

CLASS ACTION SETTLEMENT AGREEMENT

David Menchaca v. Abode Services (Lead Class and PAGA Action) and Jessica Costilla v. Abode Services (Consolidated Class and PAGA Action)

CLASS ACTION SETTLEMENT AGREEMENT AND CLASS NOTICE

This CLASS ACTION SETTLEMENT AGREEMENT (“Agreement”) is made by and between Plaintiffs DAVID MENCHACA (“Lead Plaintiff”) and JESSICA COSTILLA (“Consolidated Plaintiff”) (collectively, “Plaintiffs”) and Defendant ABODE SERVICES (“Abode”). The Agreement refers to Plaintiffs and Abode collectively as “Parties,” or individually as “Party.”

By mutual consent and express intent of the Parties, this CLASS ACTION SETTLEMENT AGREEMENT is fully integrated and supersedes all prior written and oral agreements between the parties.

1. **DEFINITIONS.**

- 1.1 “Abode” means named Defendant Abode Services and all its affiliates, subsidiaries, parent companies, predecessors-in-interest, and successors-in-interest.
- 1.2 “Action” means **both** Plaintiffs’ lawsuits alleging wage and hour violations against Abode including: (a) the “**Lead Action**” of *David Menchaca v. Abode Services* captioned Case No. 22CV009389 initiated on April 1, 2022, and pending in the Superior Court of the State of California, County of Alameda; and, (b) the “**Consolidated Action**” of *Jessica Costilla v. Abode Services* captioned Case No. 22CV014896 initiated on July 22, 2022 and ordered consolidated into the Lead Action on or about December 20, 2022. The complaints from both actions’ consolidated matters are attached hereto as **Exhibit A-1** and **Exhibit A-2**, respectively.
- 1.3 “Administrator” means Phoenix Settlement Administrators (“Phoenix”), the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.4 “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.
- 1.5 “Aggrieved Employees” or “PAGA Employees” means all persons employed by Abode in California classified as non-exempt hourly employees who worked for Abode during the PAGA Period. As of the settlement date, Abode estimates there are approximately 1,140 PAGA Employees who collectively worked approximately 32,000 Pay Periods.
- 1.6 “Class” means all persons employed by Abode in California classified as non-exempt hourly employees who worked for Abode during the Class Period.
- 1.7 “Class Counsel” means counsel for Plaintiffs, who are:

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Samuel A. Wong, Esq.
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- 1.8 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.9 “Class Data” means Class Member identifying information in Abode’s possession including the Class Member’s first and last names, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Period Pay Periods.
- 1.10 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member. As of the settlement date, Abode estimates there are approximately 1,553 Class Members who collectively worked a total of approximately 96,000 Workweeks.
- 1.11 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods, and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.12 “Class Notice” means the Notice of Class Action Settlement and Hearing Date for Final Court Approval, to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as **Exhibit B** and incorporated by reference into this Agreement.
- 1.13 “Class Period” means the period from October 5, 2017 through the earliest of (a) the date the court enters an order of preliminary approval of this settlement, (b) June 1, 2024, or (c) the date on which the number of workweeks in the Class Period totals 105,600.
- 1.14 “Class Representatives” means the named Lead Plaintiff and Consolidated Plaintiff in the operative complaints in the Action seeking Court approval to serve as Class Representatives.
- 1.15 “Class Representative Service Payment” means the payment to the Class Representatives for prosecuting the Action and providing services in support of the Action.
- 1.16 “Consolidated Action” means *Jessica Costilla v. Abode Services* captioned Case No. 22CV014896 initiated on July 22, 2022 and ordered consolidated with the Lead Action

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on or about December 20, 2022. The complaint from the Consolidated Action is attached hereto as **Exhibit A-2**.

1.17 “Consolidated Plaintiff” means and refers to Plaintiff Jessica Costilla from the Consolidated Action.

1.18 “Court” means the Superior Court of California, County of Alameda.

1.19 “Defense Counsel” means counsel for Abode, who are:

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1.20 “Effective Date” means the date when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

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

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

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

1.24 “Gross Settlement Amount” means **One Million Three-Hundred Fifty-Thousand Dollars (\$1,350,000.00)** which is the total amount Abode agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, PAGA Payments to the LWDA and Aggrieved Employees, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payments and the Administrator’s Expenses.

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- 1.25 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.26 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of the Individual PAGA Portion calculated according to the number of workweeks worked during the PAGA Period.
- 1.27 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.28 “Lead Action” means *David Menchaca v. Abode Services* captioned Case No. 22CV009389 initiated on April 1, 2022, and pending in Superior Court of the State of California, County of Alameda. The operative complaint the Lead Action is attached hereto as **Exhibit A-1**.
- 1.29 “Lead Plaintiff” means and refers to Plaintiff David Menchaca from the Lead Action.
- 1.30 “LWDA Payment” means 75% of the Fifty Thousand Dollars and Zero Cents (\$50,000.00) allocated to the settlement of Released PAGA Claims, or Thirty Seven Thousand, Five Hundred Dollars and Zero Cents (\$37,500.00), which will be paid to the Labor and Workforce Development Agency (“LWDA”) pursuant to Section IV(D)(8)(e) of this Settlement, subject to Court approval.
- 1.31 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Class Representative Service Payment, Class Counsel Fees Payment, PAGA Payments to the LWDA and Aggrieved Employees, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.32 “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.
- 1.33 “PAGA Period” means the period from April 1, 2021 to the date of Preliminary Approval.
- 1.34 “PAGA Notice” means the letter filed with the California Labor & Workforce Development Agency on or about April 1, 2022.
- 1.35 “Pay Period” means and refers to the regular interval at which Abode’s employees are paid wages.
- 1.36 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37 “Plaintiffs” means David Menchaca and Jessica Costilla, the named Plaintiffs in the Lead Action and Consolidated Action.
- 1.38 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.39 “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval of the Settlement.

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- 1.40 “Released Class Claims” means the claims being released as described in Section 5.2 below.
- 1.41 “Released PAGA Claims” means any and all claims for civil penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”) alleged in Plaintiffs’ PAGA Notices to the LWDA, arising during the PAGA Period only.
- 1.42 “Released Parties” means: Abode and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.43 “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.
- 1.44 “Response Deadline” means 60 days after the Administrator mails Notice to Class Members and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.45 “Settlement” means the disposition of the entire Lead Action and Consolidated Action effected by this Agreement and the Judgment.
- 1.46 “Workweek” means any week during which a Class Member worked for Abode for at least one day, during the Class Period.

2. RECITALS.

- 2.1 On or about April 1, 2022, Lead Plaintiff David Menchaca commenced this Action by filing a complaint alleging causes of action against Abode for Failure to Provide Meal Periods, Failure to Provide Rest Periods, Failure to Pay Overtime Wages, Failure to Pay Minimum Wages, Failure to Maintain Required Records, Failure to Provide Accurate Wage Statements, Violation of Business and Professions Code Section 17200, and Waiting Time Penalties.
- 2.2 On or about June 22, 2022, Lead Plaintiff filed a First Amended Complaint, adding a cause of action for Enforcement of the Private Attorneys General Act.
- 2.3 On or about July 22, 2022, Consolidated Plaintiff Jessica Costilla filed a complaint alleging causes of action against Abode for Failure to Provide Meal Periods, Failure to Provide Rest Periods, Failure to Pay Overtime Wages, Failure to Pay Minimum Wages, Failure to Maintain Required Records, Failure to Provide Accurate Wage Statements, Violation of Business and Professions Code Section 17200, and Waiting Time Penalties.
- 2.4 On or about December 20, 2022, Judge Evelio Grillo consolidated the Lead Action of *David Menchaca v. Abode Services*, Case No. 22CV009389, filed April 1, 2022, and the Consolidated Action of *Jessica Costilla v. Abode Services*, Case No. 22CV014896. *Menchaca* became the Lead Action, with all pleadings ordered filed under Case No. 22CV009389.
- 2.5 On April 2, 2024, the Parties participated in an all-day mediation presided over by Steve Serratore, Esq. which led to this Agreement to settle the entire Action.

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- 2.6 Prior to and during mediation, Plaintiffs obtained, through both formal and informal discovery, pertinent data and information regarding Abode and its employees' practices related to and underlying the Released Class Claims and Released PAGA Claims.
- 2.7 Class counsel's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.8 The Court has not yet granted class certification in this Action.
- 2.9 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Abode promises to pay **One Million Three-Hundred Fifty-Thousand Dollars (\$1,350,000.00)** as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Abode 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 to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Abode.
- 3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1 To Class Representatives: Class Representative Service Payments to the Class Representatives of not more than \$10,000.00 each (in addition to any Individual Class Payments and any Individual PAGA Payments the Class Representatives are entitled to receive as Participating Class Members and PAGA Employees). Abode will not oppose Plaintiffs' request for Class Representative Service Payments that do not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Lead Plaintiff and Consolidated Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves Class Representative Service Payments less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Forms 1099. Lead Plaintiff and Consolidated Plaintiff assume full responsibility and liability for employee taxes owed on the Class Representative Service Payments.
 - 3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than 35%, which is currently estimated to be \$472,500.00 and a Class Counsel Litigation Expenses Payment of not more than \$30,000.00. Abode will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees

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Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or

any other Plaintiff's Counsel arising from any claim to any portion of 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 Abode harmless, and indemnifies Abode, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$_____ 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 \$_____, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4 PAGA Payments To LWDA and Aggrieved Employees:

3.2.4.1 To the California Labor & Workforce Development Agency: The LWDA Payment of 75% of the Fifty Thousand Dollars and Zero Cents (\$50,000.00) allocated to the settlement of Released PAGA Claims, or Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00), which will be paid to the California Labor and Workforce Development Agency, subject to Court approval.

