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pursuant to Labor Code § 2698 *et seq.*

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THE REINFORCED EARTH COMPANY

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

ROBERT YANEZ, on behalf of himself and
all "aggrieved employees" pursuant to
Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

THE REINFORCED EARTH COMPANY,
a Delaware corporation, and DOES 1
through 10, inclusive,

Defendants.

CASE NO: CIVSB2212908

Assigned to the Hon. Gilbert Ochoa, Dept. S24

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: June 21, 2022

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims ("Settlement Agreement") is made and
3 entered into by and between Plaintiff Robert Yanez ("Plaintiff" or "Class Representative"),
4 individually and on behalf of the members of the Class (as defined below), by and through his
5 counsel of record, and Defendant The Reinforced Earth Company, a Delaware corporation
6 ("Defendant"), by and through its counsel of record, subject to the terms and conditions herein and
7 the Court's approval, as set forth below. This Settlement Agreement is intended by Plaintiff and
8 Defendant to fully, finally, and forever resolve, discharge, and settle the Released Claims (as
9 defined below), upon and subject to the terms and conditions hereof.

10 **A. DEFINITIONS.** As used herein, for the purposes of this Settlement Agreement only, the
11 following terms shall be defined as set forth below:

12 1. The "**Action**" refers to the action entitled to *Robert Yanez v. The Reinforced Earth*
13 *Company*, San Bernardino County Superior Court Case No. CIVSB2212908, pending before the
14 Superior Court of the State of California for the County of San Bernardino.

15 2. The "**Aggrieved Employees**" shall be defined as "all current and former employees
16 of Defendant who were employed in California as a non-exempt, hourly paid employee during the
17 PAGA Period.

18 3. The "**Class Counsel**" refers to Daniel F. Gaines and Alex P. Katofsky of Gaines &
19 Gaines, APLC are counsel of record for Plaintiff. For purposes of this Settlement Agreement only,
20 the firm of Gaines & Gaines, APLC shall be designated as "Class Counsel."

21 4. The "**Class Members**" or "**Class Member**" refer to all members of the "Settlement
22 Class."

23 5. The "**Class Notice**" refers to the form of direct-mail notice to Class Members,
24 substantially in the form attached hereto as "Exhibit 1," as may be modified by the Court.

25 6. The "**Class Period**" is defined as July 1, 2020 through July 31, 2023.

26 7. The "**Class Representative**" refers to Plaintiff Robert Yanez.

27 8. The "**Class Workweeks**" refers to the number of workweeks worked by each Class
28 Member during the Class Period.

1 9. The “**Effective Date**” is the date the Court signs an order granting final approval of
2 the settlement and entering judgment thereon (the “Effective Date”). If objections to the settlement
3 are filed, the Effective Date of the settlement is the sixty-fifth (65th) day after notice of the Final
4 Approval Order is mailed, unless an appeal is filed, in which case the Effective Date is the day after
5 (1) the settlement is upheld by the Court of Appeals, or (2) all appeals are dismissed.

6 10. The “**Employer Taxes**” refers to all applicable federal, state, and local income and
7 employment taxes, including, but not limited to, any portion of such taxes that are to be paid by an
8 employer, and including, but not limited to, Unemployment Insurance, Employment Training Tax,
9 FICA (Social Security and Medicare), State Disability Insurance, and state and federal personal
10 income taxes.

11 11. The “**Final Approval Order**” refers to the final order by the Court approving the
12 Settlement Agreement and entering Judgment following a hearing at which the Court will make a
13 final determination whether the terms of the Settlement Agreement are fair, reasonable, and
14 adequate for the Settlement Class and meet all applicable requirements for approval.

15 12. The “**Gross Settlement Amount**” refers to a non-reversionary negotiated dollar
16 amount of this Settlement Agreement, which equals TWO HUNDRED THOUSAND SIXTY
17 THOUSAND U.S. DOLLARS AND ZERO CENTS (\$260,000.00) subject to any increase based
18 on the escalator provision in Paragraph H(16) herein. The Gross Settlement Amount includes the
19 following: all Individual Settlement Payments to Class Members; all awards to Class Counsel for
20 attorneys’ fees and litigation costs and expenses, including, without limitation, all such fees and
21 costs incurred to date, as well as such fees and costs to be incurred in documenting the settlement,
22 providing any notices required as part of the settlement, securing Court approval of the settlement,
23 and obtaining judgment in the Action; the Incentive Award to the Class Representative as approved
24 by the Court; the PAGA Payment; and all Settlement Administration Costs, including, without
25 limitation, settlement administration fees and expenses. The Gross Settlement Amount does not
26 include Defendant’s share of Employer Taxes. Defendant shall pay Employer Taxes separately
27 from, and in addition to, the Gross Settlement Amount.

1 13. The “**Individual PAGA Payments**” refer to the payment made to the Aggrieved
2 Employees of their pro rata share of the twenty-five percent (25%) of the PAGA Payment
3 distributed to the Aggrieved Employees, or each of them, in accordance with the provisions of
4 Paragraph C(2).

5 14. The “**Individual Settlement Payments**” refers to the portion of the Net Settlement
6 Proceeds distributable to each Class Member who participates in the Class Settlement (i.e., who
7 does not submit a valid request for exclusion form). Individual Settlement Proceeds shall be
8 determined in accordance with the provisions of Paragraph C(3).

9 15. The “**LWDA**” refers to the California Labor & Workforce Development Agency.

10 16. The “**Net Settlement Proceeds**” shall be defined as the Gross Settlement Amount,
11 less the amounts approved and awarded by the Court for: attorney’s fees and documented litigation
12 costs and expenses incurred or advanced by Class Counsel; the Incentive Award to the Class
13 Representative; the payment to the LWDA pursuant to PAGA; and the costs of administering the
14 settlement.

15 17. The “**Objection**” refers to process by which Class Members may object to the terms
16 and conditions of this Settlement Agreement.

17 18. The “**PAGA Claims**” refers to the causes of Action for civil penalties brought by
18 Plaintiff on behalf of all Aggrieved Employees pursuant to the California Private Attorneys General
19 Act, Labor Code section 2698 *et seq.* during the PAGA Period as set forth in the PAGA Notice and
20 First Amended Complaint.

21 19. “**PAGA Notice**” refers to the letter sent on behalf of Plaintiff to the LWDA on April
22 15, 2022, providing notice of intent to file the PAGA Claims.

23 20. “**PAGA Payment**” refers to all payments made to satisfy the settlement of the
24 PAGA Claim as set forth in Paragraph C(1).

25 21. The “**PAGA Period**” is defined as April 15, 2021 through July 31, 2023,

26 22. The “**Parties**” or “**Party**” refers to Plaintiff, the Settlement Class (as defined
27 below), and Defendant, or each of them. are collectively referred to herein as “the Parties.”
28

1 23. The “**Preliminary Approval Order**” refers to the order by the Court granting
2 preliminary approval to the Settlement Agreement and directing the Parties to disseminate Class
3 Notice to the Class Members.

4 24. The “**Qualified Settlement Fund**” refers to the settlement fund that the Settlement
5 Administrator shall establish that meets the requirements of a Qualified Settlement Fund (“QSF”)
6 under US Treasury Regulation section 468B-1.

7 25. The “**Request for Exclusion**” means the submission of a written request by a Class
8 Member to be excluded from the Settlement, which is signed by the Class Member in the form
9 attached hereto as “**Exhibit 2.**”

10 26. The “**Settlement Class**” shall be defined as “all current and former employees of
11 Defendant who were employed in California as a non-exempt, hourly paid employee during the
12 Class Period, excluding those who executed a release of Defendant.” Defendant represents that
13 this Class contains no more than approximately 80 Class Members who worked an estimated 4,723
14 workweeks during the Class Period through May 8, 2023. Any Class Member who files a timely
15 request for exclusion, as detailed below, will be excluded from the final Settlement Class.

