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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ASTRID OROZCO, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DELPHON INDUSTRIES, LLC, a Delaware
Limited Liability Company; and DOES 1
through 20, inclusive;

Defendants.

Case No.: 22CV006597

*[Assigned to Hon. Judge Evelio Grillo, Dept.
21, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: February 8, 2023

Time: 10:00 a.m.

Dept.: 21

Complaint filed: February 4, 2022

1 I, Brian J. Mankin, state and declare:

2 1. I am an attorney licensed to practice before all of the courts of the State of
3 California. I manage the employment department within my firm where I am also a Partner. I
4 represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge
5 of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for
6 Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would
7 competently testify thereto.

8 **COUNSEL'S EXPERIENCE**

9 2. I have been a member, in good standing, of the State Bar of California since 2001.
10 I am admitted to practice in the United States District Courts for the Central and Southern
11 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
12 courts in California.

13 3. I have handled over 500 employee vs. employer litigation matters during my 22
14 years in practice. Over the last 16 years, my practice has almost entirely consisted of
15 representing employees, the majority of which has included class action and representative
16 action wage and hour matters. In total, I have handled well over 250 class action and
17 representative action wage/hour cases, and have been appointed by the court as class counsel and
18 have received final court approval and judgment in close to half of those actions to date, and
19 anticipate receiving final approval in many more of those in the future.

20 4. As part of these settlements and judgments, I have recovered in excess of \$250
21 million in damages for my clients and the class members (who often work as nurses, ambulance
22 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
23 countless other trades). As of the end of last year, my team and I held the record for the largest
24 known PAGA-only case in California's history as of that time - a \$12.5 million-dollar court
25 approved settlement, which followed extensive litigation, summary adjudication and writs to the
26 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior
27 Court).

28 ///

1 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
2 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior
3 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
4 against Walmart that was tried to the jury in District Court for the Central District, wherein the
5 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases
6 were appealed.

7 6. Over the last four or five consecutive years, I have been selected by my peers as a
8 “Super Lawyer” in Employment Litigation, a distinction that only 5% of lawyers receive.

9 **BRIEF SUMMARY OF THE SETTLEMENT**

10 7. Following a contested but productive mediation, Plaintiff and Defendant
11 (collectively, the “Parties”) entered into a Class Action and PAGA Settlement Agreement and
12 Release of Claims resolving the wage and hour claims of the putative class (the “Settlement
13 Agreement” or “S.A.”), which is attached hereto as **Exhibit 1**. The Settlement Agreement
14 seeks to release and discharge Defendant from the claims brought against it in exchange for
15 Defendant’s agreement to pay \$775,000 on a non-reversionary, non-claims made basis (each
16 Class Member will receive his/her share of the Net Settlement Amount without having to
17 submit a claim form or take any action, except for those who opt-out). Plaintiff seeks to
18 represent a class of all current and former non-exempt employees employed by Defendant
19 Delphon Industries, LLC in California at any time during the Class Period of February 4, 2018,
20 through February 13, 2023, or the date the Court enters an order preliminary approving the
21 settlement, whichever is earlier. Under the terms of the Settlement Agreement, Defendant will
22 not oppose Class Counsel’s application for a reasonable award of attorneys’ fees not to exceed
23 one-third of the Settlement Amount, Class Counsel’s litigation expenses not to exceed \$20,000,
24 settlement administrator costs of \$8,000, PAGA Penalties of \$75,000 of which \$56,250 will be
25 paid to the LWDA and the remaining \$18,750 will be paid to the Aggrieved Employees, and a
26 service award not to exceed \$7,500 to Plaintiff. After subtracting these deductions from the
27 Settlement Amount, approximately \$406,166.67 will be available to pay individual settlement
28 amounts to approximately 225 Class Members who do not opt-out of the settlement, as follows:

Gross Settlement Amount	\$ 775,000.00
Attorneys' Fees (1/3)	\$ 258,333.33
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 8,000.00
PAGA Penalties	\$ 75,000.00
Class Representative Service Award	\$ 7,500.00
Net Settlement Amount	\$ 406,166.67

8. Assuming 225 Class Members, the average payment to each Class Member will be approximately \$1,805.18 (\$406,166.67 / 225). However, the actual payment will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member during the Class Period, with each Work Week having a value of approximately \$14.50 (\$406,166.67 / 28,000 estimated Work Weeks)

9. Each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Weeks Worked he/she is credited with working during the Class Period (*see* Exhibit A to the S.A.).

PROCEDURAL BACKGROUND

10. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case. Because of the risks involved in litigating the case and the contested legal and factual issues, Plaintiff's Counsel (i.e., my office) believes this settlement to be fair, reasonable, and adequate.

11. After being retained by Plaintiff, we submitted February 4, 2022, letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), which is attached to the Settlement Agreement as Exhibit B, and simultaneously sent a letter to Defendant requesting the production of Plaintiff's personnel and timekeeping records to further evaluate the wage and hour claims. The LWDA ultimately declined to assert jurisdiction over the PAGA, thereby giving Plaintiff the

1 right to bring PAGA claims.

2 12. That same day, we filed a putative class action against Defendant for (1) failure to
3 pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4)
4 failure to provide rest breaks; (5) failure to timely pay final wages; (6) failure to provide accurate
5 itemized wage statements; and (7) unfair and unlawful competition. Then on April 14, 2022, we
6 filed the operative First Amended Complaint to add PAGA claims.

7 13. Defendant retained counsel and immediately began to defend the case. Then,
8 after early discussions among counsel, the Parties agreed to attend early mediation and scheduled
9 a mediation with David Phillips, Esq., on November 15, 2022.

10 14. In preparation for the mediation, the Parties informally exchanged documents and
11 information that allowed both sides to calculate the potential damages and evaluate potential risk,
12 including policies and procedures pertaining to each claim alleged, and statistics relating to the
13 number of current and former employees, number of shifts, pay periods worked and other things.
14 Defendant also provided its written policies and practices and a robust sampling of payroll and
15 timekeeping records for Class Members. This information enabled both parties to take a deep
16 dive into the claims. Additionally, during this process, Plaintiff and his counsel analyzed,
17 researched, and investigated the potential issues, including matters related to the calculation of
18 damages, trial, and appellate issues and risks.

19 15. On November 15, 2022, Plaintiff and Defendant participated in mediation before
20 David Phillips, Esq., a well-respected wage-and-hour mediator. The matter resolved at
21 mediation pursuant to a mediator's proposal which was accepted by both Parties. The Parties
22 memorialized the terms of the settlement in a long-form Settlement Agreement and, pursuant to
23 the terms of the settlement, the Parties now seek preliminary approval of the Settlement.

24 **THE WAGE AND HOUR CLAIMS, CLASS COUNSEL'S INVESTIGATION, AND**
25 **EVALUATION OF THE SETTLEMENT**

26 16. The putative Class in this case consists of approximately 225 similarly situated
27 non-exempt employees employed by Defendant Delphon Industries, LLC in California at any
28 time during the Class Period. Plaintiff alleged numerous wage and hour violations on behalf of

1 the Class Members. However, Defendant vigorously contested and denied each of Plaintiff's
2 material allegations on the merits and as to the propriety of a class action or PAGA
3 representative action, as discussed herein.

4 17. In preparation for mediation, Peter Carlson, a senior associate within my firm, and
5 I formulated a damages model and risk analysis based upon detailed data obtained through
6 informal discovery and information exchanges. The summary of the claims below is based on
7 calculations by our expert and us, and the risks that we potentially faced, giving significant credit
8 to the defenses that Defendants raised or would like raise in further proceedings. Following the
9 informal exchange and other information provided by Defendants, we estimated the following
10 data points through the date of mediation: (1) 224 class members, (2) 75 class members that
11 separated from employment during the 3-year lookback for Labor Code § 203, (3) 26,456
12 workweeks, (4) 121,007 shifts worked, and (4) approximately 5,232 wage statements during the
13 PAGA Period. From these metrics, and when factoring in claim certification probabilities and
14 liability probabilities, we formulated detailed damages models to value the claims in preparation
15 for mediation and to reach a realistic and reasonable resolution.

16 18. Here, there were three primary categories of claims alleged by Plaintiff: (1)
17 unpaid wage claims under various theories, (2) meal and rest break violations, and (3) derivative
18 claims for waiting time and wage statement penalties due to the other alleged violations.

19 19. As to the unpaid wage claims, Plaintiff alleged three distinct theories of liability.
20 First, Plaintiff alleged that Defendant utilized a rounding policy that was not neutral in
21 application, as it resulted in a systematic underpayment to the Class. Second, Plaintiff alleged
22 that Defendant implemented a pre-shift COVID-19 screening program that subjected Class
23 Members to uncompensated work. Third, Plaintiff also alleged that Defendant paid Class
24 Members on an alternative workweek schedule (with four 10-hour shifts per week) but failed to
25 pay proper overtime because Defendant did not have a valid alternative workweek election. In
26 total, Plaintiff's counsel estimated the maximum value of these unpaid wages to be \$635,852.

27 20. However, Defendant vehemently opposed these unpaid wage claims on the merits
28 and as to the propriety of class certification. For example, as to the rounding claim, Defendant

1 argued that its policy was neutral on its face and in application, in compliance with California
2 law. Then, as to the COVID-19 screening claim, Defendant argued that time spent in pre-shift
3 COVID-19 screenings is not compensable because this time was not under Defendant's control
4 and, moreover, the requirement was enforced by the government and was not enacted by
5 Defendant's choice or for its benefit and, thus, the time was not compensable. Moreover, in
6 addition to its other defenses on the merits, Defendant argued that Plaintiff would be unable to
7 meet its evidentiary burden at summary judgment and/or trial because Plaintiff and the Class
8 would be unable to introduce evidence as to the amount of unpaid wages (since the claims are
9 not apparent from the timekeeping records), thus defeating liability. Furthermore, as to the
10 alternative workweek claims, Defendant provided evidence that it had a valid alternative
11 workweek election under the name of an entity that it acquired decades ago (GEL-PAK, LLC)
12 and that acts as a complete bar to any such claims.

13 21. Due to these defenses and arguments, we assigned a 20% risk for each respective
14 unpaid wage claim at the class certification stage. And, due to the defenses as to the merits, we
15 assigned the following merits-based risk to each claim: 20% risk on the rounding claim, 30% risk
16 on the COVID-19 screening claim, and a 60% risk on the alternative workweek claim. In sum,
17 my office calculated the risk-adjusted value of the unpaid wage claims as \$295,089.

18 22. Plaintiff also alleged meal and rest break claims against Defendant. Given the
19 total number of shifts at issue (an estimate of 121,007), and when incorporating violation rates
20 from expert review of the timekeeping records and other evidence, we estimated a 10.1%
21 violation rate for meal breaks and a 50% violation rate for rest breaks, leading to 12,221 alleged
22 meal violations and 60,504 alleged rest break violations. This established a maximum potential
23 value for these claims of \$1,710,492 (72,725 violations multiplied by the average hourly rate of
24 \$23.52 as the applicable premium rate under § 226.7).

25 23. However, Defendant raised numerous arguments in response to this claim,
26 including that it maintained fully compliant written policies and specifically authorized the Class
27 Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break
28 or take a short/late break. Therefore, Defendant asserted that a fact-finder would have to

1 determine for each Class Member whether a break was missed and why, and why a break was
2 noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to
3 Defendant. These defenses are factored into Plaintiff's analysis in two ways. First, these issues
4 raise questions regarding whether the meal and rest break claims could be certified, and Plaintiffs
5 placed a 40% risk at the class certification stage for meal periods and a 60% risk for rest breaks.
6 Second, these defenses also go toward the merits given the evidentiary question of proving the
7 number of meal and rest violations. As such, we placed a 40% risk on the merits for meal
8 breaks, and an additional 60% risk on the merits for rest breaks, setting the risk-adjusted value
9 for the combined meal and rest break claims at \$331,166.

