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

JESSICA VARGAS ZARAGOZA, on
behalf of herself and on behalf of all
similarly situated individuals,

Plaintiff,

v.

AMERICAN TAX SOLUTIONS, a
California corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: 22STCV09469

Assigned to the Hon. Carolyn B. Kuhl, Dept. 12

CLASS ACTION

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: March 17, 2022

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims ("Settlement Agreement," "Stipulation,"
3 or "Stipulation of Settlement") is made and entered into by and between Plaintiffs Jessica Vargas
4 Zaragoza, Sean Richardson, Kayla Salas, Selina Taing, Alizae Vargas, and Ricki Freitas
5 ("Plaintiffs" or "Class Representatives"), individually and on behalf of the Settlement Class and all
6 others similarly situated, and Defendant American Tax Solutions ("Defendant"), subject to the
7 terms and conditions herein and the Court's approval.

8 **A. Definitions.**

9 1. Plaintiffs, the Settlement Class (as defined below), and Defendant are collectively
10 referred to herein as "the Parties."

11 2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of
12 record for Plaintiffs. For purposes of this settlement only, the firm of Gaines & Gaines, APLC
13 shall be designated as "Class Counsel."

14 3. The "Action" means the case entitled *Jessica Vargas Zaragoza, et al. v. American*
15 *Tax Solutions*, Case No. 22STCV09469, pending before the Superior Court of the State of
16 California for the County of Los Angeles (the "Action").

17 4. The "Settlement Class" shall be defined as "all persons who are or previously were
18 employed as non-exempt employees and/or commissioned Settlement Officers by Defendant in
19 California during the Class Period." Defendant represents that the Class includes approximately
20 285 employees who worked approximately 10,411 workweeks during the Class Period. Members
21 of the Settlement Class shall collectively be referred to as a "Class Member" or "Class Members."
22 Any Class Member who files a timely Request for Exclusion, as detailed below, will be excluded
23 from the final Settlement Class.

24 5. The "Class Period" shall be defined as "March 17, 2018 through May 31, 2023."

25 6. The "Aggrieved Employees" are defined as: all persons who are or previously were
26 employed as non-exempt employees and/or commissioned Settlement Officers by Defendant in
27 California during the PAGA Period. Aggrieved Employees will receive a share of the PAGA
28 Payment whether or not they participate in the class settlement.

1 7. The “PAGA Period” shall be defined as “April 9, 2020 through May 31, 2023.”

2 **B. General.**

3 1. On or about March 17, 2022, Plaintiff Jessica Vargas Zaragoza initiated the Action
4 by filing a class action complaint on behalf of herself and all other class members (the “Action”).

5 2. On March 18, 2022, Plaintiff Zaragoza exhausted the pre-filing requirements of the
6 Labor Code Private Attorneys General Act of 2004 (“PAGA”) (the “LWDA Letter”). Thereafter,
7 on May 25, 2022, Plaintiff Zaragoza filed a First Amended Complaint that added PAGA allegations
8 based on those alleged in the LWDA Letter.

9 3. On September 21, 2022, Plaintiffs Sean Richardson, Kayla Salas, Selina Taing,
10 Alizae Vargas, and Ricki Freitas (the “Additional Plaintiffs”) exhausted the pre-filing requirements
11 of the PAGA. The Second Amended Complaint was filed on January 25, 2023 to add the Additional
12 Plaintiffs and their respective class and PAGA allegations. A separate and related individual and
13 representative PAGA action entitled *Castaneda, et al v. American Tax Solutions, et al.*, Los Angeles
14 Superior Court Case No. 21STCV13626 (the “*Castaneda* Action”) was also resolved at the
15 mediation on an individual basis. The *Castaneda* Action alleged individual claims *only* on behalf
16 of plaintiffs Michael Castaneda and Francisco Covarrubias, a representative PAGA claim, and did
17 not allege any class claims.

18 4. On June 13, 2023, Plaintiffs again exhausted PAGA to allege additional claims.

19 5. The Third Amended Complaint in the form attached hereto as **Exhibit 3** will be filed
20 concurrently with the filing of Plaintiffs’ Motion for Preliminary Approval asserts class and PAGA
21 representative action claims against Defendant for (1) failure to pay all minimum and overtime
22 wages due (Labor Code §§ 204, 510, 1174, 1174.5, 1194, 1197, 1197.1, and 1199); (2) failure to
23 provide compliant rest periods or compensation in lieu thereof (Labor Code § 226.7; IWC Wage
24 Order 4-2001); (3) failure to provide compliant meal periods or compensation in lieu thereof (Labor
25 Code §§ 226.7, 512, 1174, and 1174.5; IWC Wage Order 4-2001); (4) knowing and intentional
26 failure to comply with itemized employee wage statement provisions (Labor Code § 226(a), (e),);
27 (5) failure to timely pay wages due at separation of employment (Labor Code §§ 201-203); (6)
28 failure to reimburse all business-related expenses (Labor Code § 2802); (7) injunctive relief and

1 restitution for the violation of Business and Professions Code § 17200; and (8) civil penalties
2 pursuant to Labor Code §§ 2698, *et seq.* for violations of Labor Code §§ 201-202, 204, 226(a),
3 226.7, 226.8, 246, 510, 510, 1194, 1197, 1197.1, 1199, and 2802 and pursuant to Labor Code §
4 2699(A) for violation of Labor Code §§ 226.3 and 558 (the "Third Amended Complaint").

5 6. Defendant denies any liability or wrongdoing of any kind associated with the claims
6 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
7 purpose other than this settlement. Defendant contends that it has complied at all times with the
8 California Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable
9 federal, state, and local laws and regulations. It is Defendant's position that, if this case were to be
10 litigated, class certification would be inappropriate because Plaintiffs are not adequate class
11 representatives, Plaintiffs' claims are not typical of putative class members, and individual issues
12 predominate over class issues. The Action, the negotiation and execution of this Settlement
13 Agreement, and all acts performed or documents executed pursuant to or in furtherance of the
14 Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf
15 of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any
16 action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and
17 may not be used as, an admission or evidence of the appropriateness of these or similar claims for
18 class certification in the Action or with respect to any other proceeding.

19 7. The Class Representatives contend that Defendant violated the California Labor
20 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
21 certification.

22 8. Class Counsel represent that they have conducted a thorough investigation into the
23 facts and law during the prosecution of this class action case, including the exchange of extensive
24 informal discovery and the review and verification of statistical data and other facts and information
25 provided by Defendant. Counsel for the Parties also represent that they have investigated the
26 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiffs and
27 potential defenses thereto, and the damages and other losses claimed by Plaintiffs.

1 9. On March 13, 2023, following their exchange of information and documents
2 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties
3 engaged in arm's-length negotiations with the assistance of mediator Henry Bongiovi, Esq.,
4 through which they were able to reach the resolution of the Action set forth herein.

5 10. Based on their own independent investigation and evaluation, Class Counsel are of
6 the opinion (and will so represent to the Court) that settlement for the consideration and on the
7 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
8 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
9 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
10 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
11 that this settlement is fair and in the best interest of the Settlement Class.

12 11. The Parties agree that the Settlement Class described herein may be certified for
13 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
14 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
15 approved, the certification will have no force or effect and will immediately be revoked. The
16 Parties further agree that certification for purposes of the settlement is in no way an admission that
17 class certification is proper under the more stringent standard applied for litigation and that
18 evidence of this limited Stipulation for settlement purposes only will not be admissible for any
19 purpose in this or any other proceeding.

20 **C. Terms of Settlement.**

21 1. The financial terms of the settlement are as follows:

22 (a) **Maximum Settlement Amount:** The Parties agree to settle this Action for
23 a Maximum Settlement Amount of Six Hundred Thousand Dollars (\$600,000) (the "Maximum
24 Settlement Amount"), subject to any increase based on the escalator provision in paragraph H(16)
25 herein. The Maximum Settlement Amount includes the attorneys' fees of Class Counsel: litigation
26 costs and expenses (which includes, without limitation, all such fees and costs incurred to date, as
27 well as such fees and costs to be incurred in documenting the settlement, providing any notices
28 required as part of the settlement, securing Court approval of the settlement, and obtaining

1 judgment in the Action); the Enhancement Payments to the Class Representatives, as approved by
2 the Court; the payment to the California Labor and Workforce Development Agency ("LWDA");
3 and all costs of administration, including, without limitation, settlement administration fees and
4 expenses. All employer payroll tax obligations due on wage payments made from the Net
5 Settlement Proceeds shall be paid by Defendant separate and apart from the Maximum Settlement
6 Amount.