16 27. The “**Settlement Administrator**” refers to Phoenix Class Action Administration
17 Solutions (“Phoenix”), an independent third-party that will be engaged by Class Counsel and paid
18 out of the Gross Settlement Amount, with the approval of Defendant, to perform the notice,
19 administration, and distribution functions further described in this Settlement Agreement in **Section**
20 **F.**

21 28. The “**Settlement Administration Costs**” or “**Claims Administration Expenses**”
22 refers to the amount for which Class Counsel shall petition this Court for compensation of the
23 Settlement Administrator for services in administering this settlement pursuant to Section C(7) of
24 the Settlement Agreement. The Settlement Administration Costs shall be paid from the Gross
25 Settlement Amount

1 **B. RECITALS.**

2 1. On April 15, 2022, Plaintiff submitted his PAGA Notice to the LWDA.

3 2. **The Action.** On June 21, 2022, Plaintiff initiated his Action in the San Bernardino
4 County Superior Court by filing a representative action complaint, pursuant to PAGA, on behalf of
5 himself and all other similarly situated individuals. As part of the settlement approval process,
6 Plaintiff will file an amended complaint adding standalone class action allegations (the "First
7 Amended Complaint")

8 3. As part of the approval of this Settlement, Plaintiff will file a First Amended
9 Complaint substantially in the form attached hereto as **Exhibit 3** which asserts claims against
10 Defendant for (1) failure to pay all minimum and overtime wages due (Labor Code §§ 510, 1194,
11 and 1194.2 and IWC Wage Order 16-2001); (2) failure to provide rest periods or compensation in
12 lieu thereof (Labor Code § 226.7 and IWC Wage Order 16-2001); (3) failure to provide meal
13 periods or compensation in lieu thereof (Labor Code §§ 226.7, 512 and IWC Wage Order 16-2001);
14 (4) knowing and intentional failure to comply with itemized employee wage statement provisions
15 (Labor Code §§ 226(a) and (e)); (5) failure to timely pay wages due at the separation of employment
16 (Labor Code §§ 201-203); (7) violation of Business and Professions Code § 17200 for underlying
17 violations of the Labor Code as set forth in the complaint in the Action; and (8) civil penalties
18 pursuant to PAGA for underlying violations of the Labor Code as set forth in the complaint in the
19 Action.

20 4. **No Admissions.** The Parties expressly acknowledge that this Settlement
21 Agreement is entered into solely for the purpose of compromising significantly disputed claims
22 and that nothing herein is an admission of liability or wrongdoing by Defendant or any of the
23 other Released Parties

24 (a) Defendant denies any liability or wrongdoing of any kind associated with
25 the claims alleged in the Action, and further denies that the Action is appropriate for class
26 treatment for any purpose other than this Settlement. Defendant contends that it has complied at
27 all times with California law, including the California Labor Code. It is Defendant's position
28 that, if this case were to be litigated, class certification would be inappropriate for many reasons,

1 including: Plaintiff is not an adequate Class Representative, Plaintiff's claims are not typical of
2 putative class members, and individual issues predominate over class issues, among other
3 defenses. The Action, the negotiation and execution of this Settlement Agreement, and all acts
4 performed or documents executed pursuant to or in furtherance of this Settlement Agreement (i)
5 shall not be used as an admission, or as evidence of wrongdoing by the Defendant, or for any
6 other purpose whatsoever; (ii) shall not be an admission or evidence of fault on behalf of
7 Defendant in any action before a civil court, criminal court, administrative agency of any type,
8 or other tribunal; and (iii) shall not be deemed to be, and may not be used as, an admission or
9 evidence of the appropriateness of these or similar claims for class certification in the Action or
10 with respect to any other proceeding whatsoever.

11 (b) The Class Representative contends that Defendant violated the California
12 Labor Code and Industrial Welfare Commission Wage Order(s), and that this case is
13 appropriate for class certification.

14 5. **Diligent Efforts.** Class Counsel represent that they have conducted a thorough
15 investigation into the facts and law during the prosecution of this class action case, including the
16 exchange of extensive formal and informal discovery and the review and verification of statistical
17 data and other facts and information provided by Defendant. Counsel for the Parties also represent
18 that they have investigated the applicable law as applied to the facts discovered regarding the
19 alleged claims of Plaintiff and potential defenses thereto, and the damages and other losses claimed
20 by Plaintiff.

21 6. The Parties agreed to participate in nonbinding mediation of Plaintiff's claims. On
22 May 8, 2023, following their exchange of information and documents regarding the Settlement
23 Class and the claims and defenses asserted by the Parties, the Parties engaged in arm's-length
24 negotiations with the assistance of an experienced wage and hour mediator, Michael Leb, Esq. Mr.
25 Leb ended the mediation session with a mediator's proposal, which both Parties accepted to reach
26 the resolution of the Action set forth herein.

27 7. **Settlement in the Interests of the Settlement Class.** Based on their own
28 independent investigation and evaluation, Class Counsel are of the opinion (and will so represent

1 to the Court) that settlement for the consideration and on the terms set forth in this Settlement
2 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
3 light of all known facts and circumstances, including the risk of significant delay, the risk the
4 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.
5 Defendant and its counsel also agree (and will so represent to the Court) that this settlement is fair
6 and in the best interest of the Settlement Class.

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

15 **C. COMPENSATION TO SETTLEMENT CLASS AND AGGRIEVED EMPLOYEES.**

16 1. **PAGA Payments:** The Parties agree that Twenty Thousand Dollars (\$20,000) from
17 the Gross Settlement Amount shall be allocated to settle all claims brought pursuant to PAGA. The
18 Settlement Administrator shall pay Seventy-Five percent (75%), or Fifteen Thousand Dollars
19 (\$15,000), from that amount directly to the LWDA. The remaining Twenty-Five percent (25%), or
20 Five Thousand Dollars (\$5,000), shall be included in the Net Settlement Proceeds and distributed
21 to the Aggrieved Employees on a *pro rata* basis as their Individual PAGA Payment.

22 2. **Calculation of Individual PAGA Payments to Aggrieved Employees:** The
23 Individual PAGA Payment to each Aggrieved Employee shall be determined by dividing the Five
24 Thousand Dollars and Zero Cents (\$5,000.00) allocated to the Aggrieved Employees by the total
25 number of weeks worked by all Aggrieved Employees during the PAGA Period, resulting in the
26 PAGA workweek value; and then multiplying the PAGA workweek value by the number of weeks
27 worked by each Aggrieved Employee during the PAGA Period.

28 3. **Calculation of the Individual Settlement Payments to Class Members:** The Net

1 Settlement Proceeds, less the allocation to PAGA for the Individual PAGA Payments to Aggrieved
2 Employees, shall be divided among Class Members based on the Class Members' number of Class
3 Workweeks worked during the Class Period. The Settlement Administrator will calculate each
4 Class Member's pro rata share of the Net Settlement Proceeds by dividing the total number of Class
5 Workweeks worked by all Class Members, net of opt outs, during the Class Period into the Net
6 Settlement Proceeds (i.e., the "Workweek Value"), and then multiplying the Workweek Value by
7 the number of Class Workweeks actually worked by each participating Class Member during the
8 Class Period..

9 4. **Incentive Award and General Release Payment to Class Representative:** Class
10 Counsel will petition the Court for the Incentive Award to the Class Representative to compensate
11 him for his time and energy spent in serving as the Class Representative and as consideration for
12 the individual release and waiver of Section 1542 of the California Civil Code as set forth in this
13 Paragraph C(4). Class Counsel's application for the Incentive Award to the Class Representative
14 will not exceed a total of Twelve Thousand Dollars (\$12,000). As long as the total amount
15 requested or awarded does not exceed Twelve Thousand Dollars (\$12,000), Defendant agrees not
16 to oppose the application for the Incentive Award to the Class Representative and to pay the amount
17 awarded by the Court out of the Gross Settlement Amount. The Class Representative will be
18 provided an IRS Form 1099 for all amounts paid as to him as the Incentive Award to the Class
19 Representative. The Incentive Award to the Class Representative shall be independent of any other
20 benefits to which the Class Representative may be entitled as Class Members pursuant to this
21 Settlement Agreement and its plan of allocation. The Incentive Award to the Class Representative
22 will be paid by the Settlement Administrator from the Gross Settlement Amount within fifteen (15)
23 days of after its receipt thereof. Any reduction by the Court in the Incentive Award to the Class
24 Representative will be distributed to all Class Members on a *pro rata* basis proportionate to the
25 amounts due to each Class Member under this Settlement Agreement, in accordance with Paragraph
26 C(3). The Incentive Award to the Class Representative is paid in consideration for the general
27 release of all claims and waiver of California Civil Code section 1542, and the execution of this
28 Settlement Agreement and the accompanying general release and Section 1542 waivers in this

1 Settlement Agreement below are conditions precedent to payment of the Incentive Award to the
2 Class Representative. The Incentive Award to the Class Representative shall be deemed to be paid
3 to the Class Representative solely in the year in which such payment is received by the Class
4 Representative. It is expressly understood and agreed that the receipt of such payment will not
5 entitle the Class Representative to additional compensation or benefits under any company bonus,
6 contest, or other compensation or benefit plan or agreement in place during the Class Period, nor
7 will it entitle the Class Representative to any increased retirement, 401K benefits or matching
8 benefits, or deferred compensation benefits. It is the intent of this Settlement Agreement that Class
9 Representative is not entitled to any new or additional compensation or benefits outside of this
10 Settlement Agreement as a result of having received the Incentive Award.

