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Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SUSANA CALDERON, individually, on a
representative basis, and on behalf of all others
similarly situated;

Plaintiff,

vs.

PRUDENTIAL INS CO OF AMERICA, a
New Jersey Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: 22STCV13172

*[Assigned to Hon. Elihu M. Berle, Dept 6, for
all purposes]*

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

Hearing

Date: September 6, 2023

Time: 9:00 a.m.

Dept.: 6

Complaint filed: April 20, 2022

I, Brian J. Mankin, state and declare:

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

1 **COUNSEL'S EXPERIENCE**

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

6 3. I have handled over 500 employee vs. employer litigation matters during my 21
7 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in over half of those actions to date, and anticipate receiving
12 final approval in many more of those in the future. In this regard, I'm attaching as **Exhibit "1"**
13 a list of over 130 resolved/settled class actions, collective actions and/or PAGA actions that I've
14 handled in the last 10 years. This list excludes currently active cases, as well as cases that I
15 handled prior to 2010.

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

23 5. I have tried two major class and PAGA cases against Fortune 100 companies over
24 the last few years. I was lead counsel in a PAGA case that my firm tried in the Orange County
25 Superior Court and received a \$425,000 judgment. I was co-counsel in a class action case
26 against Walmart that was tried to the jury in District Court, wherein the jury awarded Plaintiffs
27 over \$6 million. Both cases were appealed, and ultimately the jury trial verdict was affirmed and
28 the PAGA case was reversed and remanded.

1 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
2 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17
3 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I
4 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
5 only 5% of lawyers receive.

6 **BRIEF SUMMARY OF THE SETTLEMENT**

7 7. As requested by the Court’s model form agreement, I hereby represent that I am
8 unaware of any other pending matter or action asserting claims that will be extinguished or
9 adversely affected by the Settlement. Moreover, I have no personal or financial relationship
10 with the Administrator.

11 8. Following a contested litigation process, Plaintiff and Defendant (collectively,
12 the “Parties”) entered into a Class Action and PAGA Settlement Agreement based on the new
13 LA model agreement (the “Settlement Agreement” or “S.A.”), which is attached hereto as
14 **Exhibit 2**. To facilitate the Court’s review of the S.A., a redlined version is attached as
15 **Exhibit 3** showing the changes that were made to the model class and PAGA settlement
16 agreement.

17 9. The Settlement Agreement seeks to release and discharge Defendant from the
18 claims brought against it in exchange for Defendant’s agreement to pay \$385,000 on a non-
19 reversionary, non-claims made basis (each Class Member will receive his/her share of the Net
20 Settlement Amount without having to submit a claim form or take any action, except for those
21 who opt-out). As set forth in the motion and Settlement Agreement, Plaintiff seeks to represent
22 two classes of similarly situated employees: the “Customer Service Class” and the “Wage
23 Statement Class.” Under the terms of the Settlement Agreement, Defendant will not oppose
24 Plaintiff Counsel’s application for a reasonable award of attorney’s fees not to exceed
25 \$128,333.33 (1/3 of the Gross Settlement Amount), litigation expenses not to exceed \$20,000,
26 Settlement Administrator Costs of \$8,500, PAGA penalties of \$40,000 (with 75% to the
27 LWDA and 25% to the Aggrieved Employees on a pro rata basis), and a Service Payment of
28 \$7,500 to Plaintiff Susana Calderon (“Class Representative”). (S.A. ¶ 3.2 et seq.). After

1 subtracting the agreed-upon deductions from the Settlement Amount, approximately
2 \$180,666.67 will be available to pay the individual settlement amounts to approximately the
3 Class Members who do not opt-out of the settlement, as follows:

<i>Gross Settlement Amount</i>	\$ 385,000.00
Attorneys' Fees (1/3)	\$ 128,333.33
Litigation Costs	\$ 20,000.00
Administrator Costs	\$ 8,500.00
PAGA Penalties	\$ 40,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 180,666.67

9 10. Assuming a maximum of 250 Class Members between the two classes, the
10 average payment to each class member will be approximately \$722.67 (\$180,666.67 / 250).
11 However, the actual payment will be calculated on a pro-rata basis according to the number of
12 Pay Periods Worked during each Class and the corresponding number of Share Points credited
13 to each Class Member. In addition, the Aggrieved Employees will receive a share of the
14 \$10,000 PAGA Penalties (25% of the total \$40,000 PAGA allocation), calculated pro-rata
15 based on approximately Pay Periods Worked during the PAGA Period.

16 11. Each Class Member will receive the Class Notice, explaining the nature of the
17 case, and the process for participating, objecting and opting-out, and advising of his/her
18 estimated settlement payment and the number of Pay Periods he/she is credited with working
19 during the Class Period (attached to the Settlement Agreement as Exhibit "A").

20 **PROCEDURAL BACKGROUND**

21 12. My office has performed considerable work and diligently investigated and
22 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
23 significant settlement fund for the benefit of the Class. We efficiently communicated and
24 exchanged information informally with Defense counsel which enabled the parties to
25 successfully settle the case. Because of the risks involved in litigating the case and the contested
26 legal and factual issues, we believe this settlement to be fair, reasonable, and adequate.

27 13. After being retained by Plaintiff, we sent a letter to Defendant requesting the
28 production of Plaintiff's personnel and timekeeping records in order to further evaluate her wage

1 and hour claims. On April 19, 2022, we submitted a letter to the California Labor Workforce
2 Development Agency (the “LWDA”) for civil penalties under the Private Attorney General Act
3 of 2004 (the “PAGA”), which is attached hereto as **Exhibit 4**.

4 14. Plaintiff then filed a class and representative PAGA action complaint in the Court
5 alleging claims for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3)
6 Failure to Provide Meal Periods; (4) Failure to Timely Pay Final Wages; (5) Failure to Provide
7 Accurate Itemized Wage Statements; (6) Unfair and Unlawful Competition, (7) failure to
8 maintain employment records and (8) related PAGA Claims.

9 15. Defendant retained counsel and immediately began to defend the case, including
10 alleging in the Joint Initial Status Conference Report that “this case has no merit as Defendant
11 complied with all wage and hour laws at all relevant times.” Thereafter, the Parties exchanged
12 formal written discovery and scheduled the depositions of Plaintiff and Defendant’s PMK.
13 During this time, the Parties engaged in extensive meet and confers regarding the scope of the
14 class, discovery disputes and other matters, prompting Plaintiff to file a motion for leave to file a
15 first amended complaint to clarify certain things in dispute. However, prior to filing a series of
16 motions and contesting class certification, the Parties stipulated to allow Plaintiff to file a first
17 amended complaint and further agreed to submit the matter to mediation.

18 16. In preparation for the mediation, the Parties informally exchanged documents and
19 information that allowed both sides to calculate the potential damages and evaluate potential risk,
20 including policies and procedures pertaining to each claim alleged, and statistics relating to the
21 number of current and former employees, number of shifts, pay periods worked and other things.
22 Defendant also provided its written policies and practices and a robust sampling of payroll and
23 timekeeping records for Class Members. This information enabled both parties to take a deep
24 dive into the claims. Additionally, during this process, Plaintiff and my office analyzed,
25 researched, and investigated the potential issues, including matters related to the calculation of
26 damages, trial, and appellate issues and risks. We also retained an expert (Jarrett Gorlick of
27 Berger Consulting Group) to perform a statistical analysis of the claims and violations.
28

1 17. On May 1, 2023, Plaintiff and Defendants participated in mediation before Jeffrey
2 Krivis, a highly regarded wage-and-hour mediator. The matter did not resolve at mediation, but
3 Mr. Krivis issued a mediator’s proposal which was accepted by the Parties approximately one
4 week later.

5 **THE WAGE AND HOUR CLAIMS AND CLASS COUNSEL’S INVESTIGATION**

6 18. Defendants vigorously contested and denied the allegations on the merits and as
7 to the propriety of a class action or PAGA representative action on behalf of the putative class
8 and allegedly aggrieved employees.

9 19. One of the primary claims in this action is that the Wage Statement Class
10 Members received inaccurate and incomplete wage statements that failed to accurately state all
11 necessary items required under Labor Code § 226. Specifically, Plaintiff alleged that the wage
12 statements failed to correctly state the regular hourly rate of pay (instead displaying a “salary
13 rate” for the pay period) and displayed a rounded overtime payment that makes it impossible for
14 employees to calculate whether they are being paid correctly. Further Plaintiff alleged derivative
15 wage statement violations including: failure to accurately state gross wages earned; failure to
16 accurately state total hours worked; failure to accurately state all applicable hourly rates in effect
17 during the pay period and the corresponding number of hours worked at each hourly rate by the
18 employees. Defendant vigorously disputed these allegations, including by arguing that Plaintiff
19 did not and could not meet her burden to show that Defendant had the requisite intent, that
20 displaying a salary is improper for salaried non-exempt employees, that the claimed failure to
21 show all wages earned gives rise to wage statement liability when the statements accurately
22 reflect the wages actually paid, or that any injury resulted from any alleged violation.

23 20. Plaintiff also alleged that the Customer Service Class was denied 30-minute off-
24 duty meal periods, as mandated by California law. As a result of Defendant’s policies and
25 practices, the customer Service Class was subject to meal period violations when they were: (1)
26 scheduled to take lunch after the 5th hour but their meal period time was fraudulently changed to
27 reflect that meal periods were taken prior to the 5th hour, (2) unable to take a meal period due to
28 work load, and (3) not provided mandated second or third meal periods on shifts in excess of 10

1 hours. Specifically, Plaintiff alleged that she and the Customer Service Class were expected to
2 take customer service calls up through the minute before their lunch was scheduled, which
3 resulted in meal periods that were not take at the scheduled times often resulting in late or
4 otherwise non-compliant meal periods. On some occasions, the meal periods were scheduled
5 after the 5th hour. Moreover, Plaintiff alleged that Defendant would adjust the meal period time
6 records to avoid paying premiums on non-compliant meal periods. However, Defendant argued
7 that it provided and made available meal breaks to all employees, that it never adjusted meal
8 period time punches, that employees never advised of any claimed inability to take breaks due to
9 work, and any employee who did not take a meal break did so entirely of his or her own volition.
10 In this regard, Defendant produced its written policies and practices, which it argued show full
11 compliance with the law. As such, Defendant argued that this claim was without merit because,
12 for each violation, a fact-finder would have to determine why a break was
13 noncompliant/nonexistent, because if it was by the employee's choice, no liability attaches to the
14 Defendant.