10 24. Finally, Plaintiff alleged claims for waiting time penalties and wage statement
11 violations. But these claims were entirely derivative of the claims above, meaning that they only
12 had merit if the claims for unpaid wages or meal/rest breaks were successful. The maximum
13 values for these claims were as follows: (1) \$423,360 for waiting time penalties [75 former
14 employees x \$23.52 per hour x 8 hours per day x 30 days], and (2) \$512,950 for wage statement
15 violations [5,232 wage statements at the \$50/\$100 formula under § 226(e)].

16 25. Defendant raised a variety of defenses to these derivative claims that impacted the
17 valuation. Namely, as to the wage statement violations, Defendant argued that its wage
18 statements did not violate Labor Code § 226 and, even if there was a "technical" violation, that
19 Plaintiff would be unable to prove the required "knowing and intentional" and "injury" elements.
20 Based on these facts and defenses, we placed a 20% risk at class certification (mirroring the
21 claims on which the wage statement claim was based) and estimated another 20% risk the merits,
22 leading to a risk-adjusted value of \$328,288 for the wage statement claims.

23 26. Then, as to the waiting time penalty claim, our valuation had to account for the
24 fact that this claim was derivative of the unpaid wage and meal/rest break claims (*e.g.*, the
25 unpaid wage premiums) and, if those claims failed at certification or on the merits, there would
26 be no waiting time penalties owed, so the same risks for those claims applied to this claim.
27 Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on
28 the merits, Plaintiff would have to prove that the violations (if any existed) were "willful" under

the meaning of Labor Code § 203. And, here, Defendant argued that there could not be a finding of a “willful” violation since they had compliant written policies, and any deviations therefrom were inadvertent and unintentional. As a result of this analysis, we applied a 20% risk at class certification and a 20% risk on the merits, leading to a risk-adjusted value of \$270,950.

27. In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff estimates the risk-adjusted class recovery as follows:

• Unpaid Wage Claims	\$ 295,089
• Meal and Rest Break Claims	\$ 331,166
• Wage Statement Claims	\$ 328,288
• Waiting Time Penalty Claims	<u>\$ 270,950</u>
• Total Risk Adjusted Penalties and Damages	\$ 1,225,493

THE SETTLEMENT IS FAIR, JUST, AND REASONABLE

28. The settlement was the product of extensive arm’s length negotiations, facilitated by an experienced mediator. Though cordial and professional, the settlement negotiations were adversarial and non-collusive in nature. The settlement reached is the product of substantial effort by the parties and their counsel. Although we believed that there was a possibility of certifying the claims, we recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate.

29. The settlement will result in a fair payment to each class member based on the number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiff and his counsel have diligently investigated the claims and defenses on behalf of the Class Members and worked to achieve a resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys’ fees and costs. After evaluating the significant risks attendant with further litigation described above and weighing them against the benefits of a known compromise and settlement as set forth in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and reasonable resolution of the claims alleged.

1 30. Plaintiff's counsel brought to bear a great deal of experience in negotiating the
2 settlement of this case. As detailed herein, Plaintiff's counsel engaged in the necessary discovery
3 and investigation, making it possible to exercise informed judgment throughout the settlement
4 process, including significant document review (e.g. documents pertaining to Defendant's
5 policies and procedures, personnel documents, among others), and conducted an extensive
6 analysis of the detailed class-wide data provided by Defendant.

7 31. Based on my experience in other cases, including wage and hour matters, I
8 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
9 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
10 settlement at this time is in the best interests of the class. The settlement provides each class
11 member with compensation for the alleged violations when viewed in relation to the costs and
12 risks inherent in obtaining class certification and proceeding to trial.

13 32. Plaintiff's counsel, as well as Defendant's counsel, fully endorse the terms and
14 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

15 33. Of course, the settlement amount represents a compromise figure, taking into
16 account the various risks surrounding class certification and the merits of Defendant's asserted
17 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
18 members, with no reversion to Defendant.

19 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

20 34. Plaintiff seeks an enhancement payment of \$7,500 for her service to the class,
21 which I believe is fair and warranted. Ms. Orozco came forward in an effort to effectuate a
22 policy and practice change that benefitted all other Class Members, and to recover unpaid wages.
23 She assumed significant risk in bringing this litigation—namely, had she lost, she would have
24 been ordered to pay Defendant's costs.

25 35. Plaintiff provided invaluable assistance to my office and the Class in this case,
26 including providing factual background for the Class Complaint; reviewing the litigation
27 documents; providing information and documents about Defendant's policies and practices;
28 participating in phone calls to discuss litigation and settlement strategy; and reviewing the

1 settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal
2 benefit. At final approval, Plaintiff will submit a comprehensive declaration setting forth all of
3 the reasons why she believes that the service award should be approved.

4 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
5 **REQUESTED FEES AND COSTS**

6 36. As set forth above, I have handled over 250 class and representative actions, have
7 been appointed as class counsel and have successfully resolved over half of those cases, and
8 many others remain pending and will successfully resolve in the future.

9 37. When this case was taken on a contingency fee basis, with my firm agreeing to
10 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
11 course of this litigation, my firm and my co-counsel paid all costs including filing fees, court
12 costs, research fees, and mediation costs. There was never a guarantee that we would recoup
13 those expenditures.

14 38. It is my experience that attorney fee awards of one-third of a common fund
15 settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third
16 of the Settlement Amount for attorneys' fees. Defendants do not oppose this fee request. The fee
17 is further warranted because it is within the range of reasonableness typically awarded in class
18 actions. The litigation costs are reasonably capped at \$20,000 and will be based on the actual
19 amount of costs incurred at the time of final approval.

20 **SETTLEMENT ADMINISTRATOR**

21 39. The parties request that the Court appoint Phoenix Settlement Administrators to
22 serve as the Settlement Administrator. Phoenix is experienced in administering class action
23 settlements, and has provided a proposal to administer this settlement for a total of \$8,000, which
24 is attached hereto as **Exhibit 2**.

25 **SUBMISSION TO THE LWDA**

26 40. Plaintiff has concurrently submitted the settlement to the LWDA in accordance
27 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit 3**.

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Moreover: (a) a true and correct copy of the proposed Class Notice is attached as Exhibit A to the Settlement Agreement, and (b) a true and correct copy of Plaintiff's notice to the LWDA is attached as Exhibit B to the Settlement Agreement.

43. The LWDA's confirmation of receipt of this Motion and Declaration is attached hereto as **Exhibit 3**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 17, 2023 at Riverside, California.

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EXHIBIT “1”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ASTRID OROZCO, individually, on a
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Plaintiff,

vs.

DELPHON INDUSTRIES, LLC, a Delaware
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through 20, inclusive;

Defendants.

Case No.: 22CV006597
*[Assigned to Hon. Judge Evelio Grillo, Dept.
21, for all purposes]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint filed: February 4, 2022

1 This Class Action and PAGA Settlement Agreement and Release of Claims is entered into
2 by and between Plaintiff Astrid Orozco, individually and on behalf of all others similarly situated,
3 and Defendant Delphon Industries, LLC, and is approved by their respective counsels of record,
4 subject to the terms and conditions hereof and the Court's approval.

5 **A. Definitions**

6 As used herein, for the purposes of this Settlement Agreement only, the following terms
7 shall be defined as set forth below:

8 1. "Action" or "Lawsuit" mean and refer to the case entitled *Astrid Orozco v. Delphon*
9 *Industries, LLC*, Superior Court of California, County of Alameda, Case No. 22CV006597.

10 2. "Settlement Agreement" means this Class Action and PAGA Settlement
11 Agreement and Release of Claims.

12 3. "Aggrieved Employees" means all current and former nonexempt employees
13 employed by Defendant in California at any time during the PAGA Period.

14 4. "Class Counsel" refers to Brian Mankin and Peter Carlson of Lauby Mankin Lauby
15 LLP.

16 5. "Class Data" mean a complete list that Defendant will diligently and in good faith
17 compile from its records and provide to the Settlement Administrator on spreadsheets and shall
18 include the Settlement Class Members' full names; last known addresses; last known telephone
19 numbers (if available); Social Security Numbers; the total Pay Periods Worked during the PAGA
20 Period for each Aggrieved Employee; and the total Weeks Worked during the Class Period for
21 each Settlement Class Member.

22 6. "Class Period" is deemed to be any time during the period of February 4, 2018,
23 through the Preliminary Approval Date or February 13, 2023, whichever is earlier.

24 7. "Class Representative" or "Plaintiff" means and refers to Astrid Orozco.

25 8. "Complaint" refers to the operative first amended complaint in the Action, alleging
26 Class Claims and representative PAGA Claims.

27 9. "Court" or "Judge" means the Superior Court of California, County of Alameda.

28 10. "Defendant" refers to Delphon Industries, LLC.

1 11. “Defendant’s Counsel” or “Defense Counsel” refers to Littler Mendelson, P.C.

2 12. “Effective Date” means the latest of the following dates: (i) sixty-one (61) calendar

3 days following the date the Court enters an order granting Final Approval, assuming no appeal is

4 filed; or (ii) if a Settlement Class Member timely and properly intervenes or files a motion to vacate

5 the judgment under Code of Civil Procedure § 663, and if a timely appeal is filed, the date of final

6 resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*),

7 resulting in final judicial approval of the Settlement.

8 13. “Final Approval” refers to the order of the Court granting final approval of this

9 Settlement Agreement and entering a judgment approving this Settlement Agreement on

10 substantially the terms provided herein or as the same may be modified by subsequent written

11 agreement of the Parties.

12 14. “Final Settlement Class” means, collectively, all Participating Class Members who

13 have not opted out of the Settlement Class by submitting timely, valid Requests for Exclusion.

14 15. “Gross Settlement Amount” shall have the meaning ascribed to it in Paragraph

15 49(a) below.

16 16. “Individual Settlement Payment(s)” shall have the meaning ascribed to it in

17 Paragraph 49(c) below.

18 17. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 49(b)

19 below.

20 18. “Notice” means the notice of class action and PAGA settlement that will be sent to

21 the Settlement Class Members and Aggrieved Employees, substantially in the Form of Exhibit A.

22 19. “Notice Response Deadline” is sixty (60) calendar days from the date the Notice

23 is mailed to the Settlement Class Members and Aggrieved Employees.

24 20. “Objecting Settlement Class Member” means a Settlement Class Member, other

25 than Plaintiff, who submits a valid and timely objection to the terms of this Settlement Agreement

26 with respect to the Released Class Claims, pursuant to Paragraph 72(c) below.

27 21. “PAGA” means the California Private Attorneys General Act of 2004, California

28 Labor Code §§ 2698 *et seq.*

1 22. “PAGA Penalties” means the total amount of civil penalties that the Parties have
2 agreed will be paid from the Gross Settlement Amount to settle the PAGA Claims, allocated
3 seventy-five percent (75%) to the California Labor and Workforce Development Agency
4 (“LWDA”) in accordance with PAGA, and twenty-five percent (25%) for the individual PAGA
5 payments to Aggrieved Employees, as set forth further below in Paragraph 49(h).

6 23. “PAGA Period” is deemed to be any time during the period of February 4, 2021,
7 through the Preliminary Approval Date or February 13, 2023, whichever is earlier.

8 24. “PAGA Released Claims” by the Aggrieved Employees upon Final Approval of
9 the settlement and Defendant’s funding of the Gross Settlement Amount means the PAGA claims
10 that Plaintiff alleged against the Released Parties, on behalf of the Aggrieved Employees and the
11 State of California, based on the facts stated in the Complaint and in the relevant LWDA notice
12 letter or that could have been asserted based on those facts, including all PAGA claims seeking
13 civil penalties premised upon: (a) failure to pay wages or minimum wages (including for off the
14 clocking or rounding), (b) failure to pay overtime wages (including for off the clock, regular rate,
15 invalid alternative work weeks, or rounding), (c) failure to provide meal periods, (d) failure to
16 provide rest breaks, (e) failure to timely pay wages each period and upon separation of
17 employment, (f) failure to provide accurate itemized wage statements, and (g) all other claims for
18 civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*
19 based on the facts or claims alleged in the LWDA Notice and the Complaint.