7 (b) **Net Settlement Proceeds:** "Net Settlement Proceeds" is defined as the
8 Maximum Settlement Amount less the amounts approved and awarded by the Court for: attorneys'
9 fees and documented litigation costs and expenses incurred or advanced by Class Counsel; the
10 Enhancement Payments to the Class Representatives; the payment to the LWDA pursuant to
11 PAGA; and the costs of administering the settlement.

12 (c) **Individual Settlement Payments:** "Individual Settlement Payment" means
13 the portion of the Net Settlement Proceeds distributable to each Class Member and Aggrieved
14 Employee who participates in the. The class portion of the Individual Settlement Payments will be
15 calculated by dividing the Net Settlement Proceeds, less the PAGA allocation, by the total weeks
16 worked by all participating Class Members for Defendant in a non-exempt and/or a commissioned
17 Settlement Officer position in California during the Class Period, which will yield the applicable
18 class workweek rate. The class workweek rate shall be multiplied by the number of weeks each
19 individual participating Class Member worked for Defendant in in a non-exempt and/or a
20 commissioned Settlement Officer position in California during the Class Period to yield the class
21 portion of their Individual Settlement Payment. The PAGA portion of the Individual Settlement
22 Payments will be calculated by dividing the PAGA allocation in the Net Settlement Proceeds
23 (\$15,000), by the total weeks worked by all Aggrieved Employees for Defendant in a non-exempt
24 and/or a commissioned Settlement Officer position in California during the PAGA Period, which
25 will yield the applicable PAGA workweek rate. The PAGA workweek rate shall be multiplied by
26 the number of weeks each individual Aggrieved Employee worked for Defendant in in a non-
27 exempt and/or a commissioned Settlement Officer position in California during the PAGA Period
28 to yield the PAGA portion of their Individual Settlement Payment.

1 (d) For tax purposes, the class portion of each Individual Settlement Payment
2 will be apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable
3 withholdings); and (b) 80% to penalties, interest, and reimbursement (reported on an IRS Form
4 1099, if required by law). The PAGA portion of each Individual Settlement Payment will be
5 apportioned 100% to penalties (reported on an IRS Form 1099, if required by law). All Individual
6 Settlement Payments paid to Class Members and Aggrieved Employees will be subject to any
7 applicable wage garnishments, liens, or other legally mandated treatment as required by law.

8 (e) **PAGA Payment:** The Parties agree that Sixty Thousand Dollars (\$60,000)
9 shall be allocated to settle Plaintiffs' claims brought pursuant to PAGA. Of this amount, Seventy-
10 Five percent (75%), or Forty-Five Thousand Dollars (\$45,000), shall be paid to the LWDA, and
11 the remaining Twenty-Five percent (25%), or Fifteen Thousand Dollars (\$15,000), shall be
12 included in the Net Settlement Proceeds for payment to Aggrieved Employees based on the formula
13 described above.

14 (f) **Enhancement Payments to Class Representatives:** The amount awarded
15 to the Class Representatives as an Enhancement Payment will be set by the Court in its discretion,
16 not to exceed Seven Thousand Five Hundred Dollars (\$7,500) each. This amount will be deducted
17 from the Maximum Settlement Amount. An IRS Form 1099 will be issued to the Class
18 Representatives for their Enhancement Payments. Defendant agrees not to dispute or otherwise
19 object to the Enhancement Payments if Plaintiffs request \$7,500 or less.

20 (g) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
21 deducted from the Maximum Settlement Amount in an amount to be set by the Court taking into
22 account the settlement award that has been made available for the Settlement Class by the efforts
23 of Class Counsel. The amount awarded shall not exceed one-third of the Maximum Settlement
24 Amount (i.e., \$200,000). An IRS Form 1099 will be issued to Class Counsel with respect to its
25 award of attorneys' fees. Defendant agrees not to dispute or otherwise object to the attorneys' fee
26 award requested by Class Counsel so long as the request does not exceed 33-1/3% of the Maximum
27 Settlement Amount.

1 (h) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
2 the Maximum Settlement Amount in an amount to be set by the Court for documented out-of-
3 pocket litigation costs and expenses, not to exceed Fifty Thousand Dollars (\$50,000). An IRS Form
4 1099 will be issued to Class Counsel with respect to its award of costs and expenses. Defendant
5 agrees not to dispute or otherwise object to the attorneys' cost award requested by Class Counsel
6 so long as the request does not exceed \$50,000.

7 (i) **Settlement Administration Costs:** The fees and other charges of the
8 Settlement Administrator to administer the Settlement are expected to total no more than Seventeen
9 Thousand Two Hundred Fifty Dollars (\$17,250), and will be paid from the Maximum Settlement
10 Amount. These fees shall include any costs associated with the required tax reporting on any
11 Individual Settlement Payments, and the issuing of any and all W-2 and 1099 forms. Subject to
12 approval of the Court, the Parties have agreed that Phoenix Settlement Administration will serve
13 as a neutral third-party claims' administrator ("Settlement Administrator") to perform all acts
14 related to providing notice to the Settlement Class. Settlement Administrator shall be responsible
15 for (a) printing and distributing the Court-approved Notice of Class Action Settlement ("Class
16 Notice") to all Class Members; (b) administering the settlement; (c) processing exclusions,
17 objections, and field inquiries from Class Members; (d) resolving disputes; (e) calculating the
18 Individual Settlement Payment each Participating Class Members is eligible to receive; (f)
19 distributing the Maximum Settlement Amount as directed by the Court and set forth herein; (g) tax
20 reporting; (h) providing necessary weekly status reports; and (i) other duties and responsibilities
21 set forth herein.

22 (j) **No Warranty by Defendant:** Plaintiffs understand and agree that
23 Defendant is not providing Plaintiffs or Class Members with tax or legal advice and that Defendant
24 makes no representations regarding tax obligations or consequences, if any, related to this
25 Settlement Agreement.

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D. Release of Claims.

1. Class Release: Upon the Effective Date, and subject to Defendant's full payment of the Maximum Settlement Amount, Plaintiffs and all Settlement Class Members who do not timely opt-out will be deemed to have fully released and discharged the Released Parties from any and all Released Class Claims which arose during their employment as non-exempt employees and/or commissioned Settlement Officers by Defendant in California during the Class Period.

2. PAGA Release: Upon the Effective Date, and subject to Defendant's full payment of the Maximum Settlement Amount, Plaintiffs and all Aggrieved Employees, regardless of whether or not they timely opt-out of the Class Settlement, will be deemed to have fully released and discharged the Released Parties from any and all Released PAGA Claims which arose during their employment as non-exempt employees and/or commissioned Settlement Officers by Defendant in California during the PAGA Period.

3. The "Released Class Claims" include any and all claims asserted in the Action or any other claims that could have been asserted in the Action based on the facts alleged, including but not limited to, unpaid minimum wages, unpaid overtime wages, rest breaks, meal breaks, wage statements, business expense reimbursement, payment of wages at separation of employment, and unfair business practices related to the aforementioned claims under Labor Code §§ 201, 202, 203, 204, 226(a), 226(e), 226(h), , 226.3, 226.7, 226.8, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1199, 2698, et seq., 2699, et seq., 2802, Business & Professions Code § 17200, IWC Wage Order 4-2001, and Code of Civil Procedure § 1021.5.

4. The "Released PAGA Claims" are defined as the claims to be released by the Aggrieved Employees, whether or not they participate in the class settlement, and include any and all claims for PAGA civil penalties asserted in the Action or any other claims for PAGA civil penalties that could have been asserted in the Action based on the facts alleged, including but not limited to, unpaid minimum wages, unpaid overtime wages, rest breaks, meal breaks, wage statements, business expense reimbursement, and payment of wages at separation of employment under Labor Code §§ 201, 202, 203, 204, 226(a), 226(e), 226(h), 226.3, 226.7, 226.8, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1199, 2698, et seq., 2699, et seq., 2802, IWC Wage

1 Order 4-2001, and Code of Civil Procedure § 1021.5. The release includes claims for civil
2 penalties in connection with any allegations brought in the operative complaints in the Action
3 during the PAGA Period and/or in the Class/PAGA Plaintiffs' written notices to the Labor and
4 Workforce Development Agency, which were prerequisites to the filing of the Action, including
5 a release from the State of California (to the extent the Class/PAGA Plaintiffs are permitted to
6 provide such a release for the State of California for the PAGA Period) of all PAGA claims alleged
7 or could have been alleged in the operative complaint in the Action that occurred during the PAGA
8 Period.