15 21. Plaintiff also pursued claims for unpaid wages due to Defendant's alleged failure
16 to accurately record and compensate for all hours worked on behalf of the Customer Service
17 Class. For example, Plaintiff was paid by the hour and assigned to work from her house and
18 alleges that she was required to perform pre and post shift work, including but not limited to
19 preparing schedules for the following day, performing computer work and other off-the-clock
20 tasks. However, Defendant vehemently denied these allegations and opposed these claims on the
21 merits in light of Defendant's actual policies and procedures and as to the propriety of class
22 certification or representative treatment due to the individualized nature of the claims.

23 22. Finally, Plaintiff alleges that Defendant engaged in the practice of failing to pay
24 all wages due and owing to Plaintiff and the Customer Service Class each pay period (Labor
25 Code § 204) and at the time employment ended with Defendant (Labor Code §§ 201-203),
26 including minimum wages, overtime wages and unpaid meal period premiums. However,
27 Defendant argued that these other claims, as well as the "derivative" claims, have no merit, both
28 on the merits (which would preclude the derivative claims) and independent, due to the inability

1 to show or establish the necessary state of mind.

2 **EVALUATION OF THE SETTLEMENT**

3 23. In preparation for mediation, Misty Lauby, a partner within my office, and I
4 formulated a damages model and risk analysis based upon detailed data obtained through
5 informal discovery and information exchanges. The summary of the claims below is based on
6 calculations by our expert and us, and the risks that we potentially faced, giving significant credit
7 to the defenses that Defendant raised or would like raise in further proceedings. Following the
8 informal exchange and other information provided by Defendant, we estimated the following
9 data points through the date of mediation: (1) 209 Wage Statement Class Members, (2) 60
10 Customer Service Class Members (2) 5,735 workweeks, (3) 96,935 shifts worked, and (4)
11 approximately 3,800 wage statements during the PAGA Period. From these metrics, and when
12 factoring in claim certification probabilities and liability probabilities, we formulated detailed
13 damages models to value the claims in preparation for mediation and to reach a realistic and
14 reasonable resolution.

15 24. Plaintiff contended that her strongest claim was Defendant's failure to provide
16 accurate itemized wage statements due to failing to accurate statement several items required by
17 Labor Code § 226(a). The maximum potential value for this claim, calculated using the statutory
18 framework of § 226(e) [\$50 for first violation and \$100 for every violation thereafter), was
19 \$377,000 based on 3,800 allegedly violative wage statements. But Defendants raised strong
20 defenses to this claim, including that, with each wage statement, the salary rate listed in the place
21 of the hourly rate is permissible for non-exempt employees classified as "salary non-exempt".
22 Defendants further argued that: (a) these violations, if any, did not result in any "injury" under §
23 226(e), (b) the violations, if any, were not "knowing and intentional" and could not support the
24 assessment of penalties, and (c) "derivative" wage statement claims are without merit. Based on
25 these defenses, Plaintiff assigned a 20% risk at class certification and an additional 25% on the
26 merits, leading to a risk-adjusted value of \$226,200. Plaintiff also made claims for PAGA civil
27 penalties on 100% of the 3800 pay periods at issue at the rate of \$100 per pay period for a
28 maximum value of \$380,000. Plaintiff believed there is a high likelihood of success because of

1 the objective nature of the claim (*i.e.*, the claims would be proven or disproven at MSJ/MSA
2 based on the wage statements themselves). For that reason, Plaintiff only applied a 25% risk on
3 the merits, leading to a risk-adjusted value of \$285,000 for the § 226 claims.

4 25. Plaintiff also alleged meal claims against Defendant. Given the total number of
5 shifts at issue, and when incorporating a 50% violation rates from the timekeeping records and
6 other evidence, Plaintiff's counsel estimated 14,373 alleged unique meal violations leading to a
7 maximum potential value of \$411,628. However, Defendant raised numerous arguments in
8 response to this claim, including that policies specifically authorized the Class Members to take a
9 meal periods, and that many employees worked from home without supervision and had ample
10 opportunity to take compliant meals. Therefore, Defendant asserted that a fact-finder would
11 have to determine for each Class Member whether a break was recorded on each employees
12 timesheet or if it was missed and why, and why a break was noncompliant or nonexistent,
13 because if it was by the employee's choice, no liability attaches to Defendant. This defense is
14 factored into Plaintiff's analysis in two ways. First, these issues raise questions regarding
15 whether the meal claims could be certified, and Plaintiff placed a 40% risk at the class
16 certification stage. Second, these defenses also go toward the merits given the evidentiary
17 question of proving the number of meal violations. As such, Plaintiff placed a 40% risk on the
18 merits, setting the risk-adjusted value for the meal at \$342,000. Plaintiff also alleged claims for
19 PAGA civil penalties for meal claims against Defendant. And because Plaintiff alleged that
20 these violations occurred on 50% of shifts, that equates to a roughly 75% violation rate under
21 PAGA. Therefore, given 2,850 alleged violations for this claim, the maximum potential value
22 was \$285,000 for the meal claim. However, the same defenses apply for class and PAGA
23 claims. Moreover, Plaintiff recognized that, even if the Court were to find Defendant liable for
24 meal period violations, the Court was likely to exercise its discretion to reduce the PAGA
25 penalties. Given the allegedly compliant policies/practices and the disputed nature of these
26 claims, we believed that the Court would apply an additional discretionary reduction of 75%
27 resulting in likely PAGA penalties after trial resulting in a risk adjusted value of \$71,250 for this
28 claim.

26. Additionally, Plaintiff alleged claims for unpaid wages, arising from off-the-clock work when booting up their computers in the morning and checking their schedules for the following day after hours, as well as, performing work during lunch periods. After investigating the alleged frequency of violations, Plaintiff estimated that there were an alleged 86,235 minutes (3 minutes per 28,745 total shifts) unpaid hours during the Class Period at an applicable rate of pay of \$57.28.¹ Thus, the maximum potential value for the unpaid wage claims was \$81,923.30. However, Defendant vehemently opposed these unpaid wage claims on multiple fronts. For example, Defendant argued that it had policies to pay employees for all hours worked and other policies requiring employees to accurately record their own hours worked. Thus, Defendant argued that there was no “off-the-clock” time and, even if there were, it had no actual or constructive notice of the same and would not be liable. Additionally, Defendant claimed that many of the Customer Service Class Members were employed at an office rather than at home where they clocked in prior to booting up their computers. Moreover, Defendant alleged that, due to these defenses, Plaintiff’s claims are the prototypical example of “individualized issues” for which certification would not be proper. Thus, Plaintiff placed a 30% risk on these claims at the class certification stage. Moreover, in addition to its other defenses on the merits, Defendant argued that Plaintiff would be unable to meet its evidentiary burden at summary judgment and/or trial because Plaintiff and the Class would be unable to identify when these alleged wage violations occurred (since the claims are not all apparent from the timekeeping records), thus defeating liability. For this reason, Plaintiff’s counsel assigned another 40% risk on the merits. When factoring in these risks and defenses, Plaintiff calculated the risk-adjusted value of the unpaid wage claims to be \$34,408. As for PAGA violations on this claim, the maximum potential recover would be \$380,00 based on \$100 penalty for each of the 3800 pay periods at issue. However, Plaintiff applied a 75% risk reduction because Defendant would likely be able to prove that not all pay periods were affected and that the Court would likely use its discretion to further reduce the recovery. Therefore, Plaintiff came up with a risk-adjusted PAGA penalty estimate of \$95,000.

¹ Since these unpaid hours were alleged to occur *after* 8 hours in a day, this blended rate is the overtime rate plus liquidated damages (for unpaid minimum wages) under Labor Code § 1194.2.

27. Furthermore, Plaintiff alleged that Defendant failed to timely pay all wages owed to the Class Members upon separation of employment since the Class Members. The maximum potential value of this claim was \$164,345 based on 26 *former* employees being entitled to the full waiting time penalty of 30 days of pay. But this maximum value failed to account for many risks and defenses. For instance, this claim was entirely derivative of the unpaid wage and meal/rest break claims (*e.g.*, the unpaid wage premiums). If those claims fails at certification or on the merits, there would be no waiting time penalties owed, so the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to prove that the violations (if any existed) were “willful” under the meaning of Labor Code § 203. And, here, Defendant argued that there could not be a finding of a “willful” violation since they had compliant written policies and any deviations therefrom were inadvertent and unintentional. As a result of this analysis, Plaintiff’s counsel applied a 30% risk at class certification and a 50% risk on the merits, leading to a risk-adjusted value of \$57,521.

28. Plaintiff also made PAGA only claims based on Defendant’s failure to timely pay wages each pay period (Labor Code §204) and for failure to maintain employment records (Labor Code §§1174, 1174.5). Each of these claims had a maximum potential penalty of \$380,000. However, since both of these claims were purely derivative of the other claims and due to the same likelihood that the Court will apply a discretionary reduction, Plaintiff discounted these claims by 75% each for a risk-adjusted value on each claim of \$95,000.

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

Class Claims

•	Wage Statement Claims	\$	226,200
•	Meal and Rest Break Claims	\$	148,186
•	Unpaid Wage Claims	\$	34,408
•	Waiting Time Penalty Claims	\$	<u>57,521</u>
•	Risk Adjusted Damages	\$	466,315

PAGA Claims

•	Wage Statement Claims	\$	285,000
•	Meal Claims	\$	71,250
•	Unpaid Wage Claims	\$	95,000
•	Late Wages	\$	95,000
•	Employment Records	\$	95,000
•	203	\$	<u>650</u>
•	Risk Adjusted Damages	\$	641,900

30. The reasonableness of the settlement is apparent from the fact that the proposed settlement is 82% of the risk-adjusted class damages and penalties and 34% of the total risk-adjusted value of the class and PAGA claims combined. And while the PAGA penalties had a maximum value in the seven figures, this fails to acknowledge that courts have wide latitude to reduce the civil penalties “based on the facts and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendant argued against the merits of the underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendant also argued that it is improper to stack civil penalty claims on top of the underlying statutory claim. For these reasons, the Parties submit that the agreed-upon settlement is fair and reasonable.