11 **5. Attorney's Fees:** An award to Class Counsel of attorney's fees will be deducted
12 from the Gross Settlement Amount located in the Qualified Settlement Fund. Class Counsel shall
13 apply to the Court for approval of an award of attorneys' fees in an amount that will not exceed
14 thirty-three and one-third percent (33-1/3%) of the Gross Settlement Amount, in accordance with
15 the applicable legal precedent therefore, and conditioned upon the Settlement Agreement reaching
16 its Effective Date. As long as the total amount requested or awarded does not exceed thirty-three
17 and one-third percent (33-1/3%) of the Gross Settlement Amount, Defendant agrees not to oppose
18 the application for attorneys' fees and to pay such amounts as requested by Class Counsel and
19 awarded by the Court, up to projected to be Eighty-Six Thousand Six Hundred Sixty-Six Dollars
20 and Sixty-Seven Cents (\$86,666.67), which shall be paid out of the Gross Settlement Amount
21 located in the Qualified Settlement Fund. Any reduction by the Court in attorneys' fees awarded to
22 Class Counsel will be added to the Net Settlement Proceeds and distributed to Class Members on
23 a *pro rata* basis. Payment shall be made by the Settlement Administrator from the Gross Settlement
24 Amount located in the Qualified Settlement Fund to Class Counsel as they direct, within fifteen
25 (15) days after its receipt thereof. Defendant shall not be liable, and Class Counsel agrees to
26 indemnify and hold Defendant harmless, for any tax implications as a result of any such election.
27 An IRS Form 1099 will be issued to Class Counsel with respect to its award of attorneys' fees.

28 **6. Attorneys' Costs and Expenses:** Class Counsel shall also apply to the Court for

1 approval of an award of litigation costs and expenses in an amount not to exceed Fifteen Thousand
2 Dollars (\$15,000), in accordance with the applicable legal precedent therefore, and conditioned
3 upon the Settlement Agreement reaching its Effective Date. Defendant agrees not to oppose the
4 application for litigation costs and expenses and to pay such amounts as requested by Class Counsel
5 and awarded by the Court, up to Fifteen Thousand Dollars (\$15,000), which shall be paid out of
6 the Gross Settlement Amount. Any reduction by the Court in litigation costs and expenses awarded
7 to Class Counsel will be added to the Net Settlement Proceeds and distributed to Class Members
8 on a *pro rata* basis. Payment shall be made by the Settlement Administrator from the Gross
9 Settlement Amount to Class Counsel as they direct, within fifteen (15) days after its receipt thereof.
10 An IRS Form 1099 will be issued to Class Counsel with respect to its award of costs and expenses.

11 7. **Settlement Administration Costs:** Class Counsel shall apply to the Court for
12 approval of an award of Settlement Administration Costs not to exceed Seven Thousand Dollars
13 (\$7,000) in order to compensate the Settlement Administrator in its efforts in administering this
14 settlement in accordance with Section F of this Settlement Agreement. These fees shall include any
15 costs associated with the required tax reporting on any Individual Payment Amounts, and the
16 issuing of any and all W-2 and 1099 forms. Defendant shall not oppose any request for Settlement
17 Administration Costs not exceeding Seven Thousand Dollars (\$7,000). Any award of Settlement
18 Administration Costs shall be paid from the Gross Settlement Amount. Defendant shall not be
19 responsible for any amounts charged by the Settlement Administrator in excess of the amount
20 awarded by the Court. Expenses were not negotiated until a settlement was reached as to all major
21 issues pertaining to the claims of the Class.

22 8. **No Warranty by Defendant:** Plaintiff understands and agrees that Defendant is
23 not providing Plaintiff or Class Members with tax or legal advice and that Defendant makes no
24 representations regarding tax obligations or consequences, if any, related to this Settlement
25 Agreement.

26 **D. EMPLOYER TAXES.**

27 1. The Parties agree that twenty percent (20%) of the Individual Settlement Payments
28 to Class Members shall be considered payment of wages as reported on an IRS Form W2 and

1 subject to applicable withholding of all usual and applicable local, state, and federal taxes including
2 payroll taxes.

3 2. The Parties further agree that forty percent (40%) of the Individual Settlement
4 Payments to Class Members shall be considered as the payment of penalties associated with unpaid
5 wages and other claims asserted and the remaining forty percent (40%) of the Individual Settlement
6 Payments to Settlement Class Members shall be considered payment of interest, and neither the
7 penalties nor interest portions of the Individual Settlement Payments to Class Members shall be
8 subject to any withholdings and shall be reflected on IRS Forms 1099 issued to members of the
9 Settlement Class.

10 3. The Parties further agree that Individual PAGA Payments to Aggrieved Employees
11 shall be considered as payment as penalties and shall be reflected on IRS Forms 1099 issued to the
12 Aggrieved Employees.

13 4. Defendant's portion of Employer Taxes shall be paid into the Qualified Settlement
14 Fund in addition to and separate from the Gross Settlement Amount. The Settlement Administrator
15 shall provide Defendant an accounting of the amount due for its portion of Employer Taxes no later
16 than seven (7) calendar days after the Effective Date. Defendant shall provide its portion of
17 Employer Taxes to Settlement Administrator in addition to, and concurrently with, the Gross
18 Settlement Amount.

19 5. The Settlement Administrator shall pay, of the Qualified Settlement Fund holding
20 the Gross Settlement Amount, Defendant's share Employer Taxes and withholdings on that portion
21 of Individual Settlement Payments to Settlement Class Members that is allocated to wages to the
22 relevant state and federal taxing agencies in accordance with applicable law and regulations on
23 behalf of Defendant. The Settlement Administrator will also be responsible for issuing any required
24 state and federal reporting documents (such as IRS Forms W-2s and 1099s) to members of the
25 Settlement Class, Class Counsel, and the Class Representative on behalf of Defendant.

26 6. The Settlement Administrator shall withhold appropriate federal, state, and local
27 income taxes and Class Members' share of FICA and Medicare taxes in accordance with the
28 Settlement Agreement.

7. The Settlement Administrator shall issue IRS Forms W-2 and 1099, under the terms set forth in this Settlement Agreement, to Class Members receiving an Individual Settlement Payment.

8. Any employer contributions and deductions required by any and all applicable federal, state, and local tax regulations shall be paid out of the Qualified Settlement Fund.

9. For all purposes, Individual Class Settlement Payments and/or Individual PAGA Payments shall be deemed to be paid to Class Members and Aggrieved Employees solely in the year in which payment of such Individual Class Settlement Payments and/or Individual PAGA Payments are actually received by the Class Members and Aggrieved Employees. It is expressly understood and agreed that the receipt of such Individual Settlement Payments and Individual PAGA Payments will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any company bonus, contest, or other compensation, or benefit plan or agreement in place during the Class Period, nor will it entitle any Class Member to any increased retirement, 401K benefits or matching benefits, or deferred compensation benefits. It is the intent of this Settlement Agreement that Individual Settlement Payments and Individual PAGA Payments are the sole payments to be made by Defendant to Class Members, and that Class Members are not entitled to any new or additional compensation or benefits as a result of having received the Individual Settlement Payments and/or Individual PAGA Payments.

