable and admissible
2 settlement agreement under California Code of Civil Procedure section 664.6 and California
3 Evidence Code section 1123(b).

4 **8.26 Inadmissibility.** This Settlement Agreement, whether approved or not approved,
5 revoked, or made ineffective for any reason, and any proceedings related to this settlement and
6 any discussions relating thereto shall be inadmissible as evidence of any liability or wrongdoing
7 whatsoever and shall not be offered as evidence of any liability or wrongdoing in any Court or
8 other tribunal in any state, territory, or jurisdiction, or in any manner whatsoever. Further,
9 neither this Settlement Agreement, nor any proceedings taken pursuant to it, shall be construed,
10 offered or received in evidence as an admission, concession or presumption that class
11 certification is appropriate, except to the extent necessary for the consummation of this
12 Agreement.

13 **8.27 Agreement Constitutes a Complete Defense.** To the extent permitted by law, this
14 Settlement Agreement may be pled as a full and complete defense to any action, suit, or other
15 proceedings that may be instituted, prosecuted or attempted against the Released Parties contrary
16 to any releases contained herein, including the release of the Released Claims and the PAGA
17 Release.

18 **8.28 Defendants' Position.** Defendants state that it has acted lawfully at all times and
19 its policies and practices have been lawful, fair and consistent with all relevant laws, rules, and
20 regulations. Defendants deny all claims as to liability, damages, penalties, interest, fees,
21 restitution, costs, injunctive relief and all other forms of relief as well as the class allegations
22 asserted in the Action. To the extent this Agreement is deemed void, Defendants do not waive,
23 but rather expressly reserves, all rights to challenge all such claims and allegations in the Action
24 upon all procedural and factual grounds, including without limitation the ability to challenge
25 class, collective, and representative action treatment on any grounds, as well as asserting any and
26 all other potential defenses or privileges. Plaintiff and her counsel agree that Defendants retain
27 and reserve these rights. Specifically, Plaintiff and her counsel agree not to argue or present any
28 argument that, in the event this Agreement is not approved in full, Defendants could not oppose

any class or collective certification motion, file a later motion for de-certification, contest any class action or collective certification on any grounds, or assert any and all other potential defenses and privileges if any or all of the Action were to proceed. Plaintiff and her counsel hereby waive such arguments and agree they will not take a position contrary to this provision.

8.29 No Admission of Liability. Nothing in the Memorandum of Understanding or the Settlement Agreement may be construed as an admission or concession on any point of fact or law by or against any Party.

SIGNATURES - READ CAREFULLY BEFORE SIGNING

PLAINTIFF KRISTINA REYES

Dated: 10/19/2022

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Kristina Reyes
CDEF9307C63349A

Kristina Reyes

**BACKPACK BOYZ/LOS ANGELES
INDUSTRY**

Dated: _____

Please Print Name of Authorized Signatory

APPROVED AS TO FORM:

LEWITT | HACKMAN

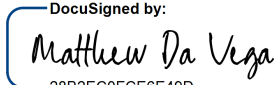
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By: _____
Tal Burnovski Yeyni

Attorneys for Defendants
BACKPACK BOYZ/LOS ANGELES
INDUSTRY

DA VEGA FISHER MECHTENBERG LLP

Dated: 10/19/2022

By:  _____
Matthew S. Da Vega

Attorneys for Plaintiff
KRISTINA REYES

1 any class or collective certification motion, file a later motion for de-certification, contest any
2 class action or collective certification on any grounds, or assert any and all other potential
3 defenses and privileges if any or all of the Action were to proceed. Plaintiff and her counsel
4 hereby waive such arguments and agree they will not take a position contrary to this provision.

5 **8.29** No Admission of Liability. Nothing in the Memorandum of Understanding or the
6 Settlement Agreement may be construed as an admission or concession on any point of fact or
7 law by or against any Party.

8
9 **SIGNATURES - READ CAREFULLY BEFORE SIGNING**

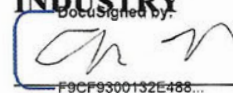
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12 **PLAINTIFF KRISTINA REYES**

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15 Kristina Reyes

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17 **BACKPACK BOYZ/LOS ANGELES**
18 **INDUSTRY**

19 Dated: 10/27/2022 _____

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APPROVED AS TO FORM:

LEWITT | HACKMAN

Dated: 10/19/2022

By: Tal Yeyni
Tal Burnovski Yeyni

Attorneys for Defendants
BACKPACK BOYZ/LOS ANGELES
INDUSTRY

DA VEGA FISHER MECHTENBERG LLP

Dated: _____

By: _____
Matthew S. Da Vega

Attorneys for Plaintiff
KRISTINA REYES

REYES v. BACKPACK BOYZ
STIPULATION OF CLASS ACTION SETTLEMENT and RELEASE

EXHIBIT A
(SECOND AMENDED COMPLAINT)

Matthew S. Da Vega, SBN 195443
Matthew Fisher, SBN 229532
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232 E. Anapamu St.
Santa Barbara, CA 93101
Telephone: 805.232.4471
Facsimile: 877.535.9358
Mdavega@mdmflaw.com

Attorneys for Plaintiff and the Proposed Plaintiff Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

KRISTINA REYES, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

BACKPACK BOYZ LOS ANGELES,
LLC; LOS ANGELES INDUSTRY, INC.;
and DOES 1-100, inclusive,

Defendants.

Case No. 22STCV05435

REPRESENTATIVE and CLASS ACTION

SECOND AMENDED COMPLAINT FOR:

- (1) FAILURE TO PAY OVERTIME WAGES (CAL. LABOR CODE §§ 204, 510, 1194 and I.W.C. WAGE ORDERS NO. 5-2001, 15-2001);**
- (2) FAILURE TO PAY MINIMUM WAGE (CAL. LABOR CODE §§ 1182.12, 1194, 1197, 1197.1; and I.W.C. WAGE ORDERS NO. 5-2001, 15-2001);**
- (3) FAILURE TO PROVIDE MEAL BREAKS (CAL. LABOR CODE §§ 226.7, 512 and I.W.C. WAGE ORDER NO. 5-2001, 15-2001);**
- (4) FAILURE TO PROVIDE REST BREAKS (CAL. LABOR CODE § 226.7 and I.W.C. WAGE ORDER NO. 5-2001, 15-2001);**
- (5) FAILURE TO FURNISH TIMELY/ACCURATE WAGE STATEMENTS (RECORD-KEEPING VIOLATIONS) (CAL LABOR CODE §§ 226, 1174);**
- (6) FAILURE TO PAY ALL WAGES DUE AT DISCHARGE IN TIMELY MANNER - "WAITING TIME PENALTIES" (CAL. LABOR CODE §§ 201-203);**
- (7) FAILURE TO REIMBURSE**

**NECESSARY BUSINESS EXPENSES
(CAL. LABOR CODE § 2802);**

**(8) UNLAWFUL AND/OR UNFAIR
BUSINESS PRACTICES (CAL. BUS. &
PROF. CODE §§ 17200, *et seq.*)(“UCL”);**

**(9) VIOLATION OF PRIVATE
ATTORNEY GENERAL ACT OF 2004
(“PAGA”)(CAL. LAB. CODE § 2698, *et
seq.*;**

DEMAND FOR JURY TRIAL

Plaintiff Kristina Reyes (“Reyes”), brings this action on behalf of herself (“Plaintiff”), and all others similarly situated (“Class Members”), and on information and belief alleges against Defendants Backpack Boyz Los Angeles, LLC; Los Angeles Industry, Inc.; and Does 1-100, inclusive, (collectively “Defendants” or “Backpack Boyz”), the following:

NATURE OF THE CASE

1. This case is brought as a class action under California Code of Civil Procedure (“CCP”) §382 to address Defendants’ violations of various California Labor Codes, Industrial Welfare Commission (“IWC”) wage orders, and Unfair Competition Law (“UCL”). This case is also brought as a representative action for recovery of penalties under the California Labor Code Private Attorney General Act of 2004 (“PAGA”), Cal. Lab. Code § 2698, *et seq.*

2. Plaintiff and Class Members are Cannabis Dispensary Non-Exempt Employees for the Backpack Boyz in Los Angeles, Long Beach, and La Mesa, California: Plaintiff was employed as a Budtender (a derivative of the term “bartender” --- an employee inside the retail store of a cannabis dispensary who provides information to customers and makes over the counter sales to customers of cannabis products), along with Cashiers, Inventory Managers, Joint Rollers and Managers (collectively “Cannabis Dispensary Employees” or “Non-Exempt Employees”), who work/worked for Defendants at its various locations in and throughout California. Plaintiff alleges Defendants have engaged in, among other things a system of willful violations of the California Labor Code, applicable IWC wage orders, and UCL.

3. Misclassification as Independent Contractors: Defendants acted intentionally and

1 with deliberate indifference and conscious disregard for the rights of Plaintiff and Class Members
 2 by intentionally misclassifying Backpack Boyz's Non-Exempt Employees as "Independent
 3 Contractors", when in fact Plaintiff and Class Members are/were Defendants' employees, all of
 4 which is in violation of Labor Code § 226.8 and/or §2753, and, in so doing, have denied Plaintiff
 5 the benefits and protections of California employment law.

6 4. Failure to Pay Overtime at the Correct Overtime Rates, Failure to Pay Minimum
 7 Wage, Failure to Provide Duty-Free Meal/Rest Periods, Failure to Provide Timely/Accurate
 8 Wage Statements, Failure to Reimburse Necessary Business Expenses, and Waiting Time
 9 Penalties: Defendants further failed to pay Plaintiff and Class Members for all wages earned
 10 including for overtime hours worked at the appropriate overtime rate (Defendants paid Class
 11 Members in cash and paid them only a flat regular hourly rate for overtime hours worked and not
 12 the correct overtime rates of 1.5x or 2x flat hourly rates for overtime hours), minimum wages, or
 13 for "on-duty" meal periods or "on-duty" rest breaks, failed to keep and provide accurate and
 14 timely records of wages earned and other legally mandated records (Defendants paid Class
 15 Members in cash and did not provide wage statements), failed to reimburse Plaintiff and Class
 16 Members for necessary business expenses (i.e. Class Members use of personal cell phones for
 17 Defendants' business), and failed to pay Plaintiff and Class Members whose employment has
 18 terminated (voluntarily resigned and/or were terminated) a final payment of his or her wages in a
 19 prompt and timely manner in conformity with Labor Codes §§ 201, 202, 203, 204, 216, 226,
 20 226.3, 226.7, 226.8, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198,
 21 1199, 2802, and other unfair and unlawful conduct in violation of the Business & Professional
 22 Code §17200, et seq. The policies, practices and customs of Defendants described herein are
 23 also violations of California Industrial Welfare Commission (I.W.C.) Wage Order 5-2001, 8 Cal.
 24 Code of Reg. § 11050 ("Wage Order 5-2001"), California I.W.C. Wage Order 15-2001, 8 Cal.
 25 Code of Reg. § 11150 ("Wage Order 15-2001").

26 5. The policies, practices and customs of Defendants described herein have resulted
 27 in unjust enrichment of Defendants and an unfair business advantage over businesses that
 28 routinely adhere to the strictures of the California Labor Code and IWC wage orders, and thus

1 violate the UCL.

2 6. **The “Class Period”** is designated as the time from February 14, 2018 (4 years
3 prior to the filing date of the original complaint on February 14, 2022), through the date the Court
4 grants preliminary approval of the Settlement, based on the allegation that the violations of
5 California’s wage and hour laws and UCL, as described herein, have been ongoing for at least the
6 four (4) years prior to the filing of the original Complaint and are continuing.

7 7. During the relevant Class Period, Defendants have had a standard and uniform
8 policies that violate California’s Labor Codes, I.W.C. orders, and UCL as follows:

- 9 a. Defendants intentionally misclassified Plaintiff and Class Members
10 (current and former California-based Non-Exempt Employees) as
11 “Independent Contractors” in violation of Labor Codes §§ 226.8 and 2753;
- 12 b. Defendants required Plaintiff and Class Members working for Defendants
13 to perform work without full compensation during overtime hours, and/or
14 paid minimum wage for said hours. On a daily basis Non-Exempt
15 Employees are required to perform work for which they were not lawfully
16 compensated in violation of Labor Code §§ 204, 510, 1182.11, 1182.12,
17 1194, 1197, 1197.1, 1198, and 1199 (and I.W.C. Orders 5-2001 and 15-
18 2001);
- 19 c. Defendants required Plaintiff and Class Members to work through/during
20 their meal and/or rest breaks on a regular basis, failed to relieve the Non-
21 Exempt Employees of all their duties, did not permit Non-Exempt
22 Employees a reasonable opportunity to take an uninterrupted 30 minute
23 meal break and/or 10 minute rest break, impeded/discouraged them from
24 taking said meal and/or rest breaks, and/or failed to provide compensation
25 for said “on-duty” meal/rest periods in violation of Labor Code §§ 226.7,
26 512 (and I.W.C. Orders 5-2001 and 15-2001);
- 27 d. Defendants failed to provide Plaintiff and Class Members, with accurate
28 and timely pay stubs (accurate, semi-monthly, itemized statements of the

total number of hours each of them worked, applicable hourly rate of pay, and/or wages earned) --- in violation of Labor Code § 226; and

- e. Defendants have willfully failed to reimburse Plaintiff and Class Members for necessary business expenses (i.e. use of personal cell phones/mobile phone for Defendants' business).
- f. Defendants have willfully failed to pay Plaintiff and Class Members whose employment has terminated (voluntarily resigned or were terminated) a final payment of his or her total wages in a prompt and timely manner ---- in violation of Labor Codes §§ 201 - 203.