THE SETTLEMENT IS FAIR, JUST, AND REASONABLE

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

1 32. The settlement will result in a fair payment to each class member based on the
2 percentage of pay periods each Class Member worked during the Class Period. As set forth
3 hereinabove, Plaintiff and her counsel have diligently investigated the claims and defenses on
4 behalf of the Class Members and worked to achieve a resolution of the claims to maximize the
5 recovery by avoiding further expenditure of attorneys' fees and costs. After evaluating the
6 significant risks attendant with further litigation described above and weighing them against the
7 benefits of a known compromise and settlement as set forth in the Settlement Agreement,
8 settlement on the terms agreed to is believed to be in the best interest of Plaintiff and the Class,
9 and is a fair and reasonable resolution of the claims alleged.

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

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

22 35. Plaintiff's counsel, as well as Defendant's counsel, fully endorse the terms and
23 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

24 36. Of course, the settlement amount represents a compromise figure, taking into
25 account the various risks surrounding class certification and the merits of Defendant's asserted
26 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
27 members, with no reversion to Defendant.

28 ///

1 **PLAINTIFF’S REQUESTED ENHANCEMENT PAYMENT**

2 37. Plaintiff seeks an enhancement payment of \$7,500 for her service to the class,
3 which I believe is fair and warranted. Plaintiff came forward in an effort to effectuate a policy
4 and practice change that benefitted all other Class Members, and to recover unpaid wages. She
5 assumed significant risk in bringing this litigation—namely, had she lost, she would have been
6 ordered to pay Defendant’s costs.

7 38. Plaintiff provided invaluable assistance to my office and the Class in this case,
8 including providing factual background for the Class Complaint; reviewing the litigation
9 documents; providing information and documents about Defendant’s policies and practices;
10 participating in phone calls to discuss litigation and settlement strategy; and reviewing the
11 settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal
12 benefit. At final approval, Plaintiff will submit a comprehensive declaration setting forth all of
13 the reasons why she believes that the service award should be approved.

14 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
15 **REQUESTED FEES AND COSTS**

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

19 40. When this case was taken on a contingency fee basis, with my firm agreeing to
20 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
21 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
22 and mediation costs. There was never a guarantee that we would recoup those expenditures.

23 41. It is my experience that attorney fee awards of one-third of a common fund
24 settlement is the standard in California. In this case, Plaintiff’s counsel agreed to seek one-third
25 of the Settlement Amount for attorneys’ fees. Defendant does not oppose this fee request. The
26 fee is further warranted because it is within the range of reasonableness typically awarded in
27 class actions. The costs are reasonably capped at \$20,000 and will be based on the actual amount
28 of costs incurred at the time of final approval.

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SUBMISSION TO THE LWDA

43. Plaintiff has concurrently submitted the settlement and motion documents to the LWDA in accordance with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit 5**.

44. A list of over 130 resolved/settled class actions, collective actions and/or PAGA actions that I've handled in the last 13 years is attached as Exhibit "1." This list excludes currently active (non-settled) cases, as well as cases that I handled prior to 2010.

46. A true and correct copy of the notice letter we submitted to the LWDA is attached as Exhibit “4.”

48. Note: the proposed Class Notice is attached to the Settlement Agreement as Exhibit “A.”

49. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the settlement as being fair, reasonable, and in the best interests of the class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement payment to the Class Representative.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “1”

Completed Class/Collective/PAGA Cases		
Case Name	Venue	Case Number
Acevedo v. DCH	Los Angeles	JCCP No. 4833
Aguirre v. DirecTV	USDC	2:16-cv-06836
Aguirre v. WellQuest	Los Angeles	19STCV15699
Angulo v. CCX2931, et al.	Los Angeles	BC717320
Antuna v. GATX	San Bernardino	CIVDS1928516
Arroyo v. Hardin Automotive	Orange	30-2013-00648090
Arroyo v. Riverside Auto	Riverside	RIC1200257
Bass v. Southern Refrigerated	San Bernardino	CIVDS1705054
Beard v. Certified Tire	Riverside	RIC1816800
Biggart vs. Creative Comm	San Bernardino	CIVDS1920394
Blanco v. Savage BMW	San Bernardino	CIVRS1200316
Bomar v. Gra-Gar	San Bernardino	CIVDS1618056
Boyd v. May Trucking	USDC	5:17-cv-02166
Bradley v. Amphastar	San Bernardino	CIVDS1607456
Brewer v. Connell Chevrolet	Orange	30-2013-00852123
Carr v. K&B Electric	Riverside	RIC1904970
Carrillo v. BlulSky	San Bernardino	CIVSB2105793
Cassidy v. Pep Boys	San Diego	37-2017-00038364
Castelo v. Millemiaaero	San Bernardino	CIVDS1825783
Castner v. Jessup Brothers	Riverside	INC10009311
Castner v. Palm Sprins Motors	Riverside	INC10009313
Castner v. VIP Motor Cars	Riverside	INC1102993
Cedano v. McPeek	Orange	30-2013-00648284
Chang v. FWL	Los Angeles	BC625531
Collado v. Intelligrated Systems	San Bernardino	CIVDS1506443
Constant v. Rooter Ranger	San Bernardino	CIVSB2206149
Constante v. Eddie's Trucking	San Bernardino	CIVDS1902466
Coronado v. Global One	San Bernardino	CIVDS1606686
Cortez v. DMA Enterprises	Ventura	56-2010-00366970
Cosey v. H&IC Bros.	San Bernardino	CIVDS1711425
Cruz v. Sterling	Orange	30-2016-00864990
Cuevas v. Adesa	Riverside	RIC1507066
Cuevas v. FHI	Riverside	RIC1713814
Davila v. Keyes Motors. Inc.	Los Angeles	BC497604
Delara v. Indio Pontiac	Riverside	PSC1301916
DePeralta v. Genesis Healthcare	Los Angeles	BC552963
Diaz v. Legacy Tile	Riverside	CVRI2104520
Estrada v. Eco Shield	San Bernardino	CIVDS1821895
Estrada v. MVT	San Bernardino	CIVDS1620885
Estrada v. Ventura Foods	San Bernardino	CIVDS1903407
Estrada v. Witron	San Bernardino	CIVDS1719080
Evans v. Neovia	San Bernardino	CIVDS1806659
Figuroa v. Mossy Ford	San Diego	37-2014-00028426
Fimbres v. Vons	Riverside	RIC1904892
Flores v. Sunrise Respiratory	San Bernardino	CIVSB2127592

Finger v. PRH	Riverside	CVRI2101956
Galdamez v. Rush Truck Center	Los Angeles	BC528888
Gallardo v. Tee For 2	San Bernardino	CIVDS1719564
Garcia v. Coach	USDC	5:18-cv-01537
Garcia v. Harkins	USDC	5:18-cv-02314
Garcia v. Macy's	San Bernardino	CIVDS1516007
Gharavi v. Censeo Health	San Bernardino	CIVDS1906608
Gieling v. BSRO Retail Operations	Los Angeles	JCCP 4638
Gomez v. Goldmax	Orange	30-2012-00577321
Greendale v. Andersen Windows	San Bernardino	CIVDS2016569
Guzman v. Deckers	Riverside	CVRI2100707
Haney v. JPI Development	Riverside	RIC537695
Harper v. Hamner Towing, Inc.	San Bernardino	CIVSB2127523
Hernandez v. Astro	San Bernardino	CIVDS2011280
Hernandez v. CPS Southwest	Orange	30-2018-00987834
Hernandez v. Cryogenic	San Bernardino	CIVDS1612524
Hernandez v. Jack B. Kelley	San Bernardino	CIVDS1704346
Hernandez v. Walmart	USDC	5:17-cv-01415
Hill v. Amazon	Riverside	RIC1614641
Iversen v. Kelle's	San Diego	37-2016-00013606
Iversen v. Toyota of Orange	Orange	30-2013-00665366
Klimek v. Kingspan	Alameda	CV-21-004201
Labra v. Sutter	Los Angeles	20STCV18751
Lara Diaz v. Shamrock	Riverside	RIC2004126
Legorreta v. Paradise	Riverside	RIC1723591
Leon v. Adcomm	San Bernardino	CIVDS1832675
Leon v. Gordon Trucking	San Bernardino	CIVDS1511918
Lepe v. Big Lots	San Bernardino	CIVDS1825693
Libby v. Psycare	San Diego	37-2019-00030656
Lopez Munoz v. Pentair	Ventura	56-2019-00525013
Lopez v. Care Funeral Services	San Bernardino	CIVDS1305650
Lopez v. Heartland	Riverside	RIC1901461
Lopez v. JBGC	San Bernardino	CIVDS2013277
Lopez v. Ramona Tire	Riverside	INC1208982
Lopez v. Unicars, Inc.	ARB	13-5105
Lupercio v. Access Exterminator	San Bernardino	CIVDS1921036
Lynn v. Wild Rocket	ADR	09-6908-
Macias v. Team Nissan	Ventura	56-2013-00431856
Maciel v. Shambaugh	Los Angeles	21STCV30747
Maldonado v. Add-On	Orange	30-2021-01206062
Marquez v. SharkNinja	San Bernardino	CIVDS1700491
Martinez v. Baxalta	Los Angeles	BC705969
McCulloch v. The Gill	Los Angeles	BC722742
Medina v. Citistaff Solutions	Riverside	RIC1500664
Mejia v. Mossberg	San Bernardino	CIVDS1724635
Melena v. Andy Frain	Orange	CIVDS1901476
Merritt v. DMA Claims	Los Angeles	21STCV31200
Micheal v. BMW of Riverside	Riverside	RIC1201709