10. **Tax Liability.** Defendant makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff and Class Members are not relying on any statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard. Class Members, Aggrieved Employees and Class Counsel understand and agree that Class Members and Aggrieved Employees shall be responsible for the payment of all of their taxes and penalties assessed on the payments specified herein, and shall hold the Parties, Class Counsel, and Defendant's Counsel free and harmless from and against any claims resulting from their treatment of such payments as non-taxable, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes

1 **E. RELEASE OF CLAIMS.**

2 In exchange for the consideration set forth in this Settlement Agreement, Plaintiff and the
3 Settlement Class members agree to release all claims alleged in the Action as set forth below.

4 1. **Released Parties.** Upon the Effective Date, and subject to Defendant's full payment
5 of the Gross Settlement Amount and all associated employer payroll tax obligations, Plaintiff and
6 all Settlement Class Members who do not timely opt-out of the Settlement will release the Released
7 Class Claims against Defendant, all entities affiliated with Defendant, and all officers, directors,
8 representatives, owners, partner, subsidiaries, parent companies, joint venturers, clients, joint
9 employer, predecessors, managers, servants, successors-in-interest, assigns, current and former
10 employees of Defendant, including but not limited to agents, insurers, attorneys and all persons or
11 entities acting in concert with or affiliated with any of them ("Released Parties"), except PAGA
12 claims, which arose during employment by Defendant in a non-exempt position in California during
13 the Class Period.

14 2. Upon the Effective Date, and subject to Defendant's full payment of the Gross
15 Settlement Amount and all associated employer payroll tax obligations, Plaintiff and Aggrieved
16 Employees, including those who opt out of the Class Settlement, will release all Released PAGA
17 claims against the Released Parties alleged in the operative complaint which arose during
18 employment by Defendant in a non-exempt position in California during the PAGA Period.

19 3. **"Released Class Claims"** means any and all claims and/or causes of action which
20 accrued during the Class Period during employment in a non-exempt position in California, that
21 are alleged, or that could have been alleged in the Action based on the facts set forth in the First
22 Amended Complaint to be filed in the Action, including Labor Code §§ 201-203, 226(a), 226.7,
23 510, 512, 1194, and 1194.2, and Business & Professions Code § 17200 *et seq.* predicated on the
24 underlying Labor Code claims alleged. No PAGA claims are encompassed in the Released Class
25 Claims.

26 4. **"Released PAGA Claims"** means any and all PAGA claims and/or causes of action
27 which accrued during the PAGA Period during employment in a non-exempt position in California,
28 that are alleged in the First Amended Complaint to be filed in the Action, or that could have been

1 alleged in the Action based on the facts set forth in the First Amended Complaint. No Aggrieved
2 Employee may opt out of the PAGA portion of the Settlement.

3 5. **Additional Release and Waiver of Claims by Plaintiff.** Upon the Effective Date,
4 and subject to Defendant's full payment of the Gross Settlement Amount and all associated
5 employer payroll tax obligations, Plaintiff shall be deemed to have fully, finally, and forever
6 released the Released Parties from any and all claims, obligations, demands, Action, rights, causes
7 of action, and liabilities against the Released Parties, of whatever kind and nature, character, and
8 description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local
9 law, statute, ordinance, regulation, common law, or other source of law, whether known or
10 unknown, and whether anticipated or unanticipated, including unknown claims covered by Civil
11 Code Section 1542, arising through the date of his signature hereon, for any type of relief, including,
12 without limitation, claims for wages, damages, unpaid costs, penalties, liquidated damages,
13 punitive damages, interest, attorney's fees, litigation costs, restitution, or equitable relief. These
14 claims include, but are not limited to, the Released Class Claims and Released PAGA Claims, as
15 well as any other claims under any provision of the California Labor Code or any applicable
16 California Industrial Welfare Commission Wage Orders, and claims under local, state, or federal
17 discrimination statutes, including, without limitation, the California Fair Employment and Housing
18 Act, California Government Code §§ 12940 *et seq.*; the Unruh Civil Rights Act, California Civil
19 Code §§ 51 *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C.
20 §§ 2000 *et seq.*; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*; the Employee
21 Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.*; and all of their implementing
22 regulations and interpretive guidelines. With respect to these Released Claims as described in this
23 Section, Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent
24 permitted by law, the provisions, rights, and benefits he may otherwise have had pursuant to Section
25 1542 of the California Civil Code, which provides as follows:

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

1 Notwithstanding Section 1542, Plaintiff understands and agrees that this Agreement shall
2 act as a release of all future claims that may arise from Plaintiff's employment or separation from
3 employment with Defendant, or any other matters that existed between Plaintiff and the Released
4 Parties up to the date of this Agreement, whether such claims are currently known or unknown, and
5 that Plaintiff intentionally waives any rights he may have under the provisions of Section 1542, as
6 well as under any other statutes or common law principles of similar effect in the State of California
7 or in any other state.

8 6. **All Members of the Settlement Class are Settling Parties.** All members of the
9 Settlement Class shall be bound by the terms and conditions of this Settlement Agreement,
10 including all orders issued pursuant thereto, and shall be deemed to have waived all unstated
11 objections and opposition to the fairness, reasonableness, and adequacy of this Settlement
12 Agreement, and any of its terms.

13 7. **Effect of the Settlement Agreement.** If the Settlement Agreement is given final
14 approval, it shall operate as a full, complete, and final release of all the Released Claims of the
15 Class Representative, all the Released Claims of the Class Members, and all Releasing Parties.
16 Additionally, this Settlement Agreement shall operate as a full, complete, and final release of the
17 PAGA Claims of all Aggrieved Employees employed during the PAGA Period, regardless of
18 whether any such Aggrieved Employee submitted a timely, valid Request for Exclusion from the
19 Settlement Agreement.

20 8. **No Other Liability.** The Settlement Agreement shall be in full settlement,
21 compromise, release and discharge of the Released Claims and each of them, and the Released
22 Claims by the Class Representative, and the Released Parties shall have no further or other liability
23 or obligation to any member of the Settlement Class, the Class Representative, or any other
24 Releasing Party with respect to the Released Claims, except as expressly provided herein.

25 **F. SETTLEMENT ADMINISTRATION.**

26 1. **Engagement of Settlement Administrator.** The Parties have agreed to retain
27 Phoenix as the Settlement Administrator to perform the Class Notice and other claims
28 administration functions necessary for the Parties to fulfill their settlement obligations.

- 1 a. The Settlement Administrator shall perform the customary duties of a Settlement
2 Administrator including, but not limited to, the following:
- 3 i. Preparing, printing, and disseminating the Court-approved Class Notice to
4 Class Members;
 - 5 ii. Processing Requests for Exclusion and Objections to the settlement;
 - 6 iii. Promptly furnishing to Class Counsel and Defendant's Counsel copies of all
7 Objections and Requests for Exclusion received;
 - 8 iv. Promptly furnishing to Defendant's Counsel copies and information
9 regarding, and verifying the information contained within, all disputes
10 submitted by Class Members regarding the Class Workweeks stated in the
11 Class Notice;
 - 12 v. Calculating all Employer Taxes on all Individual Settlement Payments, and,
13 within seven (7) days after the Effective Date, informing Defendant's
14 Counsel of the amount of Defendant's share of Employer Taxes to be paid;
15 and
 - 16 vi. Distributing Individual Settlement Payments and/or Individual PAGA
17 Payments to all Class Members and Aggrieved Employees. Additionally, the
18 Settlement Administrator will handle all tax document preparation and
19 filing, including state and federal tax forms, if any.
- 20 b. Also, on a weekly basis after the Class Notice is mailed, the Settlement
21 Administrator shall provide Defendant's Counsel and Class Counsel with a
22 summary report, including the total number of Class Notices that were returned as
23 undeliverable, and the total number of Workweek Disputes, Requests for Exclusion,
24 and Objections received. The Settlement Administrator shall maintain records of its
25 work, which shall be available for inspection upon request by Defendant's Counsel
26 or Class Counsel.
- 27 2. **Identification of Class Members.** Within ten (10) calendar days after entry of the
28 Preliminary Approval Order, Defendant shall provide to the Settlement Administrator a "Class Data

1 List,” which shall consist of the following items:

- 2 a. The names, last known addresses, telephone numbers, social security numbers;
- 3 b. Each Class Member’s dates of employment in California during the Class Period;
- 4 and
- 5 c. Such other information that the Settlement Administrator requires to identify Class
- 6 Members.