3.2.4.2 PAGA Payments To Each Aggrieved Employee: An Individual PAGA Payment calculated by (a) dividing 25% of the Fifty Thousand Dollars and Zero Cents (\$50,000.00) allocated to the settlement of Released PAGA Claims, or Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00), which will be paid to the Aggrieved Employees, subject to Court approval. An Individual PAGA Payment will be calculated by (a) dividing Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) by the total number of Pay Periods worked by all PAGA Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods.

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

3.2.5.1 Tax Allocation of Individual Class Payments. 10% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on

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an IRS W-2 Form. The remaining portion of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for 45% in penalties and 45% interest (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 Class Workweeks and PAGA Periods. Based on a review of its records to the settlement date, Abode estimates there are approximately 1,553 Class Members who collectively worked a total of approximately 96,000 Workweeks. Furthermore, Abode estimates there are approximately 1,140 PAGA Employees who collectively worked approximately 32,000 Pay Periods.
- 4.2 Class Data. Not later than 21 days after the Court grants Preliminary Approval of the Settlement, Abode 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. Abode 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 Abode 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. Abode shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Abode's share of payroll taxes by transmitting the funds to the Administrator in three (3) equal installments, as follows:
- (1) **Four-Hundred and Fifty Thousand Dollars** (\$450,000.00) to be paid sixty (60) days after the **Effective Date** of this settlement;
 - (2) **Four-Hundred and Fifty Thousand Dollars** (\$450,000.00) to be paid ninety (90) days after first payment; and
 - (3) **Four-Hundred and Fifty Thousand Dollars** (\$450,000.00) to be paid one-hundred and eighty (180) days after first payment.
- 4.4 Payments from the Gross Settlement Amount. Within 21 days after Abode makes the first and second installment payments totaling \$900,000, the Administrator will mail checks for all Individual Class Payments, Individual PAGA Payments, and the LWDA Payment. Within 21 days after Abode makes the third installment payment, the

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Administrator will mail checks for the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments.

- 4.4.1 The Administrator will issue checks for the Individual Class Payments and Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 90 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 4.4.3 For any Class Member whose Individual Class Payment or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall redistribute the remaining uncashed Individual Class Payments and Individual PAGA Payments to Class Members and Aggrieved Employees who cashed their payments from the initial distribution of Settlement Proceeds, applying the same criteria provided in Paragraphs 3.2.4.2 and 3.2.5.
- 4.4.4 Ninety (90) calendar days after the second issuance and redistribution of remaining Individual Class Payments and/or Individual PAGA Payments, undeposited checks from that second distribution will be cancelled and voided. Individual Class Payments and/or Individual PAGA Payments remaining after the second issuance, along with any amounts that would have been paid to Class Members who timely request exclusion, will be delivered by the Settlement Administrator to the Alameda Boys & Girls Club , or to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipient") or shall otherwise be distributed as ordered by the Court. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.
- 4.4.5 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Abode to confer any additional benefits or make any

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additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS.

- 5.1 Release of Claims. Effective on the date when Abode fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, PAGA Members, and Class Counsel will release claims against all Released Parties as follows:

- 5.1.1 Plaintiffs' Release. Lead Plaintiff and Consolidated Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period and PAGA Period, including, but not limited to all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint or ascertained during the Action and released under Section 5.2, below. ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Lead Plaintiff and Consolidated Plaintiff acknowledge that Lead Plaintiff and Consolidated Plaintiff may discover facts or law different from, or in addition to, the facts or law that Lead Plaintiff and Consolidated Plaintiff now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or discovery of them.
- 5.1.2 Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs' Release, Lead Plaintiff and Consolidated Plaintiff expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

- 5.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims arising during the Class Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaints including any and all claims involving any alleged failure to provide meal periods, failure to provide rest periods, failure to pay overtime wages, failure to pay minimum wages, failure to maintain required records, failure to provide accurate wage statements, violation of Business and Professions Code section 17200, and claims for waiting time penalties ("Released Class Claims"). Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing

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Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

- 5.3 Release by LWDA: Lead Plaintiff, as proxy and agent of the LWDA, is deemed to release the Released Parties from the LWDA's Released PAGA Claims.

6. MOTION FOR PRELIMINARY APPROVAL.

- 6.1 Joint Motion. Plaintiffs will prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's rules and requirements for Preliminary Approvals.
- 6.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 calendar days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Phoenix to serve as the Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Notice to Class Members.
- 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members and Workweeks in the Class Data.
 - 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 calendar days after receiving the Class Data, the Administrator will send to all

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Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation substantially in the form attached to this Agreement as **Exhibit B**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and Individual PAGA Payment payable to the Class Member, and the number of Workweeks or Pay Periods used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

- 7.4.3 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 calendar days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, Abode, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person, by electronic mail, or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.
- 7.5 Requests for Exclusion (Opt-Outs). Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 calendar days after the Administrator mails the Class Notice (plus an additional 14 calendar days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member’s election to be excluded from the Settlement and includes the Class Member’s name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
 - 7.5.1 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member’s desire to be excluded. The Administrator’s determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the

CLASS ACTION SETTLEMENT AGREEMENT

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Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

- 7.5.2 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 5.2 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 7.5.3 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement.
- 7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 calendar days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and the Administrator's determination of the challenges to Defense Counsel and Class Counsel.
- 7.7 Objections to Settlement. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.
 - 7.7.1 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).
 - 7.7.2 Non-Participating Class Members have no right to object to any of the class action components of the 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 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion

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for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

- 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4 Workweek Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5 Administrator’s Declaration. Not later than 14 calendar days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- 7.8.6 Final Report by Settlement Administrator. Within 10 calendar days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator’s declaration in Court.

CLASS ACTION SETTLEMENT AGREEMENT

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8. CLASS SIZE ESTIMATES.

- 8.1 Based on its records, as of the settlement date, Abode estimates that there are approximately 1,553 Class Members who collectively worked a total of approximately 96,000 Workweeks. If the number of Total Workweeks during the Class Period exceeds 96,000 by more than 10%, at Defendant's choice, either (a) the Gross Settlement Amount will increase by a pro rata dollar value equal to the number of Workweeks in excess of 105,600 (the 10% escalation limit), or (b) the release date will end on the date that includes only up to 105,600 Workweeks. In the event Abode elects the former, for example, if the actual number of workweeks is determined to be 11% higher than 96,000 (i.e., the number of workweeks increases to 106,560), the Gross Settlement Amount shall be increased by 1%. However, Defendant must make this election prior to the Class Notice being sent. The escalation of the Gross Settlement Amount will apply if the Workweeks exceed the 10% threshold after the Class Notice is sent (due to validly disputed workweeks or any other error in the workweek count).

9. ABODE'S RIGHT TO WITHDRAW.

- 9.1 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Abode may, but is not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Abode withdraws, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and that none of the Parties will have any further obligation to perform under this Agreement; provided, however, Abode will remain responsible for paying all Settlement Administration Expenses incurred to that point. Abode must notify Class Counsel and the Court of its election to withdraw not later than seven calendar days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. MOTION FOR FINAL APPROVAL.

- 10.1 Not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a Proposed Final Approval Order and a proposed Judgment (collectively, "Motion for Final Approval"). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than seven 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.
- 10.2 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 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.3 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 Payments, 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.

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- 10.4 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.
- 10.5 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 as 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.
- 10.6 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payments 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.

11. AMENDED JUDGMENT.

- 11.1 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.