Micheal v. Mercedes Benz	ARB	A196865-27
Mitchell v. American Residential Services	Riverside	RIC1709360
Montano v. Honda Cars of Corona	Riverside	RIC1608165
Moody v. Dura	San Bernardino	CIVDS2008887
Moody v. National Distribution	Riverside	RIC1905953
Moreno v. JJ Kane	Riverside	CVRI2101236
Nelson v. Rancho Santa Margarita Motors	Orange	30-2016-00845005
Nieves v. KLLM	San Bernardino	CIVSB2134796
Ollarsaba v. Pumpman	San Bernardino	CIVDS2008889
Ortiz v. Quick Care	San Bernardino	CIVDS1610143
Palmer vs. Charter Hospice	San Bernardino	CIVDS2013037
Pearson v. PSF Trucking	Kern	BCV-17-102520
Pena v. SA Recycling	Riverside	RIC1610639
Perez v. Staffmark	Riverside	MCC1401137
Pham v. MVVT	Orange	30-2013-00661705
Pollock v. Wynden Stark	Los Angeles	19STCV24217
Pompa v. Landforce	San Bernardino	CIVDS1700451
Pompa v. Russo Brothers	Sacramento	30-2017-00207703
Pompa v. Unicars, Inc.	Riverside	INC1207208
Poulin v. Dignity Health	San Bernardino	CIVDS1515101
Purvis v. Honeywell	Riverside	RIC10010156
Reddall v. Quest Diagnostics	USDC	13-2099
Redman v. Zenith	San Bernardino	CIVDS1826759
Reed v. Beach City	Orange	30-2018-00989665
Reed v. Thousand Oaks Toyota	Ventura	56-2012-00419282
Robertson v. All Care Home Health	Los Angeles	20STCV18318
Romero v. RHI, Inc.	Los Angeles	BC528035
Rossello v. Ontario T	San Bernardino	CIVDS1415708
Ruiz v. Mountain View Tires	San Bernardino	CIVRS1206400
Ruiz v. Unity Courier	Los Angeles	BC724435
Sacks v. Natural Energy	Riverside	RIC1816789
Sandoval v. National Seating	San Bernardino	CIVDS1721797
Santos v. WestRock	San Benito	CU-18-00074
Sebastian v. Sprint	USDC	8:18-cv-00757
Sewell v. Imedris Data Corp	San Bernardino	CIVDS1401836
Solis v. Palo Verde Health Care	Riverside	INC10009315
St. Amand v. Hendrickson	San Bernardino	CIVDS1617165
Stafford v. GOSCH Auto	Riverside	RIC1814300
Stinson v. Pacific Production Plumbing	San Bernardino	CIVDS1721708
Stock v. Atwood & Andrews, Inc.	Riverside	MCC1400665
Threadgill v. Decker Truck Lines	San Bernardino	CIVDS2018856
Torres v. ePac	San Bernardino	CIVDS2017140
Torres v. Xerxes	Orange	30-2019-01095537
Vaughner v. FST Services	San Bernardino	CIVDS1830784
Vega v. Marathon	Los Angeles	20STCV19405
Venegas v. Ross Nissan	Los Angeles	BC694099
White v. Westin	Riverside	PSC1404641
Williamson v. APEX	San Bernardino	CIVDS2000708

Woods v. JITC	San Bernardino	CIVDS2000750
Wright v. Bob Stall Chevrolet	San Diego	37-2017-00010598

EXHIBIT “2”

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Susana Calderon (“Plaintiff”) and The Prudential Insurance Company of America (“Defendant” or “Prudential”). Plaintiff and Defendant shall collectively be referred to as “Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Calderon v. Prudential Ins Co of America*, which was initiated on April 20, 2022 and pending in Superior Court of the State of California, County of Los Angeles.

1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.

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

1.4. “Agreement” or “Settlement Agreement” shall mean this Class Action and PAGA Settlement Agreement, including the Class Notice.

1.5. “Aggrieved Employees” means Plaintiff, all Wage Statement Class Members and all Customer Service Class Members who were employed by Defendant in the State of California at any time during the PAGA Period. Aggrieved Employees may not exclude themselves from receipt of the PAGA Penalties.

1.6. “Class” consists of shall be comprised of two classes: Wage Statement Class and Customer Service Class, as defined herein.

1.7. “Class Counsel” means Brian Mankin and Misty Lauby of Lauby Mankin Lauby LLP.

1.8. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.9. “Class Data” means a complete list that Defendant will diligently and in good faith compile from their records and provide to the Settlement Administrator on one spreadsheet which shall include the Class Member identifying information in Defendant’s possession, including the Class Member’s name, last-known mailing address, Social Security number, and number of Pay Periods during the Class Period for the Customer Service Class Members and during the PAGA Period for the Wage Statement Class Members.

1.10. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.11. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.12. “Class Notice” means the court approved notice of class action settlement to be mailed to Class Members in English only in the form attached as Exhibit A and incorporated by reference into this Agreement.

1.13. “Class Representative” means the named Plaintiff in the operative Complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. “Complaint” refers to the operative complaint filed in the Action, alleging class action and representative PAGA action claims, which is pending in the Court and designated as Case No. 22STCV13172.

1.16. “Court” means the Superior Court of California, County of Los Angeles.

1.17. “Customer Service Class” includes all current and former non-exempt Prudential employees in the State of California whose primary job responsibilities were making and/or receiving calls, assisting customers, or answering customers’ queries during the Customer Service Class Period.

1.18. “Customer Service Class Period” means the period from April 20, 2018, through the earlier of August 1, 2023 or the date that the Preliminary Approval Order is entered.

1.19. “Defendant” means The Prudential Insurance Company of America.

1.20. “Defense Counsel” means Seyfarth Shaw, LLP.

1.21. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the expiration date of the time for filing or noticing any appeal of the Judgment; (b) if there is an appeal of the Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the California Supreme Court; or (c) if a petition for writ of certiorari is filed, the date of denial of the petition for writ of certiorari, or the date the Judgment is affirmed pursuant to such petition.

1.22. “Exclusion List” means the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion.

1.23. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.24. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.25. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.26. “Gross Settlement Amount” or “GSA” means \$385,000, which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 9 below and except for the employer’s share of applicable payroll tax obligations that Defendant shall separately pay. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.

1.27. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Share Points credited.

1.28. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods during the PAGA Period.

1.29. “Judgment” means the judgment entered by the Court based upon the Final Approval.

1.30. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.31. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.32. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.33. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion. A Non-Participating Class Member shall receive their share of the PAGA Penalties.

1.34. “PAGA Period” means the period from April 20, 2021, through the earlier of August

1, 2023 or the date that the Preliminary Approval Order is entered.

1.35. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.36. “PAGA Notice” means Plaintiff’s April 19, 2021, letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.37. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount (\$40,000), allocated 25% to the Aggrieved Employee (\$10,000) and 75% to LWDA (\$30,000) in settlement of PAGA claims.

1.38. “Participating Class Member” means all Class Members who are deemed to participate, who will receive an Individual Class Payment, except for those who opt-out by submitting a timely valid Request for Exclusion.

1.39. “Pay Periods” means all pay periods in which a Class Member worked at least one shift during the pay period.

1.40. “Plaintiff” means Susana Calderon, the named plaintiff in the Action.

1.41. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.42. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

1.43. “Released Class Claims” means the claims being released as described in Paragraph 6.2 below.

1.44. “Released PAGA Claims” means the claims being released as described in Paragraph 6.2 below.

1.45. “Released Parties” means: Defendant and its predecessors, successors, subsidiaries, parent companies, other corporate affiliates, and all of its owners, shareholders, members, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by, through, under or in concert with any of them.

1.46. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

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

1.48. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.49. “Share Points” will be used to calculate a Class Member’s Individual Class Payment and will be credited as follows: (a) for each Pay Period Worked during the Customer Service Class Period by a Class Member who is a member of the Customer Service Class only (and not of the Wage Statement Class), the Class Member will be credited with a half (0.5) Share Point; (b) for each Pay Period Worked during the Wage Statement Class Period by a Class Member by who is a member of the Wage Statement Class only (and not of the Customer Service Class), the Class Member will be credited with one (1.0) Share Point; (c) for each Pay Period Worked during the Customer Service Class Period by a Class Member who is a member of both the Customer Service Class and Wage Statement Class, the Class Member will be credited with 1.2 Share Points; and (d) for each Pay Period Worked during the Customer Service Class Period by a Class Member who is a member of both the Customer Service Class and Wage Statement Class and is no longer employed by Defendant will be credited with 1.25 Share Points. The total combined share points in both classes will be referred to as a Class Member’s Share Points.

1.50. “Share Points Credited” refers to the total combined Share Points that are credited to a Class Member from the Customer Service Class and Wage Statement Class.

1.51. “Wage Statement Class” includes all current and former non-exempt Prudential employees in the State of California at any time during the Wage Statement Class Period.

1.52. “Wage Statement Class Period” means the period from April 20, 2021, through the earlier of August 1, 2023 or the date that the Preliminary Approval Order is entered.

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

2. RECITALS.

2.1. On April 20, 2022, Plaintiff commenced this Action by filing a Complaint against Defendant. On January 6, 2023, Plaintiff filed a First Amended Complaint against Defendant alleging the following causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Timely Pay Final Wages; (5) Failure to Provide Accurate Itemized Wage Statements; (6) Unfair and Unlawful Competition, (7) failure to maintain employment records and (8) related PAGA Claims. Defendant denies the allegations in the Complaint, deny any failure to comply with the laws identified in in the Complaint and deny any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.3. On May 1, 2022, the Parties participated in an all-day mediation presided over by Jeffrey Krivis, which culminated in a mediator's proposal. The Parties accepted the mediator's proposal, and thereafter entered into this Agreement to settle the Action.

2.4. Prior to the mediation and negotiating the Settlement, Plaintiff obtained, through formal and informal discovery, documents and information, including but not limited to Defendant's written policies and practices, information relating to the size of the Class and Aggrieved Employees, number of Pay Periods, as well as a sampling of payroll and timekeeping records. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.5. The Court has not granted class certification.