7 Upon its receipt of the Class Data List, and no later than seven (7) days thereafter, the Settlement
8 Administrator shall access the National Change of Address (“NCOA”) Database and update the
9 addresses maintained by Defendant before mailing the Class Notice.

10 3. **Privacy of Class Information.** Class Member names, addresses, telephone
11 numbers, and Social Security numbers will only be disclosed to the Settlement Administrator and
12 not to Plaintiff’s Counsel. Any production of information to Class Counsel from the Class Data
13 List must be made in redacted form so that only the name and Individual Settlement Payment or
14 Individual PAGA Payment will be provided. All information provided to the Settlement
15 Administrator will be marked CONFIDENTIAL. This information shall be kept confidential and
16 shall not be disclosed, either in writing or orally, by the Settlement Administrator. The Settlement
17 Administrator shall use due care with respect to the storage, custody, use, and/or dissemination of
18 the confidential information. Such information must be stored in a secure fashion and all persons
19 who access the data must agree to keep it confidential.

20 4. **Modification of Class Data List.** If Defendant, Class Counsel, and the Settlement
21 Administrator determine, based upon further review of available data, that a person previously
22 identified as being a Class Member should not be so included or identify a person who should have
23 been included as a Class Member but was not so included, Defendant and the Settlement
24 Administrator shall promptly delete or add such person as appropriate and notify Class Counsel
25 prior to such deletions or additions (and the reasons therefore). The time periods and methodologies
26 set forth herein reflect Defendant’s best current belief as to its ability to make such identifications
27 and it is understood that Defendant, in undertaking the tasks set forth herein, shall use reasonable
28 efforts to identify all Class Members and to determine their last known addresses and social security

1 numbers, as provided above, and to do so within the stated time periods. Other than the obligations
2 set forth in this Settlement Agreement, Defendant shall have no additional obligation to identify or
3 locate any Class Member.

4 5. **Class Notice for Persons Identified as Class Members.** A Class Notice in the form
5 attached hereto as **Exhibit 1**, and as approved by the Court, shall be sent by the Settlement
6 Administrator to the Class Members, by first class mail, within twenty (20) calendar days after
7 entry of the order granting preliminary approval. Attached to the Class Notice will be a Request
8 for Exclusion Form in the form attached hereto as **Exhibit 2**.

9 6. Each Class Member will be fully advised of the settlement, the ability to object to
10 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
11 inform the Class Members of the Court-established deadlines for filing objections and a Request
12 for Exclusion Form.

13 7. **Disputes Regarding Class Workweeks.** Each Class Notice will contain
14 personalized information setting forth the number of weeks each Class Member worked for
15 Defendant in California in a non-exempt position during the Class Period and their estimated
16 Individual Payment Amount. To the extent a Class Member disputes any of the information listed
17 on his or her Class Notice, the Class Member may produce evidence to the Settlement
18 Administrator showing such information the Class Member contends should be reflected in the
19 Class Notice. Defendant's records will be presumed determinative, however, and the Settlement
20 Administrator's decision on these matters will be final. The Class Notice will also set forth IRS
21 W-9 information if required.

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

28 9. All Class Members who do not submit a Request for Exclusion Form will be eligible

1 to receive an Individual Payment Amount and all Aggrieved Employees will be eligible to receive
2 a share of the PAGA allocation from the Net Settlement Proceeds, which shall be mailed to them
3 if and when the Effective Date occurs.

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

12 11. **Extension for Response due to Re-Mailing of Class Notice.** The deadline for
13 submission of Request for Exclusion Forms shall be extended once by 30 days for those Class
14 Members whose Class Notice and Exclusion Form are returned as “undeliverable.” If the 30th day
15 falls on a Sunday or federal holiday, this deadline will be extended to the next day on which the
16 U.S. Postal Service is open.

17 12. The Settlement Administrator will search for additional addresses on returned mail
18 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days
19 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second
20 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not
21 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
22 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
23 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
24 Settlement Administrator will search using the social security number for a more current address.
25 If no address is found within 10 days, no further action is required.

26 13. The Settlement Administrator will notify the Parties of the total number of valid
27 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
28 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice

1 and Request for Exclusion Forms to Class Members).

2 14. **Time to Object** In order to object to the settlement, a Class Member must mail his
3 or her objection to the Settlement Administrator no later than forty-five (45) calendar days after the
4 mailing of the Class Notice and Request for Exclusion Form to Class Members, unless the Court
5 requires a longer period, in which case the Court ordered objection period will apply. If the 45th
6 day falls on a Sunday or federal holiday, the time to object to the settlement will be extended to the
7 next day on which the U.S. Postal Service is open. Under no circumstances shall the objection
8 deadline be extended for any reason.

9 15. **Settlement Administrator Declaration of Compliance.** The Settlement
10 Administrator shall provide to the Parties, at least twelve (12) calendar days prior to the final
11 approval hearing, or as otherwise ordered by the Court, a declaration of due diligence and proof of
12 mailing with regard to the mailing of the Class Notice and Request for Exclusion Forms. The
13 Settlement Administrator will also provide to the Parties, at least twelve (12) calendar days prior to
14 the final approval hearing, or as otherwise ordered by the Court, a report listing the amount of all
15 payments to be made to each Class Member without names or personal identifying information.

16 16. **Funding of Gross Settlement Amount.** Defendant shall deposit the Gross
17 Settlement Amount and all employer payroll tax obligations with the Settlement Administrator no
18 later than ten (10) calendar days after the Effective Date.

19 17. **Payments from the Gross Settlement Amount.** The Settlement Administrator
20 shall disburse the Gross Settlement Amount within fifteen (15) calendar days after its receipt
21 thereof. Class Members and Aggrieved Employees must cash each of their Individual Payment
22 Amount checks within one hundred eighty (180) calendar days after they are mailed by the
23 Settlement Administrator. The value of any checks uncashed more than one hundred eighty (180)
24 days after mailing shall be paid to the State of California Controller's Office – Unclaimed Property
25 Fund, to be held in the name of the respective Class Member or Aggrieved Employee.

G. Duties of the Parties Prior to Court Approval.

1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the Court for a Preliminary Approval Order of this settlement and entry of an order accomplishing the following:

- (a) scheduling a fairness hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable, and adequate as to the Class Members;
- (b) approving as to form and content the proposed Class Notice;
- (c) approving as to form and content the proposed Request for Exclusion Form;
- (d) preliminarily certifying the Settlement Class for purposes of approving the Settlement Agreement;
- (e) preliminarily approving the PAGA payment of \$15,000 to the LWDA;
- (f) preliminarily setting attorney's fees and costs payable to Class Counsel;
- (g) preliminarily setting the Incentive Award to the Class Representative;
- (h) preliminarily approving Phoenix Settlement Administrators as the Settlement Administrator and its estimated fees and costs of \$9,000; and
- (i) permitting Plaintiff to file the First Amended Complaint attached hereto as

Exhibit 3.

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

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

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

- (a) approving the settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) approving Class Counsel's application for an award of attorney's fees and reimbursement of documented litigation costs and expenses, the Incentive Award to the Class

Representative, the PAGA payment to the LWDA, and the costs of administering the settlement;
and

(c) Entering judgment in the Action in accordance with this Settlement Agreement, pursuant to Cal. Rules of Court, Rule 3.769(h).

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

I. Miscellaneous Provisions:

1. Voiding the Agreement.

A failure of the Court to approve any material condition of this Settlement Agreement which effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or materially modified on appellate review, shall render the entire Settlement Agreement voidable and unenforceable as to all Parties herein at the option of any Party.

2. Parties' Authority.

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

3. Mutual Full Cooperation.

The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement.