12. ADDITIONAL PROVISIONS.

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

CLASS ACTION SETTLEMENT AGREEMENT

David Menchaca v. Abode Services (Lead Class and PAGA Action) and Jessica Costilla v. Abode Services (Consolidated Class and PAGA Action)

- 12.2 Confidentiality Prior to Preliminary Approval. Lead Plaintiff, Consolidated Plaintiff, Class Counsel, Abode, and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Lead Plaintiff, Consolidated Plaintiff, Class Counsel, Abode, and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party other than the Settlement Administrator regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Lead Plaintiff, Consolidated Plaintiff and Abode, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

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- 12.8 No Tax Advice. Neither Lead Plaintiff, Consolidated Plaintiff, Class Counsel, Abode 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.
- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Abode in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, and upon Abode's request, Lead Plaintiff and Consolidated Plaintiff shall destroy all paper and electronic versions of Class Data received from Abode unless, prior to the Court's discharge of the Administrator's obligation, Abode makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.
- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all references to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

CLASS ACTION SETTLEMENT AGREEMENT

David Menchaca v. Abode Services (Lead Class and PAGA Action) and Jessica Costilla v. Abode Services (Consolidated Class and PAGA Action)

To Lead Plaintiff:

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Samuel A. Wong, Esq.
Jessica L. Campbell, Esq.
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Tel: 949.379.6250
jcampbell@aegislawfirm.com

To Consolidated Plaintiff:

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MaryBeth LippSmith, Esq.
Celene Chan Andrews, Esq.
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To Abode:

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Craig A. Tomlins, Esq.
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Roseville, CA 95661
Tel: 916.245.7846
ctomlins@fmglaw.com
dane.willis@fmglaw.com

- 12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree, pursuant to CCP section 583.330, upon the signing of this Agreement to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

CLASS ACTION SETTLEMENT AGREEMENT

David Menchaca v. Abode Services (Lead Class and PAGA Action) and Jessica Costilla v. Abode Services (Consolidated Class and PAGA Action)

13. EXECUTION.

DocuSigned by:

David Menchaca

DAVID MENCHACA

Lead Plaintiff

JESSICA COSTILLA

Consolidated Plaintiff

2/21/2025 | 1:57 PM PST

Date

Date

AEGIS LAW FIRM, PC

LIPPSMITH LLP

By:

Jim Jim Costilla

Counsel for Lead Plaintiff

By:

Counsel for Consolidated Plaintiff

February 18, 2025

Date

Date

ABODE SERVICES

By:

Vivian Wan

Its:

Chief Executive Officer

Date

FREEMAN MATHIS & GARY, LLP

By:

Julie A. Marquis

Counsel for Abode Services

February 18, 2025

Date

CLASS ACTION SETTLEMENT AGREEMENT

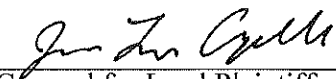
David Menchaca v. Abode Services (Lead Class and PAGA Action) and Jessica Costilla v. Abode Services (Consolidated Class and PAGA Action)

13. EXECUTION.

DAVID MENCHACA
Lead Plaintiff

Date

AEGIS LAW FIRM, PC

By: 
Counsel for Lead Plaintiff

February 18, 2025
Date

ABODE SERVICES

By: 
Its: Chief Executive Officer

2/18/25
Date


Jessica Costilla (Feb 20, 2025 17:53 PST)

JESSICA COSTILLA
Consolidated Plaintiff

Feb 20, 2025

Date

LIPPSMITH LLP

By: 
Counsel for Consolidated Plaintiff

February 20, 2025
Date

FREEMAN MATHIS & GARY, LLP


By: Julie A. Marquis
Counsel for Abode Services

February 18, 2025
Date

EXHIBIT A-1

AEGIS LAW FIRM, PC

SAMUEL A. WONG, State Bar No. 217104

KASHIF HAQUE, State Bar No. 218672

JESSICA L. CAMPBELL, State Bar No. 280626

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Attorneys for Plaintiff David Menchaca, individually,
and on behalf of all others similarly situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

DAVID MENCHACA, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

ABODE SERVICES; and DOES 1 through
20, inclusive,

Defendants.

Case No. **22CV009389**

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Reimburse Business Expenses;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Pay Wages Timely During Employment;
8. Failure to Pay All Wages Due Upon Separation of Employment; and
9. Violation of Business and Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff David Menchaca, individually and on behalf of others similarly situated, alleges
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff David Menchaca (“Plaintiff”) brings this putative class action against
5 defendants Abode Services and DOES 1 through 20, inclusive (collectively, “Defendants”), on
6 Plaintiff’s own behalf and on behalf of a putative class of California citizens who are and were
7 employed by Defendants as non-exempt employees throughout California.

8 2. Defendants provide services or goods throughout California.

9 3. Through this action, Plaintiff alleges that Defendants engaged in a systematic
10 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
11 Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair
12 competition.

13 4. Plaintiff is informed and believe, and thereon alleges, that Defendants have
14 increased their profits by violating state wage and hour laws by, among other things:

- 15 (a) failing to pay all wages (including minimum wages and overtime wages);
- 16 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 17 (c) failing to authorize or permit lawful rest breaks or provide compensation
18 in lieu thereof;
- 19 (d) failing to reimburse necessary business-related costs;
- 20 (e) failing to provide accurate itemized wage statements;
- 21 (f) failing to pay wages timely during employment; and
- 22 (g) failing to pay all wages due upon separation of employment.

23 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
24 others similarly situated in California to recover, among other things, unpaid wages, un-
25 reimbursed business expenses, benefits, interest, attorneys’ fees, costs and expenses, and
26 penalties pursuant to Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1182.12,
27 1194, 1194.2, 1197, 1198, 2800, and 2802, and Code of California Civil Procedure § 1021.5.

28 ///

1 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20
2 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at
3 all relevant times.

4 14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
5 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
6 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
7 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the
8 employer and/or joint employer of Plaintiff and the class members.

9 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
10 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES
11 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the
12 other's behalf. The acts of any and all Defendants were in accordance with, and represent, the
13 official policy of Defendants.

14 16. At all relevant times, Defendants, and each of them, acted within the scope of
15 such agency or employment, or ratified each and every act or omission complained of herein. At
16 all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
17 each and all the other Defendants in proximately causing the damages herein alleged.

18 17. Plaintiff is informed and believes, and thereon alleges, that each of said
19 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
20 omissions, occurrences, and transactions alleged herein.

21 **CLASS ACTION ALLEGATIONS**

22 18. Plaintiff brings this action under Code of Civil Procedure § 382 on Plaintiff's own
23 behalf and on behalf of all others similarly situated who were affected by Defendants' Labor
24 Code, Business and Professions Code §§ 17200, and IWC Wage Order violations.

25 19. All claims alleged herein arise under California law for which Plaintiff seeks
26 relief authorized by California law.

27 20. Plaintiff's proposed class consists of and is defined as follows:
28

1 Class

2 All California citizens currently or formerly employed by Defendants as non-
3 exempt employees in the State of California at any time between October 5, 2017¹
4 and the date of class certification (“Class”).

5 21. Plaintiff also seeks to certify the following subclasses of employees:

6 Waiting Time Subclass

7 All members of the Class who separated their employment with Defendant at any
8 time between October 5, 2018 and the date of class certification (“Waiting Time
9 Subclass”).

10 22. Plaintiff reserves the right to modify or re-define the Class, establish additional
11 subclasses, or modify or re-define any class or subclass definition as appropriate based on
12 investigation, discovery, and specific theories of liability.

13 23. Members of the Class and the Waiting Time Subclass described above will be
14 collectively referred to as “Class Members.”

15 24. There are common questions of law and fact as to the Class Members that
16 predominate over any questions affecting only individual members including, but not limited to,
17 the following:

18 (a) Whether Defendants failed to pay Plaintiff and Class Members all wages
19 (including minimum wages and overtime wages) for all hours worked by
20 Plaintiff and Class Members.

21 (b) Whether Defendants required Plaintiff and Class Members to work over
22 eight (8) hours per day, over twelve (12) hours per day, and/or over forty
23 (40) hours per week and failed to pay them proper overtime compensation
24 for all overtime hours worked.

25
26
27 ¹ The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020
28 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

- 1 (c) Whether Defendants deprived Plaintiff and Class Members of timely meal
2 periods or required Plaintiff and Class Members to work through meal
3 periods without legal compensation.
- 4 (d) Whether Defendants deprived Plaintiff and Class Members of rest breaks
5 or required Plaintiff and Class Members to work through rest breaks.
- 6 (e) Whether Defendants failed to reimburse Plaintiff and Class Members for
7 necessary business-related costs expended for the benefit of Defendants.
- 8 (f) Whether Defendants failed to provide Plaintiff and Class Members
9 accurate itemized wage statements.
- 10 (g) Whether Defendants failed to pay wages timely to Plaintiff and Class
11 Members;
- 12 (h) Whether Defendants failed to timely pay the Waiting Time Subclass all
13 wages due upon termination or within seventy-two (72) hours of
14 resignation.
- 15 (i) Whether Defendants' conduct was willful or reckless.
- 16 (j) Whether Defendants engaged in unfair business practices in violation of
17 Business and Professions Code §§ 17200, *et seq.*

18 25. There is a well-defined community of interest in this litigation and the proposed
19 Class and subclasses are readily ascertainable:

20 (a) Numerosity: The Class Members are so numerous that joinder of all
21 members is impractical. Although the members of the Class are unknown to Plaintiff at this time,
22 on information and belief, the Class is estimated to be greater than fifty (50) individuals. The
23 identities of the Class Members are readily ascertainable by inspection of Defendants'
24 employment and payroll records.

25 (b) Typicality: Plaintiff's claims (or defenses, if any) are typical of the claims
26 (or defenses, if any) of the Class Members because Defendants' failure to comply with the
27 provisions of California's wage and hour laws entitled each Class Member to similar pay,
28 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries

1 sustained by the Class Members, because they arise out of and are caused by Defendants'
2 common course of conduct as alleged herein.