20 25. “Participating Class Member” means any and all Settlement Class Members who
21 are deemed to participate, who will receive an Individual Settlement Payment, and who do not opt-
22 out by submitting a timely, valid Request for Exclusion.

23 26. “Parties” mean Plaintiff and Defendant, collectively.

24 27. “Pay Period(s) Worked” means all pay periods during the PAGA Period in which
25 an Aggrieved Employee was employed by Defendant in California as a nonexempt employee and
26 worked at least one shift during the pay period. For purposes of calculating Pay Periods Worked,
27 there will no fractional calculations (*i.e.*, a situation where an individual worked only one shift
28 during a pay period still counts as one Pay Period Worked).

1 28. “Preliminary Approval Date” means the date the Court preliminarily approves this
2 Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

3 29. “Preliminary Approval Order” means the judicial Order to be entered by the Court,
4 upon the application or motion of the Plaintiff, preliminarily approving this settlement and
5 providing for the issuance of the Notice to the Settlement Class and Aggrieved Employees, an
6 opportunity for Settlement Class Members to opt-out of the Settlement, an opportunity to submit
7 timely objections to the Settlement, and setting a hearing on the fairness of the terms of Settlement,
8 including approval of attorneys’ fees and costs.

9 30. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator
10 for the benefit of the Final Settlement Class and Aggrieved Employees, and from which the
11 settlement payments shall be made, and which is intended to be a fund that qualifies under Internal
12 Revenue Code Sec. 468.

13 31. “Released Class Claims” or “Class Claims” by the Participating Class Members
14 upon Final Approval of the settlement and Defendant’s funding of the Gross Settlement Amount
15 will include the claims stated in the Complaint or those claims which could have been asserted in
16 the Complaint based upon the facts in the Complaint, including: (a) failure to pay wages or
17 minimum wages (including for off the clock claims and rounding claims), (b) failure to pay
18 overtime wages (including for off the clock, regular rate, invalid alternative work weeks, or
19 rounding claims), (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure
20 to timely pay wages, including upon separation of employment, (f) failure to provide accurate
21 itemized wage statements, (g) unfair and unlawful competition, and (i) all other claims for statutory
22 penalties based on the above.

23 32. “Released Parties” means Defendant and its past and present officers, directors,
24 shareholders, members, partners, managers, employees, agents, principals, heirs, representatives,
25 accountants, auditors, consultants, insurers and reinsurers, and their respective parent corporations,
26 subsidiaries, divisions, affiliates, attorneys, predecessors, successors and assigns.

27 33. “Release” shall mean (1) the release and discharge of the Released Class Claims by
28 Plaintiff and all Participating Class Members, and (2) the release and discharge of the PAGA

Released Claims by Plaintiff, the State of California, and all of the Aggrieved Employees. The *res judicata* effect of the judgment will be the same as that of the Release of the Released Class Claims and PAGA Released Claims.

34. “Request for Exclusion” means and refers to a valid and timely request for exclusion from the settlement of the Released Class Claims, which may be submitted by any Settlement Class Member, other than Plaintiff, pursuant to Paragraph 72(a) below.

35. “Service Payment” means, as set forth further in Paragraph 49(e) below, the amount approved by the Court to be paid from the Gross Settlement Amount to the Class Representative, Astrid Orozco, in addition to Astrid Orozco’s Individual Settlement Payment as a Participating Class Member and Aggrieved Employee.

36. “Settlement Administrator” means and refers to Phoenix Settlement Administrators, the third-party class action settlement administrator agreed to by the Parties, that will provide the Notice to the Settlement Class and Aggrieved Employees and distribute the settlement amounts as described in this Settlement Agreement.

37. “Settlement Administration Costs” means the costs payable from the Gross Settlement Amount to the Settlement Administrator for administering this settlement, including, but not limited to, printing, distributing, and tracking documents for this settlement, tax reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property due diligence, reporting and remittance obligations, distributing the Gross Settlement Amount, and providing necessary reports and declarations, as requested by the Parties.

38. “Settlement Class” consists of all current and former nonexempt employees employed by Defendant in California at any time during the Class Period. Defendant represents that there were approximately two hundred and twenty-five (225) eligible Class Members as of the date of mediation on November 15, 2022.

39. “Settlement Class Member(s)” or “Class Member(s)” refers to individual members of the Settlement Class.

40. “Work Week(s)” or “Week(s) Worked” means all calendar weeks in which the Settlement Class Member was employed by Defendant in California as a nonexempt employee

and worked at least one shift during a work week. For purposes of calculating Weeks Worked, there will no fractional calculations (*i.e.*, a situation where an individual worked only one shift during a week does not equal 1/7th of a Work Week, it counts as one Work Week).

B. General Terms

41. Plaintiff filed a class action complaint with the Court on February 4, 2022. Then, on April 14, 2022 Plaintiff filed the operative First Amended Complaint against Defendant, alleging class and representative PAGA claims. Plaintiff's Complaint alleged the following class claims: (1) failure to pay minimum wages, (2) failure to pay overtime, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to timely pay final wages, (6) failure to provide accurate itemized wage statements, and (7) unfair and unlawful competition pursuant to California Business and Professions Code §§ 17200 *et seq.* Plaintiff's Complaint alleged the following claims under PAGA: (8) failure to pay minimum wages, (9) failure to pay overtime, (10) failure to provide meal periods, (11) failure to provide rest breaks, (12) failure to timely pay wages each period, (13) failure to timely pay final wages, and (14) failure to provide accurate itemized wage statements.

42. Pursuant to California Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending her LWDA notice letter on February 4, 2022 ("PAGA Notice") alleging Defendant violated Labor Code §§ 200, 201, 201.3, 201.5, 201.9, 202, 203, 204, 204.1, 205.5, 208, 210, 218.6, 221, 222, 223, 225.5, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 1199 and Industrial Welfare Commission Wage Order §§ 3, 4(B), 20, and Cal. Admin. Code, Title 8, § 11090. In Plaintiff's PAGA Notice, Plaintiff further alleged Plaintiff and Aggrieved Employees were not provided proper minimum and overtime wages, compensated for off-the-clock work, compensated at the proper regular rate of pay for overtime and sick time to incorporate any and all nondiscretionary compensation, provided compliant meal and rest periods, provided timely payment of wages each pay period, provided timely payment of final wages, and provided accurate itemized wage statements. A copy of Plaintiff's PAGA Notice is attached to this Settlement Agreement as Exhibit

B.

1 43. Defendant denies Plaintiff's claims and allegations and contends that the Action is
2 not suitable for class certification or manageable as a class or representative action.

3 44. The Class Representative believes she can proceed with her representative and class
4 claims, that the Action is meritorious, and that class certification is appropriate.

5 45. The Parties have conducted a thorough investigation into the facts of the Action.
6 This includes conducting an extensive exchange of informal discovery, including Defendant's
7 written policies and practices and confirmation regarding the uniform payroll and timekeeping
8 practices for Settlement Class Members. Class Counsel is both knowledgeable about and has done
9 extensive research with respect to the applicable law and potential defenses to the claims of the
10 Settlement Class. Class Counsel has diligently pursued an investigation of the Class Members'
11 claims against Defendant. Based on the foregoing data and on their own independent investigation
12 and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the
13 consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and
14 adequate and is in the best interest of the Class Members in light of all known facts and
15 circumstances, including the risk of significant delay and uncertainty associated with litigation,
16 various defenses asserted by Defendant, and numerous potential appellate issues.

17 46. On November 15, 2022, Plaintiff and Defendant participated in mediation before
18 David Phillips, Esq. a well-respected wage and hour mediator. The Action resolved at mediation
19 and, thereafter, the Parties continued to negotiate the terms embodied in this Settlement
20 Agreement.

21 47. The Parties agree that neither the Parties' settlement, this Settlement Agreement,
22 nor the acts to be performed or judgments to be entered pursuant to the terms of the settlement and
23 this Settlement Agreement, shall be construed as an admission by Defendant of any wrongdoing
24 or violation of any statute or law or liability on the claims or allegations in the Action.

25 48. Stipulation to Class Certification and Representative Treatment. For settlement
26 purposes only, Defendant will stipulate that the Settlement Class Members described herein who
27 do not submit a timely Request for Exclusion from the Settlement Class may be conditionally
28 certified as a settlement class and that the Aggrieved Employees are appropriate for representative

1 treatment. Defendant's stipulation to certification and representative treatment for settlement
2 purposes only is not an admission that class action certification and/or representative treatment is
3 proper, not admissible in this or any other action except for the sole purpose of enforcing this
4 Settlement Agreement, and not deemed as a waiver to any additional defenses against class or
5 representative action treatment. Should, for whatever reason, the Court fail to issue either
6 Preliminary Approval or Final Approval, the Parties' stipulation to class certification and
7 representative treatment as part of the settlement shall become null and void *ab initio* and shall
8 have no bearing on and shall not be admissible in connection with the issue of whether or not
9 certification and/or representative treatment would be appropriate in a non-settlement context.
10 Defendant expressly reserves its rights and declares that Defendant would continue to oppose class
11 certification, representative treatment, and the substantive merits of the case should the Court
12 decline to issue Final Approval. Plaintiff expressly reserves her rights and declares that she will
13 continue to pursue class certification, representative treatment, and a trial should the Court decline
14 to issue Final Approval.

15 **C. Terms of Settlement**

16 49. The financial terms of the Settlement are as follows:

17 (a) Gross Settlement Amount: The Parties agree to settle this Action for Seven
18 Hundred Seventy-Five Thousand Dollars and Zero Cents (\$775,000.00) ("the Gross Settlement
19 Amount"). The Gross Settlement Amount is the maximum amount that will be paid, and includes
20 Individual Settlement Payments, Attorneys' Fees and Costs Award, the Service Payment to the
21 Class Representative, all Settlement Administration Costs, PAGA Penalties, and interest.
22 Defendant shall separately pay the employer's share of applicable payroll tax obligations due on
23 the wage portions of the Individual Settlement Payments, which shall be reported through the
24 Settlement Administrator.

25 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
26 Gross Settlement Amount less the court-approved Attorneys' Fees and Costs Award, the court-
27 approved Service Payment to the Class Representative, the court-approved Settlement
28 Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys' Fees and Costs

Award, Service Payment to the Class Representative, and/or Settlement Administration Costs, and/or either increases or decreases the amount allocated to the PAGA Penalties, the Net Settlement Amount shall be increased or decreased accordingly.

(c) Individual Settlement Payments: Individual Settlement Payments for the Settlement Class will be calculated and apportioned from the Net Settlement Amount based on the number of Weeks Worked by a Settlement Class Member during the Class Period. Each specific Individual Settlement Payment will be calculated by: (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each Participating Class Members' Weeks Worked. The entire Net Settlement Amount will be disbursed to all Participating Class Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionally increase the Individual Settlement Payment for each Participating Class Member according to the number of Weeks Worked, so that the amount actually distributed to Participating Class Members equals one hundred percent (100%) of the Net Settlement Amount.