2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant agrees to pay \$385,000 and no more as the Gross Settlement Amount, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$7,500 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and Aggrieved Employee). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments on a date set by the Court at the Preliminary Approval Hearing and no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative

Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third of the GSA (33.333%), which is currently estimated to be \$128,333.33 and a Class Counsel Litigation Expenses Payment of not more than \$20,000. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment on a date set by the Court at the Preliminary Approval Hearing and no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$8,500 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$8,500, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: Each Class Member will receive an amount based on the Class Member's Share Points, as defined above. Class Member's Share Points will be calculated from the Net Settlement Amount. A Class Member who is a member of the Customer Service Class only (and not of the Wage Statement Class) will receive 0.5 Share Point for each Pay Period Worked during the Customer Service Class Period. A Class Member by who is a member of the Wage Statement Class only (and not of the Customer Service Class) will receive 1.0 Share Point for each Pay Period Worked during the Wage Statement Class Period. A Class Member who is a member of both the Customer Service Class and Wage Statement Class will receive 1.2 Share Points for each Pay Period Worked during the Customer Service Class Period. A Class Member who is a member of both the Customer Service Class and Wage Statement Class and is no longer employed by Defendant will receive 1.25 Share Points for each Pay Period Worked during the Customer Service Class Period. The Net Settlement Amount will be divided by the number of Share Points credited to all Class Members, resulting in a value per Share Point (referred to as the Share Point Rate). The Administrator will multiply the Share Point Rate by the number of Share Points credited to each Class Member to determine the Individual Class Payment to each Participating Class Member.

3.2.4.1. Tax Allocation of Individual Class Payments. Portions of the Individual Class Payment paid to the Participating Class Members in the Customer Service Class will be allocated as 20% to wage claims (the "Wage Portion") and remaining 80% will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). Portions of the Individual Class Payment paid to the Participating Class Members belonging only in the Wage

Statement Class will be treated 100% as penalties and interest, and will be included in the Non-Wage Portion. The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$40,000 to be paid from the Gross Settlement Amount, with 75% (\$30,000) allocated to the LWDA PAGA Payment and 25% (\$10,000) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$10,000) by the total number of Pay Periods by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Pay Periods. Based on a review of its records to date, Defendant estimates that the Customer Service Class Members collectively worked a total of 2,948 Pay Periods between April 20, 2018 and May 1, 2023. Defendant estimates that the Wage Statement Class Members who are not already part of the Customer Service Class worked a total of 2,396 Pay Periods between April 20, 2021 and May 1, 2023. This results in an estimated total of 5,344 Pay Periods.

4.2. Class Data. Not later than 30 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of

payroll taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 10 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will also send checks for Individual PAGA Payments to all Aggrieved Employees. If the recipient is both a Participating Class Member and Aggrieved Employees, the Payments may be contained on one check. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

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

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

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

6. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims

against all Released Parties as follows:

6.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences whether known or unknown, which exist or may exist on her behalf as of the date of this Agreement, including but not limited to any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code Section 17200 et seq., and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement or to any claims for vested benefits.. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

6.2 Release by Participating Class Members: All Participating Class Members will be bound by a release of all claims alleged in the operative First Amended Complaint ("Complaint"), as set forth below:

6.2.1 Participating Wage Statement Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint, including failure to provide accurate itemized wage statements under Labor Code section 226 (the "Wage Statement Class Released Claims"). The time period governing the Wage Statement Class Released Claims shall

be the Wage Statement Class Period.

6.2.2 Participating Customer Service Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, will release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint, including for (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to timely pay final wages; and (5) unfair and unlawful competition (the “Customer Service Class Released Claims”). The time period governing the Customer Service Class Released Claims shall be the Customer Service Class Period.

6.2.3 Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

6.3 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from any PAGA claims that Plaintiff alleged against the Released Parties, on behalf of Aggrieved Employees and State of California, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint and the PAGA Notice, as follows: (1) as alleged on behalf of the State of California and Aggrieved Employees who are in the Customer Service Class, Aggrieved Employees shall release all PAGA claims premised upon claims including unpaid minimum wages, unpaid overtime wages, failure to provide compliant meal periods, failure to timely pay wages, and failure to maintain employment records, and claims for penalties pursuant to Labor Code §§ 201-204, 210, 226, 226.7, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197 and 2699; and (2) as alleged on behalf of the State of California and Aggrieved Employees in the Wage Statement Class, Aggrieved Employees shall release all PAGA claims premised upon the claims for the violation of Labor Code § 226 and § 226.3 (the “Released PAGA Claims”). The operative release period for the Released PAGA Claims is the PAGA Period.

7. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

7.1 Defendant’s Declaration in Support of Preliminary Approval. Within 15 court days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and Defendant shall advise that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,

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

7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator, and all related documents.

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

8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected the Administrator to serve and verified that, as a condition of appointment, the Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

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

8.4 Notice to Class Members.

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

8.4.2 Using best efforts to perform as soon as possible, and in no event later than 10 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice [with Spanish translation, if applicable] substantially in the form attached to this Agreement as Exhibit A, or as modified by the Court and agreed to by the Parties. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Share Points Credited as a Class Member and number of Pay Periods as an Aggrieved Employee (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

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

8.4.4 The deadlines for Class Members’ written objections, Challenges to Share Points Credited and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the Response Deadline otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

8.4.5 If the Administrator, Defense Counsel, Class Counsel or Defendant are contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5 Requests for Exclusion (Opt-Outs).

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

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

8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Pay Periods. Each Class Member shall have until the Response Deadline (plus an additional [14] days for Class Members whose Class Notice is re-mailed) to challenge the number of Pay Periods that were allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Pay Periods to Defense Counsel and Class Counsel and the Administrator's

determination the challenges.

8.7 Objections to Settlement.

8.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

8.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

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

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

8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email the Exclusion List to Class Counsel and Defense Counsel containing (a) the Exclusion List containing names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion; (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

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

assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

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

8.8.5 Administrator's Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator must also provide a breakdown of the Gross Settlement Amount, high/low/average payments to Participating Class Members, the total Share Points and/or Pay Periods by Class Members and Aggrieved Employees and the per Pay Period value of each. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

8.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE. Based on its records, Defendant estimates that the Customer Service Class Members collectively worked a total of 2,948 Pay Periods between April 20, 2018 and May 1, 2023. Defendant estimates that the Wage Statement Class Members who are not already part of the Customer Service Class worked a total of 2,396 Pay Periods between April 20, 2021 and May 1, 2023. This results in an estimated total of 5,344 Pay Periods. If the total Pay Periods by the Customer Class between April 20, 2018 and May 1, 2023 and the Pay Periods by the Wage Statement Class Members who are not already in the Customer Service Class between April 20, 2021 and May 1, 2023 exceeds 5,879 (10% above 5,344) then either (1) Defendant will increase the gross settlement amount proportionately for the percentage of Pay Periods that exceeds 5,879 (i.e., an 11% increase in Pay Periods will result in a 1% increase of the Gross Settlement Amount) or (2) the Class Period and PAGA Period shall end on the date before the Pay Periods meet or exceed the 5,879 threshold but that date cannot be prior to May 1, 2023, at Defendant's option. If Defendant exercises the option to end the Class Period prior to August 1, 2023, Defendant must notify Class Counsel by August 25, 2023.

10. DEFENDANT’S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendant may, but are not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

11. MOTION FOR FINAL APPROVAL. Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than 5 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

11.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties’ obligations to perform under this Agreement will be

suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

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

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

13. ADDITIONAL PROVISIONS.

13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

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

Each Party agrees to immediately notify each other Party of any judicial or agency order,

inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party (excluding the individuals identified in (1) through (5) above) regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

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

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

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

13.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

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

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

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

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

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

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

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

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

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

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

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

To Plaintiff:

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

To Defendant:

Andrew M. Paley
apaley@seyfarth.com
Seyfarth Shaw LLP
2029 Century Park East, Suite 3500
Los Angeles, California 90067-3021
Tel: (310) 277-7200

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

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

Dated: July 27, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:



Susana Calderon (Jul 27, 2023 11:59 PDT)

Susana Calderon

Dated: July 27, 2023

CLASS COUNSEL:

LAUBY MANKIN LAUBY LLP



Brian J. Mankin
Attorneys for Plaintiff

Dated: July __, 2023

DEFENDANT:

THE PRUDENTIAL INSURANCE COMPANY OF
AMERICA

By: _____
Title: _____

To Defendant:

Andrew M. Paley
apaley@seyfarth.com
Seyfarth Shaw LLP
2029 Century Park East, Suite 3500
Los Angeles, California 90067-3021
Tel: (310) 277-7200

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Dated: July __, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

Susana Calderon

Dated: July __, 2023

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

Brian J. Mankin
Attorneys for Plaintiff

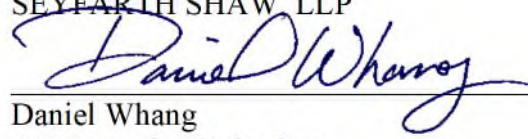
Dated: July 27, 2023

DEFENDANT:
THE PRUDENTIAL INSURANCE COMPANY OF
AMERICA

Kate Tekker
By: Kate Tekker
Title: VP, Global Total Rewards and HR Operations

Dated: July 27, 2023

DEFENDANT'S COUNSEL:
SEYEARTH SHAW LLP

A handwritten signature in blue ink, reading "Daniel Whang", is written over a horizontal line.

Daniel Whang
Attorneys for Defendant

END OF DOCUMENT

EXHIBIT “3”

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

This Class Action and PAGA Settlement Agreement ("Agreement") is made by and between plaintiff Susana Calderon ("Plaintiff") and defendant XYZ

(XYZ). The Agreement refers to Prudential Insurance Company of America ("Defendant" or "Prudential"). Plaintiff and XYZ Defendant shall collectively be referred to as "Parties," or individually as "Party."

1. DEFINITIONS.

1.1. "Action" means the Plaintiff's lawsuit alleging wage and hour violations against XYZ Defendant captioned Calderon v. Prudential Ins Co of America, which was initiated on April 20, 2022 and pending in Superior Court of the State of California, County of Los Angeles.

1.2. "Administrator" means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.

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

1.4. "Agreement" or "Settlement Agreement" shall mean this Class Action and PAGA Settlement Agreement, including the Class Notice.

~~1.4.1.5.~~ "Aggrieved Employee/Employees" means ~~[e.g., a person Plaintiff, all Wage Statement Class Members and all Customer Service Class Members who were employed by XYZ Defendant in the State of California and classified as a who worked for XYZ at any time during the PAGA Period].~~ Aggrieved Employees may not exclude themselves from receipt of the PAGA Penalties.

1.5. "Class" means [define class e.g., all persons employed by XYZ in California and classified as who worked for XYZ during the Class Period].