3 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
4 interests of all Class Members because it is in Plaintiff's best interest to prosecute the claims
5 alleged herein to obtain full compensation and penalties due. Plaintiff's attorneys, as proposed
6 class counsel, are competent and experienced in litigating large employment class actions and
7 versed in the rules governing class action discovery, certification, and settlement. Plaintiff has
8 incurred and, throughout the duration of this action, will continue to incur attorneys' fees and
9 costs that have been and will be necessarily expended for the prosecution of this action for the
10 substantial benefit of the Class Members.

11 (d) Superiority: The nature of this action makes use of class action
12 adjudication superior to other methods. A class action will achieve economies of time, effort, and
13 expense as compared with separate lawsuits and will avoid inconsistent outcomes because the
14 same issues can be adjudicated in the same manner for the entire Class and Waiting Time
15 Subclass at the same time. If appropriate, this Court can, and is empowered to, fashion methods
16 to efficiently manage this case as a class action.

17 (e) Public Policy Considerations: Employers in the State of California violate
18 employment and labor laws every day. Current employees are often afraid to assert their rights
19 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
20 because they believe their former employers might damage their future endeavors through
21 negative references and/or other means. Class actions provide class members who are not named
22 in the complaint with a type of anonymity that allows for the vindication of their rights while
23 affording them privacy protections.

24 **GENERAL ALLEGATIONS**

25 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
26 California residents as non-exempt employees throughout California at Defendants' California
27 business location(s).

28 27. Defendants continue to employ non-exempt employees within California.

1 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who
3 were knowledgeable about California's wage and hour laws, employment and personnel
4 practices, and the requirements of California law.

5 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and Class Members were entitled to receive wages for all time
7 worked (including minimum wages and overtime wages) and that they were not receiving all
8 wages earned for work that was required to be performed. In violation of the Labor Code and
9 IWC Wage Orders, Plaintiff and Class Members were not paid all wages (including minimum
10 wages and overtime wages) for all hours worked at the correct rate and within the correct time.

11 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and Class Members were entitled to receive all required meal
13 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
14 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
15 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal periods
16 or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of
17 pay when they did not receive a timely, uninterrupted meal period.

18 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
20 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
21 when a rest break was late, missed, or interrupted. In violation of the Labor Code and IWC Wage
22 Orders, Plaintiff and Class Members did not receive all rest breaks or payment of one (1)
23 additional hour of pay at Plaintiff's and Class Members' regular rate of pay when a rest break
24 was missed, late, or interrupted.

25 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and Class Members were entitled to reimbursement and/or
27 indemnification for all necessary business expenditures or losses as a direct consequence of the
28 discharge of their duties, or of their obedience to the directions of Defendants. In violation of the

1 Labor Code and IWC Wage Orders, Plaintiff and Class Members incurred necessary business
2 expenses or losses, but were not reimbursed nor indemnified of such expenses or losses that were
3 incurred as a direct consequence of the discharge of their duties, or of their obedience to the
4 directions of Defendants.

5 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and Class Members were entitled to receive itemized wage
7 statements that accurately showed the following information pursuant to the Labor Code: (1)
8 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
9 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
10 deductions, provided that all deductions made on written orders of the employee may be
11 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
12 which the employee is paid; (7) the name of the employee and only the last four digits of his or
13 her social security number or an employee identification number other than a social security
14 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
15 hourly rates in effect during the pay period and the corresponding number of hours worked at
16 each hourly rate by the employee. In violation of the Labor Code, Plaintiff and Class Members
17 were not provided with accurate itemized wage statements.

18 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that the Waiting Time Subclass was entitled to timely payment of wages due
20 upon separation of employment. In violation of the Labor Code, the Waiting Time Subclass did
21 not receive payment of all wages within the permissible time periods.

22 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known they had a duty to compensate Plaintiff and Class Members, and Defendants
24 had the financial ability to pay such compensation but willfully, knowingly, and intentionally
25 failed to do so in order to increase Defendants' profits.

26 36. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
27 against Defendants on Plaintiff's own behalf and on behalf of all Class Members to recover,
28 among other things, unpaid wages (including minimum wages and overtime wages), unpaid meal

1 period premium payments, unpaid rest period premium payments, unreimbursed business
2 expenditures, interest, attorneys' fees, penalties, costs, and expenses.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

5 (Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order §3-4)

6 37. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
7 though fully set forth herein.

8 38. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
9 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
10 wage than the minimum so fixed is unlawful.

11 39. Plaintiff and Class Members were employees entitled to the protections of Labor
12 Code §§ 1194 and 1197.

13 40. During the relevant time period, Defendants failed to pay Plaintiff and Class
14 Members all wages owed when Defendants did not pay minimum wage for all hours worked.

15 41. During the relevant time period, Defendants failed to pay at least minimum wage
16 to Plaintiff and Class Members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

17 42. Defendants' failure to pay Plaintiff and Class Members the required minimum
18 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class
19 Members are entitled to recover the unpaid balance of their minimum wage compensation as
20 well as interest, costs, and attorneys' fees.

21 43. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
22 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
23 interest thereon.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY OVERTIME**

26 (Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order § 3)

27 44. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

1 45. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
2 unlawful to employ persons without compensating them at a rate of pay either one and one-half
3 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
4 worked by the person on a daily or weekly basis.

5 46. Specifically, the applicable IWC Wage Orders provide that Defendants are and
6 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one
7 and one-half times (1½) their regular rate of pay when working and for all hours worked in
8 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
9 eight (8) hours of work on the seventh day of work in a workweek.

10 47. The applicable IWC Wage Orders further provide that Defendants are and were
11 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times
12 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours in
13 a day or in excess of eight (8) hours on the seventh day of work in a workweek.

14 48. California Labor Code § 510 codifies the right to overtime compensation at one
15 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a
16 day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
17 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
18 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
19 seventh day of work in a workweek.

20 49. Labor Code § 510 and the applicable IWC Wage Orders provide that employment
21 of more than six days in a workweek is only permissible if the employer pays proper overtime
22 compensation as set forth herein.

23 50. Plaintiff and Class Members were employees entitled to the protections of
24 California Labor Code §§ 510 and 1194.

25 51. During the relevant time period, Defendants required Plaintiff and Class Members
26 to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or on a seventh
27 consecutive day of work, entitling them to overtime wages.

1 52. During the relevant time period, Defendants failed to pay Plaintiff and Class
2 Members overtime wages for all overtime hours worked. To the extent these hours qualify for
3 the payment of overtime wages, Plaintiff and Class Members were not paid proper overtime
4 wages.

5 53. In violation of California law, Defendants knowingly and willfully refused to
6 perform their obligations and compensate Plaintiff and Class Members for all wages earned and
7 all hours worked.

8 54. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
9 overtime compensation, as required by California law, violates the provisions of Labor Code §§
10 510 and 1198, and is therefore unlawful.

11 55. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to
12 recover their unpaid overtime and double time compensation as well as interest, costs, and
13 attorneys' fees.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PROVIDE MEAL PERIODS**

16 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

17 56. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
18 though fully set forth herein.

19 57. Labor Code § 226.7 provides that no employer shall require an employee to work
20 during any meal period mandated by the IWC Wage Orders.

21 58. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall
22 employ any person for a work period of more than five (5) hours without a meal period of not
23 less than 30 minutes, except that when a work period of not more than six (6) hours will
24 complete the day's work the meal period may be waived by mutual consent of the employer and
25 the employee."

26 59. Labor Code § 512(a) provides that an employer may not require, cause, or permit
27 an employee to work for a period of more than five (5) hours per day without providing the
28 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if

1 the total work period per day of the employee is not more than six (6) hours, the meal period may
2 be waived by mutual consent of both the employer and the employee.

3 60. Labor Code § 512(a) also provides that an employer may not employ an employee
4 for a work period of more than ten (10) hours per day without providing the employee with a
5 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no
6 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
7 employer and the employee only if the first meal period was not waived.

8 61. During the relevant time period, Plaintiff and Class Members did not receive
9 compliant meal periods for working more than five (5) and ten (10) hours per day because their
10 meal periods were missed, late, short, interrupted, and/or they were not permitted to take a
11 second meal period.

12 62. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
13 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
14 compensation for each work day that a compliant meal period is not provided.

15 63. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
16 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b)
17 and section 11 of the applicable IWC Wage Order.

18 64. As a result of Defendants' failure to pay Plaintiff and Class Members an
19 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
20 Class Members suffered and continue to suffer a loss of wages and compensation.

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO PERMIT REST BREAKS**

23 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

24 65. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
25 though fully set forth herein.

26 66. Labor Code § 226.7(a) provides that no employer shall require an employee to
27 work during any rest period mandated by the IWC Wage Orders.
28

1 67. Section 12 of the applicable IWC Wage Order states “[e]very employer shall
2 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
3 the middle of each work period[,]” and the “[a]uthorized rest period time shall be based on the
4 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
5 fraction thereof[,]” unless the total daily work time is less than three and one-half (3½) hours.