(d) Allocation of Individual Settlement Payments: The Individual Settlement Payments will be allocated based on the allegations in the Action as follows: one-third (1/3) will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and the remaining two-thirds (2/3) will be allocated between interest and penalties (pursuant to, *e.g.*, California Labor Code §§ 203, 210, 226, 2699) from which no taxes will be withheld. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

(e) Service Payment to Class Representative: The amount, if any, awarded to the Class Representative as a Service Payment will be set by the Court in its discretion, not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), in exchange for the services Plaintiff performed on behalf of the Class (including taking steps to support the settlement) and for entering into the general and expansive release discussed hereinafter. Defendant agrees not to oppose this Service Payment request if Plaintiff does not request exclusion

1 from the Settlement Class and does not take any action, directly or indirectly, to undercut this
2 settlement. The Service Payment to Plaintiff will be paid out of the Gross Settlement Amount.
3 The Class Representative will be issued IRS Form 1099 in connection with this payment. Plaintiff
4 shall be solely and legally responsible to pay any and all applicable taxes on this Service Payment.
5 The Parties agree that any amount awarded as the Service Payment to Plaintiff less than the
6 requested amount shall not be a basis for Class Counsel to void this Settlement Agreement or to
7 appeal this aspect of the Court's ruling. Should the Court approve a lesser amount for the Service
8 Payment, the difference shall be added to the Net Settlement Amount to be distributed to
9 Participating Class Members.

10 (f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a request
11 by Class Counsel to the Court for an award of attorneys' fees of not more than one-third (1/3) of
12 the Gross Settlement Amount (Two Hundred Fifty-Eight Thousand Three Hundred Thirty-Three
13 Dollars and Thirty-Three Cents (\$258,333.33)), plus reasonable litigation costs not to exceed
14 Twenty Thousand Dollars and Zero Cents (\$20,000.00) ("Attorneys' Fees and Cost Award"),
15 subject to Court approval. The Attorneys' Fees and Cost Award shall be paid from the Gross
16 Settlement Amount, and Defendant shall have no further obligation to pay any attorneys' fees,
17 costs, or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought
18 by Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to
19 Participating Class Members. The Parties agree that any amount awarded as attorneys' fees and
20 costs to Class Counsel less than the requested amount shall not be a basis for Class Counsel to
21 rescind or otherwise void this Settlement Agreement. The Settlement Administrator shall issue to
22 Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by
23 the Court.

24 (g) Settlement Administration Costs: The fees and other charges of the
25 Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed Eight
26 Thousand Dollars and Zero Cents (\$8,000.00) unless approved by all Parties and the Court.

27 (h) PAGA Penalties: The Parties agree that Seventy-Five Thousand Dollars
28 and Zero Cents (\$75,000.00) is allocated to PAGA Penalties and is to be paid from the Gross

1 Settlement Amount, subject to the Court's approval. Seventy-five percent (75%) of the PAGA
2 Penalties (Fifty-Six Thousand Two Hundred and Fifty Dollars and Zero Cents (\$56,250.00)) shall
3 be paid to the LWDA in satisfaction of civil penalties under the Private Attorney General Act of
4 2004 ("PAGA") and twenty-five percent (25%) of the PAGA Penalties (Eighteen Thousand Seven
5 Hundred and Fifty Dollars and Zero Cents (\$18,750.00)) will be paid to the Aggrieved Employees
6 based upon the number of Pay Periods Worked by each Aggrieved Employee during the PAGA
7 Period, which will be treated entirely as civil penalties and reported as required on an IRS Form
8 1099. Class Counsel shall give proper notice to the LWDA of the settlement.

9 (i) Tax Liability: Class Counsel, Defendant, and Defendant's counsel make no
10 representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder,
11 and Plaintiff, Settlement Class Members, and Aggrieved Employees are not relying on any
12 statement or representation by Class Counsel, Defendant, or Defendant's counsel in this regard.
13 Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they
14 will be solely responsible for the payment of any taxes and penalties assessed on their respective
15 Settlement Amounts described herein. The amount of federal income tax withholding will be
16 based upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg.
17 § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made
18 pursuant to applicable state and/or local withholding codes or regulations. Forms W-2 and/or
19 Forms 1099 will be distributed at the times and in the manner required by the Internal Revenue
20 Code of 1986 (the "Code") and consistent with this Settlement Agreement. If the Code, the
21 regulations promulgated thereunder, or other applicable tax law, are changed after the date of this
22 Settlement Agreement, the processes set forth in this Section of this Settlement Agreement may
23 be modified in a manner to bring Defendant into compliance with any such changes. Plaintiff,
24 Participating Class Members, and Aggrieved Employees understand and agree that they will be
25 solely responsible for the payment of any taxes and penalties assessed on their respective payments
26 described herein and will hold Defendant harmless from and against any claims resulting from
27 treatment of such payments as non-taxable damages.

28 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS

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

25 50. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
26 Participating Class Members under this Settlement Agreement, as well as any other payments
27 made pursuant to this Settlement Agreement, shall not be utilized to calculate any additional
28 benefits under any benefit plans to which any Participating Class Members may be eligible,

1 including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or
2 other types of equity plans, vacation plans, sick leave plans, PTO plans, and any other benefit
3 plan. Rather, it is the Parties' intention that this settlement will not affect any rights,
4 contributions, or amounts to which any Participating Class Members may be entitled under any
5 benefit plans. The Parties agree that the amounts paid pursuant to this settlement are not for days
6 or hours worked, and shall not be included toward any regular rate of pay calculation, or any
7 benefit vesting or accrual purpose.

8 51. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
9 no circumstances will any portion of the Gross Settlement Amount revert to Defendant.
10 Participating Class Members will not have to make a claim in order to receive an Individual
11 Settlement Payment, and Aggrieved Employees will not have to make a claim in order to receive
12 their share of PAGA Penalties. Distributions, in the form of Individual Settlement Payments, will
13 be made directly to each Participating Class Member and Aggrieved Employee. The Settlement
14 Administrator shall be responsible for accurately and timely reporting and remittance obligations
15 with respect to unclaimed funds as a result of a Participating Class Member or Aggrieved
16 Employee not cashing an Individual Settlement Payment by the check cashing deadline, as set
17 forth herein.

18 52. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
19 adequate, and will so represent same to the Court.

20 **D. Release by Plaintiff, Participating Class Members, and Aggrieved Employees**

21 53. Upon entry of the Final Approval Order and Defendant's funding of the entire
22 Gross Settlement Amount, and except as to such rights or claims as may be created by this
23 Settlement Agreement, the Participating Class Members will forever completely release and
24 discharge the Released Parties from the Released Class Claims for the Class Period. It is the intent
25 of the Parties that the Final Approval Order and judgment entered by the Court shall have full
26 equitable and collateral estoppel and *res judicata* effect and be final and binding upon Participating
27 Class Members regarding the Released Class Claims.

28 54. Each Participating Class Member will be deemed to have made the foregoing

1 Release as if by manually signing it.

2 55. Upon entry of the Final Approval Order and Defendant's funding of the entire
3 Gross Settlement Amount, Plaintiff, standing in the shoes of the Labor Commissioner/LWDA, and
4 on behalf of the State of California and all Aggrieved Employees, will forever completely release
5 and discharge the Released Parties from the PAGA Released Claims for the PAGA Period. It is
6 the intent of the Parties that the Final Approval Order and judgment entered by the Court shall
7 have full equitable and collateral estoppel and *res judicata* effect and be final and binding upon
8 Aggrieved Employees regarding the PAGA Released Claims.

9 56. Each Aggrieved Employee and the LWDA will be deemed to have made the
10 foregoing Release as if by manually signing it.

11 57. Plaintiff and Defendant intend that the settlement described in this Settlement
12 Agreement will release and preclude any further claim, whether by lawsuit, administrative claim
13 or action, arbitration, demand, or other action of any kind, by each and all of the Participating
14 Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the
15 Released Class Claims. The Class Members shall be so notified in the Notice. This paragraph
16 only applies to Participating Class Members and, thus, does not apply to any Class Member who
17 timely and validly submits a Request for Exclusion.

18 58. Plaintiff and Defendant also intend that the settlement described in this Settlement
19 Agreement will release and preclude any further PAGA claim, whether by lawsuit, administrative
20 claim or action, arbitration, demand, or other PAGA action of any kind, by each and all of the
21 Aggrieved Employees to obtain a recovery based on, arising out of, and/or related to any and all
22 of the PAGA Released Claims. The Aggrieved Employees shall be so notified in the Notice and
23 Class Counsel shall provide appropriate notice to the LWDA of this Settlement Agreement prior
24 to the filing of the Motion for Preliminary Approval. Aggrieved Employees shall receive their
25 portion of the PAGA Settlement and shall be deemed to have released the PAGA Claims even if
26 they opt out of the Class Settlement.

27 59. Class Representative, on behalf of herself and the Participating Class Members,
28 acknowledges and agrees that the claims, including claims for unpaid wages and untimely payment

1 of wages are disputed, and that the payments set forth herein constitute payment of all sums
2 allegedly due to them. Class Representative, on behalf of herself and the Participating Class
3 Members, acknowledges and agrees that California Labor Code § 206.5 is not applicable to the
4 Parties hereto. California Labor Code § 206.5 provides in pertinent part as follows:

5 An employer shall not require the execution of any release of any claim or
6 right on account of wages due, or to become due, or made as an advance on
7 wages to be earned, unless payment of those wages has been made.

8 **E. Release by Class Representative**

9 60. As a material inducement to Defendant to enter into this Settlement Agreement and
10 in consideration of the Service Payment, and in addition to the Class Representative's release of
11 the Released Class Claims and PAGA Released Claims, Class Representative does hereby, for
12 herself and for her respective spouses, domestic partners, marital community, children, estates,
13 attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,
14 conservators, guardians, personal representatives, and assigns forever and completely release and
15 discharge and covenants not to sue the Released Parties with respect to any and all claims,
16 demands, liens, agreements, contracts, covenants, actions, suits, causes of action, wages,
17 obligations, debts, liquidated damages, penalties, interest, costs, expenses, attorneys' fees,
18 damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise,
19 whether now known or unknown, suspected or unsuspected, concealed or hidden, which Plaintiff
20 now owns or holds or has at any time heretofore owned or held as against said Released Parties,
21 or any of them. Such released claims include specifically, but not exclusively and without limiting
22 the generality of the foregoing, any and all claims, demands, agreements, obligations and causes
23 of action, known or unknown, suspected or unsuspected, concealed or hidden, including but not
24 limited to all claims arising out of, based upon, or relating to Class Representative's employment
25 with Defendant or the remuneration for or termination of such employment, as alleged in the
26 operative Complaint, arising out of or in any way connected with any transactions, occurrences,
27 acts or omissions set forth, or facts alleged, in any and all charges, complaints, claims or pleadings
28 filed by Class Representative against any Released Party prior to the date hereof with any city,

1 county, state or federal agency, commission, office or tribunal whatsoever; or arising out of or in
2 any way connected with any transactions, occurrences, acts or omissions occurring prior to the
3 date hereof, including specifically without limiting the generality of the foregoing any claim under
4 Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (29 U.S.C.
5 Section 621 *et seq.*), the Americans with Disabilities Act, the Employee Retirement Income
6 Security Act, the National Labor Relations Act, the Fair Labor Standards Act, the Family and
7 Medical Leave Act, the California Constitution, the California Labor Code, the California Civil
8 Code, the California Government Code, the California Business & Professions Code, the
9 California Family Rights Act, the California Fair Employment and Housing Act, the California
10 Industrial Welfare Commission Wage Orders, or any other federal, state, or local statute or
11 regulation (collectively, the “Class Representative’s Claims”).

12 61. Class Representative agrees that there is a risk that any injury that she may have
13 suffered by reason of the Released Parties’ relationship with her might not now be known, and
14 there is a further risk that said injuries, whether known or unknown at the date of this Settlement
15 Agreement, might possibly become progressively worse, and that as a result thereof further
16 damages may be sustained. Nevertheless, Class Representative agrees to forever and fully release
17 and discharge the Released Parties, and understands that by the execution of this Settlement
18 Agreement no further claims for any such injuries that existed at the time of the execution of this
19 Settlement Agreement may ever be asserted by Class Representative with respect to claims arising
20 in the time period from the beginning of time to the execution of this Settlement Agreement.