8. Plaintiff, on behalf of herself and the proposed Class, seeks unpaid compensation (including underpaid overtime hours, minimum wages, wages for missed meal and rest periods), interest thereon, waiting time penalties, penalties and relief for failure to provide accurate and timely itemized statements of total hours worked/wages earned, reimbursement of unpaid necessary business expenses, and reasonable attorneys' fees and costs, under Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 226.8, 510, 512, 558, 1174, 1194, 1197.1, 1199, 2699.3, 2699.5, 2802, C.C.P. § 1021.5, California common law, (and I.W.C. orders 5-2001, 15-2001). Plaintiff also claims civil penalties for the above acts, which violate the California Labor Code, under the Private Attorneys General Act ("PAGA"), Cal. Labor Code § 2698 et seq.

9. Under California Business & Professions Code ("Cal. Bus. & Prof. Code") §§ 17200, *et seq.* ("UCL"), and pursuant to class action procedures provided for in these statutes, Plaintiff, on behalf of herself and all others similarly situated also seeks injunctive relief and restitution of all benefits the Defendants have received from their violations, as described herein, during the relevant Class Period.

JURISDICTION AND VENUE

10. **Jurisdiction:** This Court has jurisdiction over this matter pursuant to the laws of the State of California including Code of Civil Procedure § 410.10. Defendants own and/or lease property in Los Angeles County. Defendants regularly do business in Los Angeles County. Defendant Backpack Boyz Los Angeles, LLC and Defendant Los Angeles Industry, Inc.

1 both have their headquarters at 5160 Venice Blvd., Los Angeles, California 90019 in Los
2 Angeles County. Defendants Backpack Boyz also has Cannabis Dispensaries located in the
3 Long Beach area (2725 E South St, Long Beach, CA 90805) and San Diego area (8260 Parkway
4 Dr, La Mesa, CA 91942). Defendants employ and/or employed approximately 100 (one
5 hundred) Non-Exempt Employees at these three locations and within Los Angeles County and
6 have obtained the benefits of the laws of the State of California and the California labor market.
7 This Court has jurisdiction over Plaintiff's and Class Members' claims for: intentional
8 misclassification of Non-Exempt Employees as "Independent Contractors"; failure to pay
9 overtime work at the correct overtime rates and/or minimum wages; failure to provide required
10 meal/rest breaks (or pay a premium in lieu thereof); penalties for failure to provide itemized
11 statements of hours worked and all applicable hourly rates (Defendants pay/paid Non-Exempt
12 Employees in cash and did not provide wage statements); failure to reimburse necessary business
13 expenses (i.e. use of Non-Exempt Employees personal cell phones/mobile phones for
14 Defendants' business); penalties for failure to pay wages of discharged employees; and
15 injunctive relief and restitution of ill-gotten benefits arising from Defendants' unlawful business
16 practices.

17 11. **Venue:** Venue is proper in this county pursuant to California Code of Civil
18 Procedure §§395(a) and/or 395.5. Defendants transact business and may be found within Los
19 Angeles County. The unlawful acts, as well as the course of conduct alleged herein, occurred in
20 Los Angeles County. Defendants maintain offices, transact business, have agents, and employ
21 numerous Class Members in Los Angeles County (estimated at approximately 100 Non-Exempt
22 Employees), and are otherwise within this Court's jurisdiction for purposes of service of process.
23 The unlawful acts alleged herein have had a direct effect on Plaintiff and those similarly situated
24 within the State of California and within Los Angeles County.

25 12. **Original PAGA Notice (February 14, 2022):** California Labor Code §§ 2699 et
26 seq., the "Labor Code Private Attorneys Generals Act" ("PAGA"), authorizes aggrieved
27 employees to sue directly for various civil penalties under the California Labor Code. On
28 February 14, 2022 (the same date of the original filing of the Complaint in this matter) Plaintiff

1 provided written notice ("PAGA Notice") with a draft copy of a First Amended Complaint
2 ("FAC"), which included the additional cause of action for alleged PAGA violations, by certified
3 mail and electronic filing to the California Labor and Workforce Development Agency
4 ("LWDA"), via the LWDA website, and to the Defendants with the specific provisions of the
5 California Labor Code alleged to have been violated, including the facts and theories to support
6 the alleged violations, pursuant to California Labor Code §2699.3. A true and correct copy of the
7 PAGA Notice showing compliance with Labor Code §2699.3 is attached hereto as **Exhibit A**. No
8 notice of cure by Defendants was provided and the LWDA has not provided Plaintiff with notice
9 that it intends to investigate this violation, although more than 65 days elapsed (as of April 21,
10 2022) since the postmark date of Plaintiff's PAGA Notice. Therefore, Plaintiff has/will file this
11 FAC on or after April 21, 2022.

12 **THE PARTIES**

13 13. **Plaintiff Kristina Reyes ("Reyes"):** Reyes is a single adult 22 year old Mexican-
14 American female. She is a resident and citizen of Panorama City, CA in Los Angeles County. She
15 was employed as a Budtender by Defendants at their Los Angeles retail location (5160 Venice
16 Blvd., Los Angeles, California 90019) in Los Angeles County from approximately March 12,
17 2021 to September 30, 2021. Defendants intentionally misclassified her, and other Non-Exempt
18 Employees, as "Independent Contractors" despite controlling every aspect of their work (i.e. rate
19 of pay, hours work, location of work, instructions, tools and supplies, unilateral right to hire and
20 fire, etc.). Defendants also classified Plaintiff and other Non-Exempt Employees as non-exempt
21 hourly workers and paid them in cash failing to provide them written wage statements. Plaintiff's
22 hourly rate is/was approximately \$15 to 18 per hour (as are most Budtenders). While employed
23 by Defendants, she and other Non-Exempt Employees would typically work over 8+ hours in a
24 day and/or over 40+ hours in a week. Plaintiff typically worked 5 days a week and one of three
25 shifts a day (Early Morning Shift = 6 a.m. to 2 p.m.; Morning Shift = 8 a.m. to 2 p.m.; and Night
26 Shift = 2 p.m. to 10 p.m.). Plaintiff would typically work a few hours of overtime per week but
27 she was only paid her flat hourly rate in cash for said overtime hours. Despite working a few
28 hours of overtime per week the Defendants failed to compensate Plaintiff and other Non-Exempt

1 Employees their fully owed wages for all overtime hours worked at the appropriate overtime rate.
2 Defendants only paid Non-Exempt Employees their regular flat hourly rate for overtime hours
3 work, thus failing to pay them the correct overtime rate of one and one half times (1.5x) or double
4 time (2x) the flat hourly rate for overtime hours worked above 8 hours a day or 40 hours in a
5 workweek. Furthermore, Plaintiff and the other Non-Exempt Employees were not permitted to
6 report duty-filled meal and/or rest breaks although they were often required to work through
7 and/or during meal and/or rest periods. Plaintiff and other Non-Exempt Employees were denied
8 duty-free meal and/or rest breaks on a regular basis. Defendants would often retroactively falsify
9 the tracking of meal and/or rest periods if Class Members worked during and/or through meal
10 and/or rest periods to make it appear as if the Class Members had in fact taken their required
11 meal/rest periods and/or on time when they had not. Defendants did not provide compliant
12 itemized wage statement in writing showing gross wages, total hours worked, all deductions, net
13 wages, applicable hourly rates, etc. as Defendants paid Class Members in cash and failed to
14 provide a wage statement at all; and Defendants did not reimburse Plaintiff for use of her personal
15 cell phone / mobile phone (i.e. Defendants required Class Members' use of a third-party mobile
16 application named Homebase to check in-and-out of work shifts, and meal/rest periods).

17 14. **Defendant Backpack Boyz Los Angeles, LLC:** At all relevant times, Defendant
18 Backpack Boyz Los Angeles, LLC was and is a corporation organized under the laws of the State
19 of California, and authorized and qualified to do business in Los Angeles County. Backpack
20 Boyz Los Angeles, LLC is headquartered at 5160 Venice Blvd., Los Angeles, California 90019 in
21 Los Angeles County. Defendants are a California-based chain of Cannabis Dispensaries
22 producing and selling cannabis related products. Defendants' flagship retail dispensary is also
23 located at 5160 Venice Blvd., Los Angeles, California 90019 in Los Angeles County. It also has
24 retail Cannabis Dispensary locations in the Long Beach area (2725 E South St, Long Beach, CA
25 90805) and the San Diego area (8260 Parkway Dr, La Mesa, CA 91942). Defendants
26 employs/employed approximately (100) one hundred Non-Exempt Employees during the Class
27 Period, and has intentionally misclassified them as "Independent Contractors" despite controlling
28 their schedules, tracking their time, processing their pay, setting their wages, having unilateral

1 power of hiring/firing, etc. It currently employs Non-Exempt Employees in California.
2 Backpack Boyz Los Angeles, LLC is the employer/joint employer of the Non-Exempt Employee
3 Class Members along with Defendant Los Angeles Industry, Inc. Plaintiff alleges that the
4 practices and policies that are complained of in this Complaint have been occurring throughout
5 the Class Period and are currently applied by Defendants in California. Defendant Backpack
6 Boyz Los Angeles, LLC is, and at all relevant times has been, an employer subject to the
7 California Labor Code.

8 15. **Defendant Los Angeles Industry, Inc.:** At all relevant times, Defendant Los
9 Angeles Industry, Inc. was and is a corporation organized under the laws of the State of
10 California, and authorized and qualified to do business in Los Angeles County. Los Angeles
11 Industry, Inc. is also headquartered at 5160 Venice Blvd., Los Angeles, California 90019 in Los
12 Angeles County. Defendants are a California-based chain of Cannabis Dispensaries producing
13 and selling cannabis related products. Defendants' flagship retail dispensary is also located at
14 5160 Venice Blvd., Los Angeles, California 90019 in Los Angeles County. It also has retail
15 Cannabis Dispensary locations in the Long Beach area (2725 E South St, Long Beach, CA
16 90805) and the San Diego area (8260 Parkway Dr, La Mesa, CA 91942). Defendants
17 employs/employed approximately one hundred (100) Non-Exempt Employees during the Class
18 Period, and has intentionally misclassified them as "Independent Contractors" despite controlling
19 their schedules, tracking their time, processing their pay, setting their wages, having unilateral
20 power of hiring/firing, etc. It currently employs Non-Exempt Employees in California. Los
21 Angeles Industry, Inc. is the employer/joint employer of the Non-Exempt Employee Class
22 Members along with Defendant Backpack Boyz Los Angeles, LLC. Plaintiff alleges that the
23 practices and policies that are complained of in this Complaint have been occurring throughout
24 the Class Period and are currently applied by Defendants in California. Defendant Los Angeles
25 Industry, Inc. is, and at all relevant times has been, an employer subject to the California Labor
26 Code.

27 **FICTITIOUS DEFENDANTS**

28 16. Defendants Does 1-100, inclusive, are sued herein under fictitious names. Their

1 true names and capacities are unknown to Plaintiff at this time. When their true names and
 2 capacities are ascertained, Plaintiff will amend this Complaint by inserting their true names and
 3 capacities. Plaintiff is informed and believe, and thereon allege that each of the fictitiously-
 4 named Defendants is responsible in some manner for the occurrences alleged herein and that
 5 Plaintiff's' and the proposed Class Members' damages and penalties alleged herein were
 6 proximately caused by such Defendants.

7 AGENCY

8 17. Plaintiff is informed, believe, and thereon allege that each of the Defendants herein
 9 was, at all times relevant in this action, the agent, employee, representing partner, and/or joint
 10 venture of the remaining Defendants and was acting within the course and scope of that
 11 relationship. Plaintiff is further informed, believe, and thereon allege that each of the Defendants
 12 herein gave consent to, ratified, and authorized the acts alleged herein to the remaining
 13 Defendants.

14 CLASS ACTION ALLEGATIONS

15 18. Plaintiff brings this action individually and as a class action on behalf of opt-out
 16 classes (the "Class") defined as follows:

17 **"All current and former non-exempt employees who worked**
 18 **for Defendants in the State of California from February 14,**
 19 **2018, through the date the Court grants preliminary approval**
 20 **of the Settlement, including but not limited to individuals**
holding the job titles of Budtenders, Cashiers, Inventory
Managers, Joint Rollers, Managers, Floor Lead, Floater, and
Receptionist"

21 19. Plaintiff is a member of the proposed class and representative of other Non-
 22 Exempt Employees and are acting on behalf of their interests. Plaintiff believes this includes, but
 23 is not limited to, Defendants' employees classified as "Independent Contractors" and working as
 24 Budtenders, Cashiers, Inventory Managers, Joint Rollers and Managers (collectively "Non-
 25 Exempt Employees") as their specific titles may have changed over time. Plaintiff reserves the
 26 right under Rule 3.765(b), California Rules of Court, to amend or modify the class description
 27 with greater specificity or further division into a subclasses or limitations to particular issues.

