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SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN

ELVIS LOPEZ, individually and on behalf of
other persons similarly situated,

Plaintiffs,

v.

WIOSS BAKERSFIELD LP; and DOES 1
through 50, inclusive,

Defendants.

Case No. BCV-22-100852JEB

**JOINT STIPULATION OF CLASS ACTION
AND PAGA SETTLEMENT AND RELEASE**

Trial Date: None

Complaint Filed: April 12, 2022

CLASS ACTION AND PAGA SETTLEMENT

AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Elvis Lopez (“Plaintiff”) and defendant Wioss Bakersfield L.P. (“Wioss” or “Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Wioss captioned *Elvis Lopez v. Wioss Bakersfield, L.P. and Does 1 through 10*, initiated on April 12, 2022 and pending in Superior Court of the State of California, County of Kern, Case No. BCV-22-100852JEB.
- 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employees” means all current and former non-exempt, hourly-paid employees of Wioss employed in California at any time during the PAGA Period.
- 1.5. “Class” means all current and former non-exempt, hourly-paid employees of Wioss employed in California at any time during the Class Period.
- 1.6. “Class Counsel” means Jeremy F. Bollinger, Dennis F. Moss, Ari E. Moss, and Jorge A. Flores of Moss Bollinger LLP.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

- 1.8. “Class Data” means Class Member identifying information in Wioss’s possession including the Class Member’s name, last-known mailing address, Social Security number, the Class Member’s number of workweeks in the Class Period and PAGA Period (if any) or the dates of employment (sufficient to calculate Workweeks and Pay Periods), and number of Class Period Workweeks and PAGA Pay Periods, whether the class member worked as an Electro Mechanic Technician, and whether the class member received a retention or PEZ bonus.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, in Spanish and English, to be mailed to Class Members in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement, along with any other documents required by the Court.
- 1.12. “Class Period” means the period from April 12, 2018 through May 2, 2023; OR, at Defendant’s option, the class period and release will end as of the date the total number of workweeks exceeded 12,328 by more than 5% (*i.e.*, a total of 12,944 workweeks).

- 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Kern, or any other court or courts that will approve the Action, whether individually or together.
- 1.16. “Wioss” means Wioss Bakersfield L.P., also referred to as “Defendant.”
- 1.17. “Defense Counsel” means James Hart of Littler Mendelson, PC.
- 1.18. “Effective Date” means later of: (i) if no timely objections are filed, or are withdrawn prior to final approval, then 61 calendar days after the date the Court enters Judgment; or (ii) if a Verified Settlement Class Member files an objection to the settlement, the Effective Date shall be the later of the following events: (a) five business days after the period for filing any appeal, writ, or other appellate proceeding opposing Final Approval has elapsed without any appeal, writ, or other appellate proceeding having been filed; or, (b) if any appeal, writ, or other appellate proceeding opposing Final Approval has been filed, five business days after any appeal, writ, or other appellate proceedings opposing the settlement has finally and conclusively dismissed with no right to pursue further remedies or relief.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. “Gross Settlement Amount” means Six Hundred Thousand Dollars and Zero Cents (\$600,000.00) which is the total amount Wioss agrees to pay under the

Settlement except for the additional payment of Wioss's share of payroll taxes as provided in Paragraph 4.3 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses.

1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the formula set forth in Paragraph 3.2.4 below.

1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of pay periods worked during the PAGA Period.

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

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

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

1.28. "Net Settlement Amount" means the Gross Settlement Amount less proposed attorneys' fees, costs, and enhancement award to named Plaintiff, and Administrator's Expenses Payment.

1.29. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Wioss for at least one day during the PAGA Period.

1.30. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.31. "PAGA Period" means the period from April 1, 2021 through May 2, 2023; OR, at Defendant's option, the PAGA period and release will end as of the date

the total number of workweeks exceeded 12,328 by more than 5% in the Class Period.

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

1.33. “PAGA Notice” means Plaintiff’s April 1, 2022 letter to Wioss and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.34. “PAGA Penalties” means the amounts attributable to the settlement of the claim for PAGA civil penalties to be paid from the Net Settlement Amount. The Parties agree that Twenty-Five Thousand Dollars (\$25,000.00) of the Gross Settlement Amount shall be allocated to resolve the penalty claims under the Private Attorneys General Act, 75% of which (\$18,750.00) will be distributed to the LWDA and 25% to the Settlement Class Members (\$6,250.00).

1.35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.36. “Plaintiff” means Elvis Lopez, the named plaintiff in the Action.

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

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

1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.

1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.

1.41. “Released Parties” means: Wioss Bakersfield L.P., its current and former officers, partners (including Witron Service America LP and Witron Service America LLC), shareholders, investors, directors, agents, employees, supervisors, attorneys, accountants, insurers, parent(s), affiliated or related

companies, shareholders, and predecessor or successor entities, if any, and each of them and any entities or persons acting in concert with any of them.

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

1.43. “Response Deadline” means forty-five (45) calendar days from the mailing of the Class Notice within which to complete and postmark a written request for exclusion, for return to the Settlement Administrator.

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

1.45. “Workweek” means any week during which a Class Member worked for Wioss for at least one day, during the Class Period.

2. RECITALS AND REQUIRED AMENDMENT OF COMPLAINT.

2.1. On April 12, 2022, Plaintiff commenced this Action by filing a Class Action Complaint in Kern County Superior Court Case No. BCV-22-100852JEB. The class action complaint alleged six causes of action against Defendant Wioss Bakersfield L.P. (“Defendant”) for:

(1) failure to provide legally compliant meal periods, (2) failure to provide legally compliant rest periods, (3) failure to pay overtime, (4) failure to furnish accurate itemized wage statements, (5) failure to pay all wages upon cessation of employment and (6) unfair competition. On October 18, 2022, Plaintiff filed a First-Amended Complaint to add a seventh cause of action for civil penalties pursuant to the California Private Attorney General Act, Labor Code sections 2698 et seq. (“PAGA”), after having exhausted his administrative remedies by submitting a PAGA notice letter to the California Labor and Workforce Development Agency (“LWDA”) and to Defendant on April 1, 2022. In addition to the above Labor Code violations, the cause of action for civil penalties pursuant to PAGA was also based on Defendant’s alleged failure to timely pay all wages owed during employment in accordance with Labor Code

§ 204 and for failure to keep accurate records as required by Labor Code §§ 1174 and 1174.5. Within ten (10) calendar days following entry of the Court’s order granting preliminary approval of the Settlement, Plaintiff will file the Second Amended Complaint attached hereto as **Exhibit B** alleging causes of action against Wioss for to add claims for failure to pay minimum wages and contract wages on an off-the-clock theory based on 1) time spent during COVID screenings; 2) time spent passing through security screenings and donning and doffing; and 3) work time during meal and rest breaks from carrying radios, work-related interruptions during breaks and working through meal periods but having time records reflecting meal periods taken, as part of the settlement under a class action and PAGA theory and shall amend his PAGA letter accordingly. The Second Amended Complaint is the operative complaint in the Action (the “Operative Complaint”). Wioss denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

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

2.3. On March 2, 2023, Plaintiff and Defendant (collectively, the “Parties”) mediated the Lawsuit before mediator Jeff Ross. At the end of the mediation, mediator Jeff Ross made a mediator’s proposal for \$600,000.00. On March 7, 2023, the Parties accepted the proposal and agreed to settle the claims alleged in the Operative Complaint.

2.4. Prior to mediation, Plaintiff served formal discovery, but the Parties agreed that Defendant would provide informally the requested discovery Plaintiff and his counsel needed to evaluate the class and PAGA claims, including the total number of Class Members, total number of Aggrieved Employees, the average hourly rate for putative Class Members during the Class Period, the total

1 number of shifts worked, total number of wage statements/weeks during the
2 Class Period, the total number of weekly pay periods during the PAGA Period,
3 the total number of meal period premiums paid, and relevant policies through
4 December 31, 2022. Defendant did not begin operating before approximately
5 March 2020. Plaintiff's investigation was sufficient to satisfy the criteria for
6 court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal. App.
7 4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
8 116, 129-130 ("*Dunk/Kullar*").

9 2.5. The Court has not yet granted class certification. For settlement purposes only,
10 the Parties agree that the Class, as defined in Paragraph 1.5 herein, may be
11 certified in the Action. The Parties are not certifying any PAGA claims. In
12 support of this Agreement, Plaintiff will request that the Court certify for
13 settlement purposes only the Class as to all non-PAGA claims that have been
14 asserted, which Wioss shall not oppose or object to.

15 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not
16 aware of any other pending matter or action asserting claims that will be
17 extinguished or affected by the Settlement.

18 2.7. Class Counsel is of the opinion that this Settlement is fair, reasonable, and
19 adequate, and in the best interest of the Class and PAGA Members and other
20 relevant interests in light of all known facts and circumstances, including the
21 benefits conferred by the Settlement, the risk of significant delay, the
22 uncertainty and risk of the outcome of further litigation, the burdens of proof
23 necessary to establish liability, defenses asserted to the merits, including but not
24 limited to the affirmative defenses asserted as to Settlement Class Members, the
25 risks of proceeding on any class claims and PAGA claims, including class
26 certification, the difficulties in establishing damages and penalties, and the
27 numerous potential appellate issues. While Defendant specifically denies any
28 liability or wrongdoing in the Action, Defendant has agreed to enter into this

Settlement to avoid the cost and business disruption associated with defending the Action. Defendant has claimed and continues to claim that the Settled Claims and Settled PAGA Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. This Agreement, made and entered into by and between the Named Plaintiff (on behalf of himself and on behalf of the Class Members and PAGA Members and interests of the LWDA) and Defendant, with the assistance of its respective counsel or attorneys of record, is intended to fully, finally, and forever settle, compromise and discharge the Settled Claims and Settled PAGA Claims against the Released Parties, subject to the terms and conditions set forth herein.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 4.3 below regarding the additional payment of Wioss's share of payroll taxes, and subject to Court approval, Wioss promises to pay Six Hundred Thousand Dollars (\$600,000) and no more, as the Gross Settlement Amount. In no event shall Wioss be liable for the payment of any amounts exceeding the Gross Settlement Amount with the exception of the employer's share of payroll taxes. Specifically, all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Wioss has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Wioss.

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

1 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
2 Representative of not more than Ten Thousand Dollars (\$10,000) (in
3 addition to any Individual Class Payment and any Individual PAGA
4 Payment the Class Representative is entitled to receive as a Participating
5 Class Member). Plaintiff agrees to a general release of all claims,
6 whether known, or unknown as of the date of preliminary approval, as
7 set forth herein. Five Thousand Dollars (\$5,000) of the Class
8 Representative Service Payment shall be deemed in payment of the
9 Service Payment and (\$5,000) shall be deemed payment for the general
10 release. Wioss will not oppose Plaintiff's request for a Class
11 Representative Service Payment that does not exceed this amount. As
12 part of the motion for Class Counsel Fees Payment and Class Litigation
13 Expenses Payment, Plaintiff will seek Court approval for any Class
14 Representative Service Payments no later than sixteen (16) court days
15 prior to the Final Approval Hearing. If the Court approves a Class
16 Representative Service Payment less than the amount requested, the
17 Administrator will retain the remainder in the Net Settlement Amount.
18 The Administrator will pay the Class Representative Service Payment
19 using IRS Form 1099. Plaintiff assumes full responsibility and liability
20 for employee taxes owed on the Class Representative Service Payment.
21 If the Court approves Class Representative Service Payment less than
22 the amounts requested, the Administrator will allocate the remainder to
23 the Net Settlement Amount.

24 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
25 35% of the Gross Settlement Amount, which is currently estimated to
26 be Two Hundred Ten Thousand Dollars (\$210,000.00) and a Class
27 Counsel Litigation Expenses Payment of not more than Eighteen
28 Thousand Dollars (\$18,000.00). Wioss will not oppose requests for

these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Wioss harmless, and indemnifies Wioss, from any dispute or controversy regarding any division or sharing of any of these Payments. Attorneys' fees as specified in the preceding paragraph and costs as specified in this paragraph shall cover all claimed and unclaimed attorneys' fees, attorneys' costs and other amounts payable or awardable against Defendant for Class Counsel's work, effort or involvement in the Action and in carrying out the Agreement and includes any and all work, effort or involvement to carry out the terms of the Agreement and as may be potentially or actually necessary or advisable to defend the Agreement and/or Settlement through appeal, or collateral attack or in any other forum or proceeding. These specified Attorneys' Fees and Costs shall be the sole payment for attorneys' fees and costs and, otherwise, the

Parties and Class Members and their counsel shall bear their own fees and costs in connection with the Action.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed Eight Thousand Seven Hundred Fifty Dollars (\$8,750) based on 248 class members except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than Eight Thousand Seven Hundred Fifty Dollars (\$8,750), the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated as follows: The Net Settlement Amount will be allocated among Participating Class Members on a proportional basis based on the number of Work Weeks worked during the Class Period, whether the class member worked as an Electro Mechanic Technician during the Class Period, whether the class member received a retention or PEZ bonus during the Class Period, whether the class member worked during the period of April 12, 2021, through May 2, 2023 and would be eligible for wage statement penalties, and whether the Participating Class Member experienced a termination during the period of April 12, 2019 through May 2, 2023 entitling them to waiting time penalties. Participating Class Members shall be allocated one (1) points of credit for each Work Week they worked within the Class Period, five (5) points of credit if the Participating Class Member worked as an Electro Mechanic Technician, five (5) points of credit if the class member received a retention or PEZ bonus during the Class Period, five (5) points of credit if the Participating Class Member experienced a termination within the Class Period, and two (2) points of credit if the Participating Class Member worked during the period of April 12, 2021,

1 through May 2, 2023 and would be eligible for wage statement
2 penalties. One or more days worked in a given week will be credited as
3 one Work Week for purposes of these calculations. To calculate each
4 Class Member's proportional share, the Administrator will (i) Add all
5 points for all Participating Class Members to obtain the Denominator;
6 (ii) Divide the number of points for each Participating Class Member by
7 the Denominator to obtain each Class Member's portion of the Net
8 Settlement Amount; (iii) Multiply each Participating Class Member's
9 portion of the Net Settlement Amount by the Net Settlement Amount to
10 determine each Class Member's estimated individual settlement
11 payment of the Net Settlement Amount.

12 3.2.4.1. The Parties acknowledge and agree that the formula used to
13 calculate Work Weeks and PAGA Period Pay Periods,
14 individual settlement payments, and individual PAGA
15 payments, does not imply that all of the elements of damages
16 covered by the release are not being taken into account. The
17 above formulas were devised as practical and logistical tools to
18 simplify the payment process.