6 68. During the relevant time period, Plaintiff and Class Members did not receive a ten
7 (10) minute rest period for every four (4) hours or major fraction thereof worked, including
8 working in excess of ten (10) hours in a day, because they were required to work through their
9 rest periods and/or were not authorized to take their rest periods.

10 69. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
11 an employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of
12 compensation for each work day that a compliant rest period is not provided.

13 70. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest
14 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
15 226.7(b) and section 12 of the applicable IWC Wage Order.

16 71. As a result of Defendants’ failure to pay Plaintiff and Class Members an
17 additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class
18 Members suffered and continue to suffer a loss of wages and compensation.

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

21 (Violation of Labor Code §§ 2800, 2802)

22 72. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
23 though fully set forth herein.

24 73. Labor Code § 2800 states that “[a]n employer shall in all cases indemnify his
25 employee for losses caused by the employer’s want of ordinary care.”

26 74. Labor Code § 2802(a) states that “[a]n employer shall indemnify his or her
27 employee for all necessary expenditures or losses incurred by the employee in direct
28

1 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
2 the employer”

3 75. Labor Code § 2802(b) states that “[a]ll awards made by a court . . . for
4 reimbursement of necessary expenditures under this section shall carry interest at the same rate
5 as judgments in civil actions. Interest shall accrue from the date on which the employee incurred
6 the necessary expenditure or loss.”

7 76. Labor Code § 2802(c) states that “[f]or purposes of this section, the term
8 “necessary expenditures or losses” shall include all reasonable costs, including, but not limited
9 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

10 77. During the relevant time period, Plaintiff and Class Members incurred necessary
11 business-related costs that were not fully reimbursed by Defendants.

12 78. In violation of Labor Code §§ 2800 and 2802, Defendants failed to reimburse or
13 indemnify Plaintiff and Class Members for their expenses due to Defendants’ knowing and
14 intentional failure to reimburse necessary business expenditures in connection with Plaintiff’s
15 and Class Members’ work and job duties.

16 79. As a direct result, Plaintiff and Class Members have suffered and continue to
17 suffer losses, and therefore seek complete reimbursement and indemnification of necessary
18 business expenditures or losses, interest thereon at the required rate, and all reasonable costs in
19 enforcing the rights under Labor Code § 2802, including, but not limited to attorneys’ fees.

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

22 (Violation of Labor Code § 226; Violation of IWC Wage Order)

23 80. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
24 though fully set forth herein.

25 81. Labor Code § 226(a) requires Defendants to provide each employee with an
26 accurate wage statement in writing showing nine pieces of information, including, the following:
27 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate
28 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all

1 deductions, provided that all deductions made on written orders of the employee may be
2 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
3 which the employee is paid, (7) the name of the employee and the last four digits of his or her
4 social security number or an employee identification number other than a social security number,
5 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
6 rates in effect during the pay period and the corresponding number of hours worked at each
7 hourly rate by the employee.

8 82. During the relevant time period, Defendants have knowingly and intentionally
9 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
10 and Class Members. The deficiencies include, among other things, the failure to correctly state
11 the gross and net wages earned, total hours worked, all applicable hourly rates in effect, and the
12 number of hours worked at each hourly rate by Plaintiff and Class Members.

13 83. As a result of Defendants' knowing and intentional failure to comply with Labor
14 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their statutorily-
15 protected rights. Specifically, Plaintiff and Class Members are deemed to suffer an injury
16 pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor Code §
17 226(a). Plaintiff and Class Members were denied both their legal right to receive, and their
18 protected interest in receiving, accurate itemized wage statements under Labor Code § 226(a). In
19 addition, because Defendants failed to provide the accurate rates of pay on wage statements,
20 Defendants prevented Plaintiff and Class Members from determining if all hours worked were
21 paid at the appropriate rate and the extent of the underpayment. Plaintiff had to file this lawsuit
22 in order to analyze the extent of the underpayment, thereby causing Plaintiff to incur expenses
23 and lost time. Plaintiff would not have had to engage in these efforts and incur these costs had
24 Defendants provided the accurate hours worked, wages earned, and rates of pay. This has also
25 delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

26 84. Plaintiff and Class Members are entitled to recover from Defendants the greater of
27 all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
28 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars

1 (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding
2 four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

3 85. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
4 Class Members from knowing, understanding, and disputing the wages paid to them and resulted
5 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
6 intentional failure to comply with California Labor Code § 226(a), Plaintiff and Class Members
7 have suffered an injury, in the exact amount of damages and/or penalties to be shown according
8 to proof at trial.

9 **SEVENTH CAUSE OF ACTION**

10 **FAILURE TO PAY TIMELY DURING EMPLOYMENT**

11 (Violation of Labor Code §§ 204, 210)

12 86. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
13 though fully set forth herein.

14 87. Pursuant to California Labor Code § 204, employees must be paid within a certain
15 number of days of the close of the pay period.

16 88. During the relevant time period, Defendants failed to timely pay Plaintiffs and
17 Class Members wages earned during the pay period.

18 89. Such a pattern, practice and uniform administration of corporate policy regarding
19 timely payment of wages as described herein is unlawful and creates an entitlement to recovery
20 by Plaintiff in a civil action, for the unpaid balance of the full amount of damages owed,
21 including interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of
22 California Labor Code § 210.

23 90. As a direct and proximate cause of these violations, Class Members have been
24 damaged, in an amount to be determined at trial.

25 **EIGHTH CAUSE OF ACTION**

26 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

27 (Violation of Labor Code §§ 201, 202, and 203)

91. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

92. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of an intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

93. During the relevant time period, Defendants willfully failed to pay the Waiting Time Subclass all their earned wages upon termination, including, but not limited to, proper minimum wage and overtime compensation, meal period premiums, and rest period premiums either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

94. Defendants' failure to pay the Waiting Time Subclass all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in violation of Labor Code §§ 201 and 202.

95. Labor Code § 203 provides that if an employer willfully fails to pay wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

96. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members' regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a maximum of thirty (30) days.

NINTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.

(Violation of Business and Professions Code §§ 17200, *et seq.*)

1 97. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
2 though fully set forth herein.

3 98. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
4 unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice . .
5 . .”

6 99. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
7 be predicated on a violation of any state or federal law. In the instant case, Defendants’ policies
8 and practices violated state law, causing Plaintiff and Class Members to suffer and continue to
9 suffer injuries-in-fact.

10 100. Defendants’ policies and practices violated state law in at least the following
11 respects:

- 12 (a) Failing to pay all wages earned (including minimum wage and overtime
13 wages) to Plaintiff and Class Members at the proper rate and in a timely
14 manner in violation of Labor Code §§ 204, 510, 1194, 1194.2, 1197, 1198.
- 15 (b) Failing to provide compliant meal periods without paying Plaintiff and
16 Class Members premium wages for every day said meal periods were not
17 provided in violation of Labor Code §§ 226.7 and 512.
- 18 (c) Failing to authorize or permit compliant rest breaks without paying
19 Plaintiff and Class Members premium wages for every day said rest
20 breaks were not authorized or permitted in violation of Labor Code §
21 226.7.
- 22 (d) Failing to reimburse Plaintiff and Class Members for necessary business-
23 related expenses in violation of Labor Code §§ 2800 and 2802.
- 24 (e) Failing to provide Plaintiff and Class Members with accurate itemized
25 wage statements in violation of Labor Code § 226.
- 26 (f) Failing to timely pay all earned wages to the members of the Waiting
27 Time Subclass upon separation of employment in violation of Labor Code
28 §§ 201, 202, and 203.

101. As alleged herein, Defendants systematically engaged in unlawful conduct in violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages (minimum and overtime wages), failing to provide meal periods and rest breaks or compensation in lieu thereof, failing to reimburse necessary business-related costs and expenses, failing to furnish accurate wage statements, and failing to pay all wages due and owing upon separation of employment in a timely manner to the Waiting Time Subclass, all in order to decrease their costs of doing business and increase their profits.

102. At all relevant times herein, Defendants held themselves out to Plaintiff and Class Members as being knowledgeable concerning the labor and employment laws of California.

103. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and Class Members wages and monies, thereby creating for Defendants an artificially lower cost of doing business in order to undercut their competitors and establish and/or gain a greater foothold in the marketplace.

104. By violating the foregoing statutes and regulations as herein alleged, Defendants' acts constitute unfair and unlawful business practices under California Business and Professions Code §§ 17200, *et seq.*

105. As a result of the unfair and unlawful business practices of Defendants as alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and restitution in an amount to be shown according to proof at trial.

106. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members, and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class Members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

On Plaintiff's own behalf and on behalf of all others similarly situated, Plaintiff prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification under California Code of Civil Procedure § 382 of the proposed Class and any other appropriate subclass;
2. For appointment of David Menchaca as class representative;
3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;
4. For compensatory damages in an amount according to proof at trial;
5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, unreimbursed expenses, benefits, and penalties;
6. For economic and/or special damages in an amount according to proof at trial;
7. For liquidated damages pursuant to Labor Code § 1194.2;
8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;
10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;
12. For pre-judgment interest;
13. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§ 226(e) and 1194; and
14. For such other relief as the Court deems just and proper.