9 5. The "Released Parties" are Defendant, and any of its subsidiaries, parents,
10 affiliates, managing agents, employees, professional employer organizations (PEO), staffing
11 agencies, servants, consultants, agents, directors, officers, independent contractors,
12 representatives, insurance carriers and attorneys (and the servants, agents, employees, directors,
13 officers, independent contractors, representatives, consultants, insurance carriers and attorneys of
14 any such subsidiaries, parents, affiliates, PEO's, or staffing agencies), and all persons acting by,
15 through, under or in concert with any of them, and each of their respective heirs, successors, and
16 assigns, as well as any individual or entity that could be alleged to be jointly liable with Defendant,
17 including but not limited to Terrance Selb, Tyler Bennett, and Geoff Plourde.

18 5. The Class Release and PAGA Release expressly exclude all other claims, including
19 claims for vested benefits, wrongful termination, unemployment insurance, disability, social
20 security, workers' compensation, and class claims outside of the Class Period and PAGA claims
21 outside of the PAGA Period. The Parties agree to take all necessary steps to make sure that a
22 release covering all of the foregoing claims is approved by the Court, including if necessary and
23 requested by the Court, amending the complaint.

24 6. Class Representatives Release: Upon the Effective Date and subject to Defendant's
25 full payment of the Maximum Settlement Amount, Plaintiffs shall be deemed to have fully, finally,
26 and forever released the Released Parties from any and all claims, obligations, demands, actions,
27 rights, causes of action, and liabilities against the Released Parties, of whatever kind and nature,
28 character, and description, whether in law or equity, whether sounding in tort, contract, federal,

1 state and/or local law, statute, ordinance, regulation, common law, or other source of law, whether
2 known or unknown, and whether anticipated or unanticipated, including unknown claims covered
3 by Civil Code Section 1542, arising through the date of their signature hereon, for any type of
4 relief, including, without limitation, claims for wages, damages, unpaid costs, penalties, liquidated
5 damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable
6 relief. These claims include, but are not limited to, the Class Released Claims and PAGA Released
7 Claims, as well as any other claims under any provision of the California Labor Code or any
8 applicable California Industrial Welfare Commission Wage Orders, and claims under local, state,
9 or federal discrimination statutes, including, without limitation, the California Fair Employment
10 and Housing Act, California Government Code §§ 12940 *et seq.*; the Unruh Civil Rights Act,
11 California Civil Code §§ 51 *et seq.*; the California Constitution; Title VII of the Civil Rights Act
12 of 1964, 42 U.S.C. §§ 2000 *et seq.*; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et*
13 *seq.*; the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.*; and all of
14 their implementing regulations and interpretive guidelines. With respect to these Released Claims
15 as described in this Section, Plaintiffs shall be deemed to have expressly waived and relinquished,
16 to the fullest extent permitted by law, the provisions, rights, and benefits they may otherwise have
17 had pursuant to Section 1542 of the California Civil Code, which provides as follows:

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

22 Notwithstanding Section 1542, Plaintiffs understand and agree that this Agreement shall act
23 as a release of all future claims that may arise from Plaintiffs' employment or separation from
24 employment with Defendant, or any other matters that existed between Plaintiffs and the Released
25 Parties up to the date of this Agreement, whether such claims are currently known or unknown, and
26 that Plaintiffs intentionally waive any rights they may have under the provisions of Section 1542,
27 as well as under any other statutes or common law principles of similar effect in the State of
28 California or in any other state.

1 **E. Notice and Exclusion Process.**

2 1. Within ten (10) calendar days after entry of the order granting preliminary approval
3 of this Settlement, Defendant shall provide to the Settlement Administrator a list of all Class
4 Members, including their last known addresses, telephone numbers, social security numbers, and
5 their dates of employment as non-exempt employees and/or commissioned Settlement Officers in
6 California during the Class Period ("Settlement Class Information"). The names, addresses,
7 telephone numbers, and Social Security numbers will only be disclosed to the Settlement
8 Administrator and not to Plaintiffs' Counsel. All information provided to the Settlement
9 Administrator will be marked CONFIDENTIAL. This information shall be kept confidential and
10 shall not be disclosed, either in writing or orally, by the Settlement Administrator. The Settlement
11 Administrator shall use due care with respect to the storage, custody, use, and/or dissemination of
12 the confidential information. Such information must be stored in a secure fashion and all persons
13 who access the data must agree to keep it confidential.

14 2. A notice of pendency of class action, proposed settlement, and hearing date for
15 Court approval ("Class Notice") in the form attached hereto as **Exhibit 1**, and as approved by the
16 Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail, in
17 English and Spanish, within twenty (20) calendar days after entry of the order granting preliminary
18 approval. Attached to the Class Notice will be a request for exclusion form ("Request for Exclusion
19 Form") in the form attached hereto as **Exhibit 2**.

20 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
21 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
22 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the
23 Class Member received the Class Notice. In the event of returned or non-deliverable notices, the
24 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
25 notices.

26 4. Each Class Member will be fully advised of the settlement, the ability to object to
27 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
28

1 inform the Class Members of the Court-established deadlines for filing objections and a Request
2 for Exclusion Form.

3 5. Each Class Notice will contain personalized information setting forth the number of
4 workweeks each Class Member worked for Defendant in California as a non-exempt employee
5 and/or commissioned Settlement Officer during the Class Period and their estimated Individual
6 Settlement Payment. To the extent a Class Member disputes any of the information listed on his
7 or her Class Notice, the Class Member may produce evidence to the Settlement Administrator
8 showing such information the Class Member contends should be reflected in the Class Notice.
9 Defendant's records will be presumed determinative, however, and the Settlement Administrator's
10 decision on these matters will be final. The Class Notice will also set forth IRS W-9 information
11 if required.

12 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
13 to receive an Individual Settlement Payment which shall be mailed to them if and when the
14 Effective Date occurs.

15 7. In order to elect not to participate in the Settlement, a Class Member must submit a
16 Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five
17 (45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to
18 Class Members, unless the Court requires a longer period, in which case the Court ordered
19 exclusion period will apply. The date of the postmark shall be deemed the date of submission. The
20 timeliness of submitted Request for Exclusion Forms will be determined by valid postmark. If the
21 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended to the
22 next day on which the U.S. Postal Service is open.

23 8. The deadline for submission of Exclusion Forms shall be extended once by 30 days
24 for those Class Members whose Class Notice and Exclusion Form are returned as "undeliverable."
25 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
26 on which the U.S. Postal Service is open.

27 9. The Settlement Administrator will search for additional addresses on returned mail
28 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days

1 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second
2 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not
3 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
4 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
5 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
6 Settlement Administrator will search using the social security number for a more current address.
7 If no address is found within 10 days, no further action is required.

8 10. The Settlement Administrator will notify the Parties of the total number of valid
9 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
10 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice
11 and Request for Exclusion Forms to Class Members).

12 11. In order to object to the settlement, a Class Member must mail his or her objection
13 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the
14 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
15 period, in which case the Court ordered objection period will apply. If the 45th day falls on a
16 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
17 which the U.S. Postal Service is open.

18 12. The Settlement Administrator shall provide to the Parties, at least twelve (12)
19 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration
20 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request
21 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve
22 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report
23 listing the amount of all payments to be made to each Class Member without names or personal
24 identifying information.

25 13. The Effective Date of this Settlement Agreement ("Effective Date") is the date of
26 the later of: (a) final approval by the Court; or (b) if there are objections to the settlement which are
27 not withdrawn, and if an appeal, review, or writ is not sought from the judgment, the sixty-first
28

(61st) day after service of notice of entry of judgment; or (e) the dismissal or denial of an appeal, review, or writ, if the Judgment is no longer subject to judicial review.

14. Class Members and Aggrieved Employees must cash each of their settlement checks within one hundred eighty (180) calendar days after they are mailed by the Settlement Administrator. The value of any checks uncashed more than one hundred eighty (180) days after mailing shall be paid to the California's State Controller's Office to held in trust for such class members and aggrieved employees pursuant to California's Unpaid Property Law.