19 3.2.4.2. The Parties intend that the Net Settlement Amount shall be
20 sufficient to pay all valid claims of Settlement Class Members
21 in accordance with the formula set forth herein. Accordingly, if
22 for any reason the total value of payments to Settlement Class
23 Members exceeds this amount, then payments to each
24 Settlement Class Member will be reduced on a pro-rata basis so
25 that the total payout to Settlement Class Members does not
26 exceed the Net Settlement Amount. To the extent the Court
27 refuses to approve the operative formula to distribute the Net
28 Settlement Amount, whether as set forth herein, the Parties agree

1 to meet and confer in good faith and revise the formula in a
2 manner that the Court deems to be acceptable and will approve.

3 3.2.4.3. Tax Allocation of Individual Class Payments. Forty percent
4 (40%) of each Participating Class Member's Individual Class
5 Payment will be allocated to settlement of wage claims (the
6 "Wage Portion"). The Wage Portions are subject to tax
7 withholding and will be reported on an IRS W-2 Form. Sixty
8 Percent (60%) of each Participating Class Member's Individual
9 Class Payment will be allocated to settlement of claims for
10 interest and penalties (the "Non-Wage Portion"). The Non-
11 Wage Portions are not subject to wage withholdings and will be
12 reported on IRS 1099 Forms. Participating Class Members
13 assume full responsibility and liability for any employee taxes
14 owed on their Individual Class Payment.

15 3.2.4.4. The Settlement Administrator shall calculate, withhold from the
16 Settlement Payments, and remit to applicable governmental
17 agencies sufficient amounts, if any, as may be owed by
18 Settlement Class Members for applicable employee taxes. The
19 SA will issue appropriate tax forms, if required, to each such
20 Settlement Class Member consistent with the foregoing
21 breakdown. The SA shall also calculate and obtain from
22 Defendant and remit to applicable governmental agencies
23 sufficient amounts, if any, as may be owed by employers for the
24 wage portion of the Settlement Payments.

25 3.2.4.5. All Parties represent that they have not received, and shall not
26 rely on, advice or representations from other parties or their
27 agents, including Class Members and PAGA Members,
28 regarding the tax treatment of payments under federal, state, or

1 local law. In this regard, the Parties make no representations
2 regarding the taxability of the Settlement Payments and PAGA
3 Payments. Each Party to this Agreement (for purposes of this
4 section, the “acknowledging party” and each Party to this
5 Agreement other than the acknowledging party, an “other
6 party”) acknowledges and agrees that no provision of this
7 Agreement, and no written or oral communication or disclosure
8 or other representation by Defendant and/or Released Parties is
9 or was intended to be, nor shall be construed or be relied upon
10 as, tax advice, and Named Plaintiff, Class Members and PAGA
11 Members shall not rely on Defendant and/or Released Parties for
12 any tax advice with respect to the Settlement of this Action.

13 3.2.4.6. Effect of Non-Participating Class Members on Calculation of
14 Individual Class Payments. Non-Participating Class Members
15 will not receive any Individual Class Payments. The
16 Administrator will retain amounts equal to their Individual Class
17 Payments in the Net Settlement Amount for distribution to
18 Participating Class Members on a pro rata basis.

19 3.2.5. To the LWDA and Aggrieved Employees: Twenty-Five Thousand
20 Dollars (\$25,000.00) of the Gross Settlement Amount shall be allocated
21 to resolve the penalty claims under the Private Attorneys General Act,
22 75% of which (\$18,750.00) will be distributed to the LWDA and 25%
23 to the Settlement Class Members (\$6,250.00).

24 3.2.5.1. The Administrator will calculate each Individual PAGA
25 Payment by (a) dividing the Aggrieved Employees’ share of the
26 25% of PAGA Penalties by the total number of PAGA Period
27 Pay Periods worked by all Aggrieved Employees during the
28 PAGA Period and (b) multiplying the result by each Aggrieved

Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Wioss estimates there are 248 Class Members who collectively worked a total of 12,204 Workweeks.

4.2. Class Data. Not later than fourteen (14) calendar days after the Court grants Preliminary Approval of the Settlement, Wioss will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Wioss has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Wioss must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

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

1 share of payroll taxes, by transmitting the funds to the Administrator no later
2 than twenty-one (21) calendar days after the Effective Date.

3 4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after
4 Wioss funds the Gross Settlement Amount, but after the 60th day of the entry of
5 Judgment, the Administrator will mail checks for all Individual Class Payments,
6 all Individual PAGA Payments, the LWDA PAGA Payment, the
7 Administration Expenses Payment, the Class Counsel Fees Payment, the Class
8 Counsel Litigation Expenses Payment, and the Class Representative Service
9 Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel
10 Litigation Expenses Payment and the Class Representative Service Payment
11 shall not precede disbursement of Individual Class Payments and Individual
12 PAGA Payments. In the event an appeal, writ, motion challenging the judgment
13 or other collateral attack is made after the Effective Date, the funds shall not be
14 distributed until all challenges are resolved in a manner that upholds the
15 Settlement in its entirety and shall be returned if the Agreement is not finally
16 and completely approved in all respects.

17 4.4.1. The Administrator will issue checks for the Individual Class Payments
18 and/or Individual PAGA Payments and send them to the Class Members
19 via First Class U.S. Mail, postage prepaid. The face of each check shall
20 prominently state the date (not less than 180 days after the date of
21 mailing) when the check will be voided. The Administrator will cancel
22 all checks not cashed by the void date. The Administrator will send
23 checks for Individual Settlement Payments to all Participating Class
24 Members (including those for whom Class Notice was returned
25 undelivered). The Administrator will send checks for Individual PAGA
26 Payments to all Aggrieved Employees including Non-Participating
27 Class Members who qualify as Aggrieved Employees (including those
28 for whom Class Notice was returned undelivered). The Administrator

1 may send Participating Class Members a single check combining the
2 Individual Class Payment and the Individual PAGA Payment. Before
3 mailing any checks, the Settlement Administrator must update the
4 recipients' mailing addresses using the National Change of Address
5 Database.

6 4.4.2. The Administrator must conduct a Class Member Address Search for all
7 other Class Members whose checks are returned undelivered without
8 USPS forwarding address. Within five (5) calendar days of receiving a
9 returned check the Administrator must re-mail checks to the USPS
10 forwarding address provided or to an address ascertained through the
11 Class Member Address Search. The Administrator need not take further
12 steps to deliver checks to Class Members whose re-mailed checks are
13 returned as undelivered. The Administrator shall promptly send a
14 replacement check to any Class Member whose original check was lost
15 or misplaced, requested by the Class Member prior to the void date.

16 4.4.3. For any Class Member whose Individual Class Payment check or
17 Individual PAGA Payment check is uncashed and cancelled after the
18 void date, the Administrator shall transmit the funds represented by such
19 checks to the California Controller's Unclaimed Property Fund in the
20 name of the Class Member thereby leaving no "unpaid residue" subject
21 to the requirements of California Code of Civil Procedure Section 384,
22 subd. (b) and no Cy Pres recipient for the Court to approve. If the Court
23 declines to permit a distribution to the Unclaimed Fund or the
24 Unclaimed Fund refuses such funds, then the Parties, subject to Court
25 approval, chose CASA (Court Appointed Special Advocates). See web
26 url:

27 <http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5301295/k.BE9>
28 A/Home.htm.

1 4.4.4. The payment of Individual Class Payments and Individual PAGA
2 Payments shall not obligate Wioss to confer any additional benefits or
3 make any additional payments to Class Members (such as 401(k)
4 contributions or bonuses, stock purchase plans, vacation plans, sick
5 leave plans, PTO plans, and any other benefit plan) beyond those
6 specified in this Agreement. Rather, it is the Parties' intention that this
7 Agreement will not affect any rights, contributions, or amounts to which
8 any Settlement Class Members, Class Members and PAGA Members
9 may be entitled under any benefit plans.

10 **5. RELEASES OF CLAIMS:** Effective on the date when Wioss fully funds the entire
11 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage
12 Portion of the Individual Class Payments, Plaintiff, Class Members, and will release
13 claims against all Released Parties as follows:

14 5.1. Plaintiff's Release. Plaintiff and his respective former and present spouses,
15 representatives, agents, attorneys, heirs, administrators, successors, and assigns
16 generally, release and discharge Released Parties (a) The Claims set forth in the
17 Action, predicated on the same or similar facts and/or claims alleged in the
18 Operative Complaint and/or PAGA Letter, as well as any claims that reasonably
19 could have been pled which arise from the same or similar facts concerning the
20 Plaintiff or the putative class, and claims for interest, penalties (including but
21 not limited to waiting time penalties), as well as any claims under the California
22 Labor Code and California Industrial Welfare Commission Wage Orders that
23 were alleged, or which could have been alleged under the same or similar facts,
24 allegations and/or claims pleaded in the Lawsuit; (b) Any claims for injunctive
25 relief, declaratory relief, restitution, fraudulent business practices or punitive
26 damages alleged or which could have been alleged under the facts, allegations
27 and/or claims pleaded in the complaints filed as part of the Lawsuit; and, (c)
28 Any and all other claims under California common law, the California Labor

1 Code including but not limited to the Private Attorneys General Act, the Fair
2 Labor Standards Act, California Industrial Welfare Commission Wage Orders,
3 and the California Business and Professions Code alleged in or that could have
4 been alleged under the same or similar facts, allegations and/or claims pleaded
5 in the Lawsuit. ("Plaintiff's Release.") Plaintiff's Release does not extend to
6 any claims or actions to enforce this Agreement, or to any claims for vested
7 benefits, unemployment benefits, disability benefits, social security benefits,
8 workers' compensation benefits that arose at any time, or based on occurrences
9 outside the Class Period. Plaintiff acknowledges that Plaintiff may discover
10 facts or law different from, or in addition to, the facts or law that Plaintiff now
11 knows or believes to be true but agrees, nonetheless, that Plaintiff's Release
12 shall be and remain effective in all respects, notwithstanding such different or
13 additional facts or Plaintiff's discovery of them

14 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542.

15 Plaintiff shall be deemed to have, and by operation of the Judgment shall
16 have, expressly waived and relinquished to the fullest extent permitted
17 by law the provisions, rights, and benefits of Section 1542 of the
18 California Civil Code, or any other similar provision under federal or
19 state law that purports to limit the scope of a general release. Plaintiff,
20 for himself, has read Section 1542 of the Civil Code of the State of
21 California, which provides as follows:

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

5.1.2. Plaintiff understands that Section 1542 gives the right not to release
existing claims of which he is not now aware, unless Plaintiff

1 voluntarily chooses to waive this right. Having been so apprised,
2 Plaintiff nevertheless voluntarily waives the rights described in Section
3 1542, and elect to assume all risks for claims that now exist in his favor,
4 known or unknown. The release of the claims of Plaintiff as set forth in
5 this Paragraph is a condition precedent to enforcement of the MOU and
6 this Agreement.

7 5.2. The “Released Class Claims”: All Participating Class Members, on behalf of
8 themselves and their respective former and present representatives, agents,
9 attorneys, heirs, administrators, successors, and assigns, release, settle,
10 compromise, relinquish, and discharge Released Parties from of all claims that
11 were set forth, or reasonably could have been set forth based on the facts
12 alleged, in the Operative Complaint, including claims for: (1) failure to
13 provide legally complaint meal periods in violation of Labor Code sections
14 226.7 and 512, and the applicable IWC Wage Order(s); (2) failure to provide
15 legally compliant rest periods in violation of Labor Code section 226.7 and
16 the applicable IWC Wage Order(s); (3) failure to pay minimum wages and
17 contract wages on an off-the-clock theory based on a) time spent during
18 COVID screenings; b) time spent passing through security screenings and
19 donning and doffing; and c) work time during meal and rest breaks from
20 carrying radios, work-related interruptions during breaks and working through
21 meal periods but having time records reflecting meal periods taken, overtime
22 wages, in violation of applicable law, including Labor Code section 510 and
23 1194 and the applicable IWC Wage Order(s); (4) failure to provide complete
24 and accurate wage statements in violation of Labor Code section 226; (5)
25 failure to pay all wages due and owing at separation in violation of Labor
26 Code sections 201, 202, and 203; (6) deceptive, fraudulent, or otherwise
27 unlawful business practices based on the foregoing in violation of California’s
28 Unfair Competition Law (Bus. & Prof. Code, §§ 17200). “Settled Class

Claims” is also intended to and includes all types of relief available for the above-referenced claims, including, without limitation, any claims for damages, restitution, losses, penalties, attorneys’ fees, costs, expenses, and interest. (“Released Class Claims.”) The Parties agree that this is a settlement of disputed claims not involving undisputed wages, and that Labor Code Section 206.5 is therefore inapplicable.

5.3. The “Released PAGA Claims”: All Aggrieved Employees are deemed to release, settle, compromise, relinquish, and discharge, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, and the State of California, the Released Parties from any and all claims for violation of the California Private Attorneys General Act of 2004 (Labor Code § 2698, et seq.) alleged or that could have been alleged in the operative PAGA letter and Operative Complaint as amended based on the factual allegations and legal assertions made in the letter that arose during the PAGA Period, including without limitation (1) failure to provide legally complaint meal periods in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage Order(s); (2) failure to provide legally compliant rest periods in violation of Labor Code section 226.7 and the applicable IWC Wage Order(s); (3) failure to pay minimum wages and contract wages based on an off-the-clock theory based on a) time spent during COVID screenings; b) time spent passing through security screenings and donning and doffing; and c) work time during meal and rest breaks from carrying radios, work-related interruptions during breaks and working through meal periods but having time records reflecting meal periods taken, and overtime wages, in violation of applicable law, including Labor Code section 510 and 1194 and the applicable IWC Wage Order(s); (4) failure to provide complete and accurate wage statements in violation of Labor Code section 226; (5) failure to pay all wages due and owing at separation in violation of Labor

Code sections 201, 202, and 203; (6) untimely payment of all wages owed during employment in accordance with Labor Code § 204 and (7) for failure to keep accurate records as required by Labor Code §§ 1174 and 1174.5. "Settled PAGA Claims" includes all types of relief available for the above-referenced claims, including, without limitation, any claims for penalties, attorneys' fees, costs, or expenses. Plaintiff shall make all required disclosures and provides all necessary notices required under the PAGA for settlement. PAGA Members shall not be able to object to or opt out of the PAGA portion of the PAGA settlement. Any Class Member who opts out of the settlement will still be bound by the release of Settled PAGA Claims and will receive a settlement payment for only the PAGA portion of the settlement. Plaintiff agrees not to object to or opt out of the settlement.