Dated: April 1, 2022

AEGIS LAW FIRM, PC

By: 

Jessica L. Campbell
Attorneys for Plaintiff David Menchaca

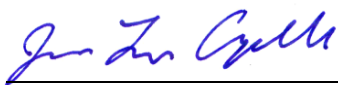
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

Dated: April 1, 2022

AEGIS LAW FIRM, PC

By: 

Jessica L. Campbell
Attorneys for Plaintiff David Menchaca

EXHIBIT A-2

Edwin Aiwazian (SBN 232943)
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ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
07/22/2022 at 04:50:26 PM
By: Xian-xi Bowie,
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

JESSICA COSTILLA, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

ABODE SERVICES, a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: **22CV014896**

**CLASS ACTION COMPLAINT FOR
DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (10) Violation of California Business & Professions Code §§ 17200, et seq.

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff JESSICA COSTILLA (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of Alameda.

PARTIES

5. Plaintiff JESSICA COSTILLA is an individual residing in the State of California.

6. Defendant ABODE SERVICES, at all times herein mentioned, was and is, upon information and belief, a California corporation and, at all times herein mentioned, an employer whose employees are engaged throughout the State of California, including the County of Alameda.

7. At all relevant times, Defendant ABODE SERVICES was the “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

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1 8. At all times herein relevant, Defendants ABODE SERVICES and DOES 1
2 through 100, and each of them, were the agents, partners, joint venturers, joint employers,
3 representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns,
4 each of the other, and at all times relevant hereto were acting within the course and scope of
5 their authority as such agents, partners, joint venturers, joint employers, representatives,
6 servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions
7 alleged herein were duly committed with the ratification, knowledge, permission,
8 encouragement, authorization and/or consent of each defendant designated as a DOE herein.

9 9. The true names and capacities, whether corporate, associate, individual or
10 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues
11 said defendants by such fictitious names. Plaintiff is informed and believes, and based on that
12 information and belief alleges, that each of the defendants designated as a DOE is legally
13 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
14 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
15 Plaintiff will seek leave of court to amend this Complaint to show the true names and
16 capacities when the same have been ascertained.

17 10. Defendant ABODE SERVICES and DOES 1 through 100 will hereinafter
18 collectively be referred to as "Defendants."

19 11. Plaintiff further alleges that Defendants directly or indirectly controlled or
20 affected the working conditions, wages, working hours, and conditions of employment of
21 Plaintiff and the other class members so as to make each of said Defendants employers liable
22 under the statutory provisions set forth herein.

23 **CLASS ACTION ALLEGATIONS**

24 12. Plaintiff bring this action on her own behalf and on behalf of all other members
25 of the general public similarly situated, and, thus, seeks class certification under California
26 Code of Civil Procedure section 382.

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13. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from four years preceding the filing of this Complaint to final judgment and who reside in California.

(Subclass A) All class members who received overtime compensation at a rate lower than their respective regular rate of pay because Defendants failed to include all shift differential pay/commissions/non-discretionary bonuses/non-discretionary performance pay in the calculation of the regular rate of pay for overtime pay purposes.

(Subclass B) All class members who were required by Defendants to stay on Defendants' premises for rest breaks.

14. Plaintiff reserves the right to establish additional subclasses as appropriate.

15. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff's claims are typical of all other class members' as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom she has a well-defined community of interest.

c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's

attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

- d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.
- e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

16. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants' had a corporate policy and practice of failing to pay their hourly-paid or non-exempt employees within the State of California for all hours worked and missed (short, late, interrupted, and/or missed altogether) meal periods and rest breaks in violation of California law;
- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week

1 and failed to pay the legally required overtime compensation to Plaintiff
2 and the other class members;

3 d. Whether Defendants deprived Plaintiff and the other class members of
4 meal and/or rest periods or required Plaintiff and the other class
5 members to work during meal and/or rest periods without compensation;

6 e. Whether Defendants failed to pay minimum wages to Plaintiff and the
7 other class members for all hours worked;

8 f. Whether Defendants failed to pay all wages due to Plaintiff and the other
9 class members within the required time upon their discharge or
10 resignation;

11 g. Whether Defendants failed to timely pay all wages due to Plaintiff and
12 the other class members during their employment;

13 h. Whether Defendants complied with wage reporting as required by the
14 California Labor Code; including, *inter alia*, section 226;

15 i. Whether Defendants kept complete and accurate payroll records as
16 required by the California Labor Code, including, *inter alia*, section
17 1174(d);

18 j. Whether Defendants failed to reimburse Plaintiff and the other class
19 members for necessary business-related expenses and costs;

20 k. Whether Defendants' conduct was willful or reckless;

21 l. Whether Defendants engaged in unfair business practices in violation of
22 California Business & Professions Code section 17200, et seq.;

23 m. The appropriate amount of damages, restitution, and/or monetary
24 penalties resulting from Defendants' violation of California law; and

25 n. Whether Plaintiff and the other class members are entitled to
26 compensatory damages pursuant to the California Labor Code.

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GENERAL ALLEGATIONS

17. At all relevant times set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California, including the County of Alameda.

18. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-exempt employee, from approximately November 2018 to approximately December 2020, in the State of California.

19. Defendants hired Plaintiff and the other class members, classified them as hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and missed meal periods and/or rest breaks.

20. Defendants had the authority to hire and terminate Plaintiff and the other class members, to set work rules and conditions governing Plaintiff's and the other class members' employment, and to supervise their daily employment activities.

21. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff and the other class members.

22. Defendants directly hired and paid wages and benefits to Plaintiff and the other class members.

23. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

24. Plaintiff and the other class members worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt employees within the State of California. This pattern and practice involved, *inter alia*, failing to pay them for all regular and/or overtime wages earned and for missed meal periods and rest breaks in violation of California law.

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1 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 certain wages for overtime compensation and that they were not receiving accurate overtime
4 compensation for all overtime hours worked.

5 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 failed to provide Plaintiff and the other class members all required rest and meal periods during
7 the relevant time period as required under the Industrial Welfare Commission Wage Orders
8 and thus they are entitled to any and all applicable penalties.

9 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knew or should have known that Plaintiff and the other class members were entitled to receive
11 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class
12 member's regular rate of pay when a meal period was missed, and they did not receive all meal
13 periods or payment of one additional hour of pay at Plaintiff's and the other class member's
14 regular rate of pay when a meal period was missed.

15 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 knew or should have known that Plaintiff and the other class members were entitled to receive
17 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class
18 member's regular rate of pay when a rest period was missed, and they did not receive all rest
19 periods or payment of one additional hour of pay at Plaintiff's and the other class members'
20 regular rate of pay when a rest period was missed.

21 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 knew or should have known that Plaintiff and the other class members were entitled to receive
23 at least minimum wages for compensation and that they were not receiving at least minimum
24 wages for all hours worked.

25 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 knew or should have known that Plaintiff and the other class members were entitled to receive
27 all wages owed to them upon discharge or resignation, including overtime and minimum wages

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1 and meal and rest period premiums, and they did not, in fact, receive all such wages owed to
2 them at the time of their discharge or resignation.

3 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 knew or should have known that Plaintiff and the other class members were entitled to receive
5 all wages owed to them during their employment. Plaintiff and the other class members did
6 not receive payment of all wages, including overtime and minimum wages and meal and rest
7 period premiums, within any time permissible under California Labor Code section 204.

8 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knew or should have known that Plaintiff and the other class members were entitled to receive
10 complete and accurate wage statements in accordance with California law, but, in fact, they did
11 not receive complete and accurate wage statements from Defendants. The deficiencies
12 included, *inter alia*, the failure to include the total number of hours worked by Plaintiff and the
13 other class members.

14 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knew or should have known that Defendants had to keep complete and accurate payroll records
16 for Plaintiff and the other class members in accordance with California law, but, in fact, did
17 not keep complete and accurate payroll records.

18 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 failed to use the shift differential pay/commissions/non-discretionary bonuses/non- discretionary
20 performance pay to calculate the regular rate of pay used to calculate the overtime rate for the
21 payment of overtime wages where Plaintiff and the other class members earned shift differential
22 pay/commissions/non-discretionary bonuses/non-discretionary performance pay and overtime
23 wages in the same workweek.

24 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 required Plaintiff and the other class members to remain on Defendants' premises during
26 purported rest periods, thereby failing to relieve them of all employer control.

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1 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to
3 reimbursement for necessary business-related expenses.

4 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 knew or should have known that they had a duty to compensate Plaintiff and the other class
6 members pursuant to California law, and that Defendants had the financial ability to pay such
7 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
8 represented to Plaintiff and the other class members that they were properly denied wages, all
9 in order to increase Defendants' profits.