1.6. "Class" consists of shall be comprised of two classes: Wage Statement Class and Customer Service Class, as defined herein.

~~1.6.1.7.~~ "Class Counsel" means Brian Mankin and Misty Lauby of Lauby Mankin Lauby LLP.

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1.7.1.8. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

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1.8.1.9. “Class Data” means a complete list that Defendant will diligently and in good faith compile from their records and provide to the Settlement Administrator on one spreadsheet which shall include the Class Member identifying information in XYZ’s Defendant’s possession, including the Class Member’s name, last-known mailing address, Social Security number, and number of Pay Periods during the Class Period Workweeks and for the Customer Service Class Members and during the PAGA Pay PeriodsPeriod for the Wage Statement Class Members.

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1.9.1.10. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).

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1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available

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

1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, court approved notice of class action settlement to be

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

1.12. "Class Period" means the period from _____ to _____.

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

1.14. "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. "Complaint" refers to the operative complaint filed in the Action, alleging class action and representative PAGA action claims, which is pending in the Court and designated as Case No. 22STCV13172.

1.15-1.16. "Court" means the Superior Court of California, County of Los Angeles.

1.16. "XYZ" means named Defendant _____.

1.17. "Customer Service Class" includes all current and former non-exempt Prudential employees in the State of California whose primary job responsibilities were making and/or receiving calls, assisting customers, or answering customers' queries during the Customer Service Class Period.

1.18. "Customer Service Class Period" means the period from April 20, 2018, through the earlier of August 1, 2023 or the date that the Preliminary Approval Order is entered.

1.19. "Defendant" means The Prudential Insurance Company of America.

1.17-1.20. "Defense Counsel" means Seyfarth Shaw, LLP.

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

1.21. (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day-expiration date of the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day-after the deadline time for filing a notice of or noticing any appeal from of the Judgment; (b) if there is an appeal of the Judgment; or if a timely appeal from, the date the Judgment is affirmed on

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appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the California Supreme Court; or (c) if a petition for writ of certiorari is filed, the day after the appellate court affirms date of denial of the petition for writ of certiorari, or the date the Judgment and issues a remittitur is affirmed pursuant to such petition.

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1.22. "Exclusion List" means the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion.

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

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

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

1.22. "Gross Settlement Amount" or "GSA" means \$385,000, which is the total amount XYZ Defendant agrees to pay under the Settlement, except as provided in Paragraph 9 below, and except for the employer's share of applicable payroll tax obligations that Defendant shall separately pay. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual

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~~1.26. PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses.~~

~~1.23-1.27. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.~~ Share Points credited.

~~1.24-1.28. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked.~~ Pay Periods during the PAGA Period.

~~1.25-1.29. "Judgment" means the judgment entered by the Court based upon the Final Approval.~~

~~1.26-1.30. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).~~

~~1.27-1.31. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).~~

~~1.28-1.32. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.~~

~~1.29-1.33. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion. A Non-Participating Class Member shall receive their share of the PAGA Penalties.~~

~~1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for XYZ for at least one day during the PAGA Period.~~

~~1.31-1.34. "PAGA Period" means the period from to April 20, 2021, through the earlier of August 1, 2023 or the date that the Preliminary Approval Order is entered.~~

~~1.32-1.35. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698, et seq.).~~

~~1.33-1.36. "PAGA Notice" means Plaintiff's April 19, 2021, letter to XYZ Defendant and the LWDA and Plaintiff's letter to XYZ and the LWDA, providing notice pursuant to Labor Code section 2699.3, subd.(a).~~

~~1.34-1.37. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, (\$40,000), allocated 25% to the Aggrieved~~

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EmployeesEmployee (\$10,000) and 75% to LWDA (\$30,000) in settlement of PAGA claims.
() and the 75% to LWDA () in settlement of PAGA-
claims.

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~~1.35-1.38.~~ “Participating Class Member” means ~~all~~ Class ~~Member~~Members, who does not submit a valid and are deemed to participate, who will receive an Individual Class Payment, except for those who opt-out by submitting a timely valid Request for Exclusion from the Settlement.

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1.39. “Pay Periods” means all pay periods in which a Class Member worked at least one shift during the pay period.

~~1.36-1.40.~~ “Plaintiff” means

~~Susana Calderon, the named plaintiff in the Action.~~

~~1.37-1.41.~~ “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

~~1.38-1.42.~~ “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

~~1.39-1.43.~~ “Released Class Claims” means the claims being released as described in Paragraph 6.2 below.

~~1.40-1.44.~~ “Released PAGA Claims” means the claims being released as described in Paragraph 6.2 below.

~~1.41-1.45.~~ “Released Parties” means: ~~XYZ~~Defendant and ~~each~~its predecessors, successors, subsidiaries, parent companies, other corporate affiliates, and all of its ~~former and~~ present directors, officers, owners, shareholders, owners, ~~members,~~members, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, predecessors, successors, and assigns ~~subsidaries~~ [affiliates], and any other persons acting by, through, under or in concert with any of them.

~~1.42-1.46.~~ “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

~~1.43-1.47.~~ “Response Deadline” means ~~60~~45 days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

~~1.44-1.48.~~ “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.49. “Share Points” will be used to calculate a Class Member’s Individual Class Payment and will be credited as follows: (a) for each Pay Period Worked during the Customer Service Class Period by a Class Member who is a member of the Customer Service Class only

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(and not of the Wage Statement Class), the Class Member will be credited with a half (0.5) Share Point; (b) for each Pay Period Worked during the Wage Statement Class Period by a Class Member by who is a member of the Wage Statement Class only (and not of the Customer Service Class), the Class Member will be credited with one (1.0) Share Point; (c) for each Pay Period Worked during the Customer Service Class Period by a Class Member who is a member of both the Customer Service Class and Wage Statement Class, the Class Member will be credited with 1.2 Share Points; and (d) for each Pay Period Worked during the Customer Service Class Period by a Class Member who is a member of both the Customer Service Class and Wage Statement Class and is no longer employed by Defendant will be credited with 1.25 Share Points. The total combined share points in both classes will be referred to as a Class Member's Share Points.

1.50. "Share Points Credited" refers to the total combined Share Points that are credited to a Class Member from the Customer Service Class and Wage Statement Class.

1.51. "Wage Statement Class" includes all current and former non-exempt Prudential employees in the State of California at any time during the Wage Statement Class Period.

1.52. "Wage Statement Class Period" means the period from April 20, 2021, through the earlier of August 1, 2023 or the date that the Preliminary Approval Order is entered.

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

2. RECITALS.

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~~1.45. "Workweek" means any week during which a Class Member worked for XYZ for at least one day, during the Class Period.^{iv}~~

~~2.1. RECITALS.~~

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~~2.1. On _____ April 20, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against XYZ for _____.
[The Complaint is the operative complaint in the Action (the "Operative Complaint.")]
[Defendant. On _____ January 6, 2023, Plaintiff filed a [e.g., First Amended Complaint] alleging causes of action against XYZ for _____.
The [e.g., First Amended] Complaint is the operative complaint in the Action (the "Operative~~

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2.1. ~~Complaint.”}~~ XYZDefendant alleging the following causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Timely Pay Final Wages; (5) Failure to Provide Accurate Itemized Wage Statements; (6) Unfair and Unlawful Competition, (7) failure to maintain employment records and (8) related PAGA Claims. Defendant denies the allegations in the ~~Operative Complaint~~, ~~denies deny~~ any failure to comply with the laws identified in in the ~~Operative Complaint~~ and ~~denies deny~~ any and all liability for the causes of action alleged.

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2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to XYZDefendant and the LWDA by sending the PAGA Notice.

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2.3. On (type in additional dates), [May 1, 2022], the Parties

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2.3. participated in an all-day mediation presided over by which led to Jeffrey Krivis, which culminated in a mediator's proposal. The Parties accepted the mediator's proposal, and thereafter entered into this Agreement to settle the Action (describe alternative means of negotiation).

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(describe alternative means of negotiation)

2.4. Prior to the mediation and negotiating the Settlement, Plaintiff obtained, through

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2.4. formal and informal discovery, (documents, testimony, and information obtained), including but not limited to Defendant's written policies and practices, information relating to the size of the Class and Aggrieved Employees, number of Pay Periods, as well as a sampling of payroll and timekeeping records. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in Dunk v. Foot Locker Retail, Inc., (1996) 48 Cal.App.4th 1794, 1801 and Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129-130 ("Dunk/Kullar").

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2.5. The Court has has not granted class certification.

(insert details as needed)

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2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

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3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, XYZ promises Defendant agrees to pay \$-385,000 and no more as the Gross Settlement Amount, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. XYZ, Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount

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without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to XYZ Defendant.

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

3.2.1. — To Plaintiff, Class Representative Service Payment to the Class Representative of not more than \$ 7,500 (in addition to any Individual Class Payment [and any Individual PAGA Payment] the Class Representative is

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3.2.1. entitled to receive as a Participating Class Member)- XYZ and Aggrieved Employee). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments on a date set by the Court at the Preliminary Approval Hearing and no later than [16 court] days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than ~~-%,one-third of the GSA (33.333%)~~, which is currently estimated to be \$ ~~128,333.33~~ and a Class Counsel Litigation Expenses Payment of not more than \$ ~~XYZ20,000~~. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment on a date set by the Court at the Preliminary Approval Hearing and no later than [16 court] days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds XYZDefendant harmless, and indemnifies XYZDefendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

~~3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed~~
~~3.2.3. \$ 8,500, except for a showing of good cause and as approved by the Court.~~
~~To the extent the Administration Expenses are less or the Court approves payment less than \$ 8,500, the Administrator will retain the remainder in the Net Settlement Amount.~~

~~3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.~~

3.2.4. To Each Participating Class Member: Each Class Member will receive an amount based on the Class Member's Share Points, as defined above. Class Member's Share Points will be calculated from the Net Settlement Amount. A Class Member who is a member of the Customer Service Class only (and not of the Wage Statement Class) will receive 0.5 Share Point for each Pay Period Worked during the Customer Service Class Period. A Class Member by who is a member of the Wage Statement Class only (and not of the Customer Service Class) will receive 1.0 Share Point for each Pay Period Worked during the Wage Statement Class Period. A Class Member who is a member of both the Customer Service Class and Wage Statement Class will receive 1.2 Share Points for each Pay Period Worked during the Customer Service Class Period. A Class Member who is a member of both the Customer Service Class and Wage

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Statement Class and is no longer employed by Defendant will receive 1.25 Share Points for each Pay Period Worked during the Customer Service Class Period. The Net Settlement Amount will be divided by the number of Share Points credited to all Class Members, resulting in a value per Share Point (referred to as the Share Point Rate). The Administrator will multiply the Share Point Rate by the number of Share Points credited to each Class Member to determine the Individual Class Payment to each Participating Class Member.