F. Duties of the Parties Prior to Court Approval.

1. Promptly after execution of this Settlement Agreement, Plaintiffs shall move the Court for preliminary approval of this settlement and entry of an order accomplishing the following:

(a) permitting Plaintiffs to file the Third Amended Complaint in the form attached hereto as Exhibit 3;

(b) scheduling a fairness hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable and adequate as to the Class Members;

(c) approving as to form and content the proposed Class Notice;

(d) approving as to form and content the proposed Request for Exclusion Form;

(e) preliminarily certifying the Settlement Class for purposes of settlement;

(f) preliminarily approving the PAGA payment of \$45,000 to the LWDA;

(g) preliminarily setting attorneys' fees and costs payable to Class Counsel;

(h) preliminarily setting the Enhancement Payments to the Class Representatives; and

(i) preliminarily approving Phoenix Settlement Administration as the Settlement Administrator and its estimated fees and costs of \$17,250.

The Parties shall submit this Settlement Agreement to the Court and the LWDA in support of Plaintiffs' unopposed motion for preliminary approval of the settlement.

G. Duties of the Parties in Connection with and Following Final Court Approval.

1. In connection with the hearing on final approval of the settlement provided for in this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10) calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered by the Court):

(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 documented litigation costs and expenses, the Enhancement Payments to the Class Representatives, the PAGA Payment to the LWDA and the Aggrieved Employees, and the costs of administering the settlement; and

(c) entering judgment in this Action in accordance with this Stipulation, pursuant to Cal. Rules of Court, Rule 3.769(h).

2. Class Counsel shall file an application for attorneys' fees and reimbursement of costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered by the Court).

3. Defendant shall deposit the Maximum Settlement Amount with the Settlement Administrator as follows, which the employer payroll taxes associated with each installment to be paid concurrently with each payment:

(a) 8.34% of the Maximum Settlement Amount no later than 90 days after the Effective Date;

(b) 8.33% of the Maximum Settlement Amount no later than 120 days after the Effective Date;

(c) 8.33% of the Maximum Settlement Amount no later than 150 days after the Effective Date;

(d) 25% of the Maximum Settlement Amount no later than one year after the Effective Date;

1 (e) 25% of the Maximum Settlement Amount no later than two years after the
2 Effective Date;

3 (f) 25% of the Maximum Settlement Amount no later than three years after the
4 Effective Date;

5 4. Defendant may prepay any installment without penalty. Pro rata disbursements to
6 the Settlement Class, Aggrieved Employees, the Class Representatives, Class Counsel, the LWDA,
7 and the Settlement Administrator shall be paid no later than ten (10) calendar days after the receipt
8 of each scheduled installment payment. No disbursements shall be made until after the Effective
9 Date occurs.

10 **H. Miscellaneous Provisions:**

11 1. **Voiding the Agreement.**

12 A failure of the Court to approve any material condition of this Settlement Agreement which
13 effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or
14 materially modified on appellate review, shall render the entire Stipulation of Settlement voidable
15 and unenforceable as to all Parties herein at the option of any Party. Defendant, at its option, may
16 withdraw from the Settlement if Class Members representing more than an aggregate total of 10%
17 of the verified workweeks opt out of the Settlement. If Defendant chooses to withdraw it will be
18 responsible for all costs incurred by the Settlement Administrator in administering the Settlement
19 up through the date of withdrawal.

20 2. **Parties' Authority.**

21 The signatories hereto represent that they are fully authorized to enter into this Settlement
22 Agreement and bind the Parties hereto to the terms and conditions hereof.

23 3. **Mutual Full Cooperation.**

24 The Parties agree to fully cooperate with each other to accomplish the terms of this
25 Stipulation of Settlement, including but not limited to, execution of such documents and such other
26 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
27 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated
28 by this Settlement Agreement and any other efforts that may become necessary by order of the

1 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As
2 soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the
3 assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the
4 Court's preliminary and final approval of the settlement.

5 **4. No Prior Assignments.**

6 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
7 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
8 entity any portion of any liability, claim, demand, action, cause of action or rights released and
9 discharged by this Stipulation of Settlement.

10 **5. No Admission.**

11 Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be
12 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
13 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
14 Settlement Agreement with the intention of avoiding further disputes and litigation with the
15 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
16 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
17 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
18 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

19 **6. Construction.**

20 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
21 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement
22 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
23 any Party or him or its counsel participated in the drafting of this Settlement Agreement.

24 ///

25 ///

26 ///

27 ///

1 **7. Captions and Interpretations.**

2 Paragraph titles or captions contained herein are inserted as a matter of convenience and for
3 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement
4 or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a
5 recital.

6 **8. Modification.**

7 This Settlement Agreement may not be changed, altered, or modified, except in writing and
8 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
9 discharged except by performance in accordance with its terms or by a writing signed by each of
10 the Parties hereto on their attorneys.

11 **9. Integration Clause.**

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

17 **10. Binding on Assigns.**

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

20 **11. Governing Law.**

21 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
22 according to the laws of the State of California, without giving effect to any conflict of law
23 principles or choice of law principles.

24 **12. Signatures of All Class Members Unnecessary to be Binding.**

25 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
26 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,
27 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release
28

1 provided herein and such shall have the same force and effect as if this Settlement Agreement was
2 executed by each Class Member.

3 **13. Counterparts.**

4 This Settlement Agreement may be executed in counterparts, and when each Party has
5 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
6 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
7 Agreement, which shall be binding upon and effective as to all Parties.

8 **14. Confidentiality**

9 Until Plaintiffs file their motion for preliminary approval of the class action settlement, the
10 Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the
11 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing
12 agencies, or as otherwise required by law.

13 **15. No Publicity**

14 In response to any inquiries, Plaintiffs will state that “the case was resolved and it was
15 resolved confidentially.” Plaintiffs and their Counsel agree that they have not reported and shall
16 not report the settlement in any medium or in any publication, have not posted or reported and shall
17 not post or report anything regarding the claims of the Plaintiffs or the Settlement Class or the
18 settlement on its website, and have not contacted and shall not contact any reporters or media
19 regarding the settlement. Despite this provision, Plaintiffs’ Counsel can discuss the settlement with
20 Plaintiffs and the Settlement Class and in any filings and communications with the Court and the
21 LWDA;

22 **16. Representation Regarding Class Size.**

23 Defendant estimates that there are approximately 10,411 workweeks worked by Class
24 Members in the Class Period as of March 6, 2023. In the event the number of workweeks worked
25 through the end of the Class Period exceeds 11,453, then Defendant shall, at its option, either (a)
26 increase the Maximum Settlement Amount proportionally by the percent of workweeks in excess
27 of 11,453; or (b) end the Class Period and PAGA Period as of the last date on which the class
28

workweeks do not exceed 11,453.

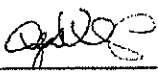
17. Default; Notice; Cure; Acceleration; Time is of the Essence.

Time is of the essence with respect to all provisions of this Agreement. If Defendant fails to timely make any payment due hereunder, it shall be in default of its obligations. Plaintiffs shall thereafter give notice of default and Defendant must cure said default within five (5) business days thereof. In the event of an uncured default, all unpaid amounts shall be accelerated and be all due and payable together with interest at the legal rate from the date of default.

18. Continuing Jurisdiction.

The Parties agree that upon the occurrence of the entry of judgment in this case pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure Section 664.6 and all other applicable law, and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and Class Members to interpret and enforce the terms, conditions and obligation of the Agreement.