10 39. During the relevant time period, Defendants failed to pay overtime wages to
11 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other
12 class members were required to work more than eight (8) hours per day and/or forty (40) hours
13 per week without overtime compensation for all overtime hours worked.

14 40. During the relevant time period, Defendants failed to provide all requisite
15 uninterrupted meal and rest periods to Plaintiff and the other class members.

16 41. During the relevant time period, Defendants failed to use the shift differential
17 pay/commissions/non-discretionary bonuses/non-discretionary performance pay to calculate the
18 regular rate of pay used to calculate the overtime rate for the payment of overtime wages where
19 Plaintiff and the other class members earned shift differential pay/commissions/non-
20 discretionary bonuses/non-discretionary performance pay and overtime wages in the same
21 workweek.

22 42. During the relevant time period, Defendants required Plaintiff and the other class
23 members to remain on Defendants' premises during purported rest periods, thereby failing to
24 relieve them of all employer control.

25 43. During the relevant time period, Defendants failed to pay Plaintiff and the other
26 class members at least minimum wages for all hours worked.

27 44. During the relevant time period, Defendants failed to pay Plaintiff and the other
28 class members all wages owed to them upon discharge or resignation.

1 working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the
2 rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
3 than forty (40) hours in a workweek.

4 54. The applicable IWC Wage Order further provides that Defendants are and were
5 required to pay Plaintiff and the other class members overtime compensation at a rate of two
6 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

7 55. California Labor Code section 510 codifies the right to overtime compensation
8 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
9 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
10 of work, and to overtime compensation at twice the regular hourly rate for hours worked in
11 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
12 of work.

13 56. During the relevant time period, Plaintiff and the other class members worked in
14 excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

15 57. During the relevant time period, Defendants intentionally and willfully failed to
16 pay overtime wages owed to Plaintiff and the other class members.

17 58. Defendants' failure to pay Plaintiff and the other class members the unpaid
18 balance of overtime compensation, as required by California laws, violates the provisions of
19 California Labor Code sections 510 and 1198, and is therefore unlawful.

20 59. Pursuant to California Labor Code section 1194, Plaintiff and the other class
21 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
22 attorneys' fees.

23 **SECOND CAUSE OF ACTION**

24 **(Violation of California Labor Code §§ 226.7 and 512(a))**

25 **(Against ABODE SERVICES and DOES 1 through 100)**

26 60. Plaintiff incorporates by reference the allegations contained in paragraphs 1
27 through 59, and each and every part thereof with the same force and effect as though fully set
28 forth herein.

1 61. At all relevant times, the IWC Order and California Labor Code sections 226.7
2 and 512(a) were applicable to Plaintiff's and the other class members' employment by
3 Defendants.

4 62. At all relevant times, California Labor Code section 226.7 provides that no
5 employer shall require an employee to work during any meal or rest period mandated by an
6 applicable order of the California IWC.

7 63. At all relevant times, the applicable IWC Wage Order and California Labor
8 Code section 512(a) provide that an employer may not require, cause or permit an employee to
9 work for a work period of more than five (5) hours per day without providing the employee
10 with a meal period of not less than thirty (30) minutes, except that if the total work period per
11 day of the employee is no more than six (6) hours, the meal period may be waived by mutual
12 consent of both the employer and employee.

13 64. At all relevant times, the applicable IWC Wage Order and California Labor
14 Code section 512(a) further provide that an employer may not require, cause or permit an
15 employee to work for a work period of more than ten (10) hours per day without providing the
16 employee with a second uninterrupted meal period of not less than thirty (30) minutes, except
17 that if the total hours worked is no more than twelve (12) hours, the second meal period may
18 be waived by mutual consent of the employer and the employee only if the first meal period
19 was not waived.

20 65. During the relevant time period, Plaintiff and the other class members who were
21 scheduled to work for a period of time no longer than six (6) hours, and who did not waive
22 their legally-mandated meal periods by mutual consent, were required to work for periods
23 longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)
24 minutes and/or rest period.

25 66. During the relevant time period, Plaintiff and the other class members who were
26 scheduled to work for a period of time in excess of six (6) hours were required to work for
27 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
28 (30) minutes and/or rest period.

67. During the relevant time period, Defendants intentionally and willfully required Plaintiff and the other class members to work during meal periods and failed to compensate Plaintiff and the other class members the full meal period premium for work performed during meal periods.

68. During the relevant time period, Defendants failed to pay Plaintiff and the other class members the full meal period premium due pursuant to California Labor Code section 226.7.

69. Defendants' conduct violates applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

70. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants 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.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against ABODE SERVICES and DOES 1 through 100)

71. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 70, and each and every part thereof with the same force and effect as though fully set forth herein.

72. At all times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff's and the other class members' employment by Defendants.

73. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

74. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be

1 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
2 hours or major fraction thereof” unless the total daily work time is less than three and one-half
3 (3 ½) hours.

4 75. During the relevant time period, Defendants required Plaintiff and other class
5 members to work four (4) or more hours without authorizing or permitting a ten (10) minute
6 rest period per each four (4) hour period worked.

7 76. During the relevant time period, Defendants willfully required Plaintiff and the
8 other class members to work during rest periods and failed to pay Plaintiff and the other class
9 members the full rest period premium for work performed during rest periods.

10 77. During the relevant time period, Defendants failed to pay Plaintiff and the other
11 class members the full rest period premium due pursuant to California Labor Code section
12 226.7.

13 78. Defendants’ conduct violates applicable IWC Wage Orders and California
14 Labor Code section 226.7.

15 79. Pursuant to the applicable IWC Wage Orders and California Labor Code section
16 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one
17 additional hour of pay at the employees’ regular hourly rate of compensation for each work
18 day that the rest period was not provided.

19 **FOURTH CAUSE OF ACTION**

20 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

21 **(Against ABODE SERVICES and DOES 1 through 100)**

22 80. Plaintiff incorporates by reference the allegations contained in paragraphs 1
23 through 79, and each and every part thereof with the same force and effect as though fully set
24 forth herein.

25 81. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1
26 provide that the minimum wage to be paid to employees, and the payment of a lesser wage
27 than the minimum so fixed is unlawful.

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82. During the relevant time period, Defendants failed to pay minimum wage to Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1.

83. Defendants' failure to pay Plaintiff and the other class members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

84. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

85. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against ABODE SERVICES and DOES 1 through 100)

86. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 85, and each and every part thereof with the same force and effect as though fully set forth herein.

87. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

88. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

89. Defendants' failure to pay Plaintiff and the other class members who are no longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

90. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

91. Plaintiff and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 204)

(Against ABODE SERVICES and DOES 1 through 100)

92. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 91, and each and every part thereof with the same force and effect as though fully set forth herein.

93. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed.

94. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive,

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of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

95. At all times herein set forth, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

96. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members all wages due to them, within any time period permissible under California Labor Code section 204.

97. Plaintiff and the other class members are entitled to recover all remedies available for violations of California Labor Code section 204.

SEVENTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against ABODE SERVICES and DOES 1 through 100)

98. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 97, and each and every part thereof with the same force and effect as though fully set forth herein.

99. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions

shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

100. Defendants have intentionally and willfully failed to provide Plaintiff and the other class members with complete and accurate wage statements. The deficiencies include, but are not limited to: the failure to include the total number of hours worked by Plaintiff and the other class members.

101. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff and the other class members have suffered injury and damage to their statutorily-protected rights.

102. More specifically, Plaintiff and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

103. Plaintiff and the other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

104. Plaintiff and the other class members are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h).

EIGHTH CAUSE OF ACTION

(Violation of California Labor Code § 1174(d))

(Against ABODE SERVICES and DOES 1 through 100)

105. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 104, and each and every part thereof with the same force and effect as though fully set forth herein.

106. Pursuant to California Labor Code section 1174(d), an employer shall keep, 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, and the

number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

107. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other class members.

108. As a result of Defendants' violation of California Labor Code section 1174(d), Plaintiff and the other class members have suffered injury and damage to their statutorily-protected rights.

109. More specifically, Plaintiff and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

NINTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against ABODE SERVICES and DOES 1 through 100)

110. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 109, and each and every part thereof with the same force and effect as though fully set forth herein.

111. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

112. Plaintiff and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants.

113. Defendants have intentionally and willfully failed to reimburse Plaintiff and the other class members for all necessary business-related expenses and costs.

114. Plaintiff and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

TENTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, et seq.)

(Against ABODE SERVICES and DOES 1 through 100)

115. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 114, and each and every part thereof with the same force and effect as though fully set forth herein.

116. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants' competitors. Accordingly, Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

117. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code section 17200, et seq.

118. A violation of California Business & Professions Code section 17200, et seq. may be predicated on the violation of any state or federal law. In this instant case, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work overtime without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Defendants' policies and practices of failing to pay minimum wages violate California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiff and the other class members violate

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California Labor Code sections 201, 202 and 204. Defendants also violated California Labor Code sections 226(a), 1174(d), 2800 and 2802.

119. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

120. Plaintiff and the other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

121. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiff and the other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years preceding the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other members of the general public similarly situated, requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of other members of the general public similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

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As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and

9. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the Court may deem just and proper.