28 20. The Plaintiff and Class Members assert the following claims:

- a. Plaintiff and Class Members were intentionally misclassified as “Independent Contractors” in violation of Labor Codes §§ 226.8 and 2753;
- b. Plaintiff and Class Members were not paid all wages owed for all hours work including overtime hours, and/or minimum wage for said hours worked as required by California Labor Code §§ 204, 510, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and 1199 and I.W.C. Orders;
- c. Plaintiff and Class members were not provided duty-free meal breaks (or paid in lieu thereof) as required by California Labor Code §§226.7; 512 and I.W.C. Orders;
- d. Plaintiff and Class members were not provided duty-free rest breaks (or paid in lieu thereof) as required by Labor Code §226.7 and I.W.C. Orders;
- e. Plaintiff and Class members did not receive pay stubs in conformity with Labor Code §226;
- f. Plaintiff and Class members were not reimbursed for necessary business expenses (i.e. use of personal cell phones for Defendants’ business).
- g. Plaintiff and Class members were not paid upon their separation from employment with Defendants as required by Labor Code §§ 201 - 203;

21. This action is brought, and may properly be maintained, as a class action pursuant to California Code of Civil Procedure §382 (and the analogous provisions of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)) as to violations of California Labor Codes, I.W.C. Wage Orders, and UCL for unpaid regular hours worked, overtime hours worked, and/or minimum pay for said hours, wages for missed meal and rest break violations, waiting time penalties, failure to furnish timely, itemized wage statements, and attorneys' fees and costs. The similarly situated employees are known to Defendants and are readily identifiable and locatable through Defendants' own employment records. There is a well-defined community of interest in the litigation, and the proposed class is easily ascertainable. As described below, this action also satisfies the numerosity, commonality, predominance, typicality, adequacy, and superiority requirements of these provisions.

1 22. **Numerosity:** A class action is the only available method for the fair and efficient
2 adjudication of this controversy. Although the exact number and identities of all Class Members
3 are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery,
4 Plaintiff is informed and believe that the Class includes approximately 100 persons. On
5 information and belief, therefore, Plaintiff alleges that the members of the Class are so numerous
6 that joinder of all members is impractical, if not impossible. Membership in the Class will be
7 determined upon analysis of, *inter alia*, records maintained by Defendants.

8 23. **Commonality and Predominance:** The Plaintiff and the Class share a
9 community of interest because there are numerous common issues of fact and law that
10 predominate over any questions and issues solely affecting individual members. Such common
11 factual and legal issues include, but are not limited to, the following:

- 12 a. Whether Plaintiff and Class Members served Defendants as employees
13 rather than “Independent Contractors” under California law;
- 14 b. Whether Defendants intentionally misclassified Plaintiff and Class
15 Members as “Independent Contractors” in violation of Labor Codes §§
16 226.8 and 2753;
- 17 c. Whether Defendants knowingly and willfully violated Labor Code §§ 204,
18 510, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and 1199, by failing to
19 pay all wages for regular hours worked, overtime hours worked, and/or
20 minimum wage for said hours, to Plaintiff and Class Members;
- 21 d. Whether Defendants violated Labor Code §§226.7, 512 by failing to
22 provide duty-free meal breaks (or one additional hour of pay in lieu
23 thereof) to Plaintiff and Class Members;
- 24 e. Whether Defendants violated Labor Code §226.7 by failing to provide
25 duty-free rest breaks (or one additional hour of pay in lieu thereof) to
26 Plaintiff and Class Members;
- 27 f. Whether Defendants violated Labor Code §§226 and 1174 by failing to
28 keep or provide accurate records of Plaintiff’s and Class Members’ gross

wages, total hours worked, deductions, net wages, dates of the pay period, hourly rates, etc.;

g. Whether Defendant violated Labor Code §2802 for failing to reimburse Plaintiff's and Class Members' necessary business expenses;

h. Whether Defendants violated Labor Code §§201, 202, 203 by failing to pay all wages due and owing at the time that Plaintiff's and Class Members' employment with Defendants terminated;

i. Whether former employees are entitled to "waiting time" penalties pursuant to Labor Code §203;

j. Whether Defendants knowingly and willfully violated the above wage and hour laws; and

k. Whether Defendants various violation of the Labor Code, described above, serve as a predicate violations of Business & Professions Code §§17200, *et seq.* ("UCL").

24. **Typicality:** Plaintiff's claims are typical of the claims of the Class. Plaintiff and all members of the Class sustained injuries and damages arising out of, and caused by, Defendants' common course of conduct in violation of law as alleged herein.

25. **Adequacy of Representation:** Plaintiff is an adequate representative of the Class in that Plaintiff have the same interests in the litigation of this case as the Class Members as they include current and former Non-Exempt Employees working for Defendants. Plaintiff is committed to vigorous prosecution of this case and have retained competent counsel who are experienced in class actions and wage and hour litigation of this nature. Plaintiff is not subject to any individual defenses different from those conceivably applicable to the Class as a whole.

26. **Superiority of Class Action:** A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class Members is impractical.

27. The California Labor Code and Wage Order provisions upon which Plaintiff and Class Members assert these claims are broadly remedial in nature. These laws and labor standards

1 serve an important public interest in establishing minimum working conditions and standards in
2 California. These laws and labor standards protect the average working employee from
3 exploitation by employers who may seek to take advantage of superior economic and bargaining
4 power in setting onerous terms and conditions of employment.

5 28. The nature of this action and the format of laws available to Plaintiff and members
6 of the class identified herein make the class action format a particularly efficient and appropriate
7 procedure to redress the wrongs alleged herein. If each employee were required to file an
8 individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage
9 since they would be able to exploit and overwhelm the limited resources of each individual class
10 member with their vastly superior financial and legal resources. Requiring each class member to
11 pursue an individual remedy would also discourage the assertion of lawful claims by employees
12 who would be disinclined to file an action against their current or former employer for real and
13 justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

14 29. Even if every Class Member could afford individual litigation, the court system
15 could not. It would be unduly burdensome to the courts in which individual litigation of
16 numerous cases would proceed. Individualized litigation would also present the potential for
17 varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all
18 parties and to the court system resulting from multiple trials of the same complex factual issues.
19 By contrast, the conduct of this action as a class action, with respect to some or all of the issues
20 presented herein, presents fewer management difficulties, conserves the resources of the parties
21 and the court system, and protects the rights of each Class Member. Plaintiff anticipate no
22 management difficulties in this litigation.

23 30. Further, the Defendants have also acted, or have refused to act, in respects
24 generally applicable to the Class, thereby making appropriate relief with regard to the members of
25 the Class as a whole, as requested herein.

26 **COMMON FACTUAL ALLEGATIONS**

27 31. Plaintiff is informed and believes and based thereon allege the following:
28

1 32. Defendants have for years intentionally misclassified Class Members as
2 Independent Contractors in violation of Labor Code § 226.8 and/or §2753, and, in so doing, have
3 denied them the benefits and protections of California employment law.

4 33. Defendants failed to: (1) pay Class Members all wages due for work performed
5 including overtime hours worked, and/or minimum wage for said hours worked; (2) provide Class
6 Members the opportunity to take duty-free meal periods/rest breaks (or pay premiums for failure
7 to provide duty-free meal periods/rest breaks); (3) provide Class Members accurate and timely
8 wage statements; (4) provide reimbursement of necessary business expenses; and (5) pay all
9 wages due upon termination; thereby enjoying a significant competitive edge over their
10 competitors.

11 34. Defendants have and had a consistent and uniform policy, practice and procedure
12 of willfully failing to comply with California's wage and hour laws, I.W.C orders and UCL as
13 described herein.

14 35. **Misclassification as "Independent Contractors":** Plaintiff and Class Members
15 are current and former persons employed by Defendants as Non-Exempt Employees providing
16 services for Defendants' Cannabis Dispensary (i.e. Budtenders, Cashiers, Inventory Managers,
17 Joint Rollers and Managers). Defendants hired Plaintiff and Class Members as "Independent
18 Contractors" despite the fact that Defendants retained control over all aspects of Class Members
19 work including but not limited to their rate of pay, hours work, training, instructions, tools and
20 supplies, and the unilateral right to hire and fire. By intentionally misclassifying Plaintiff and
21 Class Members as Independent Contractors in violation of Labor Code § 226.8 and/or §2753,
22 Defendants purposely and willfully attempted to avoid their obligations under California labor
23 law. If an employer has "willfully" misclassified an employee it shall be fined not less than
24 \$5,000 and up to \$15,000 per violation. Further, if that entity is found to have engaged in a
25 "pattern or practice" of misclassification (as is the case here), then those fines are ratcheted up to
26 a minimum of \$10,000 per violation, with a cap of up to \$25,000 per violation in addition to other
27 penalties authorized by law.

28 36. **Regular Time, Overtime, and Minimum Wage Violations:** Specifically, as

1 alleged above, Defendants failed to compensate Plaintiff and Class Members all wages owed for
2 all hours worked including failing to pay minimum wages and overtime wages at the correct
3 overtime rates. Therefore, Plaintiff and Class Members are entitled to recover wages and/or
4 penalties as provided by Labor Code §§ 204, 510, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198,
5 and 1199 and applicable IWC Wage Orders.

6 37. **Meal and Rest Break Violations:** Defendants' practices and policies regarding
7 meal and rest breaks as described herein, resulted in the systemic and uniform failure to provide
8 Plaintiff and Class Members with meal and/or rest breaks as required by Labor Code § 226.7,
9 Labor Code § 512. Defendants have failed to provide Plaintiff and Class Members with a full 30-
10 minute duty-free meal period for each workday. When Plaintiff and other Class Members were
11 not provided duty-free and/or on-time meal periods they were not provided with an additional
12 premium hours pay as required by California Labor Codes.

13 38. Defendants have also failed to provide Plaintiff and Class Members duty-free rest
14 periods based on the total hours worked daily at the rate of ten (10) minutes net rest time per four
15 (4) hours or major fraction thereof. When Plaintiff and Class Members were not provided their
16 duty-free rest periods they were not provided with additional compensation pursuant to Labor
17 Code § 226.7. Defendants intentionally and knowingly understaffed, overworked, and required
18 Non-Exempt Employees to work through and/or during meal and/or rest breaks and by also
19 delaying the taking of such meal and/or rest breaks past the legally required times. Plaintiff
20 estimate that they, and other Non-Exempt Employees at Defendants, would typically be required
21 to work through/during and/or be delayed in taking numerous meal periods and rest breaks on an
22 almost daily basis.

23 39. Therefore, Plaintiff and Class Members are entitled to recover wages and/or
24 penalties as provided by Labor Code § 558 and applicable IWC Wage Orders. Since Defendants
25 required these employees to work during meal periods in violation of Labor Code § 226.7, these
26 current and/or former aggrieved employees seek wages of one additional hour of pay as permitted
27 by Labor Code § 226.7(c) as well as all available penalties as set forth in Labor Code § 2699(f).

28 40. Further, Plaintiff and Class Members were also at all times entitled to rest breaks

1 as authorized and permitted by applicable I.W.C. Wage Order. Defendants failed to authorize or
2 permit rest breaks as required by Labor Code § 226.7, Labor Code § 512, and I.W.C. Orders.
3 Therefore, Plaintiff, on behalf of the Class Members, seeks recovery of wages and/or penalties as
4 provided by Labor Code § 558 and applicable IWC Wage Orders. Because Defendants required
5 its employees to work during rest periods in violation of Labor Code § 226.7, Plaintiff and Class
6 Members also seeks wages of one additional hour of pay as permitted by Labor Code § 226.7(c)
7 as well as all available penalties as set forth in Labor Code § 2699(f.)

8 41. Plaintiff estimates, based on observation and conversations with other Class
9 Members, that typically Non-Exempt Employees were not provided the opportunity for duty-free
10 meal periods a couple times a week and/or duty-free rest breaks a couple times a week, including
11 taking such meal periods after the 5th hour and lack of and/or late second meal period on shifts
12 longer than 10 hours. Further, Defendants were not accurately keeping track of Class Members
13 meal/rest breaks periods and in fact falsified such records after the fact. Defendants despite
14 knowing that the employees were not provided their duty-free meal periods/rest breaks the Class
15 Members were not being paid an additional hours wage for the rest/meal periods.

16 42. Defendants' uniform failure to allow duty-free rest and/or meal periods to these
17 employees during their workday and other derivative claims were done with a systematic policy
18 of nonpayment of an additional one-hour's wage per day per violation at the Class Members'
19 regular rate of pay, or alternatively, premium compensation, if applicable. Defendants' failure to
20 provide such compensation in lieu of meal periods or rest breaks violated Labor Code §§ 204 and
21 204(b), such that penalties are recoverable as set forth in Labor Code § 210 and/or § 1194, et.seq

22 43. **Wage Statement Violations:** Defendants' practices and policies, as described
23 above, resulted in the systemic and uniform failure to provide timely and/or accurate wage
24 statements in violation of Labor Code §§ 226, 226.3, and 1174. Defendants paid Plaintiff and
25 Class Members in cash and did not provide wage statements. Further, despite knowledge of
26 Plaintiff's and Class Members' entitlement to overtime pay rates for overtime hours worked
27 (including minimum wage) and failure to provide a duty-free/on-time meal periods and/or rest
28 breaks, Defendants have violated California Labor Code §1174 by failing to provide or require

1 the use, maintenance, or submission of accurate time records by members of the Class.
2 Defendants failed to take appropriate steps to correct its mistakes. As described above, Class
3 Members' were not provided paystubs at all, let alone accurate and timely ones, in part due to
4 being misclassified as "Independent Contractors". The cash payments received by Class Members
5 did not accurately reflect all of the hours worked or correct pay rates, including work performed
6 during meal periods and/or rest breaks, and Defendants did not provide its Non-Exempt
7 Employees payment of an additional hour(s) of pay at the employee's/Class Member's regular
8 rate for each duty-free meal period and/or rest break that was not provided. Defendants' failure
9 to provide Plaintiff and Class Members with timely and/or accurate, semi-monthly itemized
10 statements was done knowingly and intentionally.