07 / 18 / 2023
Dated: July __, 2023



Jessica Vargas Zaragoza

Dated: July __, 2023

Sean Richardson

Dated: July __, 2023

Kayla Salas

Dated: July __, 2023

Selina Taing

Dated: July __, 2023

Alizae Vargas

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Ricki Freitas

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07 / 18 / 2023
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Dated: July __, 2023

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Dated: July __, 2023

Selina Taing

Dated: July __, 2023

Alizae Vargas

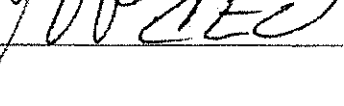
Dated: July __, 2023



Ricki Freitas

1 Dated: July 21, 2023

2 DEFENDANT AMERICAN TAX
3 SOLUTIONS

4 By: 
5 Its: 

6 **APPROVED AS TO FORM AND CONTENT:**

7 Dated: July ____, 2023

GAINES & GAINES, APLC

8 By: _____
9 Daniel F. Gaines, Esq.
10 Alex P. Katofsky, Esq.
11 Counsel for Plaintiffs Jessica Vargas
12 Zaragoza, Sean Richardson, Kayla Salas,
13 Selina Taing, Alizae Vargas, and Ricki
14 Freitas

15 Dated: July ____, 2023

FISHER & PHILIPS LLP

16 By: _____
17 Christine D. Baran, Esq.
18 Counsel for Defendant
19
20
21
22
23
24
25
26
27
28

1 Dated: July __, 2023

2 **DEFENDANT AMERICAN TAX**
3 **SOLUTIONS**

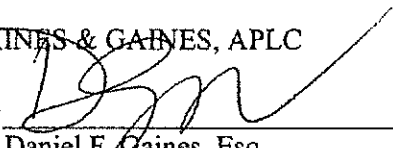
4 By: _____

5 Its: _____

6 **APPROVED AS TO FORM AND CONTENT:**

7 Dated: July 7/19, 2023

8 GAINES & GAINES, APLC

9 By:  _____

10 Daniel F. Gaines, Esq.

11 Alex P. Katofsky, Esq.

12 Counsel for Plaintiffs Jessica Vargas

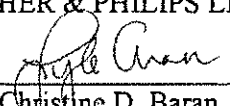
13 Zaragoza, Sean Richardson, Kayla Salas,

14 Selina Taing, Alizae Vargas, and Ricki

15 Freitas

16 Dated: July 20, 2023

17 FISHER & PHILIPS LLP

18 By:  _____

19 Christine D. Baran, Esq. and Lyle M. Chan, Esq.
20 Counsel for Defendant

EXHIBIT 1

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

JESSICA VARGAS ZARAGOZA, on behalf of
herself and on behalf of all similarly situated
individuals,

Plaintiff,

v.

AMERICAN TAX SOLUTIONS, a California
corporation, and DOES 1 through 10, inclusive,

Defendants.

CASE NO: 22STCV09469

Assigned to the Hon. Carolyn B. Kuhl, Dept. 12

**NOTICE OF PENDENCY OF PROPOSED
CLASS ACTION SETTLEMENT AND
FINAL HEARING**

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

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$600,000 to pay claims to all individuals who worked for American Tax Solutions (“Defendant”) as non-exempt employees and/or commissioned Settlement Officers in California between March 17, 2018 and May 31, 2023.
- The settlement resolves a lawsuit alleging that Defendant failed to pay all minimum and overtime wages due; provide compliant meal and rest periods or premium compensation in lieu thereof; reimburse all business-related expenses; timely issue final wages upon separation of employment; and issue accurate and complete itemized wage statements. The Settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$200,000 as attorneys’ fees and \$50,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and believes all appropriate wages were paid and that it otherwise complied with any Labor Code obligations. The Parties disagree on how much money could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below.
Exclude Yourself	To exclude yourself, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you may receive no money from the Settlement . This is the only option that allows you to ever be part of any other lawsuit against American Tax Solutions about the legal claims that were brought in this case. Class Members will receive a PAGA Payment regardless of whether or not they exclude themselves from the Settlement.
Object	Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement, as detailed below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

Plaintiffs Jessica Vargas Zaragoza, Sean Richardson, Kayla Salas, Selina Taing, Alizae Vargas, and Ricki Freitas ("Plaintiffs"), former employees of American Tax Solutions, filed this lawsuit in the Los Angeles County Superior Court on March 17, 2022. As amended, the lawsuit alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all persons who are or previously were employed as non-exempt employees and/or commissioned Settlement Officers by Defendant in California at any time between March 17, 2018 and May 31, 2023 ("Class Period"). Specifically, the lawsuit alleges that members of the Class were not provided all minimum and overtime wages due; compliant meal and rest periods or premium compensation in lieu thereof; were not reimbursed all business-related expenses; were not timely issued final wages upon separation of employment; and were not issued accurate and complete itemized wage statements. The Settlement seeks recovery of wages, business-related expenses incurred, damages, interest, statutory and civil penalties, restitution, attorneys' fees, and costs. Defendant denies all of the material allegations in the lawsuit and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiffs' Attorneys

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Gaines & Gaines, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Phone: (866) 550-0855

Defendant's Attorneys

Christine D. Baran, Esq.
Lyle M. Chan, Esq.
Fisher & Phillips LLP
2050 Main Street, Suite 1000
Irvine, CA 92614

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendant. Plaintiffs believe they would have prevailed on their claims at a trial. Defendant does not believe that Plaintiffs would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement and Release of Claims ("Settlement" or "Settlement Agreement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiffs and Plaintiffs' Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all individuals who worked for American Tax Solutions as non-exempt employees and/or commissioned Settlement Officers in California at any time between March 17, 2018 and May 31, 2023 (the "Class Period"). Aggrieved Employees refers to all persons who are or previously were employed as non-exempt employees and/or commissioned Settlement Officers by Defendant in California at any time between April 9, 2020 and May 31, 2023. Aggrieved Employees will receive a PAGA Payment regardless of whether they exclude themselves from the Settlement (the "PAGA Period").

C. What does the Settlement provide?

1. Maximum Settlement Amount.

The Settlement provides that Defendant will pay \$600,000 (the "Maximum Settlement Amount") to settle the lawsuit.

2. Net Settlement Proceeds.

The "Net Settlement Proceeds" is the portion of the Maximum Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion and all Aggrieved Employees in exchange for the release of their class claims. The Net Settlement Proceeds is the Maximum Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Participating Class Members. The Court will fix these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed \$200,000;

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$50,000;

(c) **Enhancement Payments to the Class Representatives** in an amount set by the Court, not to exceed \$7,500 each for their service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$17,250, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$60,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). 75% or \$45,000, shall be paid to the California Labor and Workforce Development Agency. The remaining 25% or \$15,000, shall be included in the Net Settlement Proceeds for payment to Aggrieved Employees

3. Individual Payment Amount.

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

1. Class Release

Upon the Effective Date, and subject to Defendant's full payment of the Maximum Settlement Amount, Plaintiffs and all Settlement Class Members who do not timely opt-out will be deemed to have fully released and discharged the Released Parties from any and all Released Class Claims which arose during their employment as non-exempt employees and/or commissioned Settlement Officers by Defendant in California between March 17, 2018 and May 31, 2023 (the "Class Period").

The "Released Class Claims" include any and all claims asserted in the Action or any other claims that could have been asserted in the Action based on the facts alleged, including but not limited to, unpaid minimum wages, unpaid overtime wages, rest breaks, meal breaks, wage statements, business expense reimbursement, payment of wages at separation of employment, and unfair business practices related to the aforementioned claims under Labor Code §§ 201, 202, 203, 204, 226(a), 226(e), 226(h), , 226.3, 226.7, 226.8, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1199, 2698, et seq., 2699, et seq., , 2802, Business & Professions Code § 17200, IWC Wage Order 4-2001, and Code of Civil Procedure § 1021.5.

The "Released Parties" means Defendant, and any of its subsidiaries, parents, affiliates, managing agents, employees, professional employer organizations (PEO), staffing agencies, servants, consultants, agents, directors, officers, independent contractors, representatives, insurance carriers and attorneys (and the servants, agents, employees, directors, officers, independent contractors, representatives, consultants, insurance carriers and attorneys of any such subsidiaries, parents, affiliates, PEO's, or staffing agencies), and all persons acting by, through, under or in concert with any of them, and each of their respective heirs, successors, and assigns, as well as any individual or entity that could be alleged to be jointly liable with Defendant, including but not limited to Terrance Selb, Tyler Bennett, and Geoff Plourde.

2. PAGA Release

Upon the Effective Date, and subject to Defendant's full payment of the Maximum Settlement Amount, Plaintiffs and all Aggrieved Employees, regardless of whether or not they timely opt-out of the Class Settlement, will be deemed to have fully released and discharged the Released Parties from any and

all Released PAGA Claims which arose during their employment as non-exempt employees and/or commissioned Settlement Officers by Defendant in California between April 9, 2020 and May 31, 2023 (the “PAGA Period”).

The “Released PAGA Claims” are defined as the claims to be released by the Aggrieved Employees, whether or not they participate in the class settlement, and include any and all claims for PAGA civil penalties asserted in the Action or any other claims for PAGA civil penalties that could have been asserted in the Action based on the facts alleged, including but not limited to, unpaid minimum wages, unpaid overtime wages, rest breaks, meal breaks, wage statements, business expense reimbursement, and payment of wages at separation of employment under Labor Code §§ 201, 202, 203, 204, 226(a), 226(e), 226(h), 226.3, 226.7, 226.8, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1199, 2698, et seq., 2699, et seq., 2802, IWC Wage Order 4-2001, and Code of Civil Procedure § 1021.5. The release includes claims for civil penalties in connection with any allegations brought in the operative complaints in the Action during the PAGA Period and/or in the Class/PAGA Plaintiffs’ written notices to the Labor and Workforce Development Agency, which were prerequisites to the filing of the Action, including a release from the State of California (to the extent the Class/PAGA Plaintiffs are permitted to provide such a release for the State of California for the PAGA Period) of all PAGA claims alleged or could have been alleged in the operative complaint in the Action that occurred during the PAGA Period.