5.4. The Aggrieved Employees will be issued a check for their share of the PAGA Penalties and will not have the opportunity to opt out of, or object to, the PAGA Penalties and release of the Released PAGA Claims set forth in this Paragraph. The Aggrieved Employees are bound by the release of the Released PAGA Claims regardless of whether they cash or deposit their Individual PAGA Payment or opt out of being a Settlement Class Member in accordance with Paragraph 7.5.

6. MOTION FOR PRELIMINARY APPROVAL.

6.1. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not

1 to exceed” bid for administering the Settlement and attesting to its willingness
2 to serve; competency; operative procedures for protecting the security of Class
3 Data; amounts of insurance coverage for any data breach, defalcation of funds
4 or other misfeasance; all facts relevant to any actual or potential conflicts of
5 interest with Class Members; and the nature and extent of any financial
6 relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed
7 declaration from Plaintiff confirming willingness and competency to serve and
8 disclosing all facts relevant to any actual or potential conflicts of interest with
9 Class Members and/or the Administrator; (v) a signed declaration from each
10 Class Counsel firm attesting to its competency to represent the Class Members;
11 its timely transmission to the LWDA of all necessary PAGA documents (initial
12 notice of violations (Labor Code section 2699.3, subd. (a)), Operative
13 Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor
14 Code section 2699, subd. (1)(2)); and (vii) all facts relevant to any actual or
15 potential conflict of interest with Class Members, the Administrator. Plaintiff
16 shall also, as necessary, properly and completely take all steps, including but
17 not limited to submitting any required documents to the Labor Workforce
18 Development Agency and take any other actions necessary to resolve the
19 Released PAGA Claims pursuant to this Agreement.

20 6.2. Class Certification for Purpose of Settlement. The Parties stipulate to the
21 certification of this Settlement Class for purposes of this Settlement only. If,
22 however, the Settlement does not become final for any reason, the Parties’
23 Agreement shall become null and void ab initio and shall have no bearing on,
24 and shall not be admissible in connection with, whether class certification
25 would be appropriate in any other context in this Action. The Parties agree for
26 settlement purposes only that, because the Class Members are so numerous, it
27 is impossible or impracticable to have each Class Member execute this
28 Agreement. Accordingly, the Class Notice will advise all Class Members of

1 the binding nature of the release and such notice shall have the same force and
2 effect as if the Agreement were executed by each Class Member

3 6.3. Duty to Cooperate. Named Plaintiff and Defendant, and each of their respective
4 counsel, shall cooperate in good faith to execute all documents and perform all
5 acts necessary and proper to effectuate and implement the terms of this
6 Agreement, including but not limited to drafting and submitting the Motions for
7 Preliminary and Final Approval, and defending the Agreement and Final
8 Judgment against objections and appeals. If the Parties disagree on any aspect
9 of the proposed Motion for Preliminary Approval and/or the supporting
10 declarations and documents, Class Counsel and Defense Counsel will
11 expeditiously work together on behalf of the Parties by meeting in person or by
12 telephone, and in good faith, to resolve the disagreement. If the Court does not
13 grant Preliminary Approval or conditions Preliminary Approval on any material
14 change to this Agreement, Class Counsel and Defense Counsel will
15 expeditiously work together on behalf of the Parties by meeting in person or by
16 telephone, and in good faith, to modify the Agreement and otherwise satisfy the
17 Court's concerns. The Parties The Parties agree not to encourage any Class
18 Members to object to or opt out of the settlement.

19 **7. SETTLEMENT ADMINISTRATION.**

20 7.1. Selection of Administrator. The Parties have jointly selected Phoenix
21 Settlement Administrators to serve as the Administrator and verified that, as a
22 condition of appointment, the Administrator agrees to be bound by this
23 Agreement and to perform, as a fiduciary, all duties specified in this Agreement
24 in exchange for payment of Administration Expenses. The Parties and their
25 Counsel represent that they have no interest or relationship, financial or
26 otherwise, with the Administrator other than a professional relationship arising
27 out of prior experiences administering settlements.
28

1 7.2. Employer Identification Number. The Administrator shall have and use its own
2 Employer Identification Number for purposes of calculating payroll tax
3 withholdings and providing reports state and federal tax authorities.

4 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund
5 that meets the requirements of a Qualified Settlement Fund (“QSF”) under US
6 Treasury Regulation section 468B-1.

7 7.4. Notice to Class Members.

8 7.4.1. No later than three (3) business days after receipt of the Class Data, the
9 Administrator shall notify Class Counsel that the list has been received
10 and state the number of Class Members, PAGA Members, Workweeks,
11 and Pay Periods in the Class Data.

12 7.4.2. Using best efforts to perform as soon as possible, and in no event later
13 than fourteen (14) days after receiving the Class Data, the Administrator
14 will send to all Class Members identified in the Class Data, via first-
15 class United States Postal Service (“USPS”) mail, the Class Notice
16 substantially in the form attached to this Agreement as Exhibit A. The
17 first page of the Class Notice shall prominently estimate the dollar
18 amounts of any Individual Class Payment and/or Individual PAGA
19 Payment payable to the Class Member/Aggrieved Employee, and the
20 information necessary to determine the estimated settlement allocation
21 to each Class Member and PAGA Member (if applicable), including
22 without limitation, the total number of workweeks worked by each the
23 Class Member and PAGA Member, and whether the Class Member
24 experienced a termination, whether the Class Member worked as
25 Electro Mechanic Technician, and whether the Class Member was paid
26 a retention and/or PEZ bonus within the Class Period. Notice of
27 Settlement will be in English and Spanish. Before mailing Class
28

1 Notices, the Administrator shall update Class Member addresses using
2 the National Change of Address database.

3 7.4.3. Not later than five (5) business days after the Administrator's receipt of
4 any Class Notice returned by the USPS as undelivered, the
5 Administrator shall re-mail the Class Notice using any forwarding
6 address provided by the USPS. If the USPS does not provide a
7 forwarding address, the Administrator shall conduct a Class Member
8 Address Search, and re-mail the Class Notice to the most current address
9 obtained. The Administrator has no obligation to make further attempts
10 to locate or send Class Notice to Class Members whose Class Notice is
11 returned by the USPS a second time.

12 7.4.4. If the Administrator, Wioss or Class Counsel is contacted by or
13 otherwise discovers any persons who believe they should have been
14 included in the Class Data and should have received Class Notice, the
15 Parties will expeditiously meet and confer in person or by telephone,
16 and in good faith, in an effort to agree on whether to include them as
17 Class Members. If the Parties agree, such persons will be Class
18 Members entitled to the same rights as other Class Members, and the
19 Administrator will send, via email or overnight delivery, a Class Notice
20 requiring them to exercise options under this Agreement not later than
21 fourteen (14) days after receipt of Class Notice, or the deadline dates in
22 the Class Notice, which ever are later.

23 7.5. Requests for Exclusion (Opt-Outs).

24 7.5.1. Each Class Member shall have forty-five (45) calendar days from the
25 mailing of the Notice within which to complete and postmark a written
26 request for exclusion, for return to the Settlement Administrator. The
27 request need not be in any particular form and will be considered a valid
28 request for exclusion so long as it communicates a clear desire by the

1 Settlement Class Member not to be included in the Settlement and/or
2 Settlement Class, and identifies his/her/their full name and date of birth,
3 and current address along with his/her/their signature. No requests for
4 exclusion shall be accepted if postmarked after the forty-five (45)
5 calendar day period for the filing of exclusions. Class Members are
6 responsible to maintain a photocopy of their request for exclusion,
7 reflecting that it was submitted in a timely manner. Any disputes
8 regarding the timeliness of a request for exclusion or whether a written
9 communication constitutes a valid request that cannot be resolved
10 between the Parties shall be determined by the Court, whose
11 determination shall be final. A Class Member, who is also an Aggrieved
12 Employee, cannot opt-out of the PAGA component of the Settlement.

13 7.5.2. Any Class Member who validly excludes himself/herself/themselves
14 from this Settlement shall not be bound by the Class Released Claims
15 and shall not be entitled to any portion of the Net Settlement Amount.

16 7.5.3. Class Members shall be permitted to rescind in writing their request to
17 opt out by submitting a written rescission statement to the SA no later
18 than the Effective Date and provided individual Settlement Payments
19 can be recalculated to reflect the rescission.

20 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have forty-
21 five (45) days after the Administrator mails the Class Notice to challenge the
22 number of Class Workweeks and PAGA Pay Periods (if any) allocated to the
23 Class Member or any other data that went into the calculation of the Class
24 Member's estimated Individual Settlement Payment listed in the Class
25 Member's Class Notice. The Class Member may challenge the allocation by
26 communicating with the Administrator via fax, email or mail. The
27 Administrator must encourage the challenging Class Member to submit
28 supporting documentation. In the absence of any contrary documentation, the

1 Administrator is entitled to presume that the Workweeks and other information
2 contained in the Class Notice are correct so long as they are consistent with the
3 Class Data. The Administrator's determination of each Class Member's
4 allocation of Workweeks and/or Pay Periods, or any other information, shall be
5 final and not appealable or otherwise susceptible to challenge. The
6 Administrator shall promptly provide copies of all challenges to calculation of
7 Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the
8 Administrator's determination the challenges.

9 7.7. Objections to Settlement.

10 7.7.1. Only Participating Class Members may object to the class action
11 components of the Settlement and/or this Agreement, including
12 contesting the fairness of the Settlement, and/or amounts requested for
13 the Class Counsel Fees Payment, Class Counsel Litigation Expenses
14 Payment and/or Class Representative Service Payment.

15 7.7.2. Participating Class Members may send written objections to the
16 Administrator, by fax, email, or mail. In the alternative, Participating
17 Class Members may appear in Court (or hire an attorney to appear in
18 Court) to present verbal objections at the Final Approval Hearing. A
19 Participating Class Member who elects to send a written objection to the
20 Administrator must do so not later than forty-five (45) days after the
21 Administrator's mailing of the Class Notice

22 7.7.3. Any Class Member, who does not affirmatively opt-out of the
23 Settlement by submitting a valid and timely request for exclusion, may
24 object to the approval of class action settlement ("Objecting Class
25 Member"). Any Class Member who makes a timely request for
26 exclusion has waived their right to object.

27 7.7.4. Non-Participating Class Members have no right to object to any of the
28 class action components of the Settlement. If a Class Member submits

an objection and request to opt out, the request to opt out will be honored and the objection will be non-operative.

7.7.5. Counsel for the Parties shall file any response to the objections submitted by Objecting Class Members, if any, at least seven (7) calendar days before the date of the Final Approval Hearing.

7.7.6. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement or to appeal from the Court's Final Judgment. Class Counsel shall not represent any Class Members with respect to any such objections to this Settlement.

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

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

7.8.2. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class

1 Notices returned undelivered, Requests for Exclusion (whether valid or
2 invalid) received, objections received, challenges to Workweeks and/or
3 Pay Periods received and/or resolved, and checks mailed for Individual
4 Class Payments and Individual PAGA Payments (“Weekly Report”).
5 The Weekly Reports must include provide the Administrator’s
6 assessment of the validity of Requests for Exclusion and attach copies
7 of all Requests for Exclusion and objections received.

8 7.8.3. Administrator’s Declaration. Not later than fourteen (14) days before
9 the date by which Plaintiff is required to file the Motion for Final
10 Approval of the Settlement, the Administrator will provide to Class
11 Counsel and Defense Counsel, a signed declaration suitable for filing in
12 Court attesting to its due diligence and compliance with all of its
13 obligations under this Agreement, including, but not limited to, its
14 mailing of Class Notice, the Class Notices returned as undelivered, the
15 re-mailing of Class Notices, attempts to locate Class Members, the total
16 number of Requests for Exclusion from Settlement it received (both
17 valid or invalid), the number of written objections and attach the
18 Exclusion List. The Administrator will supplement its declaration as
19 needed or requested by the Parties and/or the Court. Class Counsel is
20 responsible for filing the Administrator’s declaration(s) in Court.

21 7.8.4. Final Report by Settlement Administrator. Within ten (10) calendar
22 days after the Administrator disburses all funds in the Gross Settlement
23 Amount, the Administrator will provide Class Counsel and Defense
24 Counsel with a final report detailing its disbursements by employee
25 identification number only of all payments made under this Agreement.
26 At least thirty (30) days before any deadline set by the Court, the
27 Administrator will prepare, and submit to Class Counsel and Defense
28 Counsel, a signed declaration suitable for filing in Court attesting to its

disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

7.8.5. Data security. As indicated herein, the Administrator (along with any of its agents) shall represent and warrant that it will: (a) provide reasonable and appropriate administrative, physical and technical safeguards for any personally identifiable information ("PII"), which it receives from Defendant; (b) not disclose the PII to any party or third parties, including agents or subcontractors, without Defendant's consent; (c) not disclose or otherwise use the PII other than to carry out its duties as set forth herein; (d) promptly provide Defendant with notice if PII is subject to unauthorized access, use, disclosure, modification, or destruction; and (e) continue to protect the PII upon termination of its services.

7.8.6. Miscellaneous. The Administrator shall date stamp documents it receives, including Opt Out Requests, Objections and any correspondences and documents from Class Members/Aggrieved Employees.

8. WIOSS'S RIGHT TO VOID THE AGREEMENT. In the event 5% or more of the Settlement Class opt-out of the settlement by submitting valid and timely requests for exclusion, Defendant may, at its option, rescind/void the Agreement within twenty (20) days after receiving from the Settlement Administrator the final list of requests for exclusion. However, if Defendant exercises its option to void the agreement, Defendant shall bear all administration costs incurred as of that date. Defendants agree to meet and confer in good faith with Class Counsel before rescinding or voiding the Agreement. In the event that Defendants elect to rescind/void the Agreement, Defendants shall provide written notice of such rescission to Class Counsel. Such rescission shall have the same effect as a termination of the Agreement for failure to

satisfy a condition of settlement, and the Agreement shall become null and void and have no further force or effect. The Parties specifically agree not to solicit opt-outs, directly or indirectly, through any means.

9. MOTION FOR FINAL APPROVAL. Not later than sixteen 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that include a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven (7) days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

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

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

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

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

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

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

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

proposed amended judgment.