11 44. **Failure to Reimburse Business Expenses:** Defendants' practices and policies
12 resulted in the systemic and uniform failure to provide Plaintiff and Class Members
13 reimbursement for necessary business related expenses (i.e. use of personal cell phone for
14 Defendants' business). Plaintiff and Class Members were required to track their work hours, shift
15 times, meal/rest breaks with the third-party mobile phone application Homebase using their
16 personal mobile phones / cell phones. Plaintiff and Class Members were not reimbursed in
17 accord with Labor Code §2802 for the use of their phones.

18 45. **Wages Owed Upon Separation/Termination Violations:** Defendants' practices
19 and policies resulted in the systemic and uniform failure to provide Plaintiff and Class Members,
20 upon termination or separation, the total wages they were owed. Plaintiff and Class Member's
21 employees who quit, were laid off, or were terminated were not paid the wages owed them in
22 accord with Labor Code §§ 201, 202, 203, 206, 226.7, 512, and 1174.

23 46. **Plaintiff and the Class Members have Sustained Damages:** As a direct and
24 proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and the Class
25 Members have sustained damages, including for the lack of pay for all hours worked (including
26 overtime hours, and/or minimum wage for said hours), wages for failure to provide duty-free/on-
27 time meal periods and/or rest breaks and loss of interest on those wages, and reimbursement of
28 necessary business expenses, all in amounts to be established at trial. As a further direct and

1 proximate result of Defendants' unlawful conduct, as set forth herein, many Class Members
2 herein are entitled to recover "waiting time" penalties and penalties for failure to provide accurate
3 and timely semi-monthly statements, all in amounts to be established at trial. Plaintiff and the
4 Class Members are also entitled to recover prejudgment interest, attorneys' fees and costs,
5 pursuant to statute.

6 **47. PAGA Aggrieved Employees:** At all times herein set forth, PAGA was
7 applicable to the Plaintiff's employment by Defendants. Pursuant to PAGA, a civil action under
8 PAGA may be brought by an "aggrieved employee," who is any person that was employed by the
9 alleged violator and against whom one or more of the alleged violations was committed. Plaintiff
10 were employed by Defendants and the Labor Code violations alleged herein were committed
11 against them and other employees during their time of employment, and they are therefore
12 aggrieved employees. Plaintiff and other Class Members are "aggrieved employees" as defined
13 by California Labor Code §2699(c) in that they are all current or former employees of
14 Defendants, and one or more of the Labor Code violations alleged herein were committed against
15 them.

16 **48. PAGA Requirements for Civil Action:** Pursuant to California Labor Code §§
17 2699.3 and 2699.5, an aggrieved employee, may pursue a civil action arising under PAGA after
18 the following requirements have been met: The aggrieved employees shall give written notice by
19 certified mail/electronic filing on website (hereinafter "PAGA Notice") to the California Labor
20 and Workforce Development Agency ("LWDA") and the employer(s) of the specific provisions
21 of the California Labor Code alleged to have been violated, including the facts and theories to
22 support the alleged violations. The LWDA shall provide notice (hereinafter "LWDA Notice") to
23 the employer and the aggrieved employee by certified mail that it does not intend to investigate
24 the alleged violation within sixty (60) calendar days of the postmark date of the PAGA Notice.
25 Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65)
26 calendar days of the postmark date of the employees' PAGA Notice, the aggrieved employee may
27 commence a civil action pursuant to California Labor Code § 2699 to recover civil penalties in
28 addition to any other penalties to which the employee may be entitled.

FAILURE TO PAY OVERTIME WAGES
(Labor Code §§ 204, 510, 1194, 1199)
(Plaintiff Against All Defendants and Does 1-100)

50. Plaintiff incorporates by reference in this cause of action each allegation of all of the foregoing paragraphs as if fully restated herein, and further allege against Defendants and Does 1-100, and each of them, as follows:

51. During the Class Period Plaintiff and Class Members often worked in excess of 8 hours in a work day and/or 40 hours in a workweek without full compensation in violation of Labor Code §510. The precise number of hours will be proven at trial.

52. On information and belief, at all relative times, Defendants were aware of, and were under a duty to comply with, various provisions of the California Labor Code. These provisions include

a. Labor Code § 510: “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day or work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an

1 employee . . .”

2 b. Labor Code § 1194: “Notwithstanding any agreement to work for a lesser
3 wage, any employee receiving less than . . . the legal overtime compensation applicable to the
4 employee is entitled to recover in a civil action the unpaid balance of the full amount of this . . .
5 overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

6 c. Labor Code § 1198: “The maximum hours of work and the standard
7 conditions of labor fixed by the commission shall be the maximum hours of work and the
8 standard conditions of labor for employees. The employment of any employee for longer hours
9 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

10 d. Labor Code § 1199: “Every employer or other person acting either
11 individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and
12 is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less
13 than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to
14 work for longer hours than those fixed, or under conditions of labor prohibited by an order of the
15 commission . . . [or] (c) Violates or refuses or neglects to comply with any provision of this
16 chapter or any order of the commission.”

17 53. By refusing to compensate Plaintiff and the Class Members at correct rates for
18 overtime wages earned, Defendants violated and continue to violate those California Labor Codes
19 and I.W.C. wage orders, including Labor Code §§ 204, 510, 1194, 1198, 1199 and Wage Orders
20 5-2001, 15-2001).

21 54. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
22 herein, Plaintiff and the Class Members have sustained damages, including loss of earnings for
23 underpaid hours of overtime worked on behalf of Defendants in an amount to be established at
24 trial. As a further direct and proximate result of Defendants’ unlawful conduct, as set forth
25 herein, Plaintiff and Class Members are entitled to recover interest on the overtime wages earned
26 but not paid, at a rate of 10% per year, as well as attorneys’ fees and costs per Labor Code
27 §§218.5, 218.6, and 1194, and the assessment of any other statutory penalties provided by the
28 Labor Code.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGE
(Labor Code §§ 1182.12, 1194, 1197, 1197.1;)
(Plaintiff Against All Defendants and Does 1-100)

55. Plaintiff incorporates by reference in this cause of action each allegation of all of the foregoing paragraphs as if fully restated herein, and further allege against Defendants and Does 1-100, and each of them, as follows:

56. Labor Code §§ 1182.12, 1194, 1197 and 1197.1 (and I.W.C. Wage Orders 5-2001 and 15-2001, establish and protect the right of employees in California to receive minimum wages for their work, in amounts set by California law. The applicable minimum wage in California during the Class Period has been \$8/hr. from the beginning of Class Period until June 30, 2014, \$9/hr. from July 1, 2014 to Jan. 1, 2016, and \$10/hr. from Jan. 1, 2016 on.

57. At all relevant times, Defendants failed to pay Plaintiff and Class Members the applicable minimum wage for all hours worked due to its failure to compensate Plaintiff and Class Members for all work performed, specifically for work performed during meal and/or rest breaks.

58. As a direct and proximate result of the Defendant's unlawful conduct, Plaintiff and Class Members have been deprived of their minimum wages in an amount to be proven at trial, and are entitled to recover such amounts, plus interest and penalties thereon, attorney's fees and costs, under Labor Code §§ 218.5, 218.6, 558, 1182.12, 1194, 1194.2, 1197.1, I.W.C. Wage Orders 5-2000 and 5-7 2001, and are entitled to injunctive relief.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MANDATED MEAL PERIODS
(Labor Code §§ 226.7, 512)
(Plaintiff Against All Defendants and Does 1-100)

59. Plaintiff incorporates by reference in this cause of action each allegation of all of the foregoing paragraphs as if fully restated herein, and further allege against Defendants and Does 1-100, and each of them, as follows:

60. Plaintiff and Class Members regularly work in excess of five (5) hours per day without being afforded a duty-free meal period of not less than 30 minutes as required by Labor

Code §§ 226.7, 512 and I.W.C Wage Orders 5-1001, 15-2001.

61. California Labor Code § 512 provides that an employer may not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than 30 minutes.

62. Furthermore, California Labor Code § 226.7 provides that:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

63. As a direct and proximate result of Defendants' unlawful conduct in not providing for duty-free meal periods, Plaintiff and Class Members are entitled to one additional hour of pay at their regular rate as wages under Labor Code §§ 226.7, 512 for each day in which the proper meal period was not provided. In addition, Plaintiff and Class Members are entitled to interests, penalties, attorney's fees and costs pursuant to C.C.P. §1021.5.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE MANDATED REST PERIODS
(Labor Code § 226.7)
(Plaintiff Against All Defendants and Does 1-100)

64. Plaintiff incorporates by reference in this cause of action each allegation of all of the foregoing paragraphs as if fully restated herein, and further allege against Defendants and Does 1-100, and each of them, as follows:

65. Plaintiff and Class Members regularly work in excess of four (4) hours per day without being afforded a rest period of not less than ten (10) minutes as required by Labor Code § 226.7 and I.W.C Order 5-2001, 15-2001 (employees are entitled to 10 minutes rest for shifts from 3 ½ hours to 6 hours in length, 20 minutes for shifts of more than 6 hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so) (See *Brinker Restaurant Corp., et al v. Superior Court* (2012), 53 Cal. 4th 1004, 1029).

1 66. California Labor Code § 226.7 mandates that no employer shall require any
2 employee to work during any meal or rest period.

3 67. California Labor Code § 226.7 provides that:

4 (a) No employer shall require any employee to work during any
5 meal or rest period mandated by an applicable order of the
6 Industrial Welfare Commission.

7 (b) If an employer fails to provide an employee a meal period or
8 rest period in accordance with an applicable order of the Industrial
9 Welfare Commission, the employer shall pay the employee one
10 additional hour of pay at the employee's regular rate of
11 compensation for each work day that the meal or rest period is not
12 provided.

13 68. As a direct and proximate result of Defendants' unlawful conduct in not providing
14 for duty-free rest periods, Plaintiff and Class Members are entitled to one additional hour of pay
15 at their regular rate as wages under Labor Code § 226.7, for each day in which the proper rest
16 break was not provided. In addition, Plaintiff and Class Members are entitled to interests,
17 penalties, attorney's fees and costs pursuant to C.C.P. §1021.5.

18 **FIFTH CAUSE OF ACTION**
19 **FAILURE TO PROVIDE TIMELY AND ACCURATE WAGE STATEMENTS**
20 **(Labor Code § 226)**
21 **(Plaintiff Against All Defendants and Does 1-100)**

22 69. Plaintiff incorporates by reference in this cause of action each allegation of all of
23 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
24 Does 1-100, and each of them, as follows:

25 70. Labor Code § 226(a) provides as follows:

26 Every employer shall, semimonthly or at the time of each payment
27 of wages, furnish each of his or her employees, either as a
28 detachable part of the check, draft or voucher paying the
employee's wages, or separately when wages are paid by personal
check or cash, an itemized statement in writing showing (1) gross
wages earned, (2) total hours worked by the employee . . . (3) the
number of piece-rate units earned and any applicable piece rate if
the employee is paid on a piece-rate basis, (4) all deductions . . . ,
(5) net wages earned . . . 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.

71. Labor Code § 226(e) provides as follows:

1 An employee suffering injury as a result of a knowing and
2 intentional failure by an employer to comply with subdivision
3 (a) shall be entitled to recover the greater of all actual damages or
4 fifty dollars (\$50) for the initial pay period in which a violation
5 occurs and one hundred dollars (\$100) per employee for each
violation in a subsequent pay period, not exceeding an aggregate
penalty of four thousand dollars (\$4,000), and shall be entitled to an
award of costs and reasonable attorney fees.

6 72. During the relevant time period, Defendants failed to provide Plaintiff sand Class
7 Members with accurate, semi-monthly itemized statements of the total hours worked, all
8 applicable hourly rates in effect, and all gross and net wages earned during the pay period. On
9 information and belief, this was the direct and proximate result of a willful refusal by Defendants
10 to provide such accurate statements.

11 73. Defendants knowingly and intentionally failed to provide timely, accurate,
12 itemized wage statements to Plaintiff and Class Members in accordance with Labor Code
13 § 226(a). The Defendants generally paid Plaintiff and Class Members in cash and failed to
14 provide any wage statements. If Defendants provided statements to Plaintiff and Class Members
15 they have not accurately reflected the total hours worked, all applicable hourly rates in effect, and
16 all gross and net wages earned during the pay period.

17 74. As a direct and proximate result of Defendants' unlawful conduct in failing to
18 provide accurate itemized wages statements, Plaintiff and Class Members suffered actual
19 damages and harm by being unable to determine their applicable hourly rate or the amount of
20 regular time or overtime worked each pay period, which prevented them from becoming aware of
21 these violations and asserting their statutory protections under California law. Plaintiff and Class
22 Members are entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the
23 initial pay period in which a violation occurs and one hundred dollars (\$100.00) per employee for
24 each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand
25 dollars (\$4,000.00). Plaintiff and Class Members are entitled to seek penalties, and attorneys' fees
26 and costs as provided by Labor Code §§ 226(e), 226(h), 226.3, and 1174.5.
27
28

SIXTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES DUE AT TERMINATION –
WAITING TIME PENALTIES
(Labor Code §§ 201, 202, 203)
(Plaintiff Against All Defendants and Does 1-100)

75. Plaintiff incorporates by reference in this cause of action each allegation of all of the foregoing paragraphs as if fully restated herein, and further allege against Defendants and Does 1-100, and each of them, as follows:

76. California Labor Code § 201 requires Defendants to pay its discharged employees all wages due immediately upon discharge or termination of employment.

77. California Labor Code § 202 requires that if an employee 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address.”