21 62. Class Representative expressly waives and relinquishes all rights and benefits
22 afforded by Section 1542 of the Civil Code of the State of California and does so understanding
23 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
24 of the State of California states:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
26 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
27 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
28 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.

1 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
2 full and complete release and discharge of all parties, Class Representative and Class Counsel
3 expressly acknowledge that this Settlement Agreement is intended to include in its effect, without
4 limitation, all claims that Class Representative knew of, as well as all claims that she does not
5 know or suspect to exist in her favor against the Released Parties, or any of them, for the time
6 period from the beginning of time to the execution of this Settlement Agreement, and that this
7 Settlement Agreement contemplates the extinguishment of any such Class Representative's
8 claims. Notwithstanding the above, the general release by Class Representative shall not extend
9 to claims for workers' compensation benefits (including but not limited to the pending claims
10 alleged by Plaintiff against Defendant and Liberty Mutual in Workers Comp Case No.
11 ADJ15748395), claims for unemployment benefits, or other claims that may not be released by
12 law.

13 63. Class Representative represents and warrants that, other than Workers Comp Case
14 No. ADJ15748395, she has not filed and will not file any other lawsuit, administrative claim or
15 action, arbitration, demand, or other action of any kind against Defendant or the Released Parties.
16 Class Representative represents and warrants that, other than Workers Comp Case No.
17 ADJ15748395, the only pending claims against Defendant or the Released Parties are included in
18 this Action. However, the Parties agree that nothing in this paragraph shall prevent or prohibit
19 Plaintiff from filing any other lawsuit, administrative claim or action, arbitration, demand, or other
20 action of any kind against Defendant or the Released Parties for workers' compensation benefits,
21 claims for unemployment benefits, or other claims that may not be released by law.

22 **F. Interim Stay of Proceedings**

23 64. Pending completion of all of the prerequisites necessary to effectuate this
24 Settlement, the Parties agree, subject to Court's approval, to a stay of all proceedings in the Action
25 except such as are necessary to effectuate this settlement.

26 **G. Notice Process**

27 65. Appointment of Settlement Administrator. The Parties have agreed to the
28 appointment of the Settlement Administrator to perform the duties of a settlement administrator,

1 including mailing the Notice, using standard devices to obtain forwarding addresses,
2 independently reviewing and verifying documentation associated with any claims or opt-out
3 requests, resolving any disputes regarding the calculation or application of the formula for
4 determining the Individual Settlement Payments, drafting and mailing the settlement checks to
5 Participating Class Members, and Aggrieved Employees, issuing W-2 and 1099 Tax Forms,
6 performing unclaimed funds due diligence, reporting and performing remittance obligations, and
7 performing such other tasks as set forth herein or as the Parties mutually agree or that the Court
8 orders.

9 66. Disputes Regarding Settlement Administration. Any and all disputes relating to
10 administration of this settlement by the Settlement Administrator (except for disputes regarding
11 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
12 over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify
13 the Court that all payments and obligations contemplated by this Settlement Agreement have been
14 fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in
15 good faith to resolve the dispute without the necessity of Court intervention. The Settlement
16 Administrator shall also be responsible for issuing to Plaintiff, Participating Class Members,
17 Aggrieved Employees, and Class Counsel any W-2, 1099, or other tax forms as may be required
18 by law for all amounts paid pursuant to this Settlement Agreement. The Settlement Administrator
19 shall also be responsible for setting up all necessary tax accounts and forwarding all payroll taxes
20 and penalties to the appropriate government authorities.

21 67. Class Data. Within fourteen (14) calendar days after entry of the Preliminary
22 Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The
23 Settlement Administrator will run a check of the Class Members' addresses against those on file
24 with the U.S. Postal Service's National Change of Address Database. The Class Data provided
25 to the Settlement Administrator will remain confidential, shall be used solely to administer the
26 Settlement, and it will not be used or disclosed to anyone (including Class Counsel), except as
27 required by applicable tax authorities, pursuant to Defendant's express written consent, or by
28 order of the Court. Although Class Counsel will not be provided with the list of Class Data,

nothing herein shall prevent Class Counsel from communicating with Class Members regarding the Action and settlement.

68. Notice. The Notice, as approved by the Court, shall be sent by the Settlement Administrator to the Settlement Class Members, by first class mail, in English, within ten (10) calendar days following the Settlement Administrator's receipt of the Class Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of Settlement Class Members if any envelopes are returned.

69. Returned Notices of Settlement. The Settlement Administrator will take steps to ensure that the Notice is received by all Settlement Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. Notices of Settlement will be re-mailed to any Settlement Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The re-mailed Notice shall be identical to the original Notice, except that it shall notify the Settlement Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Notice Response Deadline or fifteen (15) calendar days after the remailing of the Notice.

70. Disputes Regarding Information on Notices of Settlement. Class Members are deemed to participate in the Settlement, unless they timely opt-out, and Aggrieved Employees may not opt-out of the PAGA Released Claims. The Notice will inform Class Members of his/her estimated Individual Settlement Payment and the number of Weeks Worked during the Class Period and Pay Periods Worked during the PAGA Period. Class Members may dispute their Weeks Worked and/or Pay Periods Worked if they feel they should be credited with more than represented on the Notice by timely submitting evidence to the Settlement Administrator. Defendant's records will be presumed determinative absent reliable evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number

1 of Weeks Worked and estimated Individual Settlement Payment. If Class Counsel and Defense
2 Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to
3 render a final decision. Class Members will have until the Notice Response Deadline to dispute
4 Weeks Worked and/or Pay Periods Worked, object or opt-out, unless extended by the Court. In
5 the event that the Settlement Administrator increases the number of Weeks Worked and/or Pay
6 Periods Worked for any Settlement Class Member, then the Settlement Administrator will
7 recalculate the Participating Class Members' Individual Settlement Payments; accordingly, in no
8 event will Defendant be required to increase the Gross Settlement Amount.

9 71. Declaration of Due Diligence. The Settlement Administrator shall provide counsel
10 for the Parties, at least twenty-five (25) calendar days prior to the Final Approval Hearing, a
11 declaration of due diligence and proof of mailing with regard to the mailing of the Notices of
12 Settlement.

13 72. Settlement Class Members' Rights. Each Settlement Class Member will be fully
14 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
15 Released Class Claims, and the ability to opt-out or request exclusion from the Settlement with
16 respect to the Released Class Claims. The Notice will inform the Settlement Class Members of
17 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
18 with respect to the Released Class Claims in accordance with the following guidelines:

19 (a) Requests for Exclusion from Participating in the Settlement Class. Any
20 Settlement Class Member, other than Plaintiff, may request to be excluded from the Settlement
21 Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or
22 before the Notice Response Deadline. The Request for Exclusion should state:

23 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT
24 CLASS IN THE DELPHON INDUSTRIES LAWSUIT. I
25 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM
26 THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
27 MONEY FROM THE CLASS ACTION PORTION OF THIS
28 LAWSUIT."

1 To be valid, any Request for Exclusion must include the full name, address, telephone
2 number, last four digits of the social security number or date of birth, and signature of the
3 Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by
4 mail to the Settlement Administrator at the specified address set forth in the Notice. Any such
5 Request must be made in accordance with the terms set forth in the Notice. A Request for
6 Exclusion will be timely only if postmarked by the Notice Response Deadline, unless the Parties
7 otherwise agree in writing. Any Settlement Class Member who timely requests exclusion in
8 compliance with these requirements: (i) will not have any rights under this Settlement Agreement
9 with respect to the Released Class Claims, including the right to object, appeal, or comment on the
10 Settlement; (ii) will not be entitled to receive any payments under this Settlement Agreement for
11 the Released Class Claims; and (iii) will not be bound by this Settlement Agreement, or the
12 judgment, with respect to the Released Class Claims. Any Aggrieved Employee who requests
13 timely exclusion will still be subject to the PAGA Released Claims to the fullest extent permitted
14 by law and shall be sent his or her share of PAGA Penalties.

15 (b) Binding Effect on Participating Class Members. Except for those
16 Settlement Class Members who exclude themselves in compliance with the procedures set forth
17 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for
18 all purposes under this Settlement Agreement; (ii) will be bound by the terms and conditions of
19 this Settlement Agreement, the Judgment, and the releases set forth herein; and (iii) except as
20 otherwise provided herein, will be deemed to have waived all objections and oppositions to the
21 fairness, reasonableness, and adequacy of the Settlement.

22 (c) Objections to Settlement of the Released Class Claims. Any Settlement
23 Class Member, other than Plaintiff, may object to the terms of this Settlement Agreement, except
24 as to the PAGA Released Claims. To object, a Settlement Class Member shall inform the
25 Settlement Administrator, in writing, of his or her objection which must be postmarked by the
26 Notice Response Deadline at the address set forth in the Notice. Such objection shall include the
27 objecting Settlement Class Member's full name, address, telephone number, last four digits of the
28 social security number or date of birth, signature, and dates of employment with Defendant, in

1 addition to the case name and number, the basis for the objection, including any legal support and
2 each specific reason in support of the objection, as well as any documentation or evidence in
3 support thereof, and, if the Objecting Settlement Class Member is represented by counsel, the
4 name and address of his or her counsel. The Settlement Administrator shall provide objections, if
5 any, to Class Counsel and Defense Counsel within three (3) calendar days of receipt, and the
6 Settlement Administrator shall attach the same to its declaration of due diligence and file with the
7 Court prior to the Final Approval Hearing. Any Participating Class Member who files an objection
8 remains eligible to receive monetary compensation from the settlement. Plaintiff and Defendant
9 shall not be responsible for any fees, costs, or expenses incurred by any Class Member and/or his
10 or her counsel related to any objections to the settlement. Submitting an objection does not
11 preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming
12 a party of record by timely and properly intervening or filing a motion to vacate the judgment
13 under California Code of Civil Procedure § 663. Settlement Class Members and Aggrieved
14 Employees may not object to or opt-out of the Settlement with respect to the PAGA Released
15 Claims.

16 (d) Failure to Object. Any Settlement Class Member who desires to object to
17 the Released Class Claims in the Settlement but fails to timely submit a written objection or in
18 person objection at the Final Approval Hearing waives any right to object and will be foreclosed
19 from making any objection to this Settlement. Any Settlement Class Member who does not timely
20 and properly become a party of record by intervening or filing a motion to vacate the judgment
21 waives any and all rights to appeal from the Judgment, including all rights to any post-judgment
22 proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a
23 motion under California Code of Civil Procedure § 473, and extraordinary writs.

24 (e) Responses to Objections. Counsel for the Parties may file a response to any
25 objections submitted by objecting Settlement Class Members at least five (5) court days before the
26 date of the Final Approval Hearing.

27 (f) Settlement Class Members will have until the Notice Response Deadline to
28 object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The

1 Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what
2 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
3 request of Class Counsel or Defense Counsel.

4 (g) Defective Submissions. If a Settlement Class Member's Request for
5 Exclusion or objection is defective as to the requirements listed herein, that Settlement Class
6 Member will be given an opportunity to cure the defect(s). The Settlement Administrator will
7 mail the Settlement Class Member a cure letter within three (3) business days of receiving the
8 defective submission to advise the Settlement Class Member that his or her submission is defective
9 and that the defect must be cured to render the Request for Exclusion or objection valid. The
10 Settlement Class Member will have the later of (i) the Notice Response Deadline or (ii) fifteen
11 (15) calendar days from the date of the cure letter to postmark or fax a revised Request for
12 Exclusion or objection. If the revised Request for Exclusion or objection is not postmarked or
13 received by fax within that period, it will be deemed untimely and disregarded.