4. No Prior Assignments.

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

5 **5. No Admission.**

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

14 **6. Construction.**

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

19 **7. Captions and Interpretations.**

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

24 **8. Modification.**

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

1 9. **Integration Clause.**

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

7 10. **Binding on Assigns.**

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

10 11. **Governing Law.**

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

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

15 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
16 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,
17 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release
18 provided herein and such shall have the same force and effect as if this Settlement Agreement was
19 executed by each Class Member.

20 13. **Counterparts.**

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

25 14. **Confidentiality**

26 Until Plaintiff files his motion for preliminary approval of the class action settlement of the
27 Action, the Parties and Counsel agree to maintain confidentiality as to the Settlement, including the
28 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing

1 agencies, or as otherwise required by law.

2 **15. No Publicity**

3 Plaintiff and his Counsel will not contact the media about the Settlement Agreement or
4 respond to any inquiries by the media regarding the Settlement, other than to state that the matter
5 was amicably settled, and the Court did not find Defendant liable. Plaintiff and his Counsel also
6 will not post any information about the Settlement Agreement on social media or their firm's
7 websites.

8 **16. Representation Regarding Class Size.**

9 Defendant has represented that Class Members worked no more than 4,723 workweeks
10 during the Class Period through May 8, 2023. Should this number exceed 5,195 as of the final
11 day of the Class Period, the Gross Settlement Amount will increase by \$50.05 per workweek in
12 excess of 5,195 workweeks.

13 **17. Continuing Jurisdiction.**

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

19 **18. Default; Notice; Cure; Acceleration; Time is of the Essence.**

20 Time is of the essence with respect to all provisions of this Agreement. If Defendant fails
21 to timely make the payment due hereunder, it shall be in default of its obligations. Plaintiff shall
22 thereafter give notice of default and Defendant must cure said default within ten (10) calendar days
23 thereof. In the event of an uncured default, all unpaid amounts shall be due and payable with interest
24 at the legal rate from the date of default.

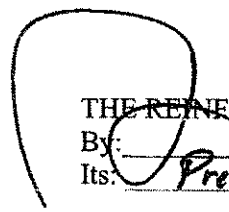
25 Dated: 08 / 01 / 2023

By: 

26 ROBERT YANEZ
27 Plaintiff and Class Representative
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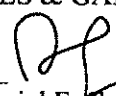
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Dated: 08.09.23

THE REINFORCED EARTH COMPANY
By: 
Its: President/CEO 8.9.23

APPROVED AS TO FORM AND CONTENT:

Dated: August 3, 2023

GAINES & GAINES, APLC
By: 
Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Counsel for Plaintiff and Class
Representative

Dated: August 11, 2023

JACKSON LEWIS P.C.
By: 
Nicole Shaffer, Esq.
Counsel for Defendant

4864-3236-7212, v. 1

EXHIBIT 1

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

ROBERT YANEZ, on behalf of himself and all
“aggrieved employees” pursuant to Labor Code
§ 2698 *et seq.*,

Plaintiffs,

v.

THE REINFORCED EARTH COMPANY, a
Delaware corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: CIVSB2212908

Assigned to the Hon. Gilbert Ochoa, Dept. S24

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

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

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

- A settlement will provide \$260,000 to pay claims to all individuals who worked The Reinforced Earth Company (“Defendant”) as a non-exempt, hourly paid employee in California at any time between July 1, 2020 and July 31, 2023.
- The settlement resolves a lawsuit alleging that Defendant failed to pay all wages, including all minimum and overtime wages; provide compliant meal and rest periods or premium compensation in lieu thereof; timely issue final wages upon separation of employment; issue accurate and complete itemized wage statements; violations of Business and Professions Code § 17200; and penalties under the Labor Code Private Attorneys General Act of 2004. The Settlement avoids costs and risks of continuing the lawsuit, pays money to employees, and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$86,666.67 as attorney’s fees and \$15,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and believes all appropriate wages were paid and that it otherwise complied with all Labor Code obligations, including providing its non-exempt hourly employees with legally mandated meal period and rest breaks. The Parties disagree on how much money could have been awarded if employees won at trial.

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

WHY DID YOU RECEIVE THIS NOTICE?

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

WHAT IS THIS LAWSUIT ABOUT?

On June 21, 2022, Plaintiff Robert Yanez ("Plaintiff"), a former employee of Defendant The Reinforced Earth Company, filed this lawsuit in the San Bernardino County Superior Court. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendant at any time between July 1, 2020 and July 31, 2023 ("Class Period"). Specifically, the lawsuit alleges that members of the Class were not paid all wages, including all minimum and overtime wages due; provided compliant meal and rest periods or premium compensation in lieu thereof; timely issued final wages upon separation of employment; or issued accurate and complete itemized wage statements. The Settlement seeks recovery of wages, liquidated damages, damages, interest, statutory and civil penalties, restitution, attorney's fees and costs. Defendant denies all of the material allegations in the lawsuit and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.

Alex P. Katofsky, Esq.

Gaines & Gaines, APLC

4550 E. Thousand Oaks Blvd., Suite 100

Westlake Village, CA 91362

Phone: (866) 550-0855

Defendant's Attorneys

Nicole M. Shaffer, Esq.

Semarnpreet Kaur, Esq.

Jackson Lewis P.C.

200 Spectrum Center Drive, Suite 500

Irvine, CA 92618

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

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

B. Who is in the Settlement Class? Who is an Aggrieved Employee?

The Settlement encompasses a class composed of all current and former employees of Defendant who were employed in California as a non-exempt, hourly paid employee between July 1, 2020 through July 31, 2023. It also encompasses Aggrieved Employees composed of all current and former employees of Defendant who were employed in California as a non-exempt, hourly paid employee between April 15, 2021 through July 31, 2023.

C. What does the Settlement provide?

1. Gross Settlement Amount.

The Settlement provides that Defendant will pay \$260,000 (the "Gross Settlement Amount") to settle the lawsuit.

2. Net Settlement Amount.

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

(a) **Class Counsel's Attorney's Fees** in an amount set by the Court, not to exceed \$86,666.67;

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$15,000;

(c) **Incentive Award Payment to the Class Representative** in an amount set by the Court, not to exceed \$12,000 to Plaintiff for his service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$7,000, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$20,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). Of that amount, 75% or \$15,000, shall be paid to the California Labor and Workforce Development Agency ("LWDA"). The remaining 25%, or \$5,000, shall be included in the Net Settlement Amount for payment to Aggrieved Employees.

3. Individual Payment Amount.

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

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

Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and all associated employer payroll tax obligations, Plaintiff and all Settlement Class Members who do not timely opt-out of the Settlement will release the Released Class Claims against The Reinforced Earth Company, all entities affiliated with it, and all officers, directors, representatives, owners, partner, subsidiaries, parent companies, joint venturers, clients, joint employer, predecessors, managers, servants, successors-in-interest, assigns, current and former employees of Defendant, including but not limited to agents, insurers, attorneys and all persons or entities acting in concert with or affiliated with any of them ("Released Parties"), except PAGA claims, which arose during employment by Defendant in a non-exempt position in California during the Class Period (July 1, 2020 through July 31, 2023). "Released Class Claims" means any and all claims and/or causes of action which accrued during the Class Period during employment in a non-exempt position in California, that are alleged, or that could have been alleged in the Action based on the facts set forth in the First Amended Complaint to be filed in the Action, including Labor Code §§ 201-203, 226(a), 226.7, 510, 512, 1194, and 1194.2, and Business & Professions Code § 17200 *et seq.* predicated on the underlying Labor Code claims alleged. No PAGA claims are encompassed in the Released Class Claims.

Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and all associated employer payroll tax obligations, Plaintiff and Aggrieved Employees, including those who opt out of the Class Settlement, will release all Released PAGA claims against the Released Parties alleged in the operative complaint which arose during employment by Defendant in a non-exempt position in California during the PAGA Period (April 15, 2021 through July 31, 2023). "Released PAGA Claims" means any and all PAGA claims and/or causes of action which accrued during the PAGA Period during employment in a non-exempt position in California, that are alleged in the First Amended Complaint to be filed in the Action, or that could have been alleged in the Action based on the facts set forth in the First Amended Complaint. No Aggrieved Employee may opt out of the PAGA portion of the Settlement.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) shall receive an "Individual Payment Amount," which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form), and a PAGA portion of the Individual Payment Amount, which is distributable to each Aggrieved Employees regardless of whether they participate in the Settlement (Aggrieved Employees will receive the PAGA portion of the Individual Payment Amount even if they exclude themselves from the Settlement).