11. ADDITIONAL PROVISIONS.

11.1. Cap or Discretionary Escalator Provision. The settlement is premised on the data and extrapolations provided by Defendant and Defendant's representation that Class Members worked approximately 12,328 workweeks during the Class Period. If the actual number of Workweeks Worked through May 2, 2023 exceeds 12,328 by more than 5% (i.e., more than 12,944 Workweeks Worked), either: (a) the Gross Settlement Amount will be increased by the same percentage above 5% (e.g., if the actual workweeks are 7% higher, the gross settlement amount will increase by 2%); OR, as discussed in Paragraph 1.12 at Defendant's option, (b) the class and PAGA Workweeks Worked and releases will end as of the date the total number of Workweeks Worked exceeded 12,328 by more than 5%. Regarding the provisions of this Paragraph, if the number of workweeks exceeds 12,944 Workweeks Worked, the default will be option (b) and the Parties shall adjust the Workweeks Worked so as not to exceed 12,944, and the escalator provisions in option (a) will only be operative if Defendant affirmatively and expressly in written notice to the other side chooses option (a).

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

1 and Wioss reserves all available defenses to the claims in the Action, and
2 Plaintiff reserves the right to move for class certification on any grounds
3 available and to contest Wioss's defenses. The Settlement, this Agreement and
4 Parties' willingness to settle the Action will have no bearing on, and will not be
5 admissible in connection with, any litigation (except for proceedings to enforce
6 or effectuate the Settlement and this Agreement).

7 11.3. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Wioss
8 and Defense Counsel separately agree that, until the Motion for Preliminary
9 Approval of Settlement is filed, they and each of them will not disclose,
10 disseminate and/or publicize, or cause or permit another person to disclose,
11 disseminate or publicize, any of the terms of the Agreement directly or
12 indirectly, specifically or generally, to any person, corporation, association,
13 government agency, or other entity except: (1) to the Parties' attorneys,
14 accountants, or spouses, all of whom will be instructed to keep this Agreement
15 confidential; (2) to the extent necessary to report income to appropriate taxing
16 authorities; (3) in response to a court order or subpoena; or (4) in response to
17 an inquiry or subpoena issued by a state or federal government agency. Each
18 Party agrees to immediately notify each other Party of any judicial or agency
19 order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel,
20 Wioss and Defense Counsel separately agree not to, directly or indirectly,
21 initiate any conversation or other communication, before the filing of the
22 Motion for Preliminary Approval, any with third party regarding this
23 Agreement or the matters giving rise to this Agreement except to respond only
24 that "the matter was resolved," or words to that effect. This paragraph does not
25 restrict Class Counsel's communications with Class Members in accordance
26 with Class Counsel's ethical obligations owed to Class Members.

27 11.4. Non-Publicity Post Preliminary Approval. Class Counsel and Plaintiff agree
28 not to publicize the terms of this Settlement with the media, including but not

1 limited to, any newspaper, journal, magazine, website and/or online reporter of
2 settlements or on any website.

3 11.5. No Solicitation. The Parties separately agree that they and their respective
4 counsel and employees will not solicit any Class Member to opt out of or object
5 to the Settlement, or appeal from the Judgment, either directly or indirectly,
6 through any means. Nothing in this paragraph shall be construed to restrict
7 Class Counsel's ability to communicate with Class Members in accordance
8 with Class Counsel's ethical obligations owed to Class Members.

9 11.6. Integrated Agreement. Upon execution by all Parties and their counsel, this
10 Agreement together with its attached exhibits shall constitute the entire
11 agreement between the Parties relating to the Settlement, superseding any and
12 all oral or other agreements, representations, warranties, covenants, or
13 inducements made to or by any Party.

14 11.7. Attorney Authorization. Class Counsel and Defense Counsel separately
15 warrant and represent that they are authorized by Plaintiff and Wioss,
16 respectively, to take all appropriate action required or permitted to be taken by
17 such Parties pursuant to this Agreement to effectuate its terms, and to execute
18 any other documents reasonably required to effectuate the terms of this
19 Agreement including any amendments to this Agreement.

20 11.8. Cooperation. The Parties and their counsel will cooperate with each other and
21 use their best efforts, in good faith, to implement the Settlement by, among
22 other things, modifying the Agreement, submitting supplemental evidence and
23 supplementing points and authorities as requested by the Court. In the event
24 the Parties are unable to agree upon the form or content of any document
25 necessary to implement the Settlement, or on any modification of the
26 Agreement that may become necessary to implement the Settlement, the Parties
27 will seek the assistance of a mediator and/or the Court for resolution.
28

- 11.9. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 11.10. No Tax Advice. Neither Plaintiff, Class Counsel, Wioss nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 11.11. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 11.12. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 11.13. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 11.14. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 11.15. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 11.16. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Wioss in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only

1 with respect to this Settlement, and no other purpose, and may not be used in
2 any way that violates any existing contractual agreement, statute, or rule of
3 court. Not later than ninety (90) days after the date when the Court discharges
4 the Administrator's obligation to provide a Declaration confirming the final pay
5 out of all Settlement funds, Plaintiff shall destroy, all paper and electronic
6 versions of Class Data received from Wioss unless, prior to the Court's
7 discharge of the Administrator's obligation, Wioss makes a written request to
8 Class Counsel for the return, rather than the destructions, of Class Data.

9 11.17. Headings. The descriptive heading of any section or paragraph of this
10 Agreement is inserted for convenience of reference only and does not constitute
11 a part of this Agreement.

12 11.18. Calendar Days. Unless otherwise noted, all reference to "days" in this
13 Agreement shall be to calendar days. In the event any date or deadline set forth
14 in this Agreement falls on a weekend or federal legal holiday, such date or
15 deadline shall be on the first business day thereafter.

16 11.19. Notice. All notices, demands or other communications between the Parties in
17 connection with this Agreement will be in writing and deemed to have been
18 duly given as of the third business day after mailing by United States mail, or
19 the day sent by email or messenger, addressed as follows:

20 To Plaintiff: Jeremy F. Bollinger
21 Moss Bollinger LLP
22 15300 Ventura Blvd., Ste. 207
23 Sherman Oaks, CA 91430

24 To Wioss: James Hart
25 Miko Sargizian
26 Littler Mendelson, PC
27 18565 Jamboree Rd, Suite 800
28 Irvine, CA 92612

1 11.20. Execution in Counterparts. This Agreement may be executed in one or more
2 counterparts by facsimile, electronically (i.e. DocuSign), or email which for
3 purposes of this Agreement shall be accepted as an original. All executed
4 counterparts and each of them will be deemed to be one and the same instrument
5 if counsel for the Parties will exchange between themselves signed
6 counterparts. Any executed counterpart will be admissible in evidence to prove
7 the existence and contents of this Agreement.

8 11.21. Stay of Litigation. The Parties agree that upon the execution of this Agreement
9 the litigation shall be stayed, except to effectuate the terms of this Agreement.
10 The Parties further agree that upon the signing of this Agreement that pursuant
11 to CCP section 583.330 to extend the date to bring a case to trial under CCP
12 section 583.310 for the entire period of this settlement process.

13 11.22. No Injunctive Relief. The Parties agree that the Settlement does not include
14 injunctive relief against Defendant or the Released Parties.

15 11.23. Captions. The captions and section numbers in this Agreement are inserted
16 for the reader's convenience, and in no way define, limit, construe, or describe
17 the scope or intent of the provisions of this Agreement.

18
19
20 **SIGNATURES ON NEXT PAGE**
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[Signature Page]

IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release between Plaintiff and Defendants as of the date(s) set forth below:

IT IS SO AGREED:

Dated: _____

ELVIS LOPEZ
Plaintiff and Class Representative

IT IS SO AGREED:

Dated: 8/10/2023 _____


Rick Jump, Vice President
WIOSS BAKERSFIELD, L.P.

APPROVED AS TO FORM AND CONTENT:

Dated: _____

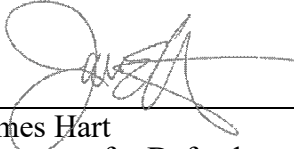
MOSS BOLLINGER, LLP

By: _____
Jeremy F. Bollinger
Dennis F. Moss
Ari E. Moss
Jorge A. Flores
Attorneys for Plaintiff ELVIS LOPEZ

APPROVED AS TO FORM:

Dated: 8/21/23 _____

LITTLER MENDELSON, P.C.

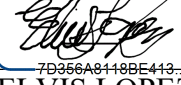
By: _____

James Hart
Attorneys for Defendants WIOSS BAKERSFIELD,
L.P.

[Signature Page]

IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release between Plaintiff and Defendants as of the date(s) set forth below:

IT IS SO AGREED:

Dated: 8/9/2023

DocuSigned by:

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ELVIS LOPEZ
Plaintiff and Class Representative

IT IS SO AGREED:

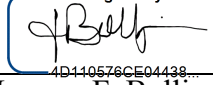
Dated: _____

[NAME], [TITLE]
WIOSS BAKERSFIELD, L.P.

APPROVED AS TO FORM AND CONTENT:

Dated: 8/9/2023

MOSS BOLLINGER, LLP

By: 
4D110576CE04438...
Jeremy F. Bollinger
Dennis F. Moss
Ari E. Moss
Jorge A. Flores
Attorneys for Plaintiff ELVIS LOPEZ

APPROVED AS TO FORM:

Dated: _____

LITTLER MENDELSON, P.C.

By: _____
James Hart
Attorneys for Defendants WIOSS BAKERSFIELD,
L.P.

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EXHIBIT

A

1
2 **COURT APPROVED NOTICE OF CLASS ACTION AND PAGA SETTLEMENT AND**
3 **HEARING DATE FOR FINAL COURT APPROVAL**

4 Elvis Lopez v. Wioss Bakersfield, L.P.

5 Kern County Superior Court Case No. BCV-22-100852JEB

6
7 ***The Superior Court for the State of California authorized this Notice. Read it carefully!***
8 ***It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***
9

10 **You may be eligible to receive money** from an employee class action and PAGA lawsuit
11 (“Action”) against Wioss Bakersfield, L.P. (“Wioss”) for alleged wage and hour violations. The
12 Action was filed by a former Wioss employee, Elvis Lopez (“Plaintiff”), and seeks payment of (1)
13 back wages and other wage and hour relief for a class of all current and former non-exempt, hourly-
14 paid employees of Wioss employed in California at any time during the Class Period (“Class
15 Members”); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all
16 current and former non-exempt, hourly-paid employees of Wioss employed in California at any
17 time during the PAGA Period (“Aggrieved Employees”). The Class Period is from April 12,
18 2018 through May 2, 2023. The PAGA Period is from April 12, 2021 through May 2, 2023.

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

22 Based on Wioss’s records, and the Parties’ current assumptions, your **Individual Class**
23 **Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is**
24 **estimated to be \$_____.** The actual amount you may receive likely will be different and will depend
25 on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to
26 Wioss’s records you are not eligible for an Individual PAGA Payment under the Settlement because
27 you didn’t work during the PAGA Period.)
28

1 The above estimates are based on Wioss's records showing that **you worked** [redacted] **workweeks**
2 during the Class Period, **you worked** [redacted] **Pay Periods** during the PAGA Period, you [redacted] **[did/did not]**
3 work as a Electro Mechanic Technician during the Class Period, you [redacted] **[did/did not]** receive a retention
4 or PEZ bonus during the Class Period, you [redacted] **[did/did not]** experience a termination during the period of
5 April 12, 2019 through May 2, 2023, and you [redacted] **[did/did not]** work during the period of April 12, 2021
6 through May 2, 2023 regarding wage statement claims. If you believe that you worked more
7 workweeks during either period or that any other information in this paragraph is incorrect, you can
8 submit a challenge by the deadline date. *See* Section 4 of this Notice.

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

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

19 (1) **Do Nothing.** You don't have to do anything to participate in the proposed
20 Settlement and be eligible for an Individual Class Payment and/or an Individual
21 PAGA Payment. If you do nothing, and the Court approves the Settlement, as a
22 Participating Class Member, though, you will give up your right to assert Class
23 Period wage claims and PAGA Period penalty claims against Wioss.

24 (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class
25 Settlement (opt-out) by submitting the written Request for Exclusion or otherwise
26 notifying the Administrator in writing. If you opt-out of the Settlement, you will
27 not receive an Individual Class Payment. You will, however, preserve your right
28 to personally pursue Class Period wage claims against Wioss, and, if you are an

Aggrieved Employee, remain eligible for an Individual PAGA Payment. If you are an Aggrieved Employee, you cannot opt-out of the PAGA portion of the proposed Settlement.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

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

Written Objections Must be Submitted by <u> </u>	personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. <i>See</i> Section 7 of this Notice. Do not submit both an Request for Exclusion and an Objection. If you submit both, the Request for Exclusion will be honored and the Objection will be ignored and non-operative.
You Can Participate in the <u> </u> Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on <u> </u>. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. <i>See</i> Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods and other Data Written Challenges Must be Submitted by <u> </u>	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period, how many Pay Periods you worked at least one day during the PAGA Period, whether you worked as an Electro Mechanic Technician during the Class Period, whether you received a retention or PEZ bonus during the Class Period, whether you experienced a termination during the period of April 12, 2019 through May 2, 2023, and whether you worked during the period of April 12, 2021 through May 2, 2023 and would be eligible for wage statement penalties. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked, and all other data, according to Wioss’s records is stated on the first page of this Notice.

If you disagree with any of the information listed, you must challenge it by . See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Wioss employee. The Action accuses Wioss of violating California labor laws and unfair competition laws by failing to provide uninterrupted meal and rest period, failure to provide accurate itemized wage statements, failing to timely pay all wages at separation of employment, failure to pay minimum, overtime and contract wages on an off-the-clock theory based on 1) time spent during COVID screenings; 2) time spent passing through security screenings and donning and doffing; and 3) work time during meal and rest breaks from carrying radios, work-related interruptions during breaks and working through meal periods but having time records reflecting meal periods taken, and committing unfair business practices. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: Jeremy F. Bollinger, Dennis F. Moss, Ari E. Moss, and Jorge A. Flores of Moss Bollinger LLP (“Class Counsel.”)

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

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

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

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

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

7 **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED**
8 **SETTLEMENT?**

9 1. Wioss Will Pay Six Hundred Thousand Dollars (\$600,000) as the Gross Settlement
10 Amount ("Gross Settlement"). Wioss has agreed to deposit the Gross Settlement into an account
11 controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to
12 pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service
13 Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties
14 to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the
15 Court grants Final Approval, Wioss will fund the Gross Settlement not more than twenty-one calendar
16 days after the time to appeal has elapsed without an appeal. The Judgment will be final after the time
17 to appeal has elapsed.

18 2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing,
19 Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross
20 Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

21 A. Up to \$210,000 (35% of the Gross Settlement) to Class Counsel for attorneys'
22 fees (subject to increase if the Gross Settlement increases) and up to \$18,000
23 for their litigation expenses. To date, Class Counsel have worked and incurred
24 expenses on the Action without payment.