The Class Release and PAGA Release expressly exclude all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and class claims outside of the Class Period and PAGA claims outside of the PAGA Period. The Parties agree to take all necessary steps to make sure that a release covering all of the foregoing claims is approved by the Court, including if necessary and requested by the Court, amending the complaint.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) shall receive an “Individual Settlement Payment,” which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).

The class portion of the Individual Settlement Payments will be calculated by dividing the Net Settlement Proceeds, less the PAGA allocation, by the total weeks worked by all participating Class Members for Defendant in a non-exempt and/or a commissioned Settlement Officer position in California during the Class Period, which will yield the applicable class workweek rate. The class workweek rate shall be multiplied by the number of weeks each individual participating Class Member worked for Defendant in a non-exempt and/or a commissioned Settlement Officer position in California during the Class Period to yield the class portion of their Individual Settlement Payment.

The PAGA portion of the Individual Settlement Payments will be calculated by dividing the PAGA allocation in the Net Settlement Proceeds (\$15,000), by the total weeks worked by all Aggrieved Employees for Defendant in a non-exempt and/or a commissioned Settlement Officer position in California during the PAGA Period, which will yield the applicable PAGA workweek rate. The PAGA workweek rate shall be multiplied by the number of weeks each individual Aggrieved Employee worked for Defendant in a non-exempt and/or a commissioned Settlement Officer position in California during the PAGA Period to yield the PAGA portion of their Individual Settlement Payment.

For tax purposes, the class portion of each Individual Settlement Payment will be apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 80% to penalties, interest, and reimbursement (reported on an IRS Form 1099, if required by law). The PAGA portion of each Individual Settlement Payment will be apportioned 100% to penalties (reported on an IRS

Form 1099, if required by law). All Individual Settlement Payments paid to Class Members and Aggrieved Employees will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked [REDACTED] weeks while employed as non-exempt employee and/or commissioned Settlement Officer in California from March 17, 2018 through May 31, 2023. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[REDACTED]. This amount is subject to change based on the final ruling of the Court.

According to the records of Defendant, you worked [REDACTED] weeks while employed as non-exempt employee and/or commissioned Settlement Officer in California from April 9, 2020 through May 31, 2023. Based on these weeks worked, you are entitled to a PAGA Payment Amount of approximately \$[REDACTED]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than [REDACTED], 2023. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

F. When Will I Be Paid?

After the Court grants approval of the settlement, you will receive your Individual Payment Amount in six installments, which are expected to take place in _____, _____, _____, _____, _____, and _____.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on [REDACTED], at 8:30 a.m., in the Courtroom of Judge Carolyn Kuhl of the Los Angeles County Superior Court, Department 12, located at [ADDRESS]. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiffs' Attorneys; and (v) the amount that should be awarded to Plaintiffs as enhancement payments. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

• **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an

explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than [REDACTED]. The Settlement Administrator's address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than [REDACTED].

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself ("opt out") from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than [REDACTED]. If you opt out from the Settlement Class and you are an Aggrieved Employee, you will still receive a PAGA Payment and be bound by the release of PAGA claims in the settlement.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed "Settlement Agreement and Release of Claims," which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Los Angeles County Superior Court, located at [ADDRESS].

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number], or Gaines & Gaines, APLC, Counsel for the Class, at (866) 550-0855.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS *Jessica Vargas Zaragoza v. American Tax Solutions, and Does 1 Through 10, Inclusive, Defendants*, Los Angeles County Superior Court, Case No. 22STCV09469. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.**

I confirm that I was employed by Defendant American Tax Solutions as a non-exempt employee and/or commissioned Settlement Officer by Defendant in California between March 17, 2018 and May 31, 2023.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE **[45 days after mailing of Notice]**. Send this signed request for exclusion form to the Settlement Administrator:

American Tax Solutions Claims Administrator
c/o Phoenix Settlement Administration



EXHIBIT 3

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Attorneys for Plaintiffs Jessica Vargas Zaragoza, Sean Richardson, Kayla Salas, Selina Taing,
Alizae Vargas, and Ricki Freitas, on behalf of themselves and on behalf of all similarly situated
individuals

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

JESSICA VARGAS ZARAGOZA, on behalf
of herself and on behalf of all similarly
situated individuals,

Plaintiffs,

v.

AMERICAN TAX SOLUTIONS, a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: 22STCV09469

Assigned to the Hon. Carolyn B. Kuhl, Dept. 12

**THIRD AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY ALL MINIMUM
AND OVERTIME WAGES (LABOR CODE
§§ 204, 510, 1174, 1174.5, 1194, 1197, 1197.1,
AND 1199)**
- 2. FAILURE TO PROVIDE REST PERIODS
OR PROPER COMPENSATION IN LIEU
THEREOF (LABOR CODE § 226.7; IWC
WAGE ORDER 4-2001)**
- 3. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7, 512,
1174, AND 1174.5; IWC WAGE ORDER 4-
2001)**
- 4. KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT
PROVISIONS (LABOR CODE § 226(a), (e))**
- 5. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION OF
EMPLOYMENT (LABOR CODE §§ 201-
203)**

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**6. FAILURE TO REIMBURSE ALL
BUSINESS-RELATED EXPENSES
(LABOR CODE § 2802)**

**7. INJUNCTIVE RELIEF AND
RESTITUTION FOR THE VIOLATION OF
BUSINESS AND PROFESSIONS CODE §
17200**

**8. CIVIL PENALTIES PURSUANT TO
LABOR CODE § 2698 ET SEQ. FOR
VIOLATION OF LABOR CODE §§ 201-202,
204, 226(a), 226.7, 226.8, 246, 510, 510, 1194,
1197, 1197.1, 1199, AND 2802 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATION OF LABOR CODE §§
226.3 AND 558**

DEMAND FOR JURY TRIAL

Complaint Filed: March 17, 2022

Plaintiffs JESSICA VARGAS ZARAGOZA, SEAN RICHARDSON, KAYLA SALAS, SELINA TAING, ALIZAE VARGAS, and RICKI FREITAS (collectively, "Plaintiffs"), individually, and on behalf of all similarly situated individuals (the "Class" or "Class Members"), and on behalf of the general public, and as "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004, complain of AMERICAN TAX SOLUTIONS, a California corporation, and/or any subsidiaries or affiliated companies (hereinafter collectively referred to as "Defendants"), and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiffs and the Class of individuals described in detail below against Defendants.

2. From March 17, 2018 through May 31, 2023 (the "Class Period"), Defendants have had a consistent policy of failing to pay all minimum and overtime wages due to Plaintiffs and Class Members (as defined below); failing to provide legally compliant meal and rest periods or compensation in lieu thereof to Plaintiffs and Class Members; failing to reimburse Plaintiffs and Class Members for all business-related expenses; failing to provide Plaintiffs and Class Members with

1 accurately itemized wage statements to Plaintiffs and Class Members; and failing to timely pay wages
2 upon separation of employment to Plaintiffs and Class Members.

3 3. Plaintiffs, on behalf of themselves and members of the Class, bring this action pursuant
4 to Labor Code §§ 201-20204, 226(a), 226.7, 226.8, 246, 510, 512, 1174, 1174.5, 1194, 1197, 1197.1,
5 1199, and 2802 seeking compensation for all unpaid minimum and overtime wages, meal and rest
6 period premium wages, unreimbursed expenses, statutory penalties, injunctive and other equitable
7 relief, and reasonable attorneys' fees and costs.

8 4. Plaintiffs, on behalf of themselves and Class Members, pursuant to Business &
9 Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all
10 benefits Defendants enjoyed from their failure to pay all wages due.

11 5. Plaintiffs, on behalf of themselves and all aggrieved employees pursuant to Labor
12 Code §§ 2698 *et seq.*, seeks penalties for Defendants' various violations of the California Labor Code.

13 6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395
14 because Defendants employed Plaintiffs in Los Angeles County, California.