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3.2.4.1. _____ Tax Allocation of Individual Class Payments. % _____ of each Participating Class Member's Portions of the Individual Class Payment paid to the Participating Class Members in the Customer Service Class will be allocated as 20% to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The % _____ of each Participating Class Member's Individual Class Payment") and remaining 80% will be allocated to settlement of claims for, e.g., interest and penalties (the

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3.2.4.1. "Non-Wage Portion": Portions of the Individual Class Payment paid to the Participating Class Members belonging only in the Wage Statement Class will be treated 100% as penalties and interest, and will be included in the Non-Wage Portion. The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$40,000 to be paid from the Gross Settlement Amount, with 75%

3.2.5. (\$30,000) allocated to the LWDA PAGA Payment and 25% (\$10,000) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$10,000 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, XYZ Defendant estimates there are that the Customer Service Class Members who collectively worked a total of Workweeks, and 2,948 Pay Periods between April 20, 2018 and May 1, 2023. Defendant estimates that the Wage Statement Class Members who are not already part of Aggrieved Employees who the Customer Service Class worked a total of PAGA Pay Periods of 2,396 Pay Periods between April 20, 2021 and May 1, 2023. This results in an estimated total of 5,344 Pay Periods.

4.2. Class Data. Not later than [e.g., 15] 30 days after the Court grants Preliminary Approval of the Settlement, XYZ Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. XYZ Defendant has a continuing

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

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

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4.3. Funding of Gross Settlement Amount. XYZDefendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay XYZ'sDefendant's share of payroll taxes by transmitting the funds to the Administrator no later than [4]30 days after the Effective Date.

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4.4. Payments from the Gross Settlement Amount. Within [4]10 days after XYZDefendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

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

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

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

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

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

6. ~~[OMITTED IN MODEL]~~

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

7.6.1. Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences ~~[that occurred during the Class Period], including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, [or ascertained during the Action and released under 6.2, below], whether known or unknown, which exist or may exist on her behalf as of the date of this Agreement, including but not limited to any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code Section 17200 et seq., and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, ("Plaintiff's Release.")~~ Plaintiff's Release does not extend to any claims or actions to enforce this Agreement; or to any claims for vested benefits, ~~unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period.~~ Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or

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additional facts or Plaintiff's discovery of them.

7.1.46.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542.

For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

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6.2 Release by Participating Class Members ~~Who Are Not Aggrieved Employees~~: All Participating Class Members will be bound by a release of all claims alleged in the operative First Amended Complaint ("Complaint"), as set forth below:

6.2.1 Participating Wage Statement Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release ~~the Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action] [, including, e.g., "(a) any failure to provide accurate itemized wage statements under Labor Code section 226 (the "Wage Statement Class Released Claims").~~ The time period governing the Wage Statement Class Released Claims shall be the Wage Statement Class Period.

6.2.2 Participating Customer Service Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, will release the Released Parties from all claims ~~involving any that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint, including for (1) failure to pay minimum wage; etc.]. Except as set forth in Section 6:~~ wages; (2) failure to pay overtime wages; (3 ~~of this Agreement,~~) failure to provide meal periods; (4) failure to timely pay final wages; and (5) unfair and unlawful competition (the "Customer Service Class Released Claims"). The time period governing the Customer Service Class Released Claims shall be the Customer Service Class Period.

6.2.3 Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

7.36.3 Release by ~~Non-Participating Class Members Who Are Aggrieved Employees~~: All ~~Non-Participating Class Members who are~~ Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from ~~all any~~ PAGA claims ~~that Plaintiff alleged against the Released Parties, on behalf of Aggrieved Employees and State of California, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint [,] and the PAGA Notice [and ascertained in the course, as follows: (1) as alleged on behalf of the Action]]~~ State of California and Aggrieved Employees who are in the Customer Service Class, Aggrieved Employees shall release all PAGA claims premised upon claims including, e.g., "(a) ~~any and all claims involving any alleged unpaid minimum wages, unpaid overtime wages, failure to provide compliant meal periods, failure to timely pay minimum wage; etc.]~~ wages, and failure to maintain employment records, and claims for penalties pursuant to Labor Code §§ 201-204, 210, 226, 226.7, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197 and 2699; and (2) as alleged on behalf of the State of California and Aggrieved Employees in the Wage Statement Class, Aggrieved Employees shall release all PAGA claims premised upon the claims for the violation

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of Labor Code § 226 and § 226.3 (the “Released PAGA Claims”). The operative release period for the Released PAGA Claims is the PAGA Period.

8.7. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

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8.7.1

XYZ’s Defendant’s Declaration in Support of Preliminary Approval. Within 15 court days of the full execution of this Agreement, XYZ Defendant will prepare and deliver to Class Counsel a signed Declaration from XYZ Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and XYZ Defendant shall advised that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

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

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

8.37.3 — Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator, and all related documents.

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

9.8. SETTLEMENT ADMINISTRATION.

9.1 Selection of Administrator. The Parties have jointly selected

8.1 to serve as the Administrator to serve and verified that, as a condition of appointment, the Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

9.28.2 — Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

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

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9.48.4 Notice to Class Members.

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

9.4.28.4.2 — Using best efforts to perform as soon as possible, and in no event later than [14]10 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice [with Spanish translation, if applicable] substantially in the form attached to this Agreement as Exhibit -A, or as modified by the Court and agreed to by the Parties. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of WorkweeksShare Points Credited as a Class Member, and PAGA number of Pay Periods as an Aggrieved Employee, (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

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

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9.4.48.4.4 — The deadlines for Class Members’ written objections, Challenges to WorkweeksShare Points Credited and/or Pay Periods, and Requests for Exclusion will be extended an additional [14] days beyond the [60]daysResponse Deadline otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

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9.4.5 — If the Administrator, XYZ or Defense Counsel, Class Counsel is or Defendant are contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than [14] days after

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~~8.4.5 receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.~~

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~~9.5.8.5 Requests for Exclusion (Opt-Outs).~~

~~9.5.48.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than [60] days after the Administrator mails the Class Notice the Response Deadline (plus an additional [14] days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.~~

~~9.5.28.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.~~

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~~9.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 8.5.3 6.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.~~

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~~9.5.48.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment. 6.4 of this Agreement and are eligible for an Individual PAGA Payment.~~

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~~9.6 Challenges to Calculation of Workweeks Pay Periods. Each Class Member shall have [60] days after until the Administrator mails the Class Notice Response Deadline (plus an additional [14] days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) that were allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the~~

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8.6 Administrator via fax, email, or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

9-7.7 Objections to Settlement.

9-7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

9-7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than [60] days after the Administrator's mailing of the Class Notice Response Deadline (plus an additional [14] days for Class Members whose Class Notice was re-mailed).

9-7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

9-8.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

9-8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes, and emails.

9-8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email the Exclusion List to Class Counsel and Defense Counsel containing (a) the Exclusion List containing names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion; (b) the names and other identifying

information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

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

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

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

9.8.58.8.5 Administrator’s Declaration. Not later than [14] days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator must also provide a breakdown of the Gross Settlement Amount, high/low/average payments to Participating Class Members, the total Share Points and/or Pay Periods by Class Members and Aggrieved Employees and the per Pay Period value of each. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

9.8.68.8.6 Final Report by Settlement Administrator. Within [10] days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least [15] days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator’s declaration in Court.

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~~10. CLASS SIZE ESTIMATES [and ESCALATOR CLAUSE]~~ Based on its records, XYZ estimates that, as of the date of this Settlement Agreement, (1) there are _____ Class Members and _____ Total Workweeks during the Class period and (2) there were _____ Aggrieved Employees who worked _____ Pay Periods during the PAGA Period.^{vii}

~~XYZ'S~~

~~9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.~~ Based on its records, Defendant estimates that the Customer Service Class Members collectively worked a total of 2,948 Pay Periods between April 20, 2018 and May 1, 2023. Defendant estimates that the Wage Statement Class Members who are not already part of the Customer Service Class worked a total of 2,396 Pay Periods between April 20, 2021 and May 1, 2023. This results in an estimated total of 5,344 Pay Periods. If the total Pay Periods by the Customer Class between April 20, 2018 and May 1, 2023 and the Pay Periods by the Wage Statement Class Members who are not already in the Customer Service Class between April 20, 2021 and May 1, 2023 exceeds 5,879 (10% above 5,344) then either (1) Defendant will increase the gross settlement amount proportionately for the percentage of Pay Periods that exceeds 5,879 (i.e., an 11% increase in Pay Periods will result in a 1% increase of the Gross Settlement Amount) or (2) the Class Period and PAGA Period shall end on the date before the Pay Periods meet or exceed the 5,879 threshold but that date cannot be prior to May 1, 2023, at Defendant's option. If Defendant exercises the option to end the Class Period prior to August 1, 2023, Defendant must notify Class Counsel by August 25, 2023.

~~11.10. DEFENDANT'S RIGHT TO WITHDRAW.~~ If the number of valid Requests for Exclusion identified in the Exclusion List exceeds % _____ 10% of the total of all Class Members, XYZDefendant may, but isare not obligated, elect to withdraw from the Settlement. The Parties agree that, if XYZDefendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, XYZDefendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. XYZDefendant must notify Class Counsel and the Court of its election to withdraw not later than [seven]7 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

~~12.11. MOTION FOR FINAL APPROVAL.~~ Not later than [16] court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than [seven]5 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

~~12.11.1 Response to Objections.~~ Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than [five]than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

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12.211.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

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

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11.3 settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

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

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

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

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14.13. ADDITIONAL PROVISIONS.