"Individual Payment Amount" means the portion of the Net Settlement Proceeds distributable to each Class Member who participates in the Class Settlement (i.e., who does not submit a valid request for exclusion form) and each Aggrieved Employee, whether they participate in the Class Settlement or not. As to participating Class Members, the class portion of the Individual Payment Amount will be determined by dividing the Net Settlement Proceeds, less the \$5,000 PAGA allocation, by the total number of weeks worked by the entire Settlement Class in a non-exempt position in California during the Class Period, net of opt outs, resulting in the class workweek value; and then multiplying the class workweek value by the number of weeks worked by each participating Class Member in a non-exempt position in California during the Class Period.

As to the Aggrieved Employees, the PAGA portion of the Individual Payment Amount will be determined by dividing the PAGA settlement amount (\$5,000) by the total number of weeks worked by all Aggrieved Employees in a non-exempt position in California during the PAGA Period, resulting in the PAGA workweek value; and then multiplying the PAGA workweek value by the number of weeks worked by each Aggrieved Employee in a non-exempt position in California during the PAGA Period.

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

Settlement Class Payment: According to the records of Defendant, you worked [REDACTED] weeks while employed as a non-exempt employee in California from July 1, 2020 through July 31, 2023. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[REDACTED]. This amount is subject to change based on the final ruling of the Court.

PAGA Payment: According to the records of Defendant, you worked [REDACTED] weeks while employed as a non-exempt employee in California from April 15, 2021 through July 31, 2023. Based on these weeks worked, you are entitled to a PAGA Payment Amount of approximately \$[REDACTED]. This amount is subject to change based on the final ruling of the Court.

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

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on _____, at 8:30 a.m., in the Courtroom of Judge Gilbert Ochoa of the San Bernardino County Superior Court, Department S24, located at 247 West Third Street, San Bernardino, California 92415. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorney's fees and costs to be awarded to Plaintiff's Attorneys; and (v) the amount that should be awarded to Plaintiff as an incentive award payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

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

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than [redacted]. The Settlement Administrator's address is [Settlement Administrator address].

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

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

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

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

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed "Settlement Agreement and Release of Claims" which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number].

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

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

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS *Robert Yanez v. The Reinforced Earth Company*, San Bernardino County Superior Court Case. No. CIVSB2212908. IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.

I confirm that I was employed by Defendant The Reinforced Earth Company in California between July 1, 2020 and July 31, 2023.

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

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

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

The Reinforced Earth Company Claims Administrator

c/o _____

EXHIBIT 3

DANIEL F. GAINES, ESQ. SBN 251488
ALEX P. KATOFISKY, ESQ. SBN 202754
EVAN S. GAINES, ESQ. SBN 287668
GAINES & GAINES, APLC
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 alex@gaineslawfirm.com
 evan@gaineslawfirm.com

Attorneys for Plaintiff Robert Yanez, on behalf of himself, the general public, and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*

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

ROBERT YANEZ, on behalf of himself and
all "aggrieved employees" pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

THE REINFORCED EARTH COMPANY, a
Delaware corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: CIV-SB-2212908

*Assigned to the Honorable Gilbert Ochoa, Dept.
S24*

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

**1. FAILURE TO PAY ALL MINIMUM
AND OVERTIME WAGES DUE (LABOR
CODE §§ 510, 1194, AND 1194.2)**

**2. FAILURE TO PROVIDE REST
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE § 226.7; IWC
WAGE ORDER 16-2001)**

**3. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7 AND
512; IWC WAGE ORDER 16-2001)**

**4. KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT
PROVISIONS (LABOR CODE § 226(a), (e))**

**5. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION OF
EMPLOYMENT (LABOR CODE §§ 201-
203)**

**6. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200**

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**7. PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 226(a), 226.7,
510, 512, AND 1194 AND PURSUANT TO
LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§ 226.3
AND 558**

DEMAND FOR JURY TRIAL

Complaint Filed: June 21, 2022

Plaintiff ROBERT YANEZ ("Plaintiff"), on behalf of himself and on behalf of all similarly situated individuals (the "Class" or "Plaintiff Class"), on behalf of the general public, and under the Labor Code Private Attorneys General Act of 2004, complains of THE REINFORCED EARTH COMPANY, a Delaware corporation, and any subsidiaries or affiliated companies (hereinafter collectively referred to as "Defendants") as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all other employees who work or formerly worked for Defendants within the State of California.

2. Since July 1, 2020 and continuing to the present (the "liability period"), Defendants have had a consistent policy of failing to pay all minimum and overtime wages due to Class Members (as defined below); provide legally compliant rest and meal periods or compensation in lieu thereof to Class Members; provide accurately itemized wage statements to Class Members; and timely pay certain Class Members all wages due at the separation of their employment.

3. Plaintiff, on behalf of himself and members of the Class, brings this action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7, 510, 512, 558, 1194, and 1194.2 seeking compensation for all unpaid wages, liquidated damages, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

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

5. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §§ 2698 *et seq.*, seeks penalties for Defendants' various violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiff and Class Members in San Bernardino County.

II.

PARTIES

A. Plaintiff

7. Plaintiff ROBERT YANEZ was employed by Defendants from February 2021 through December 9, 2021, as a non-exempt employee in San Bernardino County, California.

8. During his work with Defendants, Plaintiff was:

- a. Willfully denied the payment of all wages due, including all minimum and overtime wages due;
- b. Willfully denied rest and meal periods or compensation in lieu thereof;
- c. Willfully denied accurately itemized wage statements; and
- d. Willfully denied the timely payment of all wages upon separation of his employment.

B. Defendants

9. Defendant THE REINFORCED EARTH COMPANY is a Delaware corporation that employed Plaintiff and Class Members throughout the State of California, including San Bernardino County, California.

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

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

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

III.

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action on behalf of himself, and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the following Class composed of and defined as follows:

THE CLASS

All current and former employees of Defendants who were employed in California as a non-exempt, hourly paid employee between July 1, 2020 through July 31, 2023, excluding those who executed a release of Defendants.

14. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify this class description with greater specificity or further division into subclasses or limitation to particular issues.

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

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1 **A. Numerosity**

2 16. The potential members of the Class as defined are so numerous that joinder of all Class
3 Members is impracticable. While the precise number of members of the Class has not been
4 ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 currently employ, and during the relevant time periods employed, over 50 persons in the State of
6 California who fall within the Class definition.

7 17. Accounting for employee turnover during the relevant period necessarily increases this
8 number. Plaintiff alleges Defendants' employment records would provide information as to the
9 number and location of members of the Class. Joinder of members of the Class is not practicable.

10 **B. Commonality**

11 18. There are questions of law and fact common to the Class that predominate over any
12 questions affecting only individual Class Members. These common questions of law and fact include,
13 without limitation:

- 14 a. Whether Defendants failed to pay all minimum and overtime wages due to
15 Plaintiff and Class Members, in violation of Labor Code §§ 510, 1194, and
16 1194.2 and IWC Wage Order 16-2001;
- 17 b. Whether Defendants failed to properly provide rest periods or compensation in
18 lieu thereof to Plaintiff and Class Members, in violation of Labor Code § 226.7
19 and IWC Wage Order 16-2001;
- 20 c. Whether Defendants failed to properly provide meal periods or compensation
21 in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§
22 226.7 and 512 and IWC Wage Order 16-2001;
- 23 d. Whether Defendants failed to provide Plaintiff and Class Members with
24 accurately itemized wage statements, in accordance with Labor Code § 226(a)
25 and (e);
- 26 e. Whether Defendants failed to timely pay Plaintiff and Class Members all
27 wages due and owing at the separation of their employment, in violation of
28 Labor Code §§ 201-203; and

f. Whether Plaintiff and Class Members are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

C. Typicality

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

D. Adequacy of Representation

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

E. Superiority of Class Action

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

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

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1 IV.