14 73. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
15 the QSF of the Gross Settlement Amount, plus the employer's share of payroll taxes, no later than
16 fifteen (15) calendar days after the Effective Date. Once Defendant has complied with their
17 obligation set forth in this paragraph, it shall be deemed to have satisfied all of the terms and
18 conditions of this Settlement Agreement, shall be entitled to all the protections afforded it under
19 this Settlement Agreement, and shall have no further obligations under this Settlement Agreement,
20 regardless of what occurs with respect to the further administration of the Settlement. The
21 Settlement Administrator (and not Defendant) shall issue the applicable W-2s and IRS Form 1099
22 reflecting all payments to the Class Members.

23 74. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
24 payment into the QSF, the Settlement Administrator will mail the Individual Settlement Payments
25 to the Participating Class Members, the payment to Class Counsel for the Attorneys' Fees and
26 Costs Award, any Service Payment to the Class Representative, the payment to the LWDA for
27 PAGA Penalties, the payments to Aggrieved Employees for PAGA Penalties, and will pay itself
28 the Settlement Administration Costs.

1 75. Deadline for Cashing Settlement Checks. Participating Class Members and
2 Aggrieved Employees shall have one hundred eighty (180) calendar days after mailing by the
3 Settlement Administrator to cash each settlement check. If any Participating Class Member's or
4 Aggrieved Employee's check is not cashed within that period, the check will be void and a stop-
5 payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the
6 California State Controller's Office in the name of the Class Member or Aggrieved Employee.
7 The release will be binding upon all Participating Class Members and Aggrieved Employees who
8 do not cash their checks within the one hundred eighty (180) calendar days period. In the event
9 that any settlement check is returned to the Settlement Administrator within one hundred eighty
10 (180) calendar days of mailing, the Settlement Administrator will, within five (5) business days of
11 receipt of the returned settlement check, perform a skip trace to locate the individual, and notify
12 Defense Counsel and Class Counsel of the results. If a new address is located by these means, the
13 Administrator will have ten (10) business days to re-issue the check. Neither Defendant, Defense
14 Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost
15 or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation
16 of settlement checks. Without limiting the foregoing, in the event a Participating Class Member
17 or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a
18 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
19 payment on such check. If the check in question has not been negotiated prior to the stop payment
20 order, the Settlement Administrator will issue a replacement check.

21 76. No person shall have any claim against Defendant or the Released Parties,
22 Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings,
23 distributions, payments or reports made in accordance with or pursuant to this Settlement
24 Agreement. This provision does not, however, prevent a Party from seeking enforcement of this
25 Settlement Agreement.

26 77. Without prejudice to any other remedies, the Settlement Administrator shall agree
27 to be responsible for any breach of its obligations (whether committed by the Settlement
28 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from

and against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

H. Duties of the Parties Prior to the Court's Approval

78. Promptly after execution of this Settlement Agreement, Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

(a) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and Aggrieved Employees and a hearing on fees, costs and the Service Payment;

(b) Approving as to form and content of the proposed Notice;

(c) Directing the mailing of the Notice by first class mail to the Settlement Class Members and Aggrieved Employees;

(d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the class solely for purposes of this Settlement.

79. Reallocation of Settlement Proceeds. In the event the Court fails, on its first hearing, to approve this Settlement Agreement because the amount of the PAGA Penalties is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Settlement Agreement, in order to try to achieve Final Approval of this Settlement Agreement upon any subsequent Court hearings.

I. Duties of the Parties Following Court's Final Approval

80. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit a proposed Final Approval Order:

a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

b. Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and

c. Entering judgment approving settlement, thereby permanently barring all

1 Participating Class Members from prosecuting any Released Class Claims against any of the
2 Released Parties and permanently barring all Aggrieved Employees and the LWDA from
3 prosecuting any PAGA Released Claims against any of the Released Parties.

4 81. Final Judgment. The Settlement Administrator shall give the Participating Class
5 Members and Aggrieved Employees notice of the entry of Final Judgment on a postcard or letter
6 that will be included with the Individual Settlement Payments.

7 **J. Voiding this Settlement Agreement**

8 82. All Parties, signatories, and their counsel shall not encourage opt-outs or objections
9 to this Settlement Agreement. The Parties specifically agree not to solicit opt-outs, directly or
10 indirectly, through any means.

11 83. If the settlement is voided or fails for any reason, Plaintiff and Defendant will have
12 no further obligations under the settlement, including any obligation by Defendant to pay the Gross
13 Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

14 84. If the settlement is voided or fails for any reason, any costs incurred by the
15 Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise
16 specified in this Settlement Agreement.

17 **K. Other Terms**

18 85. Waiver. The waiver by one Party of any breach of this Settlement Agreement by
19 another Party shall not be deemed a waiver of any other prior or subsequent breach of this
20 Settlement Agreement.

21 86. Full and Complete Defense. This Settlement Agreement may be pleaded by any
22 Released Party as a full and complete defense to, and may be used as the basis for an injunction
23 against, any action, suit, or other proceeding that has been or may be instituted, prosecuted or
24 attempted, asserting any Released Class Claim or PAGA Released Claim.

25 87. Injunction Against Duplicative Claims. Upon Preliminary Approval of the
26 Settlement Agreement, all Settlement Class Members who do not opt out of the Settlement Class
27 shall be enjoined from filing, joining, or becoming a party, member or representative in any
28 actions, claims, complaints, or proceedings in any state or federal court on an individual,

1 representative, collective or class action basis, or with the California Department of Industrial
2 Relations' Division of Labor Standards Enforcement ("DLSE") or the United States Department
3 of Labor ("DOL"), or from initiating any other proceedings, regarding any of the Released Claims.
4 Any related pending actions, claims, complaints, or proceedings in any state or federal court or
5 with the DLSE or DOL, shall be stayed until the Settlement Class Members have had an
6 opportunity to decide to participate, object or file a Request for Exclusion from this settlement.
7 In addition, upon Preliminary Approval of the Settlement Agreement, all Settlement Class
8 Members (regardless of whether they opt-out) shall be enjoined from filing, joining, or becoming
9 a party, member or representative in any actions, claims, complaints, or proceedings in any state
10 or federal court on an individual, representative, collective or class action basis, or with the
11 California Department of Industrial Relations' Division of Labor Standards Enforcement
12 ("DLSE") or the United States Department of Labor ("DOL"), or from initiating any other
13 proceedings, regarding any of the Release defined hereinabove to the extent such actions, claims,
14 complaints, or proceedings are based on the PAGA Released Claims released via this Settlement
15 Agreement.

16 88. Parties' Authority. The signatories hereto represent that they are fully authorized
17 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
18 hereof. The signatories hereto further represent that the Parties to this Settlement Agreement are
19 represented by competent counsel, and they have had an opportunity to consult with counsel prior
20 to authorizing its execution.

21 89. No Publicity. The Parties will not publicize the settlement or disclose it to third
22 parties, except as required or necessary to effectuate its terms and comply with law, including the
23 payment of taxes. Specifically, Plaintiff and Plaintiff's counsel shall not publicize the settlement
24 on their websites, in advertising/marketing materials or on social media. The Parties and their
25 counsel agree that they will not issue any press releases or initiate any contact with the media about
26 the fact, amount, or terms of the settlement. If counsel for any party receives an inquiry about the
27 settlement from the media, counsel may respond only after the motion for preliminary approval of
28 the settlement has been filed and only by confirming the accurate terms of the settlement. Nothing

1 in this provision shall prevent Defendant from making any required disclosure.

2 90. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
3 accomplish the terms of this Settlement Agreement, including but not limited to, execution of such
4 documents and to take such other action as may reasonably be necessary to implement the terms
5 of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts,
6 including all efforts contemplated by this Settlement Agreement and any other efforts that may
7 become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and
8 the terms set forth herein. As soon as practicable after execution of this Settlement Agreement,
9 Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel,
10 take all necessary steps to secure the Court's preliminary and final approval of the settlement, and
11 the final entry of judgment. Class Counsel shall provide Defendant's Counsel with copies of the
12 Preliminary Approval Motion and Final Approval Motion for review at least five (5) court days
13 prior to the filing deadline.

14 91. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
15 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
16 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
17 cause of action or rights released and discharged by this Settlement Agreement.

18 92. No Admission. Defendant denies any and all liability to Plaintiff, any Settlement
19 Class Member, and/or any Aggrieved Employee in this Action, as to any and all causes of action
20 that were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes
21 to settle and compromise the matters at issue in the Complaint to avoid further substantial expense
22 and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has
23 taken into account the uncertainty and risks inherent in litigation, and without conceding any
24 infirmity in the defenses that they have asserted or could assert against Plaintiff, has determined
25 that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms
26 and conditions set forth in this Settlement Agreement.

27 93. Inadmissibility of this Settlement Agreement. Whether or not the Court issues the
28 Final Approval Order, nothing contained herein, nor the consummation of this Settlement

1 Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or
2 wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties
3 hereto has entered into this Settlement Agreement with the intention of avoiding further disputes
4 and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a
5 settlement document, and it, along with all related documents such as the notices, and motions for
6 preliminary and final approval, shall, pursuant to California Evidence Code § 1152 and/or Federal
7 Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or
8 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement. The
9 stipulation for class certification as part of this Settlement Agreement is for settlement purposes
10 only and if, for any reason the settlement is not approved, the stipulation will have no force or
11 effect.

12 94. Notices. Unless otherwise specifically provided herein, all notices, demands, or
13 other communications pursuant to this Settlement Agreement shall be in writing and shall be
14 deemed to have been duly given as of the third business day after mailing by United States
15 registered or certified mail, return receipt requested, addressed:

16 To the Settlement Class Members and Aggrieved Employees:

17 Brian Mankin
18 *brian@LMLfirm.com*
19 Lauby Mankin Lauby LLP
20 5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

21 To Defendant:

22 Gregory G. Iskander
23 *giskander@littler.com*
24 Daniel XuLi
25 *dxuli@littler.com*
26 Littler Mendelson, P.C.
27 Treat Towers
1255 Treat Boulevard, Suite 600
28 Walnut Creek, California 94597
Tel: 925.932.2468 | Fax: 925.946.9809

1 95. Construction. The Parties hereto agree that the terms and conditions of this
2 Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the
3 Parties and that this Settlement Agreement shall not be construed in favor of or against any Party
4 by reason of the extent to which any Party or his or its counsel participated in the drafting of this
5 Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory
6 rule of construction that ambiguities should be construed against the drafter of an agreement and
7 further agree, covenant, and represent that the language in all parts of this Settlement Agreement
8 shall be in all cases construed as a whole, according to its fair meaning.

9 96. Captions and Interpretations. Paragraph titles or captions contained herein are
10 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
11 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
12 Settlement Agreement is contractual and not merely a recital.

13 97. Modification. This Settlement Agreement may not be changed, altered, or
14 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
15 Settlement Agreement may not be discharged except by performance in accordance with its terms
16 or by a writing signed by all of the Parties hereto.

17 98. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
18 this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement,
19 a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged
20 deficiencies, and Plaintiff and Defendant agree to seek the help of the mediator identified in this
21 Settlement Agreement to resolve any dispute they are unable to resolve informally. During this
22 period, the Parties shall bear their own attorneys' fees and costs. This provision shall not apply to
23 any legal action or other proceeding instituted by any person or entity other than Plaintiff or
24 Defendant.

25 99. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
26 dismissal pursuant to the terms of this Settlement Agreement, that, pursuant to California Code of
27 Civil Procedure § 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this
28 Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and

obligations of this Settlement Agreement.

100. Enforceability. Pursuant to California Evidence Code §§ 1123(a) and (b), the Parties intend that this Settlement Agreement shall be enforceable, binding, and admissible in a court of law.

101. Choice of Law. This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California.

102. Integration Clause. This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

103. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

104. Signatures of All Class Members and Aggrieved Employees Unnecessary to be Binding. It is agreed that, because the members of the Settlement Class and Aggrieved Employees are numerous, it is impossible or impractical to have each Class Member and Aggrieved Employee execute this Settlement Agreement. The Notice will advise all Settlement Class Members and Aggrieved Employees of the binding nature of the releases provided herein and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member and Aggrieved Employee.