78. California Labor Code § 203 provides that if an employer willfully fails to timely pay any wages that are due to an employee who quits or is discharged, the employer must, as a penalty, continue to pay the employees’ wages until the back wages are paid in full or an action is commenced. The penalty accrues for up to 30 days of wages. To this end, Labor Code § 203 provides as follows:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202 and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

79. Plaintiff and Class Members who have been discharged or who have quit are entitled to unpaid compensation, pursuant to Labor Code § 203, but to date have not received such compensation.

80. During the relevant time period, Plaintiff and many Class Members were employed by Defendants and were thereafter terminated or resigned from their positions with

Defendants. Defendants, however, did not pay such Plaintiff and Class Members all wages due upon their termination or within 72 hours of their resignation of employment. On information and belief, Plaintiff alleges that such non-payment was the direct and proximate result of a willful refusal to do so by Defendants.

81. As a direct and proximate result of Defendants' unlawful and willful conduct in not paying compensation for all hours worked, many Class Members are entitled to up to 30 days wages as a penalty ("waiting time penalty") under Labor Code § 203, together with reasonable attorneys' fees and costs.

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE EMPLOYEES FOR NECESSARY BUSINESS EXPENSES
(California Labor Code §2802)
(Plaintiff Against All Defendants and Does 1-100)

82. Plaintiff incorporates by reference in this cause of action each allegation of all of the foregoing paragraphs as if fully restated herein, and further allege against Defendants and Does 1-100, and each of them, as follows:

83. Cal. Lab. Code § 2802 provides, in relevant part, that:

"An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions believed them to be unlawful."

84. Pursuant to California Labor Code §2802, Defendants were required to reimburse Plaintiffs and the Class Members for necessary business expenditures. The purpose of this statute is to prevent employers from passing their operating costs and expenses onto their employees. See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554, 562.

85. At all relevant times herein, Defendants violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse Plaintiff and Class Members for required expenses incurred in the discharge of their job duties for Defendants' benefit. Specifically, Defendants failed to reimburse Plaintiff and Class Members for expenses which included, but were not limited to, the cost associated with the use of their personal cellular phones / mobile phones for Defendants' benefit.

1 86. In order to work for Defendants, Plaintiff and other Class Members were required
2 to use a third-party mobile phone application called Homebase to track time, shifts, meal/rest
3 breaks, and as such it is/was mandatory to have a cell phone/mobile phone that is compatible with
4 that mobile application. As a result, in the course of their employment with Defendants, Plaintiff
5 and Class Members incurred unreimbursed business expenses which included, but were not
6 limited to, the costs related to the use of their personal cellular mobile phones all on behalf of and
7 for the benefit of Defendants. These expenses are necessary to complete the Class Members'
8 principal job duties.

9 87. Although these expenses are necessary expenses incurred by Plaintiff and Class
10 Members Defendants failed to indemnify and reimburse Plaintiff and Class members for these
11 expenses as an employer is required to do under the laws and regulations of California.

12 88. As a direct and proximate cause of Defendants' conduct, Plaintiff and Class
13 Members have suffered substantial losses according to proof, as well as pre-judgment interest,
14 costs, and attorneys' fees for the prosecution of this action. Plaintiff therefore demands
15 reimbursement for expenditures or losses incurred by Plaintiff and Class Members in the
16 discharge of their job duties for Defendants, or their obedience to the directions of Defendants,
17 with interest at the statutory rate and costs under Cal. Lab. Code § 2802. Further, by unlawfully
18 failing to indemnify Plaintiff and Class Members the Defendants are liable for reasonable
19 attorneys' fees and costs under Labor Code § 2802(c).

20
21 **EIGHTH CAUSE OF ACTION**
22 **UNFAIR PRACTICE UNDER THE UNFAIR COMPETITION ACT**
23 **(California Business & Professions Code §§ 17200-17208)**
24 **(Plaintiff Against All Defendants and Does 1-100)**

25 89. Plaintiff incorporates by reference in this cause of action each allegation of all of
26 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
27 Does 1-100, and each of them, as follows:

28 90. Plaintiff brings this cause of action on behalf of herself and the Class as well as on
behalf of the general public, seeking equitable and statutory relief to stop the misconduct of
Defendants, as complained of herein, and to compel disgorgement of all profits obtained by

1 Defendants through the unfair, unlawful, and/or fraudulent business practices described herein.

2 91. The conduct of Defendants, as alleged herein, constitutes an unlawful business
3 practice as set forth in Business and Professions Code §§ 17200, *et seq.*

4 92. Specifically, Defendants conducted business activities while failing to comply
5 with California Labor Codes and IWC wage orders as described in this Complaint. Defendants,
6 and each of them, have intentionally and improperly failed to pay Class Members for all hours
7 worked including regular hours, overtime hours at the correct overtime rate, and/or minimum
8 wage for said hours; additional wages for their failure to provide duty-free meal periods and/or
9 rest breaks; failed to reimburse Class Members for necessary business expenses; and failed to
10 provide other benefits in violation of the California Labor Code and IWC wage orders. Section
11 17200 of the Business and Professions Code prohibits unfair competition by prohibiting unlawful,
12 unfair, or fraudulent business practices or acts. Defendants' failure to adopt policies in
13 accordance and/or adherence with these laws, all of which are binding upon and burdensome to
14 Defendants' competitors, engenders an unfair competitive advantage for Defendants, thereby
15 constituting an unfair business practice, as set forth in California Business and Professions Code
16 §§ 17200, *et seq.*

17 93. Furthermore, Defendants has under-reported to federal and state authorities the
18 wages earned by their employees and, therefore, have underpaid state and federal taxes, employer
19 matching funds, unemployment premiums, Social Security, Medicare, and Workers'
20 Compensation premiums.

21 94. Defendants' conduct as alleged herein has damaged Plaintiff and the Class
22 Members by wrongfully denying them earned wages, failing to pay them all wages due upon
23 termination of employment, and failing to provide accurate and timely itemized wage statements.
24 Such conduct was substantially injurious to Plaintiff and the Class.

25 95. Under the circumstances alleged herein, it would be inequitable and result in a
26 miscarriage of justice for Defendants to continue to retain the property of Plaintiff and the Class
27 Members, entitling Plaintiff and the Class Members to restitution of the unfair benefits obtained
28 and disgorgement of Defendants' ill-gotten gains.

1 96. As a direct and proximate result of Defendants' unlawful and unfair business
2 practices, Plaintiff and Class Members are entitled to, and hereby do, seek restitution and
3 disgorgement of these ill-gotten gains, including but not limited to, restitution of all unpaid
4 wages, plus interest thereon, as well as attorney's fees and costs, and other appropriate injunctive
5 and other relief available under California Business and Professions Code §§ 17200, *et seq.*

6
7 **NINTH CAUSE OF ACTION**
8 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT ("PAGA")**
9 **(California Labor Code §§ 2698, *et. seq.*)**
10 **(Plaintiff Against All Defendants and Does 1-100)**

11 97. Plaintiff incorporates by reference in this cause of action each allegation of all of
12 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
13 Does 1-100, and each of them, as follows:

14 98. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil
15 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code § 2699.5.

16 99. PAGA provides as follows, "[n]otwithstanding any other provision of law, a
17 Plaintiff may as a matter of right amend an existing complaint to add a cause of action arising
18 under this part at any time within 60 days of the time periods specified in this part."

19 100. Defendants' conduct, as alleged herein, violates numerous sections of the
20 California Labor Code and I.W.C. Orders, including, but not limited to, the following: violation
21 of Labor Code § 226.8 and/or § 2753 (for willfully misclassifying Class Members as
22 "Independent Contractors"); violation of Labor Code §§ 204, 510, 1182.11, 1182.12, 1194, 1197,
23 1197.1, 1198, and 1199 (for failure to pay wages for all hours worked including regular hours,
24 overtime hours, and/or paid minimum wage for said hours); violation of Labor Code §§ 226.7,
25 512 (for failure to provided duty-free meal periods/rest periods or pay a premium in lieu thereof);
26 violation of Labor Code § 226(a) (for failure to provide accurate wage statements as herein
27 alleged); violation of Labor Code § 2802 (for failure to reimburse necessary business expenses);
28 and violation of Labor Code §§ 201, 202, and 203 (for failure to timely pay all earned wages
upon discharge).

101. California Labor Code § 1198 makes it illegal to employ an employee under

1 conditions of labor that are prohibited by the applicable wage order. California Labor Code §1198
2 requires that, " ... the standard conditions of labor fixed by the commission shall be the ...
3 standard conditions of labor for employees. The employment of any employee ... under
4 conditions of labor prohibited by the order is unlawful."

5 102. California Labor Code § 204 requires that all wages earned by any person in any
6 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
7 wages due upon termination of an employee, are due and payable between the 16th and the 26th
8 day of the month during which the labor was performed, and that all wages earned by any person
9 in any employment between the 16th and the last day, inclusive, of any calendar month, other
10 than those wages due upon termination of an employee, are due and payable between the 1st and
11 the 10th day of the following month. California Labor Code § 204 also requires that all wages
12 earned for labor in excess of the normal work period shall be paid no later than the payday for the
13 next regular payroll period. During the relevant time period, Defendants failed to pay Plaintiff
14 and other aggrieved employees all wages due to them, including, but not limited to, overtime
15 wages paid at the correct rate, within any time period specified by California Labor Code § 204.

16 103. Defendants, at all times relevant to this complaint, were employers or persons
17 acting on behalf of an employer(s) who violated Plaintiff and other aggrieved employees' rights
18 by violating various sections of the California Labor Code as set forth above.

19 104. As set forth above, Defendants have violated numerous provisions of both the
20 Labor Code sections regulating hours and days of work as well as the applicable order of the
21 Industrial Welfare commission. Accordingly, Plaintiff seeks the remedies set forth in Labor Code
22 § 558 for themselves, the State of California, and all other aggrieved employees.

23 105. Pursuant to PAGA, and in particular California Labor Code §§ 2699(a), 2699.3,
24 2699.5, and 558, Plaintiff, acting in the public interest as a private attorney general, seeks
25 assessment and collection of unpaid wages and civil penalties for Plaintiff and all aggrieved
26 employees, and the State of California against Defendants, in addition to other
27 remedies, plus reasonable attorneys' fees and costs, pursuant to California Labor Code §§ 201,
28 202, 203, 204, 210, 218.5, 218.6, 226, 226(a), 226.3, 226.7, 226.8, 510, 512, 1174, 1194, 1197,

1 1197.1, 1198, 1199, 2802, C.C.P. § 1021.5, California common law, (and I.W.C. orders 5-2001,
2 15-2001).

3
4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff, on behalf of herself and the Proposed Class pray for judgment
6 and the following specific relief against Defendants, jointly and separately, as follows:

7 A. That the Court determine that this action may be maintained and certified as a
8 class action under California Code of Civil Procedure § 382;

9 B. That the Court appoint Plaintiff as representatives of the Class;

10 C. That the Court appoint Counsel for Plaintiff as Class Counsel;

11 D. That Defendants are found to have violated the provisions of the Labor Code
12 and/or I.W.C. wage orders as to the Plaintiff and Class Members by failing to pay all wages owed
13 including regular hours, overtime hours and/or minimum wage for said hours in violation of
14 Labor Code §§ 204, 510, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, 1199 and I.W.C. Orders;

15 E. That Defendants are found to have violated meal period and rest brake provisions
16 of Labor Code §§226.7, 512 and I.W.C. Orders;

17 F. That Defendants are found to have violated the record-keeping provisions of Labor
18 Code §§ 226, 1174(d), 1174.5, and I.W.C. Orders;

19 G. That Defendants are found to have violated the reimbursement of employee
20 business expenses provisions of Labor Code §2802 and I.W.C Orders;

21 H. That Defendants are found to have violated Labor Code §§ 201-203 for willful
22 failure to pay all wages owed at the time of termination/separation of employment of Plaintiff and
23 Class Members formerly employed by Defendants, therefore owe waiting time penalties under
24 California Labor Code § 203;

25 I. That Defendants are found to have willfully misclassified as “Independent
26 Contractors” Plaintiff and Class Members, and have therefore violated California Labor Code
27 § 226.8 and/or § 2753; and that all damages proximately caused by Defendants’ wrongful
28

1 conduct be reimbursed and/or applicable penalties be awarded to Plaintiff and the Class
2 Members.

3 J. That the Defendants are found to have committed unfair and unlawful business
4 practices in violation of California Business & Professions Code §§ 17200, et seq., by their
5 violations of the Labor Code and Wage Order(s) as described above;

6 K. That Defendants be ordered and enjoined to pay restitution to Plaintiff and Class
7 Members due to Defendants' unlawful activities, pursuant to Business & Professions Code
8 §§ 17200, *et seq.*;

9 L. That Defendants further be ordered and enjoined to cease and desist from unlawful
10 activities in violation of Business & Professions Code §§ 17200, *et seq.*;

11 M. That Defendants' violations as described above are found to have been willful;

12 N. That Plaintiff and Class Members receive an award of damages for the amount of
13 unpaid compensation (including for regular hours, overtime hours, and minimum wage for said
14 hours, and failure to provided duty-free meal periods/rest breaks), interest thereon, and liquidated
15 damages and/or statutory penalties as set forth herein, according to proof at trial;

16 O. That Plaintiff and the Class be awarded reasonable attorneys' fees, costs, interest,
17 penalties and liquidated damages pursuant to Labor Code §§ 200, 201, 202, 203, 204, 218.5,
18 218.6, 225.5, 226, 226 (a), 226.8, 1174, 1174.5, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1,
19 2802, 2699, et seq.; Code of Civil Procedure § 1021.5; and/or other applicable law;

20 P. That Plaintiff and the Class Members be awarded pre-judgment and/or post-
21 judgment interest on all damages and other relief awarded pursuant to Labor Code § 218.6 and
22 Civil Code § 3287, and/or other applicable law;

23 Q. Actual and/or liquidated damages pursuant to Labor Code §226(e);

24 R. For penalties as provided, per violation, under the Private Attorneys General Act
25 (PAGA) Labor Code § 2699, et seq., and as provided by Labor Code § 558, and distributed in
26 accordance with the Act.