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As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

28. For liquidated damages pursuant to California Labor Code section 1194.2; and

29. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other class members no longer employed by Defendants;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendants' employ;

33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

34. For such other and further relief as the Court may deem just and proper.

As to the Sixth Cause of Action

35. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the other class members;

36. For all actual, consequential, and incidental losses and damages, according to proof;

37. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

38. For such other and further relief as the Court may deem just and proper.

As to the Seventh Cause of Action

39. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

40. For actual, consequential and incidental losses and damages, according to proof;

41. For statutory penalties pursuant to California Labor Code section 226(e);

42. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h); and

43. For such other and further relief as the Court may deem just and proper.

As to the Eighth Cause of Action

44. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records for Plaintiff and the other class members as required by California Labor Code section 1174(d);

45. For actual, consequential and incidental losses and damages, according to proof;

46. For statutory penalties pursuant to California Labor Code section 1174.5; and

47. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

49. For actual, consequential and incidental losses and damages, according to proof;

50. For the imposition of civil penalties and/or statutory penalties;

51. For reasonable attorneys' fees and costs of suit incurred herein; and

52. For such other and further relief as the Court may deem just and proper.

As to the Tenth Cause of Action

53. That the Court decree, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the other class members, failing to pay Plaintiff's and the other class members' wages timely as required by California Labor Code section 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800 and 2802.

1 54. For restitution of unpaid wages to Plaintiff and all the other class members and
2 all pre-judgment interest from the day such amounts were due and payable;

3 55. For the appointment of a receiver to receive, manage and distribute any and all
4 funds disgorged from Defendants and determined to have been wrongfully acquired by
5 Defendants as a result of violation of California Business and Professions Code sections
6 17200, et seq.;

7 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
8 California Code of Civil Procedure section 1021.5;

9 57. For injunctive relief to ensure compliance with this section, pursuant to
10 California Business and Professions Code sections 17200, et seq.; and

11 58. For such other and further relief as the Court may deem just and proper.

12 Dated: July 22, 2022

LAWYERS for JUSTICE, PC

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14 By: 
15 Edwin Aiwanian
16 Attorneys for Plaintiff
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EXHIBIT B

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

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Abode Services (“Abode”) for alleged wage and hour violations. The Action was filed by former Abode employees David Menchaca (“Lead Plaintiff”) and Jessica Costilla (“Consolidated Plaintiff”) (together, “Plaintiffs”) seeking payment of wages and other relief for a class of nonexempt employees (“Class Members”) who worked for Abode during the Class Period (October 5, 2017 to [DATE]) and during the PAGA Period (April 1, 2021 to [DATE]).

The proposed Settlement is a Class and PAGA Settlement requiring Abode to fund Individual Class Payments and Individual PAGA Payments.

Based on Abode’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$ [REDACTED] (less withholding) and your PAGA Class Payment is estimated to be \$ [REDACTED]**. The actual amount you may receive likely will be different and will depend on a number of factors.

The above estimates are based on Abode’s records showing that you worked [REDACTED] workweeks during the Class Period and [REDACTED] pay periods during the PAGA Period. If you believe that you worked more workweeks during this period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

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

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

- 1) **Do Nothing.** You don’t have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment or Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims against Abode.
- 2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Abode.

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

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE
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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. In exchange, you will give up your right to assert the wage claims against Abode that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement The Opt-out Deadline is 45 days after the mailing of this Notice	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.
Participating Class Members Can Object to the Class Settlement Written Objections Must be Submitted within 45 days after the mailing of this Notice	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, Lead Plaintiff and Consolidated Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the [REDACTED] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [REDACTED]. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks Written Challenges Must be Submitted by 45 days after the mailing of this Notice	The amount of your Individual Class Payment depends on how many workweeks you worked at least one day during the Class Period. The number of Class Period Workweeks you worked according to Abode's records is stated on the first page of this Notice. If you disagree with this number, you must challenge it by 45 days after the mailing of this Notice. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former Abode employees. The Action accuses Abode of violating California labor laws by failing to pay overtime wages, minimum wages, wages due upon termination and reimbursable expenses and failing to provide meal periods, rest breaks and accurate itemized wage statements, as well as PAGA Claims. Plaintiffs are represented by attorneys in the Action: Aegis Law Firm and LippSmith LLP ("Class Counsel.")

Abode strongly denies violating any laws, failing to pay any wages, provide meal and rest periods, provide accurate itemized wage statements and reimburse expenses, and contends it complied with all applicable laws.

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

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE
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So far, the Court has made no determination whether Abode or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Abode 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, Plaintiffs and Abode 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, Abode does not admit any violations or concede the merit of any claims.

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

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

3.1 Abode Will Pay **One Million Three-Hundred Fifty-Thousand Dollars (\$1,350,000.00)** as the Gross Settlement Amount (Gross Settlement). Abode has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, and the Administrator’s expenses. Assuming the Court grants Final Approval, Abode will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

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

3.2.1 Up to \$472,500.00 (35%) of the Gross Settlement to Class Counsel for attorney fees and up to \$30,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

3.2.2 Up to \$10,000 as Class Representative Awards for prosecuting the Action, working with Class Counsel and representing the Class. Class Representative Awards will be the only monies Plaintiffs will receive other than their Individual Class Payments and any Individual PAGA Payments.

3.2.3 Up to \$_____ to the Administrator for services administering the Settlement.

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

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

3.4 Taxes Owed on Payments to Class Members. Plaintiffs and Abode are asking the Court to approve an allocation of 10% of each Individual Class Payment to taxable wages (“Wage Portion”), 45% in penalties and 45% in interest (“Non-Wage Portion.”). The Wage

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Portion is subject to withholdings and will be reported on IRS W-2 Forms. The Administrator will report the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

- 3.5 Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be paid to the California State Controller for deposit in the Unclaimed Property Fund.
- 3.6 Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [REDACTED], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the [REDACTED] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Abode.
- 3.7 The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Abode have agreed that, in either case, the Settlement will be void: Abode will not pay any money and Class Members will not release any claims against Abode.
- 3.8 Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
- 3.9 Participating Class Members' Release. After the Judgment is final and Abode has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Abode or related entities for wages based on the Class Period facts, as alleged in the Action and resolved by this Settlement.

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

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims arising during the Class Period that were alleged, or reasonably could have been alleged, based on the

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE
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facts stated in the Operative Complaints including any and all claims involving any alleged failure to provide meal periods, failure to provide rest periods, failure to pay overtime wages, failure to pay minimum wages, failure to maintain required records, failure to provide accurate wage statements, violation of Business and Professions Code section 17200, and claims for waiting time penalties ("Released Class Claims"). Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

3.10 LWDA'S PAGA Release.

The LWDA will be bound by the following release:

The LWDA is deemed to release the Released Parties from all claims for PAGA penalties arising during the PAGA Period that were alleged in the PAGA Notice ("Released PAGA Claims").

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

- 4.1 Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of pay periods worked by each individual Participating Class Member.
- 4.2 Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) by the total number of Pay Periods worked by all PAGA Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods.
- 4.3 Workweek Challenges. The number of Class Workweeks or PAGA Pay Periods you worked during the Class Period, as recorded in Abode's records, are stated in the first page of this Notice. You have 45 days from the date of this Notice to challenge the number of Workweeks. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

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

5. HOW WILL I GET PAID?

- 5.1 Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out).

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

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

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action (*David Menchaca v. Abode Services, et al.*), and include your identifying information (full name, address, telephone number, and approximate dates of employment, 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 within 45 days after the mailing of this Notice, 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 Plaintiffs and Abode are asking the Court to approve. At least **14 days** before the [REDACTED] Final Approval Hearing, Class Counsel and/or Plaintiffs 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 Awards stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as Class Representative Service Awards. 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 [REDACTED] or the Court's website [REDACTED].

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 Awards may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to the Administrator is 45 days from the date of this Notice.** 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 (*David Menchaca v. Abode Services, et al.*) and include your name, current address, telephone number, and approximate dates of employment for Abode and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [REDACTED] at [REDACTED] in Department 21 of the Alameda County Superior Court, located in the Rene C. Davidson Courthouse at 1225 Fallon Street, Oakland, CA 94612. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court's website for the most current attendance information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website [REDACTED] beforehand to verify the date and time of the Final Approval Hearing.

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9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Abode and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Settlement Administrator's website at [REDACTED]. You can also telephone or send an email to the Administrator using the contact information listed below or consult the Alameda County Superior Court website (<https://www.alameda.courts.ca.gov/>) and entering the Case Number for the Lead Action, Case No. 22CV009389. You can also make an appointment to personally review court documents in the Office at the Rene C. Davidson Courthouse by calling (510) 891-6000.

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

Class Counsel:

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contact@lippsmith.com

Settlement Administrator:

Name of Company: Phoenix Settlement Administrators
Email Address: [REDACTED]
Mailing Address: [REDACTED]
Telephone: [REDACTED]

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 by going to https://www.sco.ca.gov/search_upd.html.

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.