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

106. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one

1 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
2 Electronic signatures shall have the same force and effect as an original.

3
4 Dated: December 22, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

5 
6 Astrid Orozco (Dec 22, 2022 11:30 PST)

Astrid Orozco

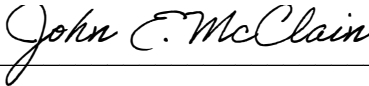
7
8 Dated: December 22, 2022

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

9 
10 Brian J. Mankin
11 Attorneys for Plaintiff

12 Dated: December 28, 2022

DEFENDANT:
DELPHON INDUSTRIES, LLC

14 
15 John E. McClain

16 By: John E. McClain

17 Title: Director, Human Resources

18
19 Dated: December 28, 2022

DEFENDANT'S COUNSEL:
LITTLER MENDELSON, P.C.

21 
22 Gregory G. Iskander

23 Attorneys for Defendant

24
25 **END OF DOCUMENT**
26
27
28

Exhibit A

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

Astrid Orozco v. Delphon Industries, LLC.

Superior Court of the State of California, County of Alameda, Case No. 22CV006597

To: All current and former nonexempt employees who were employed by Delphon Industries, LLC (“Delphon”) in California at any time between February 4, 2018, and [REDACTED], 2023 (*administrator to fill in the earlier of February 13, 2023, or PA Date) (the “Class”):

THIS NOTICE is of a proposed settlement of the above-referenced class action and representative action lawsuit (the “Lawsuit”), and a court hearing that you may attend. Your rights may be affected by the legal proceedings in this Lawsuit. The Court will conduct a hearing on [REDACTED], 2023, to address whether the proposed settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement (“Settlement”).

[IDENTIFYING INFORMATION]

You have been identified as a Class Member and possible Aggrieved Employee in the above Lawsuit. Under the terms of the proposed settlement, you are estimated to receive \$[INSERT AMOUNT] based on the number of eligible weeks and pay periods that you worked for Delphon in California between February 4, 2018 and [REDACTED], 2023 (*administrator to fill in the earlier of February 13, 2023, or PA Date) (the “Class Period”) as your share of the Settlement should the Court approve the Settlement. Please note your actual share of the Settlement may be more or less than this estimate. Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you want to receive your full settlement payment, no further action is required. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. By accepting your full settlement payment, you will be bound by the terms of the Settlement and will give up your right to sue on the released class and PAGA claims described in Section IV under the provisions titled “Release of Class Claims” and “Release of PAGA Claims.”
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2023 (see Section V(B) for more details on how to opt-out). If you opt-out of the settlement of the Class Claims, you will no longer be a Class Member, and you will (1) neither receive any settlement payment for the Class Claims nor release any Class Claims as set forth in Section IV, and (2) be barred from filing an objection to the Settlement. You still will receive a payment as part of the civil penalties paid pursuant to the California Private Attorneys General Act of 2004 (“PAGA”) and will release your claims for such civil penalties.
OBJECT	If you decide to object to the Settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an objection by [REDACTED], 2023 (see Section V(C) for more details on how to object).

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Orozco v. Delphon Industries, LLC*, Alameda County Superior Court Case No. 22CV006597 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

Delphon’s records show that you were employed as a nonexempt employee (meaning you were paid hourly or eligible for overtime pay) in California at some point between February 4, 2018, and [REDACTED], 2023 (*administrator to fill in the earlier of February 13, 2023, or PA Date) (“Class Period”). The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by Delphon as a nonexempt employee in California at any time during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On February 4, 2022, Plaintiff and Class Representative Astrid Orozco, through her attorneys (“Class Counsel”), filed a class action complaint against Delphon and later filed an amended complaint for alleged wage and hour violations on behalf of all current and former nonexempt employees employed by Delphon in California at any time since February 4, 2018. The Lawsuit alleges that Delphon violated various Labor Code sections by failing to pay all required minimum and overtime wages, failing to provide meal periods and rest breaks, failing to timely pay final wages, and failing to provide accurate and complete wage statements during the Class Period. The Lawsuit also sought equitable relief under the Unfair Competition Law. All these claims are called the “Class Claims.” The Lawsuit also sought, on behalf of the California Labor Workforce Development Agency (“LWDA”), civil penalties pursuant to PAGA as a representative action. The civil penalty claims are called “PAGA Claims” and the relevant period for PAGA claims is February 4, 2021, through [REDACTED], 2023 (*administrator to fill in the earlier of February 13, 2023, or PA Date) (“PAGA Period”).

The Court has not ruled on the merits of Plaintiff’s factual or legal allegations in the Lawsuit. Delphon has denied, and continues to deny, the factual and legal allegations in the Lawsuit and believes that Delphon has and is in compliance with California law or has valid defenses. By settling, Delphon is not admitting liability on any of Plaintiff’s factual legal allegations in the case or that the case can proceed as a class action and/or a representative action.

After considering the risks, expenses, and inconvenience of continued litigation, Delphon and Plaintiff have concluded that it is in their best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. The Settlement was reached following an arm’s length mediation with a respected and experienced mediator after the Parties exchanged extensive information. By approving the Settlement and issuing this Notice, the Court is not suggesting which party would win or lose this case if it went to trial.

The Class Representative and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to Delphon, the risk of denial of class certification or representative status, the inherent risk of trial on the merits, and the delays and uncertainties associated with such litigation.

If you are still employed by Delphon, this Settlement will NOT affect your employment. California law strictly prohibits unlawful retaliation. Delphon will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member regardless of whether the Class Member chooses to participate or not in the Settlement. If a Class Member does not participate as to the Class Claims, his/her share of the settlement of the Class Claims will be paid to those who do participate.

III. Who are the attorneys representing The Parties?

Attorneys for Plaintiff and Class Members:	Attorneys for Delphon:
Brian Mankin <i>brian@LMLfirm.com</i> Peter Carlson <i>peter@LMLfirm.com</i> Lauby Mankin Lauby LLP 4590 Allstate Drive Riverside, CA 92501 Tel: (951) 320-1444	Gregory Iskander <i>giskander@littler.com</i> Daniel XuLi <i>dxuli@littler.com</i> Littler Mendelson P.C. 1255 Treat Boulevard, Suite 600 Walnut Creek, CA 94597 Tel: (925) 932-2468

IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all current and former nonexempt employees employed by Delphon in California at any time from February 4, 2018, through [REDACTED], 2023 (*administrator to fill in the earlier of February 13, 2023, or PA Date) (the “Settlement Class” or “Class Members”) and approved a representative class comprised of all current and former nonexempt employees employed by Delphon in California at any time from February 4, 2021, through [REDACTED], 2023 (*administrator to fill in the earlier of February 13, 2023, or PA Date) (“Aggrieved Employees”). Individuals who do not opt out of the Settlement Class, pursuant to the procedures set

forth in this Notice, will become “Participating Class Members”, be mailed Settlement checks, and be bound by the Settlement and release certain wage and penalty claims against Delphon.

Without admitting any wrongdoing, Delphon has agreed to pay \$775,000 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Gross Settlement Amount:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of \$8,000.00 will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

Settlement Administrator
Name Address Telephone

Penalties to the California Labor Workforce and Development Agency. The Labor Code Private Attorneys General Act (“PAGA”) authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other Aggrieved Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$75,000 of the Gross Settlement Amount will be allocated to Plaintiff’s PAGA Claims. Of the \$75,000, \$56,250 will be paid to the California Labor Workforce and Development Agency (“LWDA”) in satisfaction of the claims for civil penalties under PAGA, and the remaining \$18,750 will be divided between all Aggrieved Employees based on the number of Pay Periods Worked during the PAGA Period. Aggrieved Employees includes all current and former nonexempt employees employed by Delphon in California at any time during the PAGA Period. You do not have the right to opt-out or exclude yourself from receiving the civil penalties paid to pursuant to PAGA. Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$18,750 allocation:

Do you Qualify as an Aggrieved Employee?	Pay Periods Worked as an Aggrieved Employee	Your Share of PAGA Penalties
YES/NO	INSERT	\$INSERT

Service Payment to Class Representative. Class Counsel will ask the Court to award the Class Representative a Service Payment in the amount of \$7,500 to compensate her for service and extra work provided on behalf of the Class Members and in exchange for a general release of claims. The Class Representative also will receive her individual share of the Settlement as a Class Member.

Attorneys’ Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or costs. Class Counsel will ask for fees of one-third (\$258,333.33) of the Gross Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$20,000 for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above from the Gross Settlement Amount, the balance will form the “Net Settlement Amount” for distribution to Participating Class Members. The Net Settlement Amount will total approximately \$. Individual Settlement Payments to Class Members will be calculated and apportioned from the Net Settlement Amount based on the number of calendar weeks during which a Settlement Class member was employed by Delphon in California and worked at least one shift (the “Weeks Worked”). Calculations of Individual Settlement Payments will be as follows: the Settlement Administrator will divide the Net Settlement Amount by total Weeks Worked by the Settlement Class to determine a per “Workweek Value.” The Workweek Value will be multiplied by the number of Weeks Worked by each Settlement Class member during the Class Period to determine the “Individual Settlement Payment,” prior to legal deductions/withholdings, for each Settlement Class member. If any Settlement Class member opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members (i.e., those who do not opt-out). Review the information below to determine your share as a Class Member:

Workweeks Worked as a Class Member During the Class Period	Your Share of the Net Settlement Amount
INSERT	INSERT

Disputes to Work Weeks or Pay Periods Credited. For each Settlement Class Member, the Weeks Worked during the Class Period and the Pay Periods Worked during the PAGA Period will be calculated from Delphon's records. If you disagree with the numbers above, you may submit evidence to the Settlement Administrator on or before [REDACTED], 2023, to establish the number of Weeks Worked and/or Pay Periods you claim to have actually worked for Delphon in California during the relevant periods. **DO NOT SEND ORIGINALS AS DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.** The Parties and Settlement Administrator will evaluate the evidence submitted by the Settlement Class member and discuss in good faith how many Weeks Worked should be credited to the Settlement Class member.

Payments to Class Members. After the Court grants Final Approval of the Settlement and judgment is entered, settlement checks will be mailed to Participating Class Members. For Aggrieved Employees who requested to be excluded from the Class Claims settlement, their settlement checks will only be for their share of PAGA civil penalties for release of their PAGA Claims. Participating Class Members and Aggrieved Employees will have 180 days from the issuance of the last check to cash all of the checks. In the event that any Participating Class Member or Aggrieved Employee fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller's Office in the name of the Participating Class Member or Aggrieved Employee, so that the Participating Class Member or Aggrieved Employee can attempt to collect the funds at a later date through the California State Controller's Office.

Allocation and Taxes. One-third (1/3) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining two-thirds (2/3) will be considered and reported as interest and penalties (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, the payments will be reported on IRS Form 1099 as income. Payments for PAGA Claims shall be paid one hundred percent (100%) as civil penalties for which no taxes shall be withheld and for which payment will be reported on IRS Form 1099. Participating Class Members and Aggrieved Employees are responsible for the proper income tax treatment of the Individual Settlement Payments and their payments for PAGA Claims. The Settlement Administrator, Delphon and their counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments or payments for PAGA Claims. Participating Class Members and Aggrieved Employees will be solely responsible for the proper income tax treatment and payment of any taxes and penalties assessed on their Individual Settlement Payments or payments for PAGA Claims. Participating Class Members and Aggrieved Employees should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release of Class Claims. Upon the final approval of the Settlement by the Court and Delphon's funding of the Gross Settlement Amount, Plaintiff and all Participating Class Members will fully release and discharge Delphon and its past and present officers, directors, members, partners, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective parent corporations, subsidiaries, divisions, affiliates, attorneys, predecessors, successors and assigns (the "Released Parties") from the claims stated in the operative complaint or those claims which could have been asserted in the Complaint based upon the facts in the Complaint, including: (a) failure to pay wages or minimum wages (including for off the clock claims and rounding claims), (b) failure to pay overtime wages (including for off the clock, regular rate, invalid alternative work weeks, or rounding claims), (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to timely pay wages, including upon separation of employment, (f) failure to provide accurate itemized wage statements, (g) unfair and unlawful competition, and (i) all other claims for statutory penalties based on the above. These released claims and damages are hereinafter referred to as "Released Class Claims." The time period governing these Released Class Claims shall be at any time from February 4, 2018, through [REDACTED], 2023 (*administrator to fill in the earlier of February 13, 2023, or PA Date) ("Class Period").