2 CAUSES OF ACTION

3 FIRST CAUSE OF ACTION

4 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

5 FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES DUE

6 (LABOR CODE §§ 510, 1194, AND 1194.2)

7 23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set
8 forth herein.

9 24. Defendants failed to pay Plaintiff and Class Members all overtime wages earned
10 during the course of employment, in violation of Labor Code §§ 510 and 1194. Plaintiff and Class
11 Members frequently worked in excess of ten (10) hours per day, but were not paid premium overtime
12 wages for work performed in excess of eight (8) hours in a workday and work performed in excess
13 of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of
14 pay, and were not compensated for work performed in excess of twelve (12) hours in a workday at a
15 rate of no less than double the regular rate of pay.

16 25. Defendant also improperly rounded down the hours recorded by employees such that
17 Plaintiff and Class Members were not fully compensated for all of their time. These instances
18 deprived Plaintiff and Class Members of significant hours worked and minimum and overtime wages
19 due, and constitute violations of Labor Code §§ 510, 1194, and 1194.2 and IWC Wage Order No. 16-
20 2001

21 26. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due,
22 Plaintiff and members of the Class have been deprived of wages in amounts to be determined at trial
23 and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and
24 costs, pursuant to Labor Code § 1194, and liquidated damages as authorized by Labor Code § 1194.2.

25 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

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2 V.

3 **SECOND CAUSE OF ACTION**

4 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

5 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

6 **(LABOR CODE § 226.7 AND IWC WAGE ORDER 16-2001)**

7 27. Plaintiff incorporates paragraphs 1 through 26 of this Complaint as though fully set
8 forth herein.

9 28. Plaintiff and Class Members are entitled to one hour of pay for each day that
10 Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and
11 IWC Wage Order 16-2001.

12 29. Defendants failed to pay proper premium wages to Plaintiff and Class Members who
13 were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 16-2001.
14 Plaintiff and Class Members were completely denied the ability to take an off-duty 10-minute rest
15 period for every four (4) hours of work or major fraction thereof. This includes the inability to take
16 second and third rest breaks to which they were entitled, irrespective of the number of hours worked.
17 In addition, Plaintiff and Class Members were not paid premium wages of one hour's pay for each
18 missed rest period. This violates Labor Code § 226.7 and IWC Wage Order No. 16-2001.

19 30. Pursuant to Labor Code § 226.7 and IWC Wage Order 16-2001, Plaintiff seeks the
20 payment of all rest period compensation that he and Class Members are owed, according to proof.

21 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

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1 VI.

2 THIRD CAUSE OF ACTION

3 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

4 FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

5 (LABOR CODE §§ 226.7 AND 512 AND IWC WAGE ORDER 16-2001)

6 31. Plaintiff incorporates paragraphs 1 through 30 of this Complaint as though fully set
7 forth herein.

8 32. Plaintiff and Class Members are entitled to one hour of pay for each day that
9 Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7
10 and 512 and IWC Wage Order 16-2001.

11 33. Defendants failed to pay proper premium wages to Plaintiff and other Class Members
12 who were denied proper meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage
13 Order 16-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, a
14 timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a
15 second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours,
16 but were not paid premium wages of one hour's pay at the correct rate for each missed first or second
17 meal period. If a meal period was taken at all, it was typically late (after the fifth hour of work), and
18 Plaintiff and Class Members were unable to take a second meal period for shifts in excess of ten (10)
19 hours in duration. This violates Labor Code §§ 226.7 and 512 and IWC Wage Order 16-2001

20 34. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 16-2001, Plaintiff
21 seeks the payment of all meal period compensation and unpaid wages that Class Members are owed
22 for four years preceding the filing of this Action, according to proof.

23 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

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VII.

FOURTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED

EMPLOYEE WAGE STATEMENT PROVISIONS

(LABOR CODE § 226(a), (e))

35. Plaintiff incorporates paragraphs 1 through 34 of this Complaint as though fully set forth herein.

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

37. Defendants failed to issue Plaintiff and Class Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). As Plaintiff and Class Members were not paid all wages due, as stated above, the wage statements provided by Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9).

1 38. In addition, and independent of the above allegations, the wage statements also failed
2 to set forth all applicable hourly rates in effect during the pay period and the corresponding number
3 of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9), because the wage
4 statements include duplicate hours worked at certain rates of pay, fail to set forth the proper overtime
5 rate, and fail to accurately set forth the number of overtime hours worked. Furthermore, and also
6 independent of the above claims, Defendants have violated Labor Code § 226(a)(7) by setting forth
7 the full social security number of Class Members on the wage statements instead of only the last four
8 digits of the employees' social security number and/or an employee identification number.

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

18 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

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VIII.

FIFTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203)

40. Plaintiff incorporates paragraphs 1 through 39 of this Complaint as though fully set forth herein.

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

42. Defendants paid Plaintiff and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class Members were not paid all wages due and owing throughout the course of their employment, as detailed above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due and owing for the entirety of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of Plaintiff and certain Class Members no longer employed by Defendants.

43. More than 30 days have passed since Plaintiff and Class Members have left Defendants' employ.

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

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

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IX.
SIXTH CAUSE OF ACTION
PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
UNFAIR COMPETITION PURSUANT TO
BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

45. Plaintiff incorporates paragraphs 1 through 44 of this Complaint as though fully set forth herein.

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

47. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, and therefore have standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

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

49. Wage and hour laws express fundamental public policies. Properly providing employees with all wages due is a fundamental public policy of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and its employees from competitors who lower their costs by failing to comply with minimum labor standards.

50. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,

1 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
2 guaranteed to all employees under law.

3 51. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
4 §17200 *et seq.* of the Business & Professions Code.

5 52. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
6 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
7 17200 *et seq.* of the Business & Professions Code.

8 53. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
9 similarly situated have been damaged in a sum as may be proven.

10 54. Unless restrained by this Court, Defendants will continue to engage in the unlawful
11 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
12 should make such orders or judgments, including the appointment of a receiver, as may be necessary
13 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
14 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
15 to, disgorgement of profits which may be necessary to restore Plaintiff and Class Members to the
16 money Defendants have unlawfully failed to pay.

17 **X.**

18 **SEVENTH CAUSE OF ACTION**

19 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
20 **CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF**
21 **LABOR CODE §§ 201, 202, 226(a), 226.7, 510, 512, AND 1194 AND PURSUANT TO LABOR**
22 **CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

23 55. Plaintiff incorporates paragraphs 1 through 54 of this Complaint as though fully set
24 forth herein.

25 56. As a result of the acts alleged above, including the Labor Code violations set forth in
26 paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

27 57. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to
28 civil penalties subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512, and 1194; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

58. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

59. On April 15, 2022, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendant setting forth the facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of April 15, 2022. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages pursuant to Labor Code §§ 510 and 1194, in the amount of all unpaid wages due to Plaintiff and Class Members;
2. For liquidated damages pursuant to Labor Code § 1194.2, in the amount of all unpaid minimum wages due to Plaintiff and Class Members;
3. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§ 226.7 and 512;
4. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
5. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members;
6. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;

- 1 7. An award of prejudgment and post-judgment interest;
- 2 8. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other
- 3 Aggrieved Employees;
- 4 9. An award providing for payment of costs of suit pursuant to Labor Code §§ 226(h),
- 5 1194, 2699(g)(1), and other applicable law;
- 6 10. An award of attorneys' fees pursuant to Labor Code §§ 226(h), 1194, 2699(g)(1), and
- 7 other applicable law; and
- 8 11. Such other and further relief as this Court may deem just and proper.

9 Dated: August 3, 2023

Respectfully submitted,

10 GAINES & GAINES
11 A Professional Law Corporation

12 By: _____
13 DANIEL F. GAINES
14 EVAN S. GAINES
 Attorneys for Plaintiff

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

17 Dated: August 3, 2023

Respectfully submitted,

18 GAINES & GAINES
19 A Professional Law Corporation

20 By: _____
21 DANIEL F. GAINES
22 EVAN S. GAINES
23 Attorneys for Plaintiff

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