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14.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by XYZDefendant that any of the allegations in the Operative Complaint have merit or that XYZ hasDefendant have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that XYZ'sDefendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, XYZDefendant reserves the right to contest certification of any class for any reasons, and XYZDefendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest XYZ'sDefendant's defenses. The Settlement, this Agreement and Parties'Parties' willingness to

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

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

Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, XYZDefendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party (excluding the individuals identified in (1) through (5) above) regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

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

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

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

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

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

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

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

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

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

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

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

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

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

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~~14.15~~13.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

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~~14.16~~13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

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~~14.17~~13.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

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To Plaintiff:

Brian Mankin

brian@LMLfirm.com

Lauby Mankin Lauby LLP

5198 Arlington Ave, PMB 513

Riverside, CA 92504

Tel: (951) 320-1444 | Fax: (951) 320-1445

To XYZDefendant:

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Andrew M. Paley

apaley@seyfarth.com

Seyfarth Shaw LLP

2029 Century Park East, Suite 3500

Los Angeles, California 90067-3021

Tel: (310) 277-7200

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~~14.18~~13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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14.1913.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

~~For XYZ~~

~~Counsel For XYZ~~

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

(case name and number)

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

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

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

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

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

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

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

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

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

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

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

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

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a[n] [former] XYZ employee. The Action accuses XYZ of violating California labor laws by failing to pay [e.g., overtime wages, minimum wages, wages due upon termination and reimbursable expenses] and failing to provide [e.g., meal periods, rest breaks and accurate-itemized wage statements]. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action:

_____. ("Class Counsel.")

XYZ strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

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

So far, the Court has made no determination whether XYZ or Plaintiff is correct on the merits.

In the meantime, Plaintiff and XYZ hired ☐ an experienced, neutral mediator ☐ a retired judge

☐ _____ (describe alternative means of negotiation) _____

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

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

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

1. ~~XYZ Will Pay \$ _____ as the Gross Settlement Amount (Gross Settlement). XYZ has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, XYZ will fund the Gross Settlement not more than [14] days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.~~
2. ~~Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:~~
 - A. ~~Up to \$ _____ (_____ % of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$ _____ for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.~~
 - B. ~~Up to \$ _____ as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.~~
 - C. ~~Up to \$ _____ to the Administrator for services administering the Settlement.~~
 - D. ~~Up to \$ _____ for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.~~

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

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

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

4. ~~Taxes Owed on Payments to Class Members.~~ Plaintiff and XYZ are asking the Court to approve an allocation of % _____ of each Individual Class Payment to taxable wages (“Wage Portion”) and % _____ to [e.g., interest, etc.] (“Non Wage Portion.”). The ~~Wage Portion~~ is subject to withholdings and will be reported on IRS W-2 Forms. [Option 1: (XYZ will separately pay employer payroll taxes it owes on the Wage Portion.)] The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

5. ~~Need to Promptly Cash Payment Checks.~~ The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies
- ☐ will be deposited with the California Controller’s Unclaimed Property Fund in your name.
 - ☐ will irrevocably lost to you because they will be paid to a non-profit organization or foundation (“Cy Pres”).

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

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

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

- ~~7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and XYZ have agreed that, in either case, the Settlement will be void: XYZ will not pay any money and Class Members will not release any claims against XYZ.~~
- ~~8. Administrator. The Court has appointed a neutral company, _____ (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.~~
- ~~9. Participating Class Members’ Release. After the Judgment is final and XYZ has fully-funded the Gross Settlement [Option 1: (and separately paid all employer payroll taxes)], Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against XYZ or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.~~

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

~~All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action] [including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.]. Except as set forth in Section 6.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.^{viii}.~~

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

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

~~All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint[,] [and] the PAGA Notice [and ascertained in the course of the Action][including, e.g., (a) any and all claims involving any alleged failure to pay minimum wage; etc.].~~

~~4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?~~

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

~~You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept XYZ's calculation of Workweeks and/or Pay Periods based on XYZ's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and XYZ's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.~~

~~5. HOW WILL I GET PAID?~~

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

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

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

HOW DO I OPT-OUT OF THE Dated: July _____, 2023 **PLAINTIFF AND CLASS REPRESENTATIVE:**

Susana Calderon

6. Dated: July _____, 2023 CLASS SETTLEMENT?

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

7. HOW DO I OBJECT TO THE SETTLEMENT?

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

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

~~to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. The deadline for sending written objections to the Administrator is _____.~~ Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. ~~Make sure you identify the Action _____ and include your name, current address,~~

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

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

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

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

9. HOW CAN I GET MORE INFORMATION?

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

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

Class Counsel:-

Name of Attorney:-

Email Address:-

Name of Firm:-

Mailing Address:-

Telephone:-

Settlement Administrator:-

Name of Company:-

Email Address:
Mailing Address:
Telephone:
Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void

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

☐ you will have no way to recover the money.

11. WHAT IF I CHANGE MY ADDRESS?

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

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

LAUBY MANKIN LAUBY LLP

ⁱⁱ Whether the “date of preliminary approval” yields a fair and adequate payment to Class Members may depend on whether the Class Members, in exchange for their releases of claims, receive consideration for time worked between the date when parties reached a settlement and the date of preliminary approval. The Parties’ *Kullar* analysis must give the Court sufficient information to allow the Court to determine whether the Gross Settlement Amount “represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation.” (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 94–95, internal quotation marks omitted.)

ⁱⁱⁱ See endnote ii above.

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

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

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

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

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

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Brian J. Mankin

Attorneys for Plaintiff

Dated: July _____, 2023

DEFENDANT:
THE PRUDENTIAL INSURANCE COMPANY OF
AMERICA

By: _____
Title: _____

Dated: July _____, 2023

DEFENDANT'S COUNSEL:
SEYFARTH SHAW, LLP

Andrew Paley

Attorneys for Defendant

END OF DOCUMENT

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EXHIBIT “4”



April 19, 2022

Sent Via Online Filing to the LWDA
California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail
Prudential Ins Co of America
751 Broad Street
Newark, Essex, NJ 07102

**Re: PAGA Civil Penalty Claim
Susana Calderon v. Prudential Ins Co of America**

To the Labor and Workforce Development Agency and Prudential Insurance Co of America:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Susana Calderon (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against her employer(s), Prudential Ins Co of America and/or any affiliated entities, for violations of Labor Code §§ 200, 201, 202, 203, 204, 210, 218.6, 221-223, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant has been employed by the Company from approximately January 18, 2022 to present. Claimant alleges that, at all relevant times, she and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during her employment.

At all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately compensate for all hours worked. For example, Claimant and the Aggrieved Employees were customer service representatives who worked from home and were required to log into their computers while off-the-clock to receive their schedules for the following day due to the Company’s practice of changing the schedules after hours which required Claimant to double check her schedule late at night or early in the morning to ensure she would be ready to perform her duties at the correct time. Therefore, the Company failed to pay proper overtime for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company’s policies and practices, as well as the

hectic and demanding workload, Claimant was subjected to meal period violations when he was: (1) scheduled to take lunch after the 5th hours but their entered meal period time was later fraudulently changed to reflect that meal periods were taken prior to the 5th hour, (2) forced to take a shortened meal period, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period for shifts in excess of 10 hours. Specifically, Claimant and the Aggrieved Employees were expected to take customer service calls up through the minute before their lunch was scheduled which resulted in meal periods that were not taken at the scheduled times often resulting in late or otherwise noncompliant meal periods. On some occasions, the meal periods were scheduled after the 5th hour. Moreover, the company would adjust the meal period time records to avoid paying premiums on noncompliant meal periods.

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining a smart phone and home Wifi and related monthly data plan to log in order to perform their work for the Company.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period. Also, the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment.

Finally, during her employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a). For instance, the Company directly violated Labor Code § 226(a) by failing to correctly state the regular hourly rate of pay and displaying a rounded overtime payment that makes it impossible for employees to calculate whether they are being paid correctly from the wage statement alone. Further, there are derivative wage statement violations including: failure to accurately state gross wages earned; failure to accurately state total hours worked; failure to accurately state all deductions; failure to accurately state net wages earned; and, failure to state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. As a result of these violations, and others described below, Claimant alleges that she and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

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

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

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately compensate for all hours worked. This resulted in earned, but unpaid, minimum and overtime wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimant and the Aggrieved Employees worked in excess of 8 and/or 12 hours per day, and/or forty hours per week without receiving proper payment of the requisite overtime and/or doubletime wages for all hours worked pursuant to Labor Code §§ 204 and 510 and/or the applicable IWC Wage Order. Claimant and the Aggrieved Employees were also not paid all earned wages to which they were



entitled at the rates agreed upon by the Company.

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

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS
AND WAGE PREMIUMS**

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

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

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

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties without reimbursement. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802



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

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

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

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

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

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

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

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

(Labor Code §§ 226, 226.3, and 1174)

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



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

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimant and all Aggrieved Employees due to direct and derivative violations including: failure to accurately state gross wages earned; failure to accurately state total hours worked; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates; and failure to accurately state the corresponding number of hours worked at each hourly rate. Accordingly, Claimant is entitled to damages under Labor Code § 226(e), including reasonable attorneys' fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR FAILURE TO MAINTAIN EMPLOYMENT RECORDS

(Labor Code §§ 1174, 1174.5, and § 7 of the IWC Wage Orders)

Labor Code § 1174(d), and § 7 of the IWC Wage Orders require employers to maintain accurate employment records, including accurate payroll records showing the total number of regular and overtime hours worked each day by employees, including meal periods, and the gross wages earned by the employee, including all applicable pay rates and the corresponding number of hours worked at each pay rate, among other requirements.

Here, the Company failed to maintain accurate employment records as mandated by California law by intentionally making changes to the meal period time records to avoid premiums on noncompliant meal periods. Therefore, in addition to recovering the amount of attorneys' fees and cost incurred herein, Claimant is entitled to the assessment of civil penalties in accordance with Labor Code §§ 1174(d), 1174.5, 1199, and 2699.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

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

ATTORNEYS' FEES, INTEREST, AND PENALTIES

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

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimant seeks the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimant is entitled to



bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimant's notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to her employment and/or other employees of the Company, she reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Misty M. Lauby, Esq.
E-mail: misty@lmlfirm.com
www.LMLfirm.com



EXHIBIT “5”