Release of PAGA Claims. Upon the Court's final approval of the Settlement and Delphon's funding of the Gross Settlement Amount, Plaintiff—in her individual capacity and on behalf of the State of California and the LWDA—and all Aggrieved Employees shall completely release and discharge the Released Parties of PAGA claims that Plaintiff alleged against the Released Parties, on behalf of the Aggrieved Employees and the State of California, based on the facts stated in the Complaint and relevant LWDA notice letter, including all PAGA claims seeking civil penalties premised upon: (a) failure to

pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to pay vested vacation, (f) reimburse business expenses, (g) failure to timely pay wages each period, (h) failure to timely pay wages upon separation of employment, (i) failure to provide accurate itemized wage statements, and (j) all other claims for civil penalties recoverable under PAGA based on the facts or claims alleged in the Complaint. These released claims and damages are hereinafter referred to as “Released PAGA Claims.” The time period governing the PAGA Released Claims shall be any time from February 4, 2021, through [REDACTED], 2023 (*administrator to fill in the earlier of February 13, 2023, or PA Date) (“PAGA Period”).

Waiver of Labor Code Sections 206.5(e). Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. Section 206.5 of the Labor Code provides in pertinent part as follows:

“No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.”

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of judgment.

V. What options do I have?

A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive a Settlement Payment unless you exclude yourself from the settlement by following the exclusion procedure set forth below. If you disagree with the number of Work Weeks or Pay Periods credited, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described below.

B. **Exclude Yourself from the Class Claims in the Settlement.** If you do not wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion from the Class Claims in the Class Action Settlement” letter/card postmarked no later than [REDACTED], 2023 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE DELPHON INDUSTRIES LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS ACTION PORTION OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator, [ADDRESS], postmarked no later than [REDACTED], 2023. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement with respect to the Class Claims, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any money for the Class Claims under this Settlement; and (3) will not be bound by this Settlement, or the Judgment, with respect to the Class Claims. You still will be bound by this Settlement with respect to the release of the PAGA Claims.

C. **Object to Settlement.** You also have the right to object to the terms of the Settlement with respect to the Class Claims if you believe they are unfair or unreasonable. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Class Claims portion of the Settlement, you must submit a written objection stating your full name, your address, your telephone number, the last four digits of your social security number or your date of birth, your dates of employment with Delphon, the case name and number, the name and address of your attorney(s) if you are represented, your signature, and each specific reason in support of your objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed to the Settlement Administrator, [ADDRESS], by no later than [REDACTED], 2023. Objections that do not include all required information, or that are not submitted timely, may not be considered by the Court. You need not object to the Settlement if you only dispute the number of Work Weeks or Pay Periods credited. To dispute the number of the number of Work Weeks or Pay Periods credited, please refer to the directions provided under the provision entitled “Calculation of Individual Settlement

Payments to Class Members” in Section IV of this Notice.

If you choose to object to the Class Claims portion of the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2023, at [REDACTED] a.m. in Department 21 of the Alameda County Superior Court, located at 24405 Amador Street, Hayward, CA 94544. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [REDACTED], 2023. All objections or other correspondence must state the name and number of the case. If you wish to appear at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

VI. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by Delphon in California at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and released the class claims in this Lawsuit, described above in Section IV under the provision titled “Release of Class Claims.” All Aggrieved Employees will be deemed to have entered into a release of the PAGA Claims, described above in Section IV under the provision titled “Release of PAGA Claims.” If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue, and the releases will not take effect.

VII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, the Class Counsel’s request for attorneys’ fees and reimbursement of documented litigation costs, and the Service Payment to the Class Representative on [REDACTED], 2023 at [REDACTED] a.m. in Department 21 of the Alameda County Superior Court, located at 24405 Amador Street, Hayward, CA 94544.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

VIII. How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you can access an electronic version of this Notice and other important documents in this Lawsuit, including the Settlement Agreement and operative complaint, by visiting this website: **INSERT WEBSITE HERE**. You may also contact Class Counsel at the contact information listed in Section III above. Additionally, you may inspect the pleadings, records, and other papers on file in this lawsuit by visiting the Records Management Unit for the Alameda County Superior Court, located at 2233 Shore Line Drive, Alameda, CA 94501. Lastly, you can also access records for this Lawsuit by utilizing the online access for such files provided by Alameda County Superior Court, located at: <https://eportal.alameda.courts.ca.gov/?q=node/388>. To access the case file for this Lawsuit, click on “Case Number Search,” then create a free online account, then type in the case number (22CV006597) where requested, then click “Search.”

IX. Reminder as to time limits

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion from the Class Claims is [REDACTED], 2023. The deadline for mailing an objection to the Settlement Administrator is [REDACTED], 2023.

These deadlines will be strictly enforced. To be considered timely, any Requests for Exclusion and objections to the Settlement must be postmarked by the above-stated deadlines. Any Requests for Exclusion and objections to the Settlement that are not postmarked on or before these deadlines will be deemed untimely and disregarded.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

Exhibit B



LAUBY, MANKIN & LAUBY LLP

February 4, 2022

Submitted Via Online Filing to the LWDA

Sent Via U.S. Mail and Certified Mail

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Delphon Industries, LLC
31398 Huntwood Ave.
Haywood, CA 94544

Re: PAGA Civil Penalty Claim
Astrid Orozco v. Delphon Industries, LLC

To the Labor and Workforce Development Agency and Delphon Industries, LLC:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Astrid Orozco (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against her employer(s), Delphon Industries, LLC and/or any affiliated entities, as well as its owners (the “Owners”) (collectively, the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately July 2021 through January 2022. Claimant alleges that, at all relevant times, she and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations that Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. As one specific example, Claimant and the Aggrieved Employees were frequently required to perform routine and recurring tasks for the Company at the beginning of the shift (such as mandatory temperature checks before being allowed to clock in) and at the end of the shift (after being required to clock out). However, because this time was spent under the Company’s control but before being allowed to clock in or after clocking out, it was uncompensated in violation of California law and led to minimum and overtime wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation”); See also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company’s control and where the tasks served the employer’s interests).



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Toll Free 888.959.8508

Also, at all relevant times, Claimant was compensated on an hourly basis plus was entitled to and did receive additional nondiscretionary compensation (such as shift differentials and/or bonuses). However, on the occasions when Claimant worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional earned compensation during the workweek, the Company failed to properly include these amounts in the calculations for Claimant's regular rate of pay. Therefore, the Company failed to pay proper overtime wages for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when she was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked 10 hours or more in a shift, the Company failed to authorize and/or permit the mandated additional rest breaks.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, and vacation wages. Finally, during her employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that she worked under the joint direction and control of the entities listed herein and their Owners and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that the entities listed herein and the Owners acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, the entities listed herein and their Owners are an integrated enterprise and should be treated as a single employer because the entities and their Owners share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, the entities listed herein and their Owners share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that the Owners are now and at all relevant times were the owners of the entities listed herein and were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times the Owners had the authority, in the interest of the entities listed herein to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in



Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that the entities listed herein and the Owners are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, the entities listed herein and the Owners were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges the entities listed herein and the Owners were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, the entities listed herein have been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which the Owners have conducted their personal affairs. Adherence to the fiction of the separate existence of the entities listed herein would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to the entities listed herein should be imposed jointly and severally against the Owners.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, the Owners are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked and the failure to pay overtime and/or properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.



**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT

(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee’s separation from employment, pay to the employee all vested but unused vacation and/or paid time off at his final rate of pay. However, as alleged herein, the Company failed to pay all accrued and unused vacation upon termination and, further, failed to pay it at the final rate as required by Labor Code § 227.3. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

FAILURE TO PAY SICK TIME AT PROPER RATE OF PAY

(Labor Code § 246)

Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

Here, Claimant and the Aggrieved Employees were compensated on an hourly basis plus additional compensation in the form of shift differentials and/or nondiscretionary bonuses. However, on the occasions



that the Aggrieved Employees took sick time and received paid sick leave, the Company only paid sick time at the base rate of pay (not factoring in the additional compensation as required by Labor Code §§ 246(l)(1-2). As such, penalties may be assessed pursuant to Labor Code § 2699.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 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 therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or



employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including: failure to accurately state total hours worked (the wage statements failed to accurately reflect total compensable hours); failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates (including the accurate overtime rate of pay); and failure to accurately state the corresponding number of hours worked at each hourly rate. Additionally, the Company's wage statements directly violated Labor Code § 226(a)(9) each period due to the practice of paying "Shift Differential(s)" and "Shift OT" without listing the corresponding rates of pay or applicable hours worked for each category of hourly pay. Accordingly, Labor Code §§ 226.3 and 2699 impose civil penalties for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

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CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, she reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: peter@lmlfirm.com



EXHIBIT “2”



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

November 23, 2022

CASE ASSUMPTIONS

Class Members	275
Opt Out Rate	1%
Opt Outs Received	3
Total Class Claimants	272
Subtotal Admin Only	\$8,406.38

Flat Fee Total \$8,000.00

For 275 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Case: Orozco v. Delphon, Opt-Out Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Brian J. Mankin
Firm: Lauby, Mankin & Lauby, LLP
Contact Number: (951) 320-1444
Email: brian@lmlfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on 275 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	2	\$200.00
Programming Database & Setup	\$100.00	2	\$200.00
Toll Free Setup*	\$150.00	1	\$150.00
Call Center & Long Distance	\$2.00	40	\$80.00
NCOA (USPS)	\$68.75	1	\$68.75
Total			\$698.75

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Reminder Postcard / Website

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Data Merge & Duplication Scrub	\$0.10	275	\$27.50
Notice Packet & Opt-Out Form	\$1.35	275	\$371.25
Estimated Postage (up to 2 oz.)*	\$0.61	275	\$167.75
Static Website	\$100.00	1	\$100.00
Check Cashing Reminder Postcard Postage Included	\$0.60	57	\$34.27
Total			\$900.77

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	5		\$275.00
Skip Tracing Undeliverables	\$0.85	69		\$58.44
Remail Notice Packets	\$0.75	66		\$49.31
Estimated Postage	\$0.61	66		\$40.11
Programming Undeliverables	\$50.00	1		\$50.00
			Total	\$472.86

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	2		\$300.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	4		\$220.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	9		\$90.00
Case Manager	\$85.00	3		\$255.00
			Total	\$1,065.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	2		\$270.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	5		\$675.00
Mail Class Checks *	\$1.05	272		\$285.60
Estimated Postage	\$0.61	272		\$165.92
			Total	\$1,856.52

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	3		\$345.00
Remail Checks & Tax Forms (Postage Included)	\$1.70	54		\$92.48
Case Associate	\$55.00	4		\$220.00
Reconcile Uncashed Checks	\$85.00	5		\$425.00
Conclusion Reports	\$115.00	3		\$345.00
Case Manager Conclusion	\$85.00	4		\$340.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,000.00	1		\$1,000.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Controllers Office Estimated <u>29</u> Total Class Members	\$300.00	1		\$300.00
Total				\$3,412.48

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$8,406.38



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT “3”