25 B. Up to \$10,000 as a Class Representative Award for filing the Action, working
26 with Class Counsel and representing the Class. A Class Representative Award
27 will be the only monies Plaintiff will receive other than Plaintiff's Individual
28 Class Payment and any Individual PAGA Payment.

1 C. Up to \$8,750 to the Administrator for services administering the Settlement.

2 D. \$18,750 for PAGA Penalties to be paid to the LWDA, which is 75% of PAGA
3 Penalties allocated in the Settlement. The remaining 25% (\$6,250) will be
4 distributed among Aggrieved Employees in Individual PAGA Payments based
5 on their PAGA Period Pay Periods.

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

8 3. Net Settlement Distributed to Class Members. After making the above deductions in
9 amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the
10 “Net Settlement”) by making Individual Class Payments to Participating Class Members based on
11 their Class Period Workweeks.

12 4. Taxes Owed on Payments to Class Members. Plaintiff and Wioss are asking the Court
13 to approve an allocation of 40% of each Individual Class Payment to taxable wages (“Wage Portion”)
14 and 60% to non-economic damages and interest (“Non-Wage Portion.”). The Wage Portion is subject
15 to withholdings and will be reported on IRS W-2 Forms. (Wioss will separately pay employer payroll
16 taxes it owes on the Wage Portion). The Individual PAGA Payments are counted as penalties rather
17 than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the
18 Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

24 5. Need to Promptly Cash Payment Checks. The front of every check issued for
25 Individual Class Payments and Individual PAGA Payments will show the date when the check expires
26 (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and,
27 unless the Court rules differently, the monies will be deposited with the California Controller’s
28 Unclaimed Property Fund in your name. If the monies represented by your check is sent to the

1 Controller's Unclaimed Property Fund, you should consult the rules of the Fund for instructions on
2 how to retrieve your money. If the Court declines to permit a distribution to the Unclaimed Property
3 Fund or the Unclaimed Property Fund refuses such funds, then the Parties, subject to Court approval,
4 chose CASA (Court Appointed Special Advocates) as the cy pres recipient pursuant to Code of Civil
5 Procedure § 384 subd. (b).

6 6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a
7 Participating Class Member, participating fully in the Class Settlement, unless you notify the
8 Administrator in writing, not later than , that you wish to opt-out. The easiest way to
9 notify the Administrator is to send a written and signed Request for Exclusion by the
10 Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her
11 representative setting forth a Class Member's name, present address, telephone number, and a simple
12 statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-
13 Participating Class Members) will not receive Individual Class Payments, but will preserve their rights
14 to personally pursue wage and hour claims against Wioss. You cannot opt-out of the PAGA portion
15 of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-
16 Participating Class Members) remain eligible for Individual PAGA Payments and are required to give
17 up their right to assert PAGA claims against Wioss based on the PAGA Period facts alleged in the
18 Action.

19 7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is
20 possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment.
21 It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Wioss have
22 agreed that, in either case, the Settlement will be void: Wioss will not pay any money and Class
23 Members will not release any claims against Wioss.

24 8. Administrator. The Court has appointed a neutral company, **Phoenix Settlement**
25 **Administrators** (the "Administrator"), to send this Notice, calculate and make payments, and process
26 Class Members' Requests for Exclusion. The Administrator will also decide Class Member
27 Challenges over Workweeks and other information listed on the first page of this Notice, mail and re-
28

1 mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement.
2 The Administrator's contact information is contained in Section 9 of this Notice.

3 9. Participating Class Members' Release. After the Judgment is final and Wioss has fully
4 funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class
5 Members will be legally barred from asserting any of the claims released under the Settlement. This
6 means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot
7 sue, continue to sue, or be part of any other lawsuit against Wioss or related entities for wages based
8 on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action
9 and resolved by this Settlement.

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

11 All Participating Class Members, on behalf of themselves and their respective
12 former and present representatives, agents, attorneys, heirs, administrators,
13 successors, and assigns, release Released Parties from shall be deemed to have
14 fully and finally and forever released, settled, compromised, relinquished and
15 discharged any and all of the Released Parties of and from any and all Settled
16 Claims during the Class Period. "Released Parties" includes Wioss Bakersfield
17 L.P., its current and former officers, partners (including Witron Service
18 America LP and Witron Service America LLC), shareholders, investors,
19 directors, agents, employees, supervisors, attorneys, accountants, insurers,
20 parent(s), affiliated or related companies, shareholders, and predecessor or
21 successor entities, if any, and each of them and any entities or persons acting in
22 concert with any of them. "Settled Class Claims" means a release of all claims
23 that were set forth, or reasonably could have been set forth based on the facts
24 alleged, in the operative Complaint, including claims for: (1) failure to provide
25 legally complaint meal periods in violation of Labor Code sections 226.7 and
26 512, and the applicable IWC Wage Order(s); (2) failure to provide legally
27 compliant rest periods in violation of Labor Code section 226.7 and the
28 applicable IWC Wage Order(s); (3) failure to pay minimum wages and contract
wages on an off-the-clock theory based on a) time spent during COVID
screenings; b) time spent passing through security screenings and donning and
doffing; and c) work time during meal and rest breaks from carrying radios,
work-related interruptions during breaks and working through meal periods but
having time records reflecting meal periods taken, overtime wages, in violation
of applicable law, including Labor Code section 510 and 1194 and the
applicable IWC Wage Order(s); (4) failure to provide complete and accurate
wage statements in violation of Labor Code section 226; (5) failure to pay all
wages due and owing at separation in violation of Labor Code sections 201,
202, and 203; (6) deceptive, fraudulent, or otherwise unlawful business
practices based on the foregoing in violation of California's Unfair Competition
Law (Bus. & Prof. Code, §§ 17200). "Settled Class Claims" is also intended
to and includes all types of relief available for the above-referenced claims,
including, without limitation, any claims for damages, restitution, losses,
penalties, attorneys' fees, costs, expenses, and interest.

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

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

10 All Participating and Non-Participating Class Members who are Aggrieved
11 Employees are deemed to release, on behalf of themselves and their respective
12 former and present representatives, agents, attorneys, heirs, administrators,
13 successors, and assigns, and the State of California, the Released Parties, from
14 all claims alleged or that could have been alleged in the operative PAGA letter
15 and operative Complaint as amended based on the factual allegations and legal
16 assertions made in the letter (as amended to reflect all claims and factual
17 assertions raised in connection with the mediation, such amendments to be
18 reviewed and approved by defense counsel prior to filing) that arose during the
19 PAGA Period, including without limitation (1) failure to provide legally
20 compliant meal periods in violation of Labor Code sections 226.7 and 512, and
21 the applicable IWC Wage Order(s); (2) failure to provide legally compliant rest
22 periods in violation of Labor Code section 226.7 and the applicable IWC Wage
23 Order(s); (3) failure to pay minimum wages and contract wages based on an
24 off-the-clock theory based on a) time spent during COVID screenings; b) time
25 spent passing through security screenings and donning and doffing; and c) work
26 time during meal and rest breaks from carrying radios, work-related
27 interruptions during breaks and working through meal periods but having time
28 records reflecting meal periods taken, and overtime wages, in violation of
applicable law, including Labor Code section 510 and 1194 and the applicable
IWC Wage Order(s); (4) failure to provide complete and accurate wage
statements in violation of Labor Code section 226; (5) failure to pay all wages
due and owing at separation in violation of Labor Code sections 201, 202, and
203; (6) untimely payment of all wages owed during employment in accordance
with Labor Code § 204 and (7) for failure to keep accurate records as required
by Labor Code §§ 1174 and 1174.5. "Settled PAGA Claims" includes all types
of relief available for the above-referenced claims, including, without
limitation, any claims for penalties, attorneys' fees, costs, or expenses. Plaintiff
shall make all required disclosures and provides all necessary notices required
under the PAGA for settlement. PAGA Members shall not be able to object to
or opt out of the PAGA portion of the PAGA settlement. Any Class Member
who opts out of the settlement will still be bound by the release of Settled PAGA
Claims and will receive a settlement payment for only the PAGA portion of the
settlement. Plaintiff agrees not to object to or opt out of the settlement.

1 **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

2 1. Individual Class Payments. The Administrator will calculate Individual Class
3 Payments using the following formula: The Net Settlement Amount will be allocated among
4 Participating Class Members on a proportional basis based on the number of Work Weeks worked
5 during the Class Period, whether the class member worked as an Electro Mechanic Technician during
6 the Class Period, whether the class member received a retention or PEZ bonus during the Class Period,
7 whether the class member worked during the period of April 12, 2021, through May 2, 2023 and would
8 be eligible for wage statement penalties, and whether the Participating Class Member experienced a
9 termination during the period of April 12, 2019 through May 2, 2023 entitling them to waiting time
10 penalties. Participating Class Members shall be allocated one (1) points of credit for each Work Week
11 they worked within the Class Period, five (5) points of credit if the Participating Class Member worked
12 as an Electro Mechanic Technician, five (5) points of credit if the class member received a retention
13 or PEZ bonus during the Class Period, five (5) points of credit if the Participating Class Member
14 experienced a termination within the Class Period, and two (2) points of credit if the Participating
15 Class Member worked during the period of April 12, 2021, through May 2, 2023 and would be eligible
16 for wage statement penalties. One day worked in a given week will be credited as a Work Week for
17 purposes of these calculations. To calculate each Class Member's proportional share, the
18 Administrator will (i) Add all points for all Participating Class Members to obtain the Denominator;
19 (ii) Divide the number of points for each Participating Class Member by the Denominator to obtain
20 each Class Member's portion of the Net Settlement Amount; (iii) Multiply each Participating Class
21 Member's portion of the Net Settlement Amount by the Net Settlement Amount to determine each
22 Class Member's estimated individual settlement payment of the Net Settlement Amount.

23 2. Individual PAGA Payments. The Administrator will calculate Individual PAGA
24 Payments by (a) dividing approximately \$6,250 by the total number of PAGA Pay Periods worked by
25 all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods
26 worked by each individual Aggrieved Employee.

27 3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked
28 during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period

1 and the other information used to calculate your Individual Settlement Payment, as recorded in
2 Wioss's records, are stated in the first page of this Notice. You have until [REDACTED] to challenge the
3 points credited to you. You can submit your challenge by signing and sending a letter to the
4 Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact
5 information. You need to support your challenge by sending copies of pay stubs or other records. The
6 Administrator will accept Wioss's calculation of Workweeks, Pay Periods and other information based
7 on Wioss's records as accurate unless you send copies of records containing contrary information.
8 You should send copies rather than originals because the documents will not be returned to you. The
9 Administrator will resolve challenges based on your submission and on input from Class Counsel
10 (who will advocate on behalf of Participating Class Members) and Wioss's Counsel. The
11 Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

12 **5. HOW WILL I GET PAID?**

13 1. Participating Class Members. The Administrator will send, by U.S. mail, one or more
14 check(s) to every Participating Class Member (i.e., every Class Member who doesn't opt-out)
15 including those who also qualify as Aggrieved Employees. The check(s) will combine the Individual
16 Class Payment and the Individual PAGA Payment.

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

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

23 **6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?**

24 Submit a written and signed letter with your name, present address, telephone number, and a
25 simple statement that you do not want to participate in the Settlement. The Administrator will exclude
26 you based on any writing communicating your request be excluded. Be sure to personally sign your
27 request, identify the Action as **Elvis Lopez v. Wioss Bakersfield, L.P., Kern Superior Court Case**
28 **No. BCV-22-100852JEB**, and include your identifying information (full name, address, telephone

number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Wioss are asking the Court to approve. At least sixteen (16) court days before the **[INSERT DATE OF FINAL APPROVAL HEARING]** Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ (url) or the Court's website _____ (url).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action **Elvis Lopez v. Wioss Bakersfield, L.P., Kern Superior Court Case No. BCV-22-100852JEB** and include your name, current address, telephone number, and approximate dates of employment for and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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

1 **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

2 You can, but don't have to, attend the Final Approval Hearing on _____ at
3 (time) in Division J of the Kern County Superior Court, located at 1215 Truxtun Ave., Bakersfield,
4 CA 93301. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement
5 and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator.
6 The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a
7 decision. You can attend (or hire a lawyer to attend) either personally or virtually by logging on to
8 the Court's website at <https://www.kern.courts.ca.gov/online-services/remote-court-hearings>. Check
9 the Court's website for the most current information. It's possible the Court will reschedule the Final
10 Approval Hearing. You should check the Administrator's website _____
11 _____ beforehand or contact Class Counsel to verify the date and time of the Final
12 Approval Hearing.

13 **9. HOW CAN I GET MORE INFORMATION?**

14 The Agreement sets forth everything Wioss and Plaintiff have promised to do under the
15 proposed Settlement. In this regard, capitalized terms in this notice are further explained in the Class
16 Action and PAGA Settlement Agreement on file with the Court as Exhibit _____ to the Declaration of
17 Jeremy F. Bollinger. The easiest way to read the Agreement, the Judgment or any other Settlement
18 documents is to go to _____ (specify entity) 's website at _____ (url) _____. You can also
19 telephone or send an email to Class Counsel or the Administrator using the contact information listed
20 below, or consult the Superior Court website by going to
21 (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action,
22 Case No. 21SMCV01620. You can also make an appointment to personally review court documents
23 in the Clerk's Office at the Metropolitan Division Justice Building by calling (661) 610-6000.

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

Class Counsel: Jeremy F. Bollinger, Dennis F. Moss, Ari E. Moss, Jorge A. Flores
Name of Attorney: Jeremy F. Bollinger
Email Address: jeremy@mossbollinger.com
Name of Firm: Moss Bollinger LLP
Mailing Address: 15300 Ventura Blvd., Ste. 207, Sherman Oaks, California 91403
Telephone: (310) 982-2984

Settlement Administrator:

Name of Company: _____

Email Address: _____

Mailing Address: _____

Telephone: _____

Fax Number: _____

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

If your check is already void you should consult the Unclaimed Property Fund _____

_____ for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

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

EXHIBIT

B

Jeremy F. Bollinger (SBN 240132)
Ari E. Moss (SBN 238579)
Jorge A. Flores (SBN 333441)
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Attorneys for Plaintiff ELVIS LOPEZ

SUPERIOR COURT OF CALIFORNIA

COUNTY OF KERN

ELVIS LOPEZ, individually and on behalf of
other persons similarly situated,

Plaintiff,

vs.

WIOSS BAKERSFIELD LP; and **DOES 1-50**, inclusive,

Defendants.