27 S. That Plaintiff and the Class Members receive an award of such other and further
28 relief as this Court may deem appropriate.

1
2
3 Dated: December 20, 2022

By: _____

4 Matthew S. Da Vega
5 **DA VEGA | FISHER | MECHTENBERG, LLP**
6 Attorneys for the Plaintiff, the Proposed Plaintiff Class
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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a trial by jury for all issues so triable.

Dated: December 20, 2022



By: _____

Matthew S. Da Vega
DA VEGA | FISHER | MECHTENBERG, LLP
Attorneys for the Plaintiff, the Proposed Plaintiff Class

REYES v. BACKPACK BOYZ
STIPULATION OF CLASS ACTION SETTLEMENT and RELEASE

EXHIBIT B
(PRELIMINARY APPROVAL ORDER)

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

KRISTINA REYES, on behalf of herself
and all similarly situated,

Plaintiff,

v.

BACKBACK BOYZ LOS ANGELES,
LLC; LOS ANGELES INDUSTRY, INC.;
and DOES 1-100, inclusive,

Defendants.

Case No. 22STCV05435

CLASS and REPRESENTATIVE ACTION

**[PROPOSED] ORDER RE PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AND PROVISIONAL
CLASS CERTIFICATION ORDER**

[Assigned To Hon. William Highberger
Dept. 10]

Date: December 20, 2022

Time: 10 a.m.

Location: Dept. 10 (Hon. William Highberger)

Action Filed: February 14, 2022

On December 20, 2022 at 10 a.m., this Court heard Plaintiff's Motion for Preliminary Approval of Class Action Settlement and provisional class certification under California Rule of Court 3.769, as filed by Plaintiff Kristina Reyes (the "Plaintiff"). This Court reviewed the motion, including the Joint Stipulation of Class Action Settlement and Release (the "Agreement," "Settlement," or "Settlement Agreement"). Based on this review, the hearing, and the findings below, the Court finds good cause to GRANT the motion.

1 **FINDINGS:**

2 **1.** Unless otherwise specified, defined terms in this Preliminary Approval of Class
3 and Representative Action Settlement and Provisional Class Certification Order (the
4 “Preliminary Approval Order”) have the same definition as the defined terms in the Agreement.

5 **2.** The Court determines there is sufficient evidence to suggest that the Agreement
6 (including the Class Representative Enhancement Payment, Class Counsel’s fees and costs, the
7 Settlement Administration Costs, and the allocation of payments to Settlement Class Members)
8 falls within the range of possible approval that could ultimately be given final approval by this
9 Court as fair, reasonable, and adequate, and that the final determination of these issues will be
10 made at the Final Approval Hearing (referred to in the Agreement as the “Fairness Hearing”).
11 More specifically, the Court finds on a preliminary basis that:

12 **(a)** The Settlement provides for a **Gross Settlement Amount of \$350,000**
13 that Defendants will pay into the settlement fund pursuant to the terms and timing specified in
14 the Agreement. The Settlement further provides that the Net Settlement Fund shall be calculated
15 by subtracting the following amounts from the total of the Gross Settlement Amount:

16 (1) the Class Counsel Award (estimated at **\$115,500 in attorneys’ fees [33% of**
17 **\$350,000 Gross Settlement Amount]** and **\$25,000 in attorney costs**);

18 (2) all Settlement Administration Costs (estimated not to exceed **\$10,000**);

19 (3) the Class Representative Enhancement Payment (estimated at **\$10,000**); and

20 (4) the amount allocated to the California Labor Workforce and Development Agency
21 (“LWDA”) under the Private Attorneys General Act of 2004 (“PAGA”) (75% of
22 \$35,000 total PAGA Penalty equals **\$26,250**).

23 The **Net Settlement Fund**, to be disbursed to Settlement Class Members (estimated at **93**
24 **individual class members**) who have not excluded themselves from the Settlement, is presently
25 anticipated to be **approximately \$163,250**. If the Settlement is approved, the full amount of the
26 Net Settlement Fund will be paid out to Settlement Class Members who do not exclude
27 themselves from the Settlement in accordance with the terms of the Agreement.
28

1 (b) The Agreement is fair, adequate and reasonable as to all Class Members
2 when balanced against the probable outcome of further litigation relating to liability and
3 damages issues.

4 (c) Settlement at this time will avoid substantial additional costs by all parties,
5 as well as avoid the delay and risks that would be presented by the further prosecution of this
6 class action.

7 (d) The Settlement does not improperly grant preferential treatment to class
8 representatives or segments of the class, supporting a presumption of fairness.

9 (e) Adequate inquiry, investigation and discovery have been conducted so
10 that counsels for the Parties are able to reasonably evaluate their respective positions, supporting
11 a presumption of fairness.

12 (f) The Agreement has been reached as a result of intensive, serious and non-
13 collusive, arms-length negotiations, supporting a presumption of fairness.

14 3. The Court finds that distribution of the Notice of Class Action Settlement,
15 substantially in the form attached hereto as “**Exhibit 1**”, via first class U.S. postal mail to
16 Class Members (a) constitutes the best notice practicable under the circumstances, (b)
17 constitutes valid, due, and sufficient notice to all members of the Class, and (c) complies fully
18 with the requirements of California Code of Civil Procedure section 382, California Rules of
19 Court 3.766 and 3.769, the California and United States Constitutions, and other applicable law.

20 4. For settlement purposes only, the Court finds the Class is so numerous that
21 joinder of all Class Members is impracticable, Plaintiff’s claims are typical of the Class’s claims,
22 there are questions of law and fact common to the Class, which predominate over any questions
23 affecting only individual Class Members, the Plaintiff is an adequate representative of the Class,
24 and class certification is superior to other available methods for the fair and efficient
25 adjudication of the controversy.

26 5. Pursuant to Labor Code section 2699, subdivision (1)(2), the Court notes that
27 Plaintiff provided a copy of the Agreement to the LWDA at the same time that Plaintiff provided
28

1 it to the Court, and the Court has reviewed the Settlement's provisions relating to settlement of
2 claims under PAGA. The Court tentatively finds that the **payment of \$35,000 for settlement of**
3 **any and all claims for which civil penalties under PAGA may be sought** or are otherwise
4 available (the "PAGA Penalty Payment"), is fair and adequate. Further, the Court tentatively
5 finds that the PAGA Penalty Payment satisfies the requirements of California Labor Code
6 section 2699, subdivision (i), because **\$26,250 (75%) of the PAGA Penalty Amount is**
7 **allocated to the LWDA** for the enforcement of labor laws and education of employers, and
8 **\$8,750 (25%) is allocated for distribution to the PAGA Group**, i.e., the allegedly "aggrieved
9 employees."

10 **IT IS ORDERED THAT:**

11 **1. Settlement Preliminary Approval.** The Settlement Agreement and the Notice of
12 Class Action Settlement are preliminarily approved. The Court further preliminarily approves
13 the formulas provided in the Settlement for calculating Individual Settlement Payments to the
14 Class Members using a shift-based calculation methodology.

15 **1.1 Provisional Certification.** The Settlement Class is provisionally certified for
16 settlement purposes only as a class of: "All current and former non-exempt employees who
17 worked for Defendants in the State of California from February 14, 2018, through the date the
18 Court grants preliminary approval of the Settlement." The "Class Period" refers to the period of
19 time from February 14, 2018 through the date the Court grants preliminary approval of the
20 Settlement. As a practical matter, there were no shifts worked by any Class Member prior to
21 March 10, 2021. Excluded from the Settlement Class are putative Class Members who submit a
22 timely and valid Request for Exclusion (as defined by the Settlement Agreement).

23 **2. Appointment of Class Representative and Class Counsel.** Plaintiff Kristina
24 Reyes is conditionally appointed as the Class Representative to implement the Parties'
25 Settlement in accordance with the Agreement. Matthew S. Da Vega and Matthew Fisher of
26 Da Vega Fisher Mechtenberg LLP are conditionally appointed as Class Counsel. Class Counsel
27 is conditionally authorized to act on behalf of the Class with respect to all acts or consents
28

1 required by, or which may be given, pursuant to the Settlement, and such other acts necessary to
2 finalize the Settlement Agreement and its terms. Any Class Member may enter an appearance
3 through his or her own counsel at such Class Member's own expense. Any Class Member who
4 does not enter an appearance or appear on his or her own behalf will be represented by Class
5 Counsel for settlement purposes only. Plaintiff and Class Counsel must fairly and adequately
6 protect the Class's interests.

7 **3. Appointment of Settlement Administrator.** CPT Group, Inc. is hereby
8 appointed as the Settlement Administrator for this case.

9 **4. Provision of Class Notice.** Within ten (10) calendar days after entry of this
10 Preliminary Approval Order, Defendant shall provide the Class List to the Settlement
11 Administrator. On or before thirty (30) calendar days of entry of this Preliminary Approval
12 Order, the Settlement Administrator shall mail the Notice of Class Action Settlement (which
13 shall be substantially similar to the form attached hereto as **Exhibit 1** to all Class Members via
14 regular First-Class U.S. Mail in the manner specified under the Settlement Agreement.

15 **5. Response Deadline.** The Response Deadline shall be **forty-five (45) calendar**
16 **days** from the initial mailing of the Class Notice to Class Members pursuant to Settlement
17 Agreement. In the event of a re-mailed Class Notice, the Response Deadline will be extended
18 an additional fifteen (15) calendar days for that individual Class Member.

19 **6. Objection to Settlement.** Settlement Class Members who have not submitted a
20 timely and valid Request for Exclusion pursuant to the Settlement Agreement and who want to
21 object to the Agreement must sign and submit by U.S. Mail or other delivery service a valid
22 written Objection to the Settlement Administrator on or before the Response Deadline. The
23 Settlement Administrator will provide copies of all such Objections to Class Counsel and
24 Defendant's counsel weekly and will also provide a Final Response Report within five (5)
25 calendar days of the Response Deadline. For an Objection to be valid, it must: (a) state the case
26 name and number of the Action (b) contain the Class Member's name, current mailing address,
27 most current telephone number, and last four digits of his or her Social Security number, (c)
28

1 state the basis for the objection, (d) be signed by the Class Member, (e) be submitted to the
2 Settlement Administrator at the address specified in the Class Notice; and (f) be submitted
3 with proof of the submission date (such as a U.S. Postal Service postmark or another delivery
4 service date stamp) on or before the Response Deadline. The date the Objection is sent, as
5 evidenced by the postmark or other delivery service date stamp, shall be the exclusive means to
6 determine whether an Objection has been timely submitted. If a Class Member intends to
7 speak at the Final Approval Hearing, he or she should (although they are not required to) file a
8 “notice of intention to appear” with the Court and provide a copy of this notice and their
9 Objection to counsel for both Parties. Any Settlement Class Member will be permitted to
10 appear and speak at the Final Approval Hearing in order to have an Objection heard by the
11 Court.

12 **7. Failure to Object to Settlement.** Class Members who fail to timely object to the
13 Settlement Agreement in the manner specified above will: (1) be deemed to have waived their
14 right to object to the Agreement; and (2) be foreclosed from objecting (whether by appeal or
15 otherwise) to the Agreement.

16 **8. Requesting Exclusion (Opt Out).** Any Class Member wishing to be excluded
17 (aka “opt-out”) from the Class Settlement must sign and submit by U.S. Mail or other delivery
18 service a valid written Request for Exclusion to the Settlement Administrator on or before the
19 Response Deadline containing all the information required by the Agreement. To be valid, the
20 Request for Exclusion must: (a) state the case name and number of the Action; (b) set forth the
21 name, address, and telephone number of the Class Member requesting exclusion; (c) be signed
22 by the Class Member; (d) be addressed to the Settlement Administrator; and (e) be postmarked
23 on or before the Response Deadline. The date the Request for Exclusion is sent, as evidenced
24 by the postmark or other delivery service date stamp, shall be the exclusive means to determine
25 whether a Request for Exclusion has been timely submitted.

26 **9. Shift Disputes.** If a Settlement Class Member wishes to dispute the number of
27 Shifts with which he or she has been credited, the Settlement Class Member must submit to the
28

1 Settlement Administrator, by U.S. Mail or other delivery service, a Shift Dispute on or before
2 the Response Deadline. The Shift Dispute must: (a) state the case name and number of the
3 Action (b) set forth the Class Member's name, address, and telephone number; (c) be signed by
4 the Class Member; (d) include any documentary evidence showing that the Shift information is
5 inaccurate, and (e) be postmarked or submitted to the Settlement Administrator on or before
6 the Response Deadline. The submission date is deemed to be, in the case of submission by U.S.
7 Mail or other delivery service, the date the Shift Dispute is sent, as evidenced by the postmark or
8 other delivery service date stamp.