15 II.

16 PARTIES

17 A. Plaintiff

18 7. Plaintiff JESSICA VARGAS ZARAGOZA was employed by Defendants from April
19 2020 through January 2022 as a non-exempt employee and performed work for Defendants in Los
20 Angeles County, California.

21 8. Plaintiff SEAN RICHARDSON was employed by Defendants from 2019 through
22 June 2021 as a non-exempt employee and performed work for Defendants in California.

23 9. Plaintiff KAYLA SALAS was employed by Defendants from November 2020 through
24 December 2021 as a non-exempt employee and performed work for Defendants in California.

25 10. Plaintiff SELINA TAING was employed by Defendants from October 2021 through
26 January 2022 as a non-exempt employee and performed work for Defendants in California.

27 11. Plaintiff ALIZAE VARGAS was employed by Defendants from November 2020
28 through January 2022 as a non-exempt employee and performed work for Defendants in California.

1 12. Plaintiff RICKI FREITAS was employed by Defendants from January 2021 through
2 January 2022 as a non-exempt employee and performed work for Defendants in California.

3 13. During their work with Defendants, Plaintiffs were:

- 4 a. Willfully denied the payment of all minimum and overtime wages due;
- 5 b. Willfully denied all meal and rest periods or proper compensation in lieu
6 thereof;
- 7 c. Willfully denied accurately itemized wage statements;
- 8 d. Willfully denied reimbursement of all business-related expenses incurred; and
- 9 e. Willfully denied the timely payment of all wages upon separation of their
10 employment.

11 **B. Defendants**

12 14. Defendant AMERICAN TAX SOLUTIONS is a California corporation that employed
13 Plaintiffs and Class Members in Los Angeles County, California.

14 15. The true names and capacities, whether individual, corporate, associate, or otherwise,
15 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiffs, who
16 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs
17 are informed and believe, and based thereon allege, that each of the Defendants designated herein as
18 a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will
19 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
20 designated hereinafter as DOES when such identities become known.

21 16. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
22 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
23 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
24 legally attributable to the other Defendants.

25 17. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
26 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
27 provisions of the California Labor Code as alleged herein.

28 ///

1 **III.**

2 **CLASS ACTION ALLEGATIONS**

3 18. Plaintiffs bring this action on behalf of themselves, and all others similarly situated as
4 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiffs seek to represent the
5 following class composed of and defined as follows:

6 **THE CLASS**

7 All persons who are or previously were employed as non-exempt
8 employees and/or commissioned Settlement Officers by Defendant in
9 California from March 17, 2018 through May 31, 2023.

10 19. Plaintiffs reserve the right under Rule 3.765, California Rules of Court, to amend or
11 modify this class description with greater specificity or further division into subclasses or limitation
12 to particular issues.

13 20. This action has been brought and may properly be maintained as a class action under
14 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
15 interest in the litigation and each proposed Class is easily ascertainable.

16 **A. Numerosity**

17 21. The potential members of the Class as defined are so numerous that joinder of all class
18 members is impracticable. While the precise number of members of the Class has not been
19 ascertained at this time, Plaintiffs are informed and believe, and based thereon allege,, that Defendants
20 currently employ, and during the relevant time periods employed, over 50 persons in the State of
21 California who fall within the Class definition.

22 22. Accounting for employee turnover during the relevant period necessarily increases this
23 number. Plaintiffs allege Defendants' employment records would provide information as to the
24 number and location of members of the Class. Joinder of members of the Class is not practicable.

25 **B. Commonality**

26 23. There are questions of law and fact common to the Class that predominate over any
27 questions affecting only individual class members. These common questions of law and fact include,
28 without limitation:

- a. Whether Defendants failed to pay all minimum and overtime wages due to Plaintiffs and Class Members, in violation of Labor Code §§ 204, 510, 1174, 1174.5, 1194, 1197, 1197.1, and 1199;
- b. Whether Defendants failed to properly provide rest periods or compensation in lieu thereof to Plaintiffs and Class Members, in violation of Labor Code § 226.7, and IWC Wage Order 4-2001;
- c. Whether Defendants failed to properly provide meal periods or compensation in lieu thereof to Plaintiffs and Class Members, in violation of Labor Code §§ 226.7, 512, 1174, and 1174.5 and IWC Wage Order 4-2001;
- d. Whether Defendants failed to reimburse all business-related expenses to Plaintiffs and Class Members, in violation of Labor Code § 2802;
- e. Whether Defendants failed to timely Plaintiffs and pay Class Members all wages due and owing at the separation of their employment, in violation of Labor Code §§ 201-203
- f. Whether Defendants failed to provide Plaintiffs and Class Members with accurately itemized wage statements, in accordance with Labor Code § 226(a), (e); and
- g. Whether Plaintiffs and members of the Class are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

C. Typicality

24. The claims of the named Plaintiffs are typical of the claims of members of the Class. Plaintiffs and members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. Adequacy of Representation

25. Plaintiffs will fairly and adequately represent and protect the interests of members of the Class. Counsel who represents Plaintiffs are competent and experienced in litigating large employment class actions.

1 **E. Superiority of Class Action**

2 26. A class action is superior to other available means for the fair and efficient adjudication
3 of this controversy. Individual joinder of all proposed members of the Class is not practicable, and
4 questions of law and fact common to the proposed Class predominate over any questions affecting
5 only individual members of the proposed Class. Each member of the proposed Class has been
6 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

7 27. Class action treatment will allow those similarly situated persons to litigate their
8 claims in the manner that is most efficient and economical for the parties and the judicial system.
9 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this
10 action that would preclude its maintenance as a class action.

11 **IV.**

12 **CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION**

14 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

15 **FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES**

16 **(LABOR CODE §§ 204, 510, 1174, 1174.5, 1194, 1197, 1197.1, AND 1199)**

17 28. Plaintiffs incorporate paragraphs 1 through 27 of this Complaint as though fully set
18 forth herein.

19 29. During the liability period, Defendants failed to properly compute bonus, commission,
20 and other non-base hourly wages earned by Plaintiffs and Class Members into their regular rate of
21 pay for purposes of paying them overtime wages at the correct rates of pay, in violation of Labor
22 Code §§ 510 and 1194 and IWC Wage Order No. 4-2001. Defendants failed to properly blend bonus,
23 commission, and/or other non-base hourly wages and instead paid Plaintiffs and Class Members
24 overtime wages based *only* on the base hourly rate of pay, thus depriving Plaintiffs and Class
25 Members of all overtime wages earned. This violates Labor Code §§ 510 and 1194 and IWC Wage
26 Order No. 4-2001.

27 30. Defendants also failed to pay Plaintiff and Class members all minimum and overtime
28 wages due and owing in violation of Labor Code §§ 204, 510, 1194, 1197, 1197.1, and 1199. Plaintiffs

1 and Class Members were required to perform work "off-the-clock," for which they received no pay,
2 and therefore, failing to pay all minimum wages due.

3 31. Defendants also failed to maintain payroll records showing the actual hours worked
4 each day by Plaintiffs and Class Members as require by Labor Code § 1174 and 1174.5.

5 32. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due,
6 Plaintiffs and members of the Class have been deprived of wages in amounts to be determined at trial,
7 and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and
8 costs, pursuant to Labor Code § 1194.

9 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

10 **V.**

11 **SECOND CAUSE OF ACTION**

12 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

13 **FAILURE TO PROVIDE REST PERIODS OR PROPER COMPENSATION IN LIEU**

14 **THEREOF (LABOR CODE § 226.7 AND IWC WAGE ORDER 4-2001)**

15 33. Plaintiffs incorporate paragraphs 1 through 32 of this Complaint as though fully set
16 forth herein.

17 34. Plaintiffs and Class Members are entitled to one hour of pay for each day that
18 Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and
19 IWC Wage Order 4-2001.

20 35. Defendants failed to pay sufficient premium wages to Plaintiffs and Class Members
21 who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 4-2001.
22 Plaintiffs and Class Members are routinely unable to take a 10-minute rest period for every four (4)
23 hours of work or major fraction thereof, but are not paid premium wages of one hour's pay for each
24 missed rest period. Defendants also fail to pay rest period premium wages at the proper rates of pay
25 because, as discussed above, Defendants failed to properly compute bonus, commission, and other
26 non-base hourly wages earned by Plaintiffs and Class Members into their regular rate of pay for
27 purposes of paying them rest period premium wages at the correct rates of pay. Instead, Defendants
28 paid Plaintiffs and Class Members rest period premium wages based *only* on the base hourly rate of

1 pay, thus depriving Plaintiffs and Class Members of all rest period premium wages earned.
2 Furthermore, when Plaintiffs and Class Members were able to take a rest period, they were oftentimes
3 late, cut short, or they would be improperly prohibited from leaving Defendants' premises while on
4 their rest periods, thereby subjecting them to Defendants' control during their rest periods. This
5 violates Labor Code § 226.7 and IWC Wage Order 4-2001.