Case No.: BCV-22-100852JEB

CLASS ACTION

SECOND AMENDED COMPLAINT FOR DAMAGES:

- 1. FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS**
- 2. FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS**
- 3. FAILURE TO PAY MINIMUM, OVERTIME AND CONTRACT WAGES**
- 4. FAILURE TO PROVIDE LEGALLY COMPLIANT WAGE STATEMENTS**
- 5. FAILURE TO PAY ALL WAGES DUE AND OWING ON SEPARATION**
- 6. UNFAIR BUSINESS PRACTICES [Cal. Bus. & Prof. Code §§17200]**
- 7. PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE §§ 2698 *et seq.* ("PAGA")**

DEMAND FOR JURY TRIAL

1 Plaintiff ELVIS LOPEZ (“Plaintiff”), on behalf of himself and all others similarly
2 situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is a class action lawsuit brought on behalf of Plaintiff and other similarly
5 situated persons, under Code of Civil Procedure § 382, seeking remedies for meal and rest period
6 violations, failure to pay overtime, minimum and contract wages, inaccurate itemized wage
7 statements, waiting time penalties in the form of continuation wages for failure to timely pay
8 employees all wages, equitable relief, and reasonable attorneys’ fees and costs from Defendant
9 WIOSS BAKERSFIELD LP. This amended complaint adds a claim for civil penalties under the
10 Private Attorneys General Act of 2004, Labor Code §§ 2698 et seq. (“PAGA”).

11 **JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over this action under Article 6 of the California
13 Constitution and California Code of Civil Procedure § 410.10.

14 3. This Court has jurisdiction over Plaintiff’s and Class Members’ claim for unpaid
15 overtime wages under California Labor Code § 1194.

16 4. This Court has jurisdiction over Plaintiff’s and Class Members’ claims for waiting
17 time penalties and meal and rest period violations under California Labor Code §§ 201-203 and
18 218.

19 5. This Court has jurisdiction over Plaintiff’s and the Class Members’ claims for
20 restitution of unpaid wages and other ill-gotten benefits arising from Defendants’ unlawful
21 and/or unfair business practices under California Business & Professions Code §§17200 *et seq.*

22 6. This Court has jurisdiction over Plaintiff’s claims for civil penalties pursuant to
23 PAGA.

24 7. Venue is proper in this judicial district pursuant to California Code of Civil
25 Procedure § 395.5 because the acts alleged herein, in part, took place in Kern, California.

PARTIES

8. Defendant WIOSS Bakersfield LP is a Delaware limited partnership with a principal place of business in Shafter, California. Defendant WIOSS Bakersfield LP provides maintenance services to various companies throughout California.

9. Plaintiff ELVIS LOPEZ (“Plaintiff”) is a resident of California. Plaintiff was employed by Defendants as an hourly paid non-exempt automation technician from approximately March 2020 to December 25, 2021. Plaintiff performed maintenance on electronics and machinery that was stored in a temperature-controlled room for Defendants’ clients in California, including in Shafter.

10. Plaintiff appears in this action on behalf of himself and on behalf of all others similarly situated.

11. Plaintiff is informed and believes that DOES 1 through 50 are corporations, individuals, limited liability partnerships, limited liability companies, general partnerships, sole proprietorships or are other business entities or organizations of a nature not currently known to Plaintiff.

12. Plaintiff is unaware of the true names of Defendants DOES 1 through 50. Plaintiff sues said Defendants by said fictitious name and will amend this complaint when the true names and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named Defendants is in some manner responsible for the events and allegations set forth in this complaint.

13. All of the acts and failures to act alleged herein were duly performed by and were attributable to all Defendants, each acting as a joint employer, successor, agent, employee, or under the direction and control of the others, except as specifically alleged otherwise. Said acts and failures to act were within the scope of such agency and/or employment, and each Defendant participated in, approved and/or ratified the unlawful acts and omissions by the other Defendants complained of herein. Whenever and wherever reference is made in this Complaint to any act by

a Defendant or Defendants, such allegations and reference shall also be deemed to mean the acts and failures to act of each Defendant acting individually, jointly and/or severally.

14. Plaintiff makes the allegations in this complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading, and Plaintiff reserves all of Plaintiff's rights to plead in the alternative.

15. Defendants WIOSS Bakersfield LP and DOES 1-50 are collectively referred to herein as "Defendants".

GENERAL FACTUAL ALLEGATIONS

16. **Facts Related to Defendants' Meal Period Violations:** At all times during the liability period, Defendants regularly failed to provide and/or permit Plaintiff, and other members of the Wage and Break Class, meal periods that complied with California law. Specifically, Plaintiff had to regularly work past his fifth hour of work before he could take a meal break.

17. In addition, Plaintiff's meal breaks were regularly interrupted by Defendants for work-related issues. Defendants required Plaintiff to remain in his work gear (which consisted of insulated boots, bibs, jacket, and gloves) and carry a radio with him at all times, including during his meal break. If Plaintiff was radioed that a machine needed repair, Plaintiff was required to address the issue immediately. Once Plaintiff responded to the request, Plaintiff's meal break was effectively over. Despite these work-related interruptions, Defendants recorded Plaintiff and others as having taken the meal periods. Defendants failed to pay Plaintiff and other Wage and Break Class members an additional hour of pay at the employees' regular rate of compensation for untimely and non-compliant meal periods.

18. **Facts Related to Defendants' Rest Period Violations:** At all times during liability period, Defendants regularly failed to provide and/or permit Plaintiff, and other members of the Wage and Break Class, rest periods that complied with California law due to work-related interruptions. As mentioned above, during the relevant time, Plaintiff was required to carry a radio with him at all times and respond immediately if a machine needed repair,

1 including during his rest break. Once Plaintiff responded to the request, Plaintiff's rest break was
2 effectively over. As a result, Plaintiff was unable to take an uninterrupted, duty-free rest period.
3 Defendants failed to pay Plaintiff and other Wage and Break Class members an additional hour
4 of pay at the employee's regular rate of compensation for non-compliant rest periods.

5 19. **Facts Related to Unpaid Minimum, Overtime and Contract Wage Claims:** At
6 all times during the relevant liability period, Defendants failed to properly pay Plaintiff and other
7 members of the Wage and Break Class as required by California law. For example, Plaintiff and
8 other members of the Wage and Break Class received various forms of non-discretionary
9 incentive pay. Including but not limited to incentive payments as indicated on their wage
10 statements as "PEZ Bonus" and "Bonus." However, during the relevant periods in which
11 Plaintiff and other members of the Wage and Break Class earned overtime and non-discretionary
12 incentive pay, including "PEZ Bonus" and "Bonus," Defendants paid Plaintiff and other Class
13 members overtime wages at a rate of one and one half their base hourly rate without factoring in
14 the amount of non-discretionary incentive pay. As a result, Plaintiff and other members of the
15 Wage and Break Class were underpaid all their required overtime wages.

16 20. In addition, prior to beginning their scheduled shifts, Plaintiff and other members
17 of the Wage and Break Class were required to undergo COVID screenings and pass through
18 security screenings before entering certain facilities where they were assigned to work. Plaintiff
19 and other members of the Wage and Break Class also spent time donning and doffing certain
20 protective gear prior to the beginning of their shifts and after the end of their shifts. In addition,
21 Defendants required Plaintiff and other members of the Wage and Break Class to work time
22 during meal and rest breaks by carrying radios, subjecting Plaintiff and aggrieved employees to
23 work-related interruptions during breaks and working through meal periods but having time
24 records reflecting meal periods taken instead of work time. However, Defendants failed to pay
25 Plaintiff and other members of the Wage and Break Class minimum wages, overtime wages
26 and/or contract wages for time spent undergoing these screenings and donning and doffing.

21. **Facts Related to Inaccurate Wage Statements:** At all times during the liability period, Plaintiff and other members of the Wage Statement Class received wage statements from Defendants that did not list all wages earned, including the premium, overtime, minimum and contract wages alleged above. As the above infractions explain, Plaintiff and other members of the Wage Statement Class were entitled to meal and rest premium wages and overtime, minimum and contract wages that were not paid and, therefore, are entitled to penalty payments pursuant to Labor Code Section 226.

22. **Facts Related to Waiting Time Penalties:** At all times during the liability period, Plaintiff and other members of the Waiting Time Penalty Class did not receive all wages owed due to Defendants' failure to properly pay all overtime, minimum and contract wages owed and failure to pay premium wages for the meal and rest period violations alleged above. Likewise, Defendants violated Labor Code Section 203 by not paying the waiting time penalties for failure to comply with Labor Code Section 201 or 202.

CLASS DEFINITIONS AND CLASS ALLEGATIONS

23. Plaintiff brings this action on behalf of himself, on behalf of all others similarly situated, and as a member of the Classes defined as follows:

- a. **Wage and Break Class:** All current and former non-exempt employees of Defendants who work or worked in California at any time during the four years preceding the filing of Plaintiff's Complaint through the date Notice is mailed to the members of this Class.
- b. **Wage Statement Class:** All members of the Wage and Break Class who worked for Defendants in California at any time during the one year preceding the filing of Plaintiff's Complaint through the date Notice is mailed to the members of this Class.
- c. **Waiting Time Penalty Class:** All members of the Wage and Break Class whose employment by Defendants ended at any time during the three years preceding

1 the filing of Plaintiff's Complaint through the date Notice is mailed to the
2 members of this Class.

3 24. This action has been brought and may be properly maintained as a class action
4 pursuant to the provisions of California Code of Civil Procedure § 382 and other applicable law.

5 25. **Numerosity:** Code of Civil Procedure § 382: members of the Classes are so
6 numerous that their individual joinder is impracticable. Plaintiff estimates that there are no less
7 than 50 persons in each of the classes. The precise number of Class members and their addresses
8 are unknown to Plaintiff. However, Plaintiff is informed and believes that the number can be
9 obtained from Defendants' records. Class members may be notified of the pendency of this
10 action by mail, electronic mail, the Internet, or published notice.

11 26. **Existence of Predominance of Common Questions of Fact and Law:** Code of
12 Civil Procedure § 382: Common questions of law and fact exist as to all members of the Class.
13 These questions predominate over any questions effecting only individual members of the class.
14 These common factual and legal questions include:

15 (a) Whether Defendants failed to provide members of the Wage and Break Class
16 timely, thirty (30) minutes uninterrupted meal breaks for each day they
17 worked more than 5 hours as contemplated by California law;

18 (b) Whether Defendants failed to pay meal premiums to members of the of the
19 Wage and Break Class for late or non-compliant meal breaks as required by
20 California law.

21 (c) Whether Defendants failed to provide members of the Wage and Break Class
22 uninterrupted, duty-free rest periods of at least ten (10) minutes for each four-
23 hour period of work, or a major fraction thereof;

24 (d) Whether Defendants failed to pay rest break premiums to members of the
25 Wage and Break Class for non-compliant rest periods as required by
26 California law.

- (e) Whether Defendants failed to factor non-discretionary incentive pay into the calculation of the regular rate of pay for the payment of overtime wages.
- (f) Whether Defendants violated IWC Wage Orders and Labor Code provisions by failing to properly pay all overtime, minimum and/or contract wages to members of the Wage and Break Class for time spent undergoing screenings and donning and doffing.
- (g) Whether Defendants failed to issue accurate wage statements under Labor Code Section 226;
- (h) Whether Defendants failed to provide class members who ceased employment with Defendants all wages owed at the time of the cessation of the employee-employer relationship;
- (i) Whether hourly paid employees are entitled to overtime wages, minimum wages, contract wages, premium wages, waiting time penalties, inaccurate wage statement penalties and other relief;
- (j) Whether Defendants committed unlawful business practices or acts within the meaning of Business & Professions Code Sects. 17200 *et seq.*;
- (k) Whether, as a consequence of Defendants' unlawful conduct, the members of the Classes are entitled to restitution, and/or equitable relief;
- (l) Whether Defendants' affirmative defenses, if any, raise any common issues of law or fact as to Plaintiff and the class members as a whole.

27. **Typicality:** Plaintiff's claims are typical of the claims of the members of each Class because Plaintiff, as an hourly paid non-exempt employee, was exposed to the same unlawful business practices as the members of the classes. Plaintiff sustained the same types of injuries and losses that the class members sustained. Plaintiff is subject to the same affirmative defenses as the members of the class.

28. **Adequacy:** Plaintiff will adequately and fairly protect the interests of the members of the Classes. Plaintiff has no interest adverse to the interests of absent Class

members. Plaintiff is represented by legal counsel who has substantial class action experience in civil litigation and employment law.

29. **Superiority**: A class action is superior to other available means for fair and efficient adjudication of the claims of the Classes and would be beneficial for the parties and the court. Class action treatment will allow a large number of similarly situated persons to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. The monetary amounts due to many individual Class members are likely to be relatively small, and the burden and expense of individual litigation would make it difficult or impossible for individual members of the Class to seek and obtain relief. A class action will serve an important public interest by permitting such individuals to effectively pursue recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS

(By Plaintiff and the Wage and Break Class against all Defendants)

30. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

31. At all relevant times, Plaintiff and the other members of the Wage and Break Class were employees of Defendants covered by Labor Code Sections 226.7 and 512 and the applicable Wage Orders, including Wage Order 4-2001.

32. Under labor Code Sections 226.7 and 512, and section 11 of the applicable Industrial Welfare Commission (“IWC”) Wage Orders, including Wage Order 4-2001, Plaintiff and other members of the Wage and Break Class were entitled to an uninterrupted meal period of at least 30 minutes for each workday worked more than 5 hours in any workday. Defendants were required to allow Plaintiff and other members of the Wage and Break Class to take their meal breaks before the fifth hour of work. Additionally, “If an employer fails to provide an

1 employee a meal... period in accordance with state law..., the employer shall pay the employee
2 one additional hour of pay at the employee's *regular rate of compensation* for each workday that
3 the meal period is not provided," Labor Code Section 226.7(c) (emphasis added).

4 33. Defendants failed to provide Plaintiff and other members of the Wage and Break
5 Class timely meal periods within the first 5 hours of their workday for each workday they
6 worked more than 5 hours in accordance with Labor Code Sections 226.7 and 512 and Section
7 11 of Wage Order 4-2001. Plaintiff is informed and believes and thereon alleges that during the
8 applicable limitations period, Defendants maintained and continue to maintain a policy or
9 practice of releasing their hourly employees for meal periods after the 5th hour of work in a
10 workday and preventing putative class members from taking their meal periods within the first 5
11 hours of the workday.