9
10 **10. Termination.** If the Agreement terminates, the following will occur: (a) the
11 Preliminary Approval Order, and/or Final Approval Order and Judgment, and all of its or their
12 provisions will be vacated by its or their own terms, including, but not limited to, vacating
13 conditional certification of the Class; (b) Plaintiff will stop functioning as the Class
14 Representative and Class Counsel will stop serving as counsel for the proposed class; and (c) the
15 Action will revert to its previous status in all respects as it existed immediately before the Parties
16 executed the Memorandum of Understanding. No term or draft of the Memorandum of
17 Understanding or the Settlement Agreement, or any part of the Parties' settlement discussions,
18 negotiations or documentation will have any effect or be admissible into evidence for any
19 purpose in the Action or any other proceeding. This Preliminary Approval Order will not waive
20 or otherwise impact the Parties' rights or arguments.

21 **11. No Admissions.** Nothing in this Preliminary Approval Order is, or may be
22 construed as, an admission or concession on any point of fact or law by or against any Party.

23 **12. Stay of Dates and Deadlines.** All discovery and pretrial proceedings and
24 deadlines in the Action are stayed and suspended until further notice from the Court, except for
25 such actions as are necessary to implement the Agreement and this Preliminary Approval Order.

26 **13. Final Approval Hearing.** On _____, at _____ am/pm,
27 this Court will hold a Final Approval Hearing to determine whether the Agreement should be
28 finally approved as fair, reasonable, and adequate. Plaintiff's Motion for Final Approval of the

1 Settlement and all papers supporting the Class Counsel Award and Class Representative
2 Enhancement Payment must be filed by _____.

3 Any additional papers supporting final approval, including the Settlement Administrator
4 declaration and any response to Objections to the Agreement must be filed by no later than
5 _____.

6 **14.** The Court reserves the right to adjourn or continue the date of the Final Approval
7 Hearing and all dates provided for in the Agreement without further notice to the Class, and
8 retains jurisdiction to consider further applications concerning the Settlement.

9 **IT IS SO ORDERED.**

10
11
12 DATED: _____

JUDGE OF THE SUPERIOR COURT

REYES v. BACKPACK BOYZ
STIPULATION OF CLASS ACTION SETTLEMENT and RELEASE

EXHIBIT C
(CLASS NOTICE)

<<EmployeeName>>

CPT ID: <<ID>>

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

KRISTINA REYES,

v.

BACKPACK BOYZ LOS ANGELES, LLC, LOS
ANGELES INDUSTRY, INC.

Case No. 22STCV05435

NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

TO: All current and former non-exempt employees who worked for Defendants in the State of California from February 14, 2018, until **(Date of Order re Preliminary Approval)** :

IF YOU ARE A MEMBER OF THIS CLASS OF PERSONS, YOU SHOULD READ THIS NOTICE CAREFULLY BECAUSE IT WILL AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS.

A settlement ("Settlement") has been proposed in a class action lawsuit pending in Los Angeles County Superior Court ("Court") titled *Kristina Reyes v. Backpack Boyz*, Case No. 22STCV05435 (the "Action"). If the Court gives final approval to the Settlement, Backpack Boyz, Los Angeles Industry, Inc., et al. ("Defendants") will provide each Settlement Class Member a payment as set forth in this notice. Here is a summary of your rights and options; they are described in more detail later in this document. If you have any questions, please contact the *Reyes v. Backpack Boyz* c/o CPT Group Inc. 50 Corporate Park, Irvine, CA 92606.

Your Estimated Settlement Payment is \$<<estAmount>> based on the <<Shifts>> Shifts you worked during the Class Period, as shown in Defendants' records.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

GET A PAYMENT	If you do nothing, you will automatically receive a payment if the Settlement is finally approved by the Court.	N/A
SUBMIT A SHIFT DISPUTE	If you believe that the number of Shifts with which you have been credited is incorrect, you must submit a Shift Dispute to the Settlement Administrator. Detailed instructions for this option are set forth in Section 10 below.	Deadline: Date of Response Deadline - 45 days post mailing
EXCLUDE YOURSELF	If you wish to exclude yourself from the Settlement, you must submit to the Settlement Administrator a valid Request for Exclusion. If you exclude yourself from the Settlement, you will not receive an Individual Settlement Amount payment under the Settlement. Detailed instructions for this option are set forth in Section 17 below.	Deadline: Date of Response Deadline - 45 days post mailing
OBJECT	If you wish to object to the Settlement, you must submit your objections to the Settlement Administrator. Submitting an objection does not exclude you from the Settlement. Detailed instructions for this option are set forth in Section 18 below.	Deadline: Date of Response Deadline - 45 days post mailing
APPEAR AT THE "FINAL APPROVAL HEARING"	The Court will hold a "Final Approval Hearing" to consider the Settlement, the request for attorneys' fees and costs by counsel representing the Class in the Action, and the Representative Plaintiff's request for service award for bringing the Action. You may, but are not required to, speak at the Final Approval Hearing about any objection to the Settlement that you submitted. If you intend to speak at the Final Approval Hearing, we ask that you also provide to the Settlement Administrator a "Notice of Intention to Appear" indicating your intent to do so. Instructions for this option are set forth in Section 18 below.	Hearing Date: 2022 at AM/ PM

<<EmployeeName>>

CPT ID:<<ID>>

The Court in charge of this Action has preliminarily approved the Settlement and must decide whether to give final approval to the Settlement. The relief provided to Class Members will be provided only if the Court gives final approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement. ***Please be patient.***

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<<EmployeeName>>

CPT ID: <<ID>>

BACKGROUND INFORMATION**1. Why did I get this notice?**

You received this Notice because a Settlement has been reached in this Action. According to Defendants' available records you are a member of the Class and may be eligible for the relief detailed below.

This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement (which defines the capitalized terms used in this Notice), see Section 23 below.

2. What is this lawsuit about?

Plaintiff Kristina Reyes (the "Plaintiff" or "Representative Plaintiff") filed a lawsuit against Backpack Boyz Los Angeles, LLC, and Los Angeles Industry, Inc. ("Defendants") on behalf of herself and all others similarly situated. The lawsuit alleges that Defendants violated California law by, among other things, failing to pay overtime and minimum wage, failing to provide meal and rest breaks, failing to timely pay wages, including at termination, failing to provide expense reimbursement, and failing to provide compliant wage statements. The lawsuit also asserts claims under the California Private Attorneys General Act of 2004, Labor Code section 2698, et seq. ("PAGA").

Defendants deny each and every one of the allegations of unlawful conduct, any wrongdoing, and any liability whatsoever, and no court or other entity has made any judgment or other determination of any liability. Defendants further deny that any Class Member is entitled to any relief and, other than for Settlement purposes, that this Action is appropriate for certification as a class action.

The issuance of this Notice is not an expression of the Court's opinion on the merits or the lack of merits of Plaintiff's claims in the Action.

For information about how to learn about what has happened in the Action to date, please see Section 23 below.

3. Why is this a class action?

In a class action lawsuit, one or more people called "Plaintiff" (in this Action, Kristina Reyes) sues on behalf of other people who allegedly have similar claims. For purposes of this proposed Settlement, one court will resolve the issues for all Class Members. The named Defendants in this Lawsuit are Backpack Boyz Los Angeles, LLC and Los Angeles Industry, Inc.

4. Why is there a Settlement?

The Plaintiff has made claims against Defendants. Defendants deny that they have done anything wrong or illegal and admit no liability. **The**

Court has not decided that Plaintiff or Defendants should win this Action. Instead, both sides agreed to a Settlement. That way, they avoid the cost of a trial, and the Class Members will receive payment now rather than years from now, if at all.

5. How do I know if I am part of the Settlement?

The Court has decided that everyone who fits the following description is a Class Member for purposes of the proposed Settlement: "All current and former non-exempt employees who worked for Defendants in the State of California from February 14, 2018, through the date the Court grants preliminary approval of the Settlement, including but not limited to individuals holding the job titles of Budtenders, Cashiers, Inventory Managers, Joint Rollers, Managers, Floor Lead, Floater, and Receptionist." "Class Period" refers to the period of time from February 14, 2018 through (date of order re preliminary approval). As a practical matter, there were no shifts worked by any Class Member prior to March 10, 2021.

6. I'm still not sure if I am included.

If you are still not sure whether you are included, you can write to the Settlement Administrator for free help. The address of the Settlement Administrator is: *Reyes v. Backpack Boyz*, c/o CPT Group Inc., 50 Corporate Park, Irvine, CA 92606.

<<EmployeeName>>

CPT ID: <<ID>>

THE PROPOSED SETTLEMENT**7. What relief does the Settlement provide to the Class Members?**

Defendants have agreed to fund a Settlement with a maximum value of **\$350,000 (three hundred and fifty thousand dollars)**. The Settlement amount will be used to pay the claims of Settlement Class Members, the cost of providing notice to the Class and administering the Settlement (i.e., \$10,000); to pay any awards of the Court for attorneys' fees (i.e., \$115,500) and costs (i.e., \$25,000) to Plaintiff's counsel; any service award the Court awards to the Representative Plaintiff (i.e., \$10,000); and the amount allocated under the California Private Attorneys General Act of 2004, California Labor Code section 2698 et seq. ("PAGA") (i.e., \$35,000, the "PAGA Penalty Amount"), which includes the 75% payment to the California Labor Workforce and Development Agency ("LWDA Payment") (i.e., \$26,250) and the 25% "PAGA Group Amount" distributed to the PAGA Group (i.e., \$8,750).

Your Estimated Settlement Payment is \$<<estAmount>> based on the <<Shifts>> Shifts you worked during the Class Period, as shown in Defendants' records. Your estimated payment was calculated using Defendants' records. Individual Settlement Payments will be calculated and apportioned as follows:

(a) The "Net Settlement Fund" shall be calculated by subtracting, from the total of \$350,000, the payments to Class Counsel, the Representative Plaintiff, and the Settlement Administrator, and the PAGA Penalty Amount.

(b) For each Class Member, the Settlement Administrator shall determine the number of Shifts worked by them during the Class Period based on Defendants' records. The sum of the Shifts for all Class Members shall be the "Total Shifts."

(c) The Net Settlement Fund shall be divided by the number of Total Shifts; the resulting figure is the "Shift Point Value."

(d) For each Settlement Class Member (i.e., Class Members who do not request to be excluded from the Settlement), the Settlement Administrator will multiply the number of Shifts he or she worked during the Class Period by the Shift Point Value. The resulting figure shall be the "Individual Settlement Amount" for each such Settlement Class Member.

(e) The Settlement Administrator shall divide the PAGA Group Amount by the total number of PAGA Group members (i.e., the total number of Class Members who worked for Defendants during the Class Period); the resulting figure shall be each PAGA Group member's pro rata share of the PAGA Group Amount.

PAYMENT TO THE CLASS**8. How can I get a payment?**

If you wish to remain a Settlement Class Member and obtain any share of the Settlement that you may be entitled to receive, then you do not have to do anything and you will automatically receive a Settlement Payment check in the mail if the Court approves the proposed Settlement. You are not required to go to court or pay anything to the lawyers in this case. The Settlement Payment you will receive will be a full and final settlement of your Released Claims described below.

9. When will I get a payment?

As described in Sections 20 and 21, the Court will hold a hearing on _____ at _____ AM/PM, to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. *Please be patient.*

10. What if I disagree with Defendants' calculation regarding my estimated Settlement payment?

If you believe that the number of Shifts with which you have been credited is incorrect, you may produce evidence to the Settlement Administrator by **(Date of Response Deadline - 45 days post mailing)** showing that such information is inaccurate. The Settlement Administrator shall decide the dispute. Defendants' records will be presumed correct, but the Settlement Administrator will evaluate the evidence submitted by you and will make the final decision as to the merits of the dispute. You can submit a Shift Dispute by mail to the Settlement Administrator at: *Reyes v. Backpack Boyz, c/o CPT Group Inc., 50 Corporate Park, Irvine, CA 92606.*

<<EmployeeName>>

CPT ID: <<ID>>

11. If I receive a Settlement payment will I have to pay taxes on it?

Your Settlement payment will be reported on IRS Form 1099. You should consult a tax professional for more information about your own specific situation.

12. No retaliation or discrimination.

Defendants respect your right to participate in this lawsuit and will take no adverse action against you should you accept payment under the Settlement.

THE LAWYERS IN THIS CASE AND THE REPRESENTATIVE PLAINTIFF**13. Do I have a lawyer in this case?**

The Court has ordered that the law firm of Da Vega, Fisher, Mechtenberg LLP ("Class Counsel") will represent the interests of all Class Members. You will not be separately charged for these lawyers. If you have a question about the Settlement, you may contact the Class Counsel by writing them at 232 E. Anapamu Street, Santa Barbara, California 93101, or emailing them at (mdavega@mdmflaw.com) or (mfisher@mdmflaw.com), or calling them at (805) 232-4471. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Defendants have agreed to pay Class Counsel's attorneys' fees up to **\$115,500** and costs and expenses of up to **\$25,000** for their services in litigating the Action, subject to approval by the Court. You will not be required to pay any attorneys' fees or costs yourself.

15. Will the Representative Plaintiff receive any compensation for their efforts in bringing this Action?

The Representative Plaintiff will request a service award (also known as an "incentive" award) of up to **\$10,000** for her service as class representative and her effort in bringing the Action. The Court will make the final decision as to the amount to be paid to the class representative.

RELEASE OF ALL CLAIMS**16. What am I giving up to obtain relief under the Settlement?**

If the Court approves the proposed Settlement, unless you exclude yourself from the Settlement, you will be releasing your claims against Defendants. This generally means that you will not be able to file a lawsuit, continue prosecuting a lawsuit, or be part of any other lawsuit against Defendants regarding the allegations in the Action. The Settlement Agreement, which is available by contacting the Settlement Administrator as described in Section 23 below, contains the full terms of the release.

HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT**17. How do I exclude myself from the Settlement?**

You may exclude yourself from the Settlement Class and the Settlement. If you want to be excluded, you must send a letter or postcard (also known as a "Request for Exclusion") via U.S. Mail or other delivery service that states: **(a)** the case name and number of the Action "*Kristina Reyes v. Backpack Boyz*, Case No.22STCV05435"; **(b)** your full name, address, and telephone number; and **(c)** a statement that you do not wish to participate in the Settlement. You must sign and date the letter or postcard for it to be valid. The letter or postcard must be sent (i.e., postmarked or delivery date stamped) by no later than **(Date of Response Deadline - 45 days post mailing)** and sent to the Settlement Administrator at: *Reyes v. Backpack Boyz*, c/o CPT Group Inc., 50 Corporate Park, Irvine, CA 92606.

If you timely request exclusion from the Settlement Class, you will be excluded from the Settlement Class, you will not be bound by the judgment entered in the Action with respect to the Release of Claims by Class Members, you will not be precluded from prosecuting any timely, individual claim against Defendants based on the conduct complained of in the Action (excepting PAGA claims), and you will not receive an Individual Settlement Payment.

Even if you request exclusion from the Settlement Class, however, you will still be bound by the Settlement Agreement's release of PAGA Claims upon final approval of the Settlement Agreement and judgment. Requests for Exclusion do not apply to PAGA Claims. All Class Members will be sent a check for their pro rata share of the PAGA Group Amount, which are civil penalties enforced on behalf of the State of California.

<<EmployeeName>>

CPT ID:<<ID>>

HOW TO OBJECT TO THE SETTLEMENT**18. How do I tell the Court that I do not like the Settlement?**

At the date, time, and location stated in Section 21 below, the Court will hold a Final Approval Hearing to determine if the Settlement is fair, reasonable, and adequate, and to also consider Class Counsel's request for an award of attorneys' fees and costs, and service award to the Representative Plaintiff.

If you wish to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, you must submit via U.S. Mail or other delivery service a valid, written Objection to the Settlement Administrator at the address set forth below by no later than (i.e., postmarked or delivery date stamped by) **(Date of Response Deadline)**.

SETTLEMENT ADMINISTRATOR

Reyes v. Backpack Boyz,
c/o CPT Group Inc.,
50 Corporate Park
Irvine, CA 92606

To be valid, any objections must: **(a)** state the name and case number of the Action "*Kristina Reyes v. Backpack Boyz* Case No. 22STCV05435"; **(b)** state your full name, current mailing address, most current telephone number, and last four digits of your Social Security number; **(c)** state your objection to the Settlement and the legal and/or factual arguments supporting the objection; **(d)** be submitted to the Settlement Administrator via U.S. Mail or other delivery service with proof of submission date (such as a U.S. Postal Service postmark or another delivery service date stamp) no later than **(Response Deadline)**. You must sign and date the objection for it to be valid. You may, but need not, submit your objection through counsel of your choice. If you make your objection through counsel, you will be responsible for your attorney's fees and costs. **If you wish to appear at the Final Approval Hearing to object to the Settlement**, either in person or through personal counsel hired at your expense, we ask that you include in your Objection the statement, "Notice of Intention to Appear at Final Approval Hearing," or that you otherwise provide to the Settlement Administrator a "Notice of Intention to Appear" indicating your intent to appear at the Final Approval Hearing. Doing so, however, does not obligate you to appear.

IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS.**19. What is the difference between excluding myself and objecting to the Settlement?**

Objecting is telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement, with exception of PAGA, no longer affects you.

FINAL APPROVAL HEARING**20. What is the Final Approval Hearing?**

The Court has preliminarily approved the Settlement meaning only that it concluded that there is sufficient evidence to suggest that the Agreement falls within the range of possible approval as fair, reasonable, and adequate, and that the final determination of these issues will be made at the Final Approval Hearing. The purpose of the Final Approval Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider the award of attorneys' fees and expenses to Class Counsel; and to consider the request for service awards to the Representative Plaintiff.

21. When and where is the Final Approval Hearing?

On _____ at _____ AM/PM, a hearing will be held on the fairness of the proposed Settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement's fairness. The hearing will take place before the Honorable William Highberger in Department 10 of the California Superior Court, for the County of Los Angeles, located at the Spring Street Courthouse - 312 North Spring Street, Los Angeles, CA 90012. The hearing may be postponed to a different date or time or location without notice.

<<EmployeeName>>

CPT ID:<<ID>>

22. May I speak at the hearing?

At that hearing, the Court will be available to hear any Objections and arguments concerning the fairness of the Settlement. You may attend, but you do not have to.

ADDITIONAL INFORMATION**23. How do I get more information?**

To see a copy of the Settlement Agreement, the Court's Preliminary Approval Order, and the operative Complaint filed in the Action, please contact Class Counsel by writing them at 232 E. Anapamu Street, Santa Barbara, California 93101, or emailing them at (mdavega@mdmflaw.com) or (mfisher@mdmflaw.com), or calling them at (805) 232-4471.

This description of this Action is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file you may visit the Clerk's office at the Spring Street Courthouse - 312 North Spring Street, Los Angeles, CA 90012, to obtain the file for inspection and copying at your own expense. Some documents and information may also be available online at: <https://www.lacourt.org/>

24. What if my address or other information has changed?

It is your responsibility to inform the Settlement Administrator of your updated information. You may make corrections to your address by contacting the Settlement Administrator at: *Reyes v. Backpack Boyz*, c/o CPT Group Inc. 50 Corporate Park, Irvine, CA 92606.

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

REYES v. BACKPACK BOYZ
STIPULATION OF CLASS ACTION SETTLEMENT and RELEASE

EXHIBIT D
(FINAL APPROVAL ORDER)

Matthew S. Da Vega, SBN 195443
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 232 E. Anapamu St.
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Attorneys for Plaintiff and the Proposed Plaintiff Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES**

KRISTINA REYES, on behalf of herself
 and all others similarly situated,

Plaintiff,

vs.

BACKPACK BOYZ LOS ANGELES,
 LLC; LOS ANGELES INDUSTRY, INC.,
 and DOES 1-100, inclusive,

Defendants.

Case No.: 22STCV05435

CLASS AND REPRESENTATIVE ACTION

**[PROPOSED] JUDGMENT and ORDER
 GRANTING PLAINTIFFS' MOTION FOR
 FINAL APPROVAL OF CLASS
 SETTLEMENT and ATTORNEYS' FEES and
 COSTS**

[Assigned to the Honorable William Highberger
 Dept. 10]

Date: TBD
Time: TBD
Location: Dept. 10 (Hon. William Highberger)

Plaintiffs Kristina Reyes ("Plaintiff"), individually, and on behalf of similarly situated persons, and Defendant Backpack Boyz Los Angeles, LLC; Los Angeles Industry, Inc., ("Defendants")(or together with the Plaintiff, the "Parties") reached a class action settlement, upon the terms and conditions set forth in the Parties' Joint Stipulation of Class Action Settlement and Release ("Settlement Agreement"), a copy of which was attached as Exhibit 1 to the Declaration of Matthew S. Da Vega filed with the Court concurrently with Plaintiffs' Notice of Motion and Motion for Preliminary Approval of Class Settlement ("Preliminary Approval").

On December 20, 2022, the Court issued its Order Granting Preliminary Approval of Class Settlement ("Preliminary Approval Order").

[PROPOSED] ORDER AND JUDGMENT RE FINAL APPROVAL OF CLASS SETTLEMENT

1 Due and adequate notice having been given to the Class Members, as defined below,
2 and the Court having considered Plaintiffs' Notice of Motion and Motion for Final Approval of
3 Class Action Settlement ("Motion") and the exhibits thereto, all papers filed and proceedings
4 had herein and any written objections/disputes received regarding the proposed Settlement, and
5 having reviewed the record in the Action, and good cause appearing,

6 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

7 **RECITALS**

8 1. On October 27, 2022, Plaintiffs filed an unopposed Motion for Final Approval
9 of Class Settlement, Class Representative Enhancement Award, Settlement Administrator
10 Costs and Class Counsel's Fees and Costs.

11 2. On [REDACTED] the Court held a Final Approval/Fairness Hearing.

12 **FINDINGS**

13 3. **Fair, Adequate and Reasonable:** The Court finds that the Settlement is, in all
14 respects, fair, adequate, and reasonable. In making this finding, the Court considers the nature
15 of the claims and the risks inherent in such claims, the good result obtained, Defendant's
16 potential liability, and the fact that this Settlement represents a compromise of the Parties'
17 respective positions rather than the result of a finding of liability at trial. The Court further
18 finds that the terms of the Settlement have no obvious deficiencies and do not improperly grant
19 preferential treatment to Plaintiff. Therefore, the Court finds that the Settlement was entered
20 into in good faith.

21 4. **Class Notice:** The Court additionally notes the significant benefits to the Class
22 Members under the Settlement Agreement, and finds that the distribution of the Class Notice of
23 Settlement to the Class Members as set forth in the Settlement Agreement has been completed
24 in conformity with the Settlement Agreement and order granting preliminary approval of the
25 Settlement. The Notice of Class Settlement provided adequate notice of the proceedings and
26 about the case, including the proposed settlement terms as set forth in the Settlement
27 Agreement. The Notice of Class Settlement fully satisfied due process requirements. The
28 Notice of Class Settlement was sent via first class U.S. Mail to all persons entitled to such
notice and to all Class Members. As executed, the Notice of Class Settlement was the best

1 notice practicable under the circumstances.

2 **ORDER**

3 5. The Court hereby **GRANTS FINAL APPROVAL** of the class settlement upon
4 the terms and conditions set forth in the Settlement Agreement.

5 6. **Class Definition:** The Court hereby certifies, for settlement purposes only, the
6 following class.

7 The Settlement class is defined as:

8 “All current and former non-exempt employees who worked for
9 Defendants in the State of California from February 14, 2018,
10 through the date the Court grants preliminary approval of the
11 Settlement, including but not limited to individuals holding the
12 job titles of Budtenders, Cashiers, Inventory Managers, Joint
13 Rollers, Managers, Floor Lead, Floater, and Receptionist.”

14 The Settlement Class does not include class member of submit valid
15 Requests for Exclusion (aka “Opt Outs”)

16 “Class Period” is from February 14, 2018, through the date the Court
17 grants preliminary approval of the Settlement.”

18 As a practical matter, there were no shifts worked by any Class Member
19 prior to March 10, 2021.

20 7. **Class Representative:** The Court hereby appoints Kristina Reyes as Class
21 Representative, for settlement purposes only.

22 8. **Class Counsel:** The Court hereby appoints Matthew S. Da Vega of Da Vega
23 Fisher Mechtenberg LLP as Class Counsel, for settlement purposes only.

24 9. **Implementation and Cy Pres:** The Court hereby orders the Parties to
25 implement the terms of the Settlement Agreement, and directs Defendant to disburse the funds
26 pursuant to the terms of the Settlement and consistent with this Order and Judgment. All
27 uncashed settlement checks and any residual amounts of the Settlement Fund returned to the
28 Settlement Administrator, plus any accrued interest that has not otherwise been distributed
pursuant to order of the Court, shall be distributed as follows: the Legal Aid Society of Los
Angeles County, website: <https://lafla.org/>; Ron Olson Justice Center, 1550 W. 8th Street, Los
Angeles, CA 90017.

10. **Release by Class Members:** All Class Members who did not “Opt-Out” of the
Settlement shall be bound by the releases provided in the Settlement Agreement and Notice of

1 Class Settlement.

2 11. **Release by the PAGA Group:** The PAGA Group shall be bound by the PAGA
3 Release provided in the Settlement Agreement.

4 12. **Class Representative Enhancement Award:** The Court hereby approves a
5 Class Representative Enhancement Awards in the amount of **\$10,000** to the Class
6 Representatives to be paid out of the Settlement Amount.

7 13. **Class Counsel Fees and Costs:** The Court hereby approves an award of
8 reasonable attorneys' fees to Class Counsel in the amount of **\$115,500** and reimbursement of
9 costs and expenses they incurred in this matter in the amount of **\$25,000** to be paid out of the
10 Gross Settlement Amount.

11 14. **Settlement Administrator Costs:** The Court hereby approves an award of
12 **\$10,000** for Settlement Administration costs to be paid out of the Gross Settlement Amount.

13 15. **PAGA Payments:** The Court hereby approves payment for civil penalties
14 under the Private Attorneys General Act of 2004 ("PAGA") in the amount of **\$35,000** (75% of
15 that amount [**\$26,250**] is to paid to the California Labor and Workforce Development Agency
16 ['LWDA'] and 25% to that amount [**\$8,750**] is to be paid to the PAGA Group.

17 16. The Court notes that Defendants do not oppose these amounts, and finds these
18 amounts are fair and reasonable under the circumstances and under both the common fund
19 approach and lodestar approach.

20 17. A Compliance Hearing will be held on _____.

21 18. A Compliance Status report shall be filed and served by _____.

22 **JUDGMENT**

23 18. This Judgment is intended to be a final disposition of this action in its entirety,
24 and is intended to be immediately appealable. Pursuant to Rule 3.769(h) of the California Rules
25 of Court, the Court retains jurisdiction over the Parties to enforce the terms of the Settlement
26 and this Judgment.

27 **IT IS SO ORDERED and JUDGMENT IS HEREBY ENTERED**

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DATED: _____

By: _____
Honorable William Highberger
Judge of the Superior Court