6 36. Pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001, Plaintiffs seeks the
7 payment of all rest period compensation which they and Class Members are owed for four years
8 preceding the filing of this Action, according to proof.

9 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

10 **VI.**

11 **THIRD CAUSE OF ACTION**

12 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

13 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

14 **(LABOR CODE §§ 226.7, 512, 1174, AND 1174.5; IWC WAGE ORDER 4-2001)**

15 37. Plaintiffs incorporate paragraphs 1 through 36 of this Complaint as though fully set
16 forth herein.

17 38. Plaintiffs and Class Members are entitled to one hour of pay for each day that
18 Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7
19 and 512.

20 39. Plaintiffs and Class Members were routinely denied, and not authorized to take, a
21 timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a
22 second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours,
23 but were not paid premium wages of one hour's pay for each missed first or second meal period.
24 Plaintiffs and Class Members were not permitted to take their meal periods due to the busy nature of
25 their work. Defendants also failed to maintain payroll records showing the actual hours worked each
26 day by Plaintiffs and Class Members, including meal periods. These practices violate Labor Code §§
27 226.7, 512, 1174, and 1174.5 and IWC Wage Order 4-2001.
28

40. Pursuant to Labor Code §§ 226.7 and 512, Plaintiffs and Class Members seek the payment of all meal period compensation which they are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

VII.

FOURTH CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED

EMPLOYEE WAGE STATEMENT PROVISIONS

(LABOR CODE § 226(a), (e))

41. Plaintiffs incorporate paragraphs 1 through 40 of this Complaint as though fully set forth herein.

42. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

43. Defendants failed to issue Plaintiffs and Class Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). As stated above, Plaintiffs and Class Members are not paid all overtime wages and rest period premium wages due. As such, the wage statements provided by Defendants fail to accurately state all gross wages earned, in violation

1 of Labor Code § 226(a)(1) total hours worked, in violation of Labor Code § 226(a)(2), net wages
2 earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay
3 period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9).

4 44. As a consequence of Defendants' willful conduct in failing to provide Class Members
5 with accurate itemized wage statements, Plaintiffs and Class Members have been injured because
6 they have not been paid all wages due and were issued wage statements which do not reflect, and fail
7 to state, all information required by Labor Code § 226(a). The missing information cannot be
8 discerned at all from the face of the wage statements themselves. Plaintiffs and Class Members are
9 entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or
10 \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in
11 a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled
12 to injunctive relief and an award of costs and reasonable attorneys' fees pursuant to Labor Code §
13 226(h).

14 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

15 **VIII.**

16 **FIFTH CAUSE OF ACTION**

17 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

18 **FAILURE TO TIMELY PAY WAGES DUE AT**

19 **SEPARATION OF EMPLOYMENT**

20 **(LABOR CODE §§ 201-203)**

21 45. Plaintiffs incorporate paragraphs 1 through 44 of this Complaint as though fully set
22 forth herein.

23 46. California Labor Code § 201 and § 202 require Defendants to pay employees all wages
24 due within 72 hours after resignation of employment or the day of termination of employment. Labor
25 Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must,
26 as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full
27 or an action is commenced. The penalty cannot exceed 30 days of wages.
28

47. Defendants paid Plaintiffs and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiffs and Class Members were not paid all wages due and owing throughout the course of their employment, including all overtime wages due and premium wages for missed and denied rest periods, as detailed above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due and owing for the entirety of their employment.

48. More than 30 days have passed since Plaintiffs and Class Members have left Defendants' employ.

49. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiffs and Class Members are entitled to up to 30 days' wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of employment.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

IX.

SIXTH CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO REIMBURSE ALL BUSINESS-RELATED EXPENSES

(LABOR CODE § 2802)

50. Plaintiffs incorporate paragraphs 1 through 49 of this Complaint as though fully set forth herein.

51. Pursuant to California Labor Code § 2802, Defendants are required to fully reimburse Plaintiffs and Class Members for all out-of-pocket expenses incurred by them in the performance of their job duties.

52. Plaintiffs and Class Members were required to incur work-related expenses as part of their work tasks for Defendants, but were not fully reimbursed by Defendants for these expenses.

53. As a proximate result of the aforementioned violations, Plaintiffs and Class Members have been damaged in an amount according to proof at the time of trial.

54. Pursuant to Labor Code § 2802, Plaintiffs and Class Members are entitled to recover from Defendants the full amount of the expenses they incurred in the performance of their job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

X.

SEVENTH CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

55. Plaintiffs incorporate paragraphs 1 through 54 of this Complaint as though fully set forth herein.

56. This is a Class Action for Unfair Business Practices. Plaintiffs, on their own behalf and on behalf of the general public, and on behalf of others similarly situated, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiffs, the general public, and members of the Class. Plaintiffs seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

57. Plaintiffs are “persons” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

58. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices.

59. Wage and hour laws express fundamental public policies. Properly providing employees with all wages and expense reimbursement due are fundamental public policies of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and its

1 employees from competitors who lower their costs by failing to comply with minimum labor
2 standards.

3 60. Defendants have violated statutes and public policies. Through the conduct alleged
4 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
5 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
6 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiffs,
7 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
8 guaranteed to all employees under law.

9 61. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
10 §17200 *et seq.* of the Business & Professions Code.

11 62. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
12 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
13 17200 *et seq.* of the Business & Professions Code.

14 63. As a proximate result of the above-mentioned acts of Defendants, Plaintiffs and others
15 similarly situated have been damaged in a sum as may be proven.

16 64. Unless restrained by this Court, Defendants will continue to engage in the unlawful
17 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court should
18 make such orders or judgments, including the appointment of a receiver, as may be necessary to
19 prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or deceptive
20 practice prohibited by the Business & Professions Code, and/or, including but not limited to,
21 disgorgement of profits which may be necessary to restore Plaintiffs and members of the Class to the
22 money Defendants have unlawfully failed to pay.

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XI.

EIGHTH CAUSE OF ACTION

**PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201-202, 204, 226(a), 226.7, 226.8, 246, 510, 510, 1174, 1174.5, 1194, 1197, 1197.1,
1199, AND 2802 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATION OF
LABOR CODE §§ 226.3 AND 558**

65. Plaintiffs incorporate paragraphs 1 through 64 of this Complaint as though fully set forth herein.

66. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiffs seeks penalties pursuant to Labor Code § 2698 *et seq.*

67. For each such violation, Plaintiffs and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201-202, 204, 226(a), 226.7, 226.8, 246, 510, 510, 1174, 1174.5, 1194, 1197, 1197.1, 1199, and 2802; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

68. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

69. On March 14, 2022, September 21, 2022, September 29, 2022, and June 13, 2023, Plaintiffs sent letters, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiffs from the LWDA within sixty-five (65) calendar days of March 14, 2022, September 21, 2022, September 29, 2022, or June 13, 2023. Plaintiffs may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiffs and the aggrieved employees they seek to represent request relief as described below.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for the following relief:

1. For compensatory damages pursuant to Labor Code § 1194 in the amount of all unpaid minimum and overtime wages due to Plaintiffs and members of the Class;
2. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided, pursuant to Labor Code § 226.7 for Plaintiffs and Class Members;
3. For penalties pursuant to Labor Code § 226(e) for Plaintiffs and Class Members;
4. For penalties pursuant to Labor Code § 203 for Plaintiffs and Class Members;
5. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiffs and all other Aggrieved Employees.
6. For restitution and injunctive relief for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiffs and Class Members;
7. An award providing for payment of costs of suit pursuant to Labor Code §§ 226(h), 2699(g)(1), and other applicable law;
8. For injunctive relief and an award of attorneys' fees pursuant to Labor Code §§ 226(h), 2699(g)(1), and other applicable law;
9. An award of prejudgment and post-judgment interest; and
10. Such other and further relief as this Court may deem just and proper.

Dated: July 31, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: DANIEL F. GAINES
EVAN S. GAINES
 Attorney for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by law.

Dated: July 31, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: _____
DANIEL F. GAINES
EVAN S. GAINES
Attorney for Plaintiffs