12 34. As alleged above, Defendants failed to provide Plaintiff and other members of the
13 Wage and Break Class with uninterrupted, duty-free meal periods as required by Labor Code
14 Sections 226.7 and 512 and Wage Order 4-2001. Plaintiff is informed and believes and thereon
15 alleges that during the applicable limitations period, Defendants maintained and continue to
16 maintain a policy of failing to provide members of the Wage and Break Class with duty-free
17 uninterrupted meal periods.

18 35. Defendants failed to provide Plaintiff and other members of the Wage and Break
19 Class the additional hour of pay required by Labor Code Section 226.7 and Section 11 of Wage
20 Order 4-2001 for late or non-compliant meal periods.

21 36. As a result of Defendants' unlawful conduct, Plaintiff and other members of the
22 Wage and Break Class have suffered damages in an amount, subject to proof, to the extent they
23 were not paid all premiums owed for meal period violations.

24 37. Pursuant to Labor Code Section 218, Plaintiff and other members of the Wage
25 and Break Class are entitled to recover the full amount of their unpaid additional pay for meal
26 period violations. Pursuant to Labor Code Section 218.5, Plaintiff and other members of the
27 Wage and Break Class are entitled to recover their reasonable attorney's fees and costs of suit.

Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiff and other members of the Wage and Break Class are entitled to recover prejudgment interest on the additional pay owed for meal period violations.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(By Plaintiff and the Wage and Break Class against all Defendants)

38. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs, as though they are set forth herein.

39. Labor Code Section 226.7 and Wage Order 4-2001 entitles Plaintiff and other members of the Wage and Break Class to rest periods of at least 10 minutes for each four-hour period of work, or a major fraction thereof. Under Labor Code Section 226.7(c), an employer who fails to provide a rest period in accordance with state law shall pay an employee one additional hour of pay at the employee's regular rate of compensation for each workday that a rest period is not provided.

40. As alleged above, Defendants failed to allow Plaintiff and other members of the Wage and Break Class to take rest periods in accordance with Labor Code Section 226.7 and Wage Order 4-2001. Plaintiff is informed and believes and thereon alleges that at all relevant times within the applicable limitations period, Defendants maintained and continue to maintain a policy or practice of failing to provide members of the Wage and Break Class uninterrupted, duty-free 10-minute rest periods for each four hours of work or major fraction thereof in accordance with Labor Code Section 226.7 and Wage Order 5-2001.

41. Defendants also failed to provide Plaintiff and other members of the Wage Break Class the additional hour of pay required by Labor Code Section 226.7 and Section 11 of Wage Order 4-2001 for non-compliant rest periods.

42. As a result of Defendants' unlawful conduct, Plaintiff and other members of the Wage and Break Class have suffered damages in an amount, subject to proof, to the extent they were not paid all premiums owed for rest period violations.

1 43. Pursuant to Labor Code Section 218, Plaintiff and other members of the Wage
2 and Break Class are entitled to recover the full amount of their unpaid additional pay for rest
3 period violations. Pursuant to Labor Code Section 218.5, Plaintiff and other members of the
4 Wage and Break Class are entitled to recover their reasonable attorney's fees and costs of suit.
5 Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiff and other
6 members of the Wage and Break Class are entitled to recover prejudgment interest on the
7 additional pay owed for rest period violations.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME, MINIMUM AND CONTRACT WAGES**

10 **(By Plaintiff and the Wage and Break Class against all Defendants)**

11 44. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs,
12 as though they are set forth herein.

13 45. At all relevant times, Defendants were subject to Labor Code Sections 510, 1194,
14 1197 and the applicable IWC Wage Orders, including Wage Order 4-2001, which entitled
15 Plaintiff and other members of the Wage and Break Class to minimum wages and to overtime
16 pay for all hours worked in excess of eight hours in one work day or forty hours per week. Under
17 Labor Code Section 510, an employer shall pay overtime pay for all hours worked in excess of
18 eight hours in one workday or forty hours per week at a rate of no less than one-and-one-half the
19 employee's regular rate of pay.

20 46. As alleged above, Defendants failed to pay Plaintiff and other members of the
21 Wage and Break Class all overtime wages in accordance with Labor Code Sections 510 and
22 1194 and the applicable IWC Wage Orders, including Section 3 of Wage Order 4-2001. Plaintiff
23 is informed and believes and thereon alleges that at all relevant times within the applicable
24 limitations period, Defendants maintained and continue to maintain a policy or practice of failing
25 to factor non-discretionary incentive pay into the calculation of the regular rate of pay for the
26 payment of overtime wages to members of the Wage and Break Class.

1 47. Pursuant to Labor Code Section 1197 and the applicable Wage Orders, Plaintiff
2 and the other members of the Class and the Wage and Break Class were entitled to receive
3 minimum wages for all hours worked.

4 48. Defendants failed to pay Plaintiff and the other members of the Wage and Break
5 Class minimum wages, overtime and contract wages for all hours worked in violation of Labor
6 Code Sections 510, 1197 and the applicable Wage Orders. Plaintiff is informed and believes and
7 thereon alleges that at all relevant times within the applicable limitations period, Defendants
8 maintained and continue to maintain a policy or practice of requiring Plaintiff and putative class
9 members to perform various duties before the start of their scheduled shift but only paying those
10 employees from the beginning of their scheduled shift instead of the actual time worked

11 49. Plaintiff, on behalf of himself and the other members of the Wage and Break
12 Class, requests the unpaid minimum, overtime and contract wages, all penalties to which they
13 may recover interest, attorneys' fees, costs, and any other remedies allowed by law, including
14 liquidated damages on his minimum wages claim, in an amount to be proven at trial.

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE LEGALLY COMPLIANT WAGE STATEMENTS**

17 **(By Plaintiffs and the Wage Statement Class against all Defendants)**

18 50. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs as
19 though they are set forth herein.

20 51. Labor Code Section 226(a) requires Defendants to furnish accurate itemized wage
21 statements in writing that show, inter alia, "(1) gross wages earned... (9) all applicable hourly
22 rates..." Defendants have knowingly and intentionally failed to comply with Labor Code Section
23 226(a) by failing to list all wages earned, including premium wages and overtime, minimum and
24 contract wages and the correct regular rate of pay for overtime wages.

25 52. As a consequence of Defendants knowing and intentional failure to comply with
26 Labor Code section 226(a), Plaintiff and each Wage Statement Class member he seeks to
27
28

1 represent are each entitled to actual damages or penalties not to exceed \$4,000 pursuant to Labor
2 Code Section 226(b), together with interest thereon and attorney's fees and costs.

3 **FIFTH CAUSE OF ACTION**

4 **FAILURE TO PAY ALL WAGES DUE UPON CESSATION OF EMPLOYMENT**

5 **(By Plaintiff and the Waiting Time Penalty Class against all Defendants)**

6 53. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs as
7 though they are set forth herein.

8 54. Plaintiff and other members of the Waiting Time Penalty Class were employees
9 of Defendants covered by Labor Code Section 201 or 202 whose employment with Defendant
10 has ended during the relevant class period. Plaintiff's employment ended on December 15, 2021.

11 55. Pursuant to Labor Code Sections 201 and 202, Plaintiff and other members of the
12 Waiting Time Penalty Class were entitled, upon cessation of employment with Defendants, to
13 timely payment of all wages earned and unpaid prior to termination. Discharged employees
14 were entitled to payment of all wages earned and unpaid prior to discharge immediately upon
15 termination. Employees who resigned were entitled to payment of all wages earned and unpaid
16 prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours
17 previous notice, they were entitled to payment of all wages earned and unpaid prior to
18 resignation at the time of resignation.

19 56. As alleged above, Defendants failed to pay Plaintiff and other members of the
20 Waiting Time Penalty Class all wages earned and unpaid prior to termination, including all break
21 premium wages and overtime, minimum and contract wages owed at the time the employee-
22 employer relationship ceased, in accordance with Labor Code Sections 201 and 202. Plaintiff is
23 informed and believes and thereon alleges that at all relevant times within the applicable
24 limitations period, Defendants maintained and continue to maintain a policy or practice of not
25 paying terminated employees all their final wages, including break premium wages, earned
26 before termination due under Labor Code Section 201 or 202.

1 57. Defendants' failure to pay Plaintiff and members of the Waiting Time Penalty
2 Class all wages earned prior to termination in accordance with Labor Code Section 201 or 202
3 was willful. Defendants had the ability to pay all wages earned by employees prior to
4 termination in accordance with Labor Code Section 201 or 202, but intentionally adopted
5 policies or practices incompatible with the requirements of Labor Code Sections 201 and 202.

6 58. Pursuant to Labor Code Sections 201 and 202, Plaintiff and other members of the
7 Waiting Time Penalty Class are entitled to all wages earned prior to termination that Defendants
8 failed to pay them.

9 59. Pursuant to Labor Code Section 203, Plaintiff and other members of the Waiting
10 Time Penalty Class are entitled to continuation of their wages, from the day their earned and
11 unpaid wages were due upon termination until paid, up to a maximum of 30 days.

12 60. As a result of Defendants' conduct, Plaintiff and other members of the Waiting
13 Time Penalty Class have suffered damages in an amount, subject to proof, to the extent they
14 were not paid for all wages earned prior to termination.

15 61. As a result of Defendants' conduct, Plaintiff and members of the Waiting Time
16 Penalty Class have suffered and continue to suffer damages in an amount, subject to proof, to the
17 extent they were not paid all continuation wages owed under Labor Code Section 203.

18 62. Pursuant to Labor Code Sections 218 and 218.5, Plaintiff and other members of the
19 Waiting Time Penalty Class are entitled to recover the full amount of their unpaid wages,
20 continuation wages under Labor Code Section 203, reasonable attorney's fees and costs of suit.
21 Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiff and other members
22 of the Waiting Time Penalty Class are entitled to recover prejudgment interest on the amount of
23 their unpaid wages and unpaid continuation wages.

24 ///

1 **SIXTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(By Plaintiff and the Classes against Defendants)**

4 63. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs, as
5 though they are set forth in herein.

6 64. Beginning at an exact date unknown to Plaintiff, Defendants engaged in unfair
7 competition as defined in California Business and Professions Code Section 17200.

8 65. Section 17200 provides a private cause of action for any “unlawful, unfair or
9 fraudulent business practice and unfair, deceptive, untrue or misleading advertising.”

10 66. At all times relevant to this action, Plaintiff and other members of the Classes were
11 employees of Defendants entitled to the benefits of Labor Code Sections 201-203, 226.7, 226, 512,
12 and 1194 and the applicable IWC Wage Orders, including Wage Order 4-2001.

13 67. During the relevant time period, Defendants intentionally and willfully failed to
14 pay Plaintiff and other members of the Wage and Break Class their meal break premium wages
15 for untimely or non-compliant meal periods as required by law. Accordingly, Plaintiff and other
16 members of the Wage and Break Class did not receive all wages they were entitled to receive by
17 law.

18 68. During the relevant time period, Defendants intentionally and willfully failed to
19 pay Plaintiff and other members of the Wage and Break Class their rest break premium wages for
20 non-compliant rest periods as required by law. Accordingly, Plaintiff and other members of the
21 Wage and Break Class did not receive all wages they were entitled to receive by law.

22 69. During the relevant time period, Defendants intentionally and willfully failed to
23 pay Plaintiff and other members of the Wage and Break Class all overtime, minimum and contract
24 wages owed. Accordingly, Plaintiff and other members of the Wage and Break Class did not
25 receive all the wages they were entitled to receive by law.

26 70. During the relevant time period, Defendants intentionally and willfully failed to
27 furnish to Plaintiff and other members of the Wage Statement Class accurate itemized wage
28

1 statements that listed all wages earned, including premium wages and overtime, minimum and
2 contract wages. Accordingly, Plaintiff and other members of the Wage Statement Class did not
3 receive accurate wage statements they were entitled to receive by law.

4 71. During the relevant time period, Defendants intentionally and willfully failed to
5 pay Plaintiff and other members of the Waiting Time Penalty Class premium wages and overtime,
6 minimum and contract wages upon separation of employment by Defendants and, thereafter, failed
7 to pay waiting time penalties pursuant to Labor Code Section 203 to the members of the Waiting
8 Time Penalty Class. Accordingly, Plaintiff and members of the Waiting Time Penalty Class did
9 not receive all wages they were entitled to receive by law.

10 72. The unlawful conduct of Defendants alleged herein constitutes unfair competition
11 within the meaning of Business and Professions Code Section 17200. Due to its unlawful and
12 unfair business practices in violation of the Labor Code, Defendants have gained a competitive
13 advantage over other comparable companies doing business in the State of California that
14 comply with their obligations under the Labor Code.

15 73. As a result of Defendants' unfair competition as alleged herein, Plaintiff and other
16 members of the Classes have suffered injury in fact and lost money or property. Plaintiff and
17 members of the Classes have been deprived of their rights to premium wages for meal and rest
18 period violations; overtime, minimum and contract wages, and accurate itemized wage statements;
19 and/or timely payment of all earned wages, including premium wages and overtime, minimum and
20 contract wages, due upon termination of employment.

21 74. Pursuant to Business and Professions Code Section 17203, Plaintiff and other
22 members of the Classes are entitled to restitution of the premium wages and overtime, minimum
23 and contract wages by which Defendants underpaid them, and to their reasonable attorney's fees
24 and costs under Code of Civil Procedure Section 1021.5.

25 ///

1 **SEVENTH CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA'S PRIVATE ATTORNEYS GENERAL ACT**

3 **(LABOR CODE §§ 2698 *et seq.*)**

4 **(By Plaintiff, Aggrieved Employees, and the State of California Against Defendants)**

5 75. Plaintiff incorporates all of the foregoing paragraphs of this complaint as though
6 fully alleged herein, except those paragraphs uniquely relates to class allegations.

7 76. Under the Private Attorneys General Act, Labor Code §§ 2698-99 ("PAGA"),
8 private parties may recover civil penalties for violations of the California Labor Code. PAGA
9 penalties are in addition to any other relief available under the Labor Code.

10 77. As set forth above, Defendant has committed numerous violations of the California
11 Labor Code by consistently failing to provide Plaintiff and other similarly aggrieved employees
12 with legally compliant meal and rest periods, all overtime, minimum and contract wages earned,
13 accurate wage statements and timely payment of final wages. In addition, Defendant has also failed
14 to timely pay all wages owed to Plaintiff and other similarly aggrieved employees in accordance
15 with Labor Code § 204 and to keep accurate records as required by Labor Code §§ 1174 and
16 1174.5.

17 78. Plaintiff provided written notice to the Labor and Workforce Development Agency
18 ("LWDA"), through the LWDA's online submission portal and to Defendant WIOSS Bakersfield
19 LP via certified mail, of the legal claims and theories of this case on April 1, 2022. (Attached
20 hereto as **Exhibit 1** is a true and correct copy of the April 1, 2022 Letter and the LWDA's receipt
21 confirmation). To date, and after 65 days from the date of the mailing of the written notice, the
22 LWDA has not notified Plaintiff that the LWDA intends to exercise jurisdiction over the claim for
23 civil penalties under the PAGA. Accordingly, Plaintiff exhausted the administrative remedies
24 required by Labor Code § 2699.3.

25 79. Under the PAGA, Plaintiff is entitled to recover the maximum civil penalties
26 permitted by law from Defendants for the Labor Code violations alleged herein.

27 80. Plaintiff is also entitled to recover his attorney's fees and costs under Labor Code
28

§ 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself and all others similarly situated, prays for relief and judgment against Defendants as follows:

CLASS CERTIFICATION:

1. An order that the action be certified as a class action;
2. An order that Plaintiff be certified as the representative of the Classes;
3. An order that counsel for Plaintiff be confirmed as Class counsel;

ON THE FIRST CAUSE OF ACTION

1. Damages for unpaid premiums for meal period violations;
2. Prejudgment interest;

ON THE SECOND CAUSE OF ACTION

1. Damages for unpaid premiums for rest period violations;
2. Prejudgment interest;

ON THE THIRD CAUSE OF ACTION

1. Damages for unpaid overtime, minimum and contract wages;
2. Liquidated damages on the minimum wage claim;
3. Prejudgment interest;

ON THE FOURTH CAUSE OF ACTION

1. Damages for inaccurate wage statements for each pay period;
2. Prejudgment interest;

ON THE FIFTH CAUSE OF ACTION

1. Damages for unpaid wages earned prior to termination of employment
2. Damages for unpaid continuation wages owed for failing to pay all earned wages timely upon termination of employment;
3. Prejudgment interest;

1 **ON THE SIXTH CAUSE OF ACTION**

- 2 1. Restitution of all unpaid wages and other monies owed and belonging to Class
3 members that Defendants unlawfully withheld from them and retained for
4 themselves;
5 2. Prejudgment interest

6 **ON THE SEVENTH CAUSE OF ACTION**

- 7 1. Civil penalties under Labor Code Section 26999 (75% payable to the LWDA and
8 25% payable to aggrieved employees);
9 2. Prejudgment interest

10 **ON ALL CAUSES OF ACTION**

- 11 1. Judgment in favor of Plaintiff and the putative Classes and against Defendants;
12 2. Reasonable attorney's fees and costs of suit; and
13 3. Such other relief as the Court deems just and proper.

14 Dated: July 10, 2023

MOSS BOLLINGER LLP

15 

16
17 By: _____
18 Jeremy F. Bollinger
19 Attorneys for Plaintiff Elvis Lopez

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff demands a trial by jury for himself and the Class on all claims so triable.

22 Dated: July 10, 2023

MOSS BOLLINGER LLP

23 

24
25 By: _____
26 Jeremy F. Bollinger
27 Attorneys for Plaintiff Elvis Lopez
28

EXHIBIT 1

to

Second Amended Complaint
Lopez v. WIOSS Bakersfield LP
Kern County Superior Court
Case No. BCV-22-100852JEB



Moss Bollinger
LLP

JEREMY F. BOLLINGER
310.982.2984/fax: 818.963.5954
jeremy@mossbollinger.com

April 1, 2022

VIA PAGA ONLINE FILING

Secretary Natalie Palugyai
Labor & Workforce Development Agency
PAGA ADMINISTRATOR
1515 Clay Street, Ste. 801
Oakland, California 94612

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Wioss Bakersfield LP
c/o National Registered Agents, Inc.
330 N. Brand Blvd, Suite 700
Glendale, CA 91203

Wioss West LP
c/o National Registered Agents, Inc.
330 N. Brand Blvd, Suite 700
Glendale, CA 91203

Witron Service America LP
c/o National Registered Agents, Inc.
330 N. Brand Blvd, Suite 700
Glendale, CA 91203

Re: Notice pursuant to Labor Code Section 2699.3
Labor Code Private Attorneys General Act ("PAGA")

Employers: WIOSS Bakersfield LP, WIOSS West LP and Witron Service America LP

Employee: Elvis Lopez, on behalf of himself and on behalf of all current and former non-exempt workers employed in California by WITRON Service America LP and its WIOSS divisions, including WIOSS Bakersfield LP and WIOSS West LP.

Dear Secretary Palugyai:

Pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.*

15300 Ventura Boulevard, Suite 207, Sherman Oaks, California 91403

(“PAGA”), representative employee, Elvis Lopez (“Plaintiff”), on behalf of himself and all other similarly aggrieved California employees, gives notice that his former employers, Defendant WIOSS Bakersfield LP, Defendant WIOSS West LP, and Defendant WITRON Service America LP (collectively “Defendants”) violated the California Labor Code throughout Plaintiff’s employment and within the one year prior to the mailing of this letter as follows.

The Parties

Defendant WIOSS Bakersfield LP is a Delaware limited partnership with its principal place of business in Shafter, California. Defendant WIOSS West LP is a Delaware limited partnership with a principal place of business in Atlanta, Georgia. Defendant WITRON Service America LP is a Delaware limited partnership with a principal place of business in Atlanta, Georgia. As part of their business, Defendants provide maintenance services to storage and other warehouse logistic systems for various companies throughout the country, including in California. Plaintiff was employed by Defendants as an automation technician. Plaintiff’s main job duties consisted of performing maintenance on electronics and machinery that was stored in a temperature-controlled room in Shafter, California. Plaintiff worked as an hourly paid non-exempt employee for Defendants from approximately March 2020 to December 15, 2021.

Plaintiff seeks civil penalties on behalf of himself, the State of California, and all other similarly aggrieved employees for the violations described herein.

Violations of California Meal and Rest Period Requirements

During Plaintiff’s employment, Defendants regularly failed to provide, authorize, and/or permit to Plaintiff and other similarly aggrieved employees meal and rest periods that complied with California law.

Under Labor Code Sections 226.7 and 512, and the applicable Industrial Welfare Commission (“IWC”) Wage Orders, including Wage Order 4-2001(11), Plaintiff and other similarly aggrieved employees were entitled to an uninterrupted meal period of at least 30 minutes for each workday they worked more than 5 hours in any workday. Defendants were required to allow Plaintiff and similarly aggrieved employees to take their meal break before the 5th hour of work. Labor Code section 226.7 and the applicable Wage Orders, including Wage Order 4, further entitle Plaintiff and other similarly aggrieved employees to rest periods of at least 10 minutes for each four-hour period of work, or a major fraction thereof. Additionally, “If an employer fails to provide an employee a meal... period in accordance with state law, ..., the employer shall the employee one additional hour of pay at the employee’s *regular rate of compensation* for each workday that the meal period... is not provided.” Wage Order 4-2001(11), (12) (same re rest periods) (emphasis added); *see* also Labor Code section 226.7(c) (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with state law, ..., the employer shall pay the employee one additional hour of pay at the employee’s *regular rate of compensation* for each work day that the meal or rest period is not

provided.” (Emphasis added)). Defendants’ violation of the applicable IWC Wage Orders, including Wage Order 4-2001, constitutes a violation of Labor Code Section 558, which imposes civil penalties upon an employer for a violation to any provision regulating hour and days of work in any order of the IWC. Labor Code Section 558(a)(1) and (2).

Defendants did not provide Plaintiff and other similarly aggrieved employees with a timely meal period. Specifically, Plaintiff regularly had to work past his fifth hour of work. Additionally, during the relevant time, Defendants required Plaintiff to remain in his work gear (which consisted of insulated boots, bibs, jacket, and gloves) during his meal and rest periods. Plaintiff was also required to carry a radio with him at all times, including during meal and rest periods. If Plaintiff was radioed that a machine needed repair, Plaintiff was required to address the issue immediately. Once Plaintiff responded to the request, Plaintiff’s break was effectively over. Defendants did not pay Plaintiff and other similarly aggrieved employees one hour of pay at the employee’s regular rate of pay for the violations of California’s meal and rest break laws when this occurred.

As a result of Defendants’ failure to pay premium wages, Defendants are liable for civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period for each first meal and rest break violation and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation.

Overtime Regular Rate Calculation

At all relevant times, Defendants employed Plaintiff and other similarly aggrieved employees subject to Labor Code sections 510, 1194, and IWC Wage Order 4-2001. Plaintiff and other similarly aggrieved employees were entitled to receive overtime for all hours worked in excess of 8 hours in a day or 40 hours in a week. Any work performed in excess of that, “shall be compensated at a rate of no less than one and one-half times the *regular rate of pay* for an employee.” Labor Code Section 510(a) (emphasis added).

During the one year prior to the date of this letter, Plaintiff and other similarly aggrieved employees earned overtime pay for working more than the hours prescribed in Wage order 4-2001(8 hours in a day or 40 hours per week). In addition, Plaintiff and other similarly aggrieved employees received various forms of non-discretionary incentive pay, including but not limited to the incentive payments as indicated on their wage statements as “PEZ Bonus”, “Bonus” and other non-discretionary incentive payments that are not excludable under California law when calculating an employee’s regular rate of pay.

However, during the relevant periods in which Plaintiff and other similarly aggrieved employees earned overtime and non-discretionary incentive pay, including “PEZ Bonus” and “Bonus”, Defendants paid Plaintiff and other similarly aggrieved employees overtime wages at a rate of one and one half their base hourly rate without factoring in the amount of the non-discretionary

incentive pay. As a result, Plaintiff and other similarly aggrieved employees were underpaid all their required overtime wages.

As Defendants failed to properly pay all overtime wages as required by California law, Defendants are liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation

Failure to Timely Pay All Wages During Employment

California Labor Code § 204 states that all wages earned by an employee are due and payable twice during each calendar month on days designated in advance by employer. As a result of the unfactored incentive pay, Plaintiff and other similarly aggrieved employees were not compensated by Defendants for all wages owed including meal and rest period premiums. Defendants also failed to pay Plaintiff and similarly aggrieved employees at the correct rate of pay for overtime. Defendants willfully failed to timely pay Plaintiff and other similarly aggrieved employees all wages due for work performed and this failure continued through their employment by Defendants. As a result, Defendants violated California Labor Code §204.

Labor Code Section 210 imposes a civil penalty of \$100 for each failure to pay each employee and \$200 for each subsequent violation, plus 25% of the amount that was unlawfully withheld. Plaintiff and other aggrieved employees have suffered an injury for purposes of Labor Code Sections 204, 210 and 2699 and are entitled to recover the greater of all actual damages or the amount specified in Sections 210 and 2699.

Violations of Labor Code § 1174(d), 1174.5 and IWC Wage Order 4-2001(7)

Labor Code Section 1174 states, “[e]very person employing labor in this state shall...(d) [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, ..., employees employed at the respective plants or establishments.” The “Records” section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid each payroll period. Wage Order 4-2001(7).

Defendants failed to keep accurate information with respect to Plaintiff’s and other similarly aggrieved employees’ payroll, including the applicable rates of pay (such as overtime rates factoring in non-discretionary incentive pay) for each payroll period as required by the “Records” section of the applicable IWC Wage Order. Therefore, Defendants knowingly and

intentionally failed to keep and maintain accurate records as required by Labor Code Section 1174.

Labor Code Section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code Section 2699 for a violation of Labor Code Section 1174(d).

Defendants' failure to maintain accurate and complete records constitutes an injury as defined under Labor Code Section 1174. Therefore, Plaintiff and other aggrieved employees have suffered an injury for purposes of Labor Code Sections 1174.5 and 2699 and are entitled to recover the greater of all actual damages or the amount specified in Sections 1174.5 and 2699 per violation.

Failure to Provide Legally Compliant Wage Statements

Labor Code § 226(a) requires employers to furnish accurate itemized wage statements in writing that show, inter alia, "(1) gross wages earned, (2) total hours worked by the employee...(9) all applicable hourly rates..." Plaintiff and other similarly aggrieved employees of Defendants received wage statements that did not list all wages earned, including meal and rest period premiums, and did not list the accurate regular rate of pay for overtime wages, as alleged above.

As Defendants violated Labor Code § 226(a), Defendants are liable for penalties of \$100 per pay period for the first wage statement within the statutory period, and \$200 per pay period for each additional violation.

Unpaid Final Wages

Plaintiff and other similarly aggrieved employees have ceased their employment with Defendants. Upon the cessation of the employment relationship, they did not receive all wages owed. Namely, Plaintiff and other similarly aggrieved employees did not receive all their overtime wages due to Defendants' failure to include incentive pay in the calculation of regular rate of pay for payment of overtime and due to Defendants' failure to pay premium wages for unused meal and rest periods. Therefore, Defendants has violated and continues to violate Labor Code Sections 201 and 202, because even if it pays employees timely, it has not paid the aforementioned wages and wage penalties.

As a result of Defendants' failure to pay final wages in compliance with Sections 201 and/or 202, Defendants are liable for civil penalties in the amount of one hundred dollars (\$100) per

April 1, 2022

Page 6 of 6

aggrieved employee per pay period for each such violation and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation

Pursuant to Labor Code Section 203, Plaintiff and other similarly aggrieved individuals are entitled to continuation of their wages, from the day of each discharge they experienced until the wages were paid, up to a maximum of thirty (30) days per discharge.

As a result of Defendants' failure to pay waiting time penalties in compliance with Section 203, Defendants are liable for civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period for each such violation and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation.

Civil Penalties

As a result of the foregoing, Defendants are liable for civil penalties as provided for by California law. Consequently, Plaintiff and all other similarly aggrieved employees of Defendants are entitled to recover all penalties permitted by the Labor Code and penalties provided for under California law, including but not limited to Labor Code § 2698 *et seq.*

Conclusion

Defendants violated and continues to violate the California law as described above. Plaintiff requests that the agency allow him to pursue these violations in the civil action currently pending and arising out of the original and first supplemental notice provided to the LWDA. Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984.

Sincerely,
MOSS BOLLINGER, LLP



Jeremy F. Bollinger



Jeremy Bollinger <jeremy@mossbollinger.com>

Thank you for submission of your PAGA Case.

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "jeremy@mossbollinger.com" <jeremy@mossbollinger.com>

Fri, Apr 1, 2022 at 5:02 PM

4/1/2022

LWDA Case No. LWDA-CM-876683-22
Law Firm : Moss Bollinger LLP
Plaintiff Name : Elvis Lopez
Employer: Wioss Bakersfield LP
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm