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Attorneys for Plaintiff STEPHANY CLUCK

**SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE**

STEPHANY CLUCK, as an individual on behalf
of herself and on behalf of all others similarly
situated

Plaintiff,

v.

CHILDHELP, INC., A CALIFORNIA NON-
PROFIT CORPORATION; AND DOES 1-
100, INCLUSIVE,

Defendants.

Case No.: CVRI2202276

Assigned for All Purposes to:
Hon. Harold Hopp
Dept. 1

DECLARATION OF NIKKI TRENNER IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

[Filed concurrently with Notice of Motion
and Motion; Memorandum of Points &
Authorities; Declaration of Sean Hartranft;
[Proposed] Order]

Date: March 20, 2025
Time: 8:30 a.m.
Dept.: 1

Reservation No.: 794918977781

I, NIKKI TRENNER, declare as follows:

1 1. I am an attorney duly licensed to practice in California and before this Court, and I
2 am associated with Crosner Legal, P.C., counsel of record for Plaintiff Stephany Cluck in the
3 above-captioned matter. If called to testify as to the facts within, I would and could competently
4 do so.

5 2. Attached hereto as Exhibit 1 is a fully-executed, true and correct copy of the
6 Parties' Class Action and PAGA Settlement Agreement ("Settlement Agreement"). Attached
7 hereto as Exhibit 2 is a true and correct copy of Plaintiff's PAGA notice letter and proof of
8 submission to the Labor & Workforce Development Agency ("LWDA"). Attached hereto as
9 Exhibit 3 is proof of submission of the complaint to the LWDA. Attached hereto as Exhibit 4 is
10 proof of submission of the settlement to the LWDA.

11 3. **Case Management Order ("CMO"), ¶ G(3)(a)(vii):** After inquiry to all other
12 members of my firm, I am unaware of any other class, representative or other collective action in
13 any other court in this or any other jurisdiction that asserts claims against similar to those asserted
14 in this action on behalf of a class or group of individuals that would include some or all of the
15 individuals who would be Class Members or Aggrieved Employees in this matter.

16 **FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

17 4. Defendant Childhelp is a non-profit organization dedicated to the prevention and
18 treatment of child abuse throughout the United States, offering a variety of services including a
19 national hotline, advocacy centers, treatments, and community outreach. Plaintiff was employed
20 by ChildHelp as a nonexempt instructional aid and driver from August 5, 2019 to September 23,
21 2021 at ChildHelp's Beaumont location.

22 5. Plaintiff alleges Childhelp violated California wage and hour law in several
23 respects. First, she alleges a failure to pay all wages due, including failing to incorporate non-
24 discretionary bonuses and shift differential pay into the regular rate of pay when calculating
25 overtime wages and failed to pay employees for all hours worked by requiring "off the clock"
26 work. Next, Plaintiff alleges Childhelp also failed to provide compliant meal and rest periods by
27 requiring employees to perform work while clocked out for meal periods and not relieving
28 employees of all employer control while on a break. Plaintiff also claims employees had to use

1 their personal phones on company business and without reimbursement and, as a result of the
2 above allegations, Plaintiff also alleges Defendant failed to provide accurate, itemized wage
3 statements and failed to pay all wages owed upon separation of employment.

4 6. Based on these allegations, on June 6, 2022, Plaintiff filed the underlying class
5 action on behalf of himself and the Class Members, asserting claims for (1) failure to pay
6 minimum wages; (2) failure to pay overtime; (3) failure to provide meal periods; (4) failure to
7 provide rest periods; (5) failure to reimburse expenses, (6) failure to provide itemized wage
8 statements; (7) failure to pay all wages due at termination; and (8) unfair competition. After
9 exhausting administrative remedies, Plaintiff later filed a First Amended Complaint adding a
10 cause of action under the PAGA on October 4, 2022

11 7. Childhelp has at all times denied Plaintiff's allegations and maintained its meal
12 and rest break and payroll policies and procedures comply with California law, and that it
13 provided the class members with required meal and rest breaks. Additionally, Childhelp contends
14 its timekeeping and payroll policies accurately track and pay for all hours worked by its
15 employees and at the correct rates of pay. It also strongly contends the case cannot be maintained
16 as any kind of class or representative action, arguing for example that to the extent class members
17 missed meal and/or rest breaks, or that such breaks were non-compliant, it was intermittent and
18 infrequent and evidence of such missed breaks would be purely anecdotal, and therefore
19 individualized issues predominate and trial on a representative basis would be unmanageable.

20 8. **CMO, ¶ G(3)(a)(vi):** Since Plaintiff filed the initial complaint, the Parties initiated
21 formal discovery. After extensive meeting and conferring on discovery issues, case management,
22 and potential law and motion, the Parties ultimately agreed to mediation, and further agreed to
23 additional informal discovery to facilitate an exchange of information necessary to engage in a
24 meaningful mediation. Consequently, Plaintiff's counsel reviewed payroll records, personnel
25 policies/handbooks, meal and rest break policies, personnel files, and a random of sampling
26 paystubs and time records for about 20% of the class members. Defendant also provided
27 documents reflecting its wage and hour policies and practices, and data regarding the total
28 number of current and former employees, the estimated total amount of workweeks and pay

1 periods they worked, and average hourly pay rates, among other relevant data. Plaintiff had that
2 data reviewed with the assistance of consulting experts from EmployStats to help determine, inter
3 alia, potential violation rates for meal breaks, potential unpaid wages, and to help formulate a
4 damages model.

5 9. The Parties then engaged the Hon. Daniel Buckley (Ret.), a highly respected
6 mediator with extensive wage and hour class action experience and, in March 2024, participated
7 in a full day mediation with Judge Buckley. Throughout the day, the arms-length negotiations
8 were hard-fought and adversarial as the Parties exchanged extensive information on their legal
9 and factual positions, and made numerous offers and counter-offers. Near the end of the day, the
10 Parties reached agreement on all major issues and thereafter jointly prepared the Settlement
11 Agreement.

12 **THE PROPOSED SETTLEMENT TERMS**

13 10. Under the settlement, Childhelp will pay \$315,000.00 into a common fund, the
14 Gross Settlement Amount. Reasonable attorney's fees of up to \$105,000.00 (33.3% of the GSA),
15 litigation costs of up to \$25,000, an enhancement award to Plaintiff of up to \$10,000, settlement
16 administration costs of no more than \$8,400.50, and \$15,000 for civil penalties under PAGA (of
17 which 75%, or \$11,250, will go to the Labor & Workforce Development Agency, and 25%, or
18 \$3,750 will go to the Aggrieved Employees) all will be paid from the Gross Settlement Amount.
19 The remainder of approximately \$146,600 will be allocated among the Participating Class
20 Members based on their total workweeks worked during the Class Period. No portion of the
21 Gross Settlement Amount will revert to Childhelp.

22 11. **CMO, ¶ G(3)(a)(i):** The settlement provides for conditional certification of a
23 settlement class including all individuals employed by Defendant and classified as an hourly paid,
24 non-exempt employee during the Class Period of January 16, 2021 to the date the Court grants
25 Preliminary Approval of this Settlement. The Settlement Class consists of approximately 340
26 individuals. The "Aggrieved Employees" for purposes of PAGA include any and all persons employed by
27 Defendant in California and classified as an hourly paid, non-exempt employee during the PAGA Period
28 of April 2, 2021 to the date of preliminary approval. There are approximately 316 Aggrieved Employees.

1 12. **CMO, ¶¶ G(3)(i)-(j):** This is a cash settlement that does not require Participating
2 Class Members to submit a claim form to receive their settlement share. Participating Class
3 Members will receive their settlement checks automatically via First Class U.S. Mail. Eighty
4 percent of each settlement share will be allocated to wages and the remaining twenty percent will
5 be allocated to penalties and interest. Childhelp will pay any and all applicable employer-side
6 payroll taxes separately and in addition to the Gross Settlement Amount.

7 13. **CMO, ¶ G(3)(c)(i):** Subject to the Court’s approval, any amounts not claimed
8 (because a class member does not cash his or her settlement check) will be forwarded to the State
9 Controller’s Unclaimed Property Fund.

10 14. Each Participating Class Member will receive a share of the Net Settlement
11 Amount based on his or her total weeks worked for Childhelp during the Class Period while
12 employed in a non-exempt position. Thus, each Class Member’s Individual Settlement Payment
13 will be calculated using criteria typically used in determining appropriate amounts of unpaid
14 wages, unpaid premium wages for missed meal and rest breaks, and potential statutory penalties
15 under applicable law. These methods are intended to ensure each Class Member receives a
16 portion of the available settlement funds corresponding to the relative value of his or her potential
17 claims. The proposed allocation provides a reasonable way to compensate Class Members based
18 on the amount of time they worked for Childhelp and the number of instances they missed a meal
19 break and/or rest break, were not provided compensation in lieu of such missed breaks, or lost
20 pay due to the alleged rounding.

21 15. **CMO, ¶¶ G(3)(a)(iv)-(v) and G(9)(c):** I estimate the average class award will be
22 approximately \$431, and the awards will range from about \$7.54 on the low end to about \$1,620
23 on the high end. I estimate the average PAGA award will be about \$11.86, and that PAGA
24 awards will range from about \$0.42 to about \$44.

25 16. **CMO, ¶ G(3)(d)(i):** Subject to the Court’s approval, and after obtaining multiple
26 bids, the Parties agreed on Apex Class Action, LLC (“Apex”) as the Settlement Administrator.
27 Apex is qualified and has significant experience administering class action settlements, including
28 numerous wage and hour matters. Apex has agreed to cap its fees and costs at \$8,400.50. If the

1 Court approves less than the above amount, the difference will remain in the Net Settlement
2 Amount for distribution to the Participating Class Members.

3 17. **CMO, ¶ G(3)(k):** The proposed Notice, Exhibit 2 hereto, sets out information
4 about this case and explains the basic settlement terms in plain language, and meets all
5 requirements under California Rules of Court 3.769(f) and 3.766(d). The Notice also sets forth the
6 individualized information used to calculate Individual Settlement Payments and each Class
7 Member's estimated settlement award. The Notice likewise details the procedures for Class
8 Members to dispute their individual information, for submitting an objection to the Settlement,
9 and to request exclusion. Further, each notice packet will include a Request for Exclusion form
10 and Objection Form, Exhibits 3 and 4 hereto. In sum, the Notice provides the Class Members
11 with the information necessary to evaluate the Settlement and provides fair opportunity to
12 participate in, opt out of, or object to the proposed Settlement. Since the class members all
13 conduct business in, and are comfortable in, English, the notice documents will not be translated
14 into any other languages. Coupled with the notice procedure, the proposed Notice provides the
15 Class with the best notice practicable.

16 18. Class Members will have forty-five (45) days to dispute the information in their
17 Notice used to calculate their settlement award, and also have 45 days to submit any objections to
18 the settlement or to request exclusion. In the event a Class Member disputes their individual
19 information, the Settlement Administrator will review the Class Member's records as well as any
20 additional information submitted, and make a final determination.

21 19. **CMO, ¶¶ G(3)(e) and (G)(9)(d):** All Participating Class Members will release
22 Childhelp from all claims alleged in the operative complaint, or that could have been brought
23 based on the factual allegations in the FAC during the Class Period. Plaintiffs and the LWDA will
24 release those PAGA claims alleged in the PAGA notice to the extent alleged in the FAC. The
25 Class and PAGA releases are limited to the claims that were actually pleaded or could have been
26 pleaded based on the alleged facts in the FAC, and PAGA notice for the PAGA claims. Only
27 Plaintiff is entering into a full general release of all claims and waiver of Civil Code section 1542.

28 20. The settlement provides Defendant will not oppose a request for attorney's fees

1 not to exceed 33.3% of the Gross Settlement Amount, or \$105,000.00, nor will they oppose a
2 request for reimbursement of litigation costs and expenses of up to \$25,000.00. Defendant also
3 will not oppose a request for an enhancement award to Plaintiff of not more than \$10,000.00 in
4 recognition of her time spent on this matter, the risks she undertook on behalf of the class, and the
5 benefit conferred to the class. My office and Plaintiff will provide the Court with appropriate
6 declarations in anticipation of the Final Approval Hearing. If the Court approves less than the
7 above amounts, the difference will remain in the Net Settlement Amount for distribution to the
8 Participating Class Members.

9 21. As noted above, the Parties allocated \$15,000 from the GSA to civil penalties
10 under PAGA, and submit that amount is fair, reasonable and adequate, and consistent with
11 PAGA's underlying purposes. Per Labor Code section 2699(l)(2), Plaintiff gave notice of the
12 settlement and the approval hearing to the LWDA via its online portal.

13 **The Proposed Settlement Class Should Be Conditionally Certified**

14 22. In the present matter, conditional certification is proper since this matter satisfies
15 all requirements for class certification under Code of Civil Procedure section 382. First, the class
16 is both sufficiently numerous, consisting of approximately 340 individuals, and ascertainable by
17 reference to Defendant's personnel and payroll records.

18 23. Plaintiff is an adequate class representative, as her claims do not conflict with and
19 are not antagonistic to the claims of other class members. Further, her claims are typical given
20 she is a member of the class and her claims arise from the same employment practices and course
21 of conduct giving rise to the claims of the other class members.

22 24. Common questions of law and fact predominate – particularly for purposes of a
23 settlement class – as the Class Members all were subject to the same meal and rest break policy,
24 and likewise were subject to the same regular rate calculation policies. Since the focus of the
25 claims against Childhelp concerns the legality of common policies applied uniformly to the entire
26 class, common issues predominate over individualized inquiries concerning liability. For
27 instance, Childhelp's meal and rest break policy is company-wide policy applied equally and
28 consistently to all class members, and this policy is either compliant with California law or it is

1 not. Regardless of that determination, it will decide liability for all class members one way or
2 another. Similarly, whether Childhelp correctly calculated the rate of overtime pay due raises a
3 question common to all class members.

4 25. Resolving this matter as a class action is superior to other available means for the
5 fair and efficient adjudication of this controversy for multiple reasons, including inter alia: (a)
6 individual joinder of all members of the class is impractical, (b) class action treatment will permit
7 a large number of similarly situated persons to resolve their common claims in a single forum
8 simultaneously, efficiently, and without unnecessary duplication of effort and expense; and (c)
9 the damages suffered by many of the individual class members are relatively small and the
10 expenses and burden of individual litigation would make it difficult or impossible for them to
11 seek redress on their own.

12 **The Proposed Settlement Meets the Kullar Factors and is within the Range of**

13 **Reasonableness -- CMO, ¶¶ G(3)(a)(ii)-(iii) and G(9)(b)-(c)**

14 26. CMO, ¶ G(3)(a)(vi): Prior to mediation, the parties engaged in both formal and
15 informal discovery to facilitate settlement discussions. As a result, Plaintiffs reviewed documents
16 and information regarding Childhelp's payroll practices, a representative sampling of class
17 member pay stubs and time records, applicable compensation plans, meal and rest break policies,
18 etc., and information from Defendant regarding class size and breakdown, number of work
19 weeks/pay periods, average rates of pay, and other information used to formulate a damages
20 model with the assistance of a consulting expert. Plaintiff's counsel are confident they obtained
21 sufficient information to understand the law and facts of this case and make an informed decision
22 regarding the proposed settlement and whether it is fair and reasonable.

23 27. First, on their unpaid wage claims, Plaintiffs allege Childhelp failed to pay for all
24 hours worked by requiring employees to work "off the clock." Here, Plaintiff alleged employees
25 lost a few minutes of compensable time each shift getting from the facility entrance to/from the
26 time clocks at the rear of facility, and further had to perform For example, if an employee was
27 assisting with care at the end of their shift, they were forced to clock out at their scheduled time
28 and then return to assisting with the task at hand. These tasks typically included supervising

1 children, assisting with laundry, and preparing meals. According to Plaintiff's expert's analysis,
2 this resulted in the loss of some **\$257,600** in pay over the Class Period (19,443 work weeks * 1
3 hour OTC/week * \$13.25 avg. min. wage). Plaintiff and the Class Members also were paid
4 nondiscretionary bonuses and shift differentials that were not incorporated into the regular rates
5 of pay for purposes of calculating overtime wages and sick pay. Per Plaintiffs' experts, this
6 resulted in an underpayment of overtime and sick time wages to Class Members in the amount of
7 about **\$10,100**. On the other hand, Defendant argued its timekeeping and payroll policies
8 accurately tracked and paid for all employee time at the correct hourly rate, and that is policies
9 strictly prohibited "off the clock" work. Thus, per ChildHelp, if any off the clock work occurred
10 it was in violation of company policy and done voluntarily by employees and without the
11 company's knowledge or consent. Accounting for these arguments, we applied an 80% risk
12 discount to the off the clock claims, for an estimated recovery of about \$51,520, and a 10% risk
13 discount to the regular rate claims for an estimated recovery of about \$9,090.

14 29. On the meal period claims, Plaintiff argued employees were not relieved of all job
15 duties while on a meal period and frequently had lunches interrupted by work. Per Plaintiff,
16 understaffing and the nature of the work required employees to remain alert and to monitor the
17 needs and actions of the children in the facilities, and employees frequently were only able to
18 grab a quick bite during their shifts instead of receiving a full, uninterrupted meal break. Plaintiff
19 contended these policies resulting in numerous "de facto" meal break violations for short, late and
20 missed meal periods. Plaintiff further alleged other policies, such as prohibiting employees from
21 napping or leaving the premises on a rest break, prevented employees using their break time as
22 they saw fit and thus they were subject to employer control. Plaintiff's expert's analysis
23 suggested about 81% of shifts had a least one unique meal violation, and estimated the potential
24 exposure at about **\$905,680** in meal period premiums (67,930 eligible shifts * 81% violation rate
25 * \$16.46/hr avg. wage).

26 30. In response, Defendant argued the break policies were fully compliant with
27 California law, and that it provided all required meal periods and thereby met its obligations
28 under the Labor Code and applicable Wage Order. Further, Defendant argued to the extent

1 employees missed a break or took a non-compliant break, any such discrepancies were
2 aberrational and against company policy and a myriad of individual issues would be required to
3 determine whether the potential violation resulted from employee choice or some other reason.
4 Consequently, per the Defendant, individualized inquiries would dominate on this issue and
5 render class certification inappropriate. We applied an 80% risk discount on this claim, for an
6 estimated recovery after trial of about \$181,135.

7 31. For the rest break claim, Plaintiffs argued that Defendant frequently provided non-
8 compliant rest breaks, as once again Class Members often had to skip rest breaks or received
9 shortened rest breaks due to the hectic nature of the work and need to monitor the children. As
10 with meal breaks, Defendant argued its rest break policies complied with California law and that
11 it authorized and permitted employees to take all required rest breaks. Defendants further
12 contended that, in light of the fact that it is not required to maintain a record of rest breaks, any
13 evidence of failure to authorize and permit rest breaks and/or discouragement from taking rest
14 breaks would be purely anecdotal and individual issues would predominate on liability. Assuming
15 a 75% violation rate comparable to the meal period issue, Defendant's exposure here was
16 estimated at about **\$877,877** (71, 120 shifts * 75% * \$16.46/hr avg. wage). We applied a 90% risk
17 discount here for an estimated recovery after trial of about \$87,790.

18 32. On the expense reimbursement issue, Plaintiff alleged ChildHelp managers and
19 representatives frequently contacted Plaintiff and the Class Members on their personal cell
20 phones with various work-related reminders and memoranda, all without reimbursement. Based
21 on \$5 per week in reimbursement, Plaintiff estimated the exposure at about \$97,215 (19,443 work
22 weeks * \$5/week). Here, Defendant argued its policies prohibited use of cell phones while
23 working, and that there would be no real need for employees to use a cell phone while performing
24 their duties. Thus, per Childhelp, any use of personal phones was not a necessary requirement of
25 the job and therefore not reimbursable under Labor Code § 2802. After applying an 80% risk
26 discount, the estimated recovery after trial on this claim was about \$19,425.

27 33. Finally, Plaintiff also alleged derivative claims under Labor Code § 226 (alleged
28 inaccurate wage statement violations) and §§ 201-203 (waiting time penalties). These claims are

1 based on the unpaid wage claims and will rise or fall along with those primary claims, in addition
2 to being subject to “good faith” and other defenses available to Defendant. Defendant argued
3 further that the wage statements accurately contained all required information, and that acted in
4 good faith all times with respect to payment of wages. Accordingly, Plaintiffs discounted the
5 derivative claims significantly in light of these multiple potential defenses. Plaintiffs’ experts
6 estimated the exposure on these claims at about **\$511,620** (316 initial violations * \$50/violation +
7 8,369 subsequent violations * \$100/violation -- \$325,280 to account for \$4,000 per employee
8 cap) on the wage statement claims, and about **\$730,825** on the waiting time penalties claim (240
9 hours * \$16.46/hr avg. wage * 185 former employees in limitations period). We applied a 90%
10 risk discount each claim to account for their derivative nature as well as Defendant’s other
11 potential defenses, leaving a risk-discounted exposure of \$51,160 on the wage statement claims
12 and about \$73,080 on the waiting time penalty claims.

13 34. **CMO, ¶ G(9)(b):** As far as potential PAGA liability, the alleged aggrieved
14 employees theoretically are entitled to penalties totaling about \$4,482,500 should Plaintiff prevail
15 on all claims, establish violations of the multiple Labor Code sections at issue, and secure the
16 maximum allowable civil penalties. This amount includes \$896,500 in penalties on the unpaid
17 wage claims (8,965 pay periods * \$100/violation); \$896,500 in penalties on the meal break claims
18 (8,965 pay periods * \$100/violation); \$896,500 in penalties on the rest break claims (8,965 pay
19 periods * \$100/violation); \$896,500 in penalties on the unreimbursed expense claims (8,965 pay
20 periods * \$100/violation); and \$896,500 in penalties on the wage statement claims (8,965 pay
21 periods * \$100/violation. As with the class claims, Plaintiffs discounted the potential PAGA
22 penalties based on Defendant’s various defenses on the merits, as discussed in detail above. We
23 also accounted for the argument that any trial under PAGA would be unmanageable due to
24 individualized issues, and further accounted for the Court’s wide discretion to reduce any
25 penalties awarded, or to decline to award penalties at all. In this regard, there was no evidence
26 suggesting any of the alleged Labor Code violations were intentional in Defendant’s part, and we
27 also noted that Defendant is a modest sized company and that imposition of a large penalty award
28 likely would be deemed unjust and oppressive and potentially jeopardize Defendant’s ability to

1 continue operations. Accordingly, the Parties negotiated an allocation \$15,000 to PAGA
2 penalties. Plaintiff submits this amount is reasonable under the circumstances and in line with
3 comparable settlements in other wage and hour class actions in California. Additionally, the
4 LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to
5 weigh in as necessary.

6 35. Taking into account all of the above-discussed risk factors, Plaintiff calculated
7 Defendant's exposure on the class claims at around **\$427,200** on a risk-discounted basis and,
8 accordingly, the settlement represents about 73% of the estimated recovery after trial after
9 accounting for the multiple risks of continued litigation as addressed above. Given Defendant's
10 multi-layered defenses and all other potential risks of continued litigation, a total recovery for the
11 class of \$315,000, which will result in average award of over \$431 per class member, is a
12 significant result well within the range of reasonableness considering all potential outcomes, and
13 will provide monetary awards to the Class without further delay.

14 36. I graduated from Trinity Law School in 2017 and joined Mara Law Firm, PC
15 (formerly The Turley and Mara Law Firm, APLC) that same year. I later joined Crosner Legal
16 in 2020 and am currently employed as a senior associate in the wage and hour department. I
17 have solely handled wage and hour class actions and PAGA lawsuits for six (6) years. I
18 routinely write and oppose motions, draft complaints, appear before the Court at law and
19 motion and settlement hearings, engage in the discovery process, including drafting Belaire-
20 West notices and meet and confer letters.

21 37. I have obtained class certification in the following matters: *Hernandez v.*
22 *Aviation Port Services, LLC*, Kern County Superior Court Case No. BCV-18-100141. I have
23 also assisted in obtaining millions of dollars for employees in the following court-approved
24 class action and/or representative PAGA settlements: *Michael Campbell, et al. v. Symons*
25 *Emergency Specialities, Inc.*, San Bernardino County Superior Court Case No. CIVDS1903158;
26 *Amber Collins v. Danbarb, Inc., et al.*, Los Angeles County Superior Court Case No.
27 20STCV44190; *Michael Elridge v. LA Downtown Medical Center, LLC, et al.*, Los Angeles
28 County Superior Court Case No. 20STCV05951; *Anthony Leon, et al. v. Sierra Aluminum*

1 *Company, et al.*, San Bernardino County Superior Court Case No. CIVDS2010856; *Elaine*
2 *Moyal v. Cabinets To Go, LLC*, Los Angeles County Superior Court Case No. 20STCV32477;
3 *Genevieve Rangel v. Bassett Direct NC, LLC*, Orange County Superior Court Case No. 30-
4 2018-01040101-CU-OE-CXC; *Jacob Buys v. Sizewise Rentals, Inc., et al.*, Sacramento County
5 Superior Court Case No. 34-2018-00225848-CU-OE-GDS; *Alejandro Valencia v. VM Tree*
6 *Service, Inc., et al.*, Riverside County Superior Court Case No. RIC1819395; *Joshua Rael v.*
7 *Intercontinental Hotels Group Resources, Inc.*, Los Angeles County Superior Court Case No.
8 19STCV16010; *Angel Cervantez v. Valley Pallet, Inc.*, Sacramento County Superior Court Case
9 No. 34-2018-00234334-CU-OE-GDS; *Tonja Edwards-Bloodsaw v. Sandburst Convalescent*
10 *Group, LTD, et al.*, Los Angeles Superior Court Case No. 19STCV15797; *Moriah Holtegaard,*
11 *et al. v. Howroyd-Wright Employment Agency, Inc. dba AppleOne Corporation Services, et al.*,
12 Central District Court of California, Eastern Division, Case No. 5:20-cv-00509 JGB (KKx);
13 *Jade Findley, et al. v. Avenue5 Residential, LLC, et al.*, Los Angeles County Superior Court
14 Case No. 20STCV34633; *Keivan Keyhanzad v. Ryan Cars, LLC dba Pomona Kia, et al.*,
15 Riverside County Superior Court Case No. RIC1905276; *Luis Bolanos v. FSC Corporation dba*
16 *Il Pastaio Restaurant, et al.*, Los Angeles County Superior Court Case No. BC722758; *Loretta*
17 *Cannon v. Pasadena Hospital Association, LTD dba Huntington Hospital*, Los Angeles County
18 Superior Court Case No. 19STCV14554; *Nathan Kapusta v. Cardinale Motors SLO, Inc., et al.*,
19 Kern County Superior Court Case No. BCV-20-101593; and *Jesse McCauley v. Mullahey Ford,*
20 *Inc., et al.*, San Luis Obispo County Superior Court Case No. 21CV0001.

21 38. Zach Crosner is a 2010 graduate of University San Diego School of Law and he
22 has approximately thirteen years of experience as a practicing attorney. For nearly his entire
23 career, his practice has focused on litigation of wage & hour, consumer, and privacy class
24 action and representative action claims. Following graduation he immediately began working
25 for a nationally recognized plaintiff's complex litigation firm, CaseyGerry, where he worked
26 directly with past presidents of the consumer attorneys and recipients of trial attorneys of the
27 year awards. He also worked for other firms that included former CAALA and CLAY trial
28 attorney of the year recipients. While with these firms, he advocated for the rights of consumers

1 and employees in class action litigation, civil rights and employment litigation, catastrophic
2 injuries, insurance bad faith and appellate litigation.

3 39. In 2013, he founded the law firm of Crosner Legal, P.C. which since its inception
4 has focused almost exclusively on plaintiff-side class actions lawsuits representing employees,
5 consumers and other victims. Currently, over ninety percent (95%) of his practice is dedicated
6 exclusively to the prosecution of class actions and representative action lawsuits, and his law
7 firm is currently responsible as lead counsel or co-lead counsel for prosecuting over one
8 hundred (100) active wage and hour class actions and/or PAGA representative actions, as well
9 as a multitude of consumer and privacy class actions, in both federal and state courts throughout
10 California. He has been a direct participant in over one hundred (100) class action and/or
11 representative action settlements where he has been approved as adequate lead counsel.

12 40. Mr. Crosner has been selected by Super Lawyers as a “Southern California
13 Rising Star” for employment and labor law consecutively from 2018 through 2023. Super
14 Lawyers has also named me on their “Up-and-Coming 100” Southern California Rising Stars
15 List for consecutive years from 2021 through 2023. Only 2.5% of lawyers within California are
16 named a Super Lawyer Rising Star and even less are added to their Top Lists. Additionally, he
17 has been selected as a Top 40 Under 40 Civil Plaintiff Attorney by the National Trial Lawyers,
18 invitation-only organization composed of the premier trial lawyers, from 2019 through 2023.
19 He is an active participant in advocacy groups, including as an executive board member of the
20 Wage and Hour Committee and the Legislative Committee for the California Employment
21 Lawyers Association; a member of the Grassroots Advocacy Team for the National
22 Employment Lawyers Association; Wage and Hour Committee member and Class Action
23 Committee member for the National Trial Lawyers; a member of the American Association for
24 Justice; and a member of the Pound Civil Justice Institute.

25 41. Jamie Serb is a partner with Crosner Legal and head of the firm’s wage and hour
26 practice group. She graduated from the University of California, San Diego in 2004 and
27 graduated from California Western School of Law in 2013, and has been a member of the
28 California Bar since 2013. She gained extensive experience in wage and hour litigation,

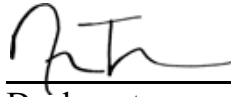
1 beginning work as a class action attorney in 2015 at the Mara Law Firm, PC (previously Turley &
2 Mara Law Firm, APLC; Turley Law Firm, APLC). She joined Crosner Legal on January 4, 2021
3 as an associate attorney. She has handled wage and hour class actions and PAGA lawsuits for
4 some eight years and has assisted in obtaining millions of dollars for employees during her years
5 of practice.

6 42. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
7 action settlements while serving as lead class counsel in recent years, including but not limited to
8 a \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America,*
9 *Inc.*, Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action
10 settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252
11 (Sacramento Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017
12 (*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a
13 \$1.8 million wage and hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc.*
14 *dba American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and
15 hour class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160
16 JGB (C.D. Cal.)), a \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v.*
17 *Wyndham Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a
18 \$1.15 million wage and hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*,
19 Case No. 4:18-CV-04864-YGR (N.D.Cal.)); a \$7.25 million wage and hour class action
20 settlement in 2020 in *Avina, et al. v. First Alarm Security & Patrol, Inc.*, Case No. 18CV323753
21 (Santa Clara Cty. Super Ct.)); a \$2.2 million wage and hour class action settlement in 2021
22 (*Ghorchian, et al. v. West Hills Hospital, et al.*, Case No. LS029737 (Los Angeles Cty. Super.
23 Ct.)); a \$2.85 million dollar wage and hour settlement in 2021 (*Valencia v. The Original*
24 *Mowbray's Tree Service, Inc.*, Case No. CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1
25 million wage and hour class action settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No.
26 21CV382467 (Santa Clara Cty. Super. Ct.)), a \$1.4 million wage and hour class action settlement
27 in 2023 in *Correa, et al. v. FedEx Supply Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino
28 Cty. Super. Ct.)), a \$2.38 million wage and hour class action settlement in 2023 in *Michel, et al. v.*

1 *Valley Thrift Store, Inc.*, Case No. 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million
2 wage and hour class action settlement in 2023 in *Jajuga v. Pilot Travel Centers*, Case No.
3 CIVDS1931464 (San Bernardino Cty. Super. Ct.); \$1.015 million wage and hour class action
4 settlement in 2023 in *Gotishan v. Kyo Autism Therapy*, Case No. CGC-21-596378 (San Francisco
5 Cty. Super. Ct); and a \$1.15 million wage and hour PAGA settlement in 2023 in *Vaughn v.*
6 *Public Health Foundation Enters., Inc.*, Case No. 21STCV18512 (Los Angeles Cty. Super. Ct.).

7 43. For the foregoing reasons, it is respectfully requested that the Court approve the
8 settlement in all particulars.

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct. Executed this 7th day of February 2025, at Los Angeles, California.

11
12
13 

14 _____
Declarant

EXHIBIT

1

CLASS, COLLECTIVE AND PAGA REPRESENTATIVE ACTION SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class, Collective, and PAGA Representative Action Settlement Agreement (“Agreement”) is made by and between Plaintiff Stephany Cluck (“Plaintiff”) and defendant Childhelp, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s pending lawsuit against Defendant captioned *Stephany Cluck v. Childhelp, Inc.* initiated on June 6, 2022, Case No. CVRI2202276 and pending in Superior Court of the State of California, County of Riverside, as amended via the filing of a First Amended Complaint on or about October 4, 2022.
- 1.2. “Administrator” means Apex – Class Action Settlement Administration, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means any and all persons employed by Defendant in California and classified as an hourly paid, non-exempt employee during the PAGA Period.
- 1.5. “Class” means all persons employed by Defendant and classified as an hourly paid, non-exempt employee during the Class Period.
- 1.6. “Class Counsel” means Zachary Crosner, Jamie Serb, and Nikki Trenner of Crosner Legal, P.C.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources,

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

- 1.11. “Class Notice” means the Court Approved Notice of Class Action Settlement, to be mailed to Class Members in English, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from January 16, 2021 to the date the Court grants Preliminary Approval of this Settlement.
- 1.13. “Class Representative” means the named Plaintiff, Stephany Cluck, in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means, in exchange for the execution of a stand-alone general release of all claims, the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Riverside, the forum where the Motion for Preliminary Approval will be filed.
- 1.16. “Defendant” means named Defendant Childhelp, Inc.
- 1.17. “Defense Counsel” means Jason Kearnaghan and Rachel Howard of Sheppard, Mullin, Richter, and Hampton LLP.
- 1.18. “Effective Date” means the date on which the Final Award becomes final. For purposes of this Section, the Final Award “becomes final” only after the Court grants the Motion for Final Approval enters Judgment and upon service of the Notice of Entry of Order and/or Judgment, and upon the latter of: (i) if no appeal, or other challenge is filed, the seventieth (70th) day following Notice of Entry of the Court’s Order and/or Judgment; (ii) the date of affirmance of an appeal of the Order Granting Final Approval and/or Judgment becomes final under the California Rules of Court; or (iii) the date of final dismissal of any appeal from the Order Granting Final Approval and/or Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Order Granting Final Approval and/or Judgment, and issuance of remittitur.
- 1.19. “Employee Paid Taxes” means taxes paid by an individual employee, including Federal Insurance Contributions Act, federal income tax, state disability insurance, state income tax payments.
- 1.20. “Employer Paid Taxes” means taxes paid by the employer, including Federal Unemployment Tax Act, Federal Insurance Contributions Act, state unemployment insurance, and Employee Training Tax payments.
- 1.21. “Final Approval” or “Final Award” 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. “Gross Settlement Amount” means \$315,000.00 which is the total gross amount Defendant agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual Class Payments (including all Employee Paid Taxes), Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and the Administrator’s Expenses. Defendant will be responsible for any and all Employer Paid Taxes required by law on the wage portions of the Individual Class Payments to Class Members, separate and in addition to the Gross Settlement Amount.
- 1.24. “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, less any and all Employee Paid Taxes required by law as a result of the payment of the amount allocated to such Class Member as set forth herein.
- 1.25. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.26. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.27. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.28. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.29. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Class Members as Individual Class Payments, including all Employee Paid Taxes.
- 1.30. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.31. “Objection to Settlement” a Class Member’s written objection to the Settlement, as contained in the form attached as Exhibit B..
- 1.32. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

- 1.33. “PAGA Period” means the period from April 2, 2021 to the date the Court grants Preliminary Approval of this Settlement.
- 1.34. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.35. “PAGA Notice” means Plaintiff’s May 20, 2022 letter to Defendant and the LWDA, providing notice pursuant to Labor Code section 2699.3, subd.(a), Case No. LWDA-CM-884854-22.
- 1.36. “PAGA Penalties” means the total amount of \$15,000.00 in PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$3,750.00) and the 75% to LWDA (\$11,250.00) in settlement of PAGA claims.
- 1.37. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.38. “Pay Period” means a pay period during which an Aggrieved Employee worked for Defendant, for at least one day, during the PAGA Period.
- 1.39. “Plaintiff” means Stephany Cluck, the named plaintiff in the Action.
- 1.40. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.41. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.42. “Released Class Claims” means the claims being released as described in Paragraph 6.2 below.
- 1.43. “Released PAGA Claims” means the claims being released as described in Paragraph 6.3 below.
- 1.44. “Released Parties” means: Defendant and each of its past, present and future agents, employees, servants, officers, directors, managing agents, members, owners (whether direct or indirect), partners, trustees, representatives, shareholders, stockholders, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, potential and alleged joint employers, temporary staffing firms (whether direct or indirect), temporary staffing agencies (whether direct or indirect), dual employers, potential and alleged dual employers, co-employers, potential and alleged co-employers, common law employers, potential and alleged common law employers, contractors, affiliates, service providers, alter-egos, potential and alleged alter-egos, vendors, affiliated organizations, any person and/or entity with potential or alleged to have joint liability, and all of their respective past, present and future employees, directors, officers, members,

owners, agents, representatives, payroll agencies, attorneys, stockholders, fiduciaries, parents, subsidiaries, other service providers, and assigns, and any and all persons and/or entities acting under, by, through or in concert with any of them.

1.45. “Request for Exclusion” means a Class Member’s written request to be excluded from the Class Settlement, as contained in the form attached as Exhibit C. To be effective, the Request for Exclusion must be post-marked by the Response Deadline and received by the Settlement Administrator. The request for exclusion shall not be effective as to the release of claims arising under the Private Attorneys’ General Act.

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

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

“Settlement Payment Check” means the payment to Class Members. The back of the Settlement Payment Check shall state, immediately below the space where the check is to be endorsed by the payee: “By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in the Fair Labor Standards Act (“FLSA”) portion of the [Action], elect to participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement.”

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

2. RECITALS.

2.1. On June 6, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for violations under the Labor Code and Business and Professions Code for: (1) recovery of unpaid minimum wages and liquidated damages; (2) recovery of unpaid overtime wages; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to furnish accurate itemized wage statements; (6) failure to timely pay all wages due upon separation of employment; (7) failure to reimburse business expenses; and (8) unfair competition (the “Complaint”). On or about October 4, 2022, Plaintiff filed a First Amended Complaint, asserting an additional cause of action for violation of the Private Attorneys General Act (“PAGA”). The First Amended Complaint is referred to herein as the “Operative Complaint.”

Defendant denies the allegations in the Complaint and the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any

and all liability for the causes of action alleged.

- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.3. On March 27, 2024, the Parties participated in an all-day mediation presided over by mediator Honorable Daniel Buckley (Ret.) which led to this Agreement to settle the Action.
- 2.4. Prior to mediation and in negotiating the Settlement, Plaintiff obtained, through formal and informal discovery, relevant information from Defendant, including but not limited to, employee time and payroll records, records relating to Plaintiff, Defendant's policy documents, and the exchange of relevant data points pertaining to the Class and PAGA claims. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk / Kullar*").
- 2.5. The Court has not yet granted class certification.
- 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Defendant promises to pay the total gross amount of \$315,000.00 and no more as the Gross Settlement Amount and to separately pay any and all Employer Paid Taxes required by law on the wage portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of \$10,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the Motion for Final Approval, Plaintiff will seek Court approval for any Class Representative Service Payment no later than 16 court days prior to the Final

Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. A reduction by the Court of the Class Representative Service Payment shall not be grounds to nullify this Agreement. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for all Employee Paid Taxes owed on the Class Representative Service Payment. The Class Representative Service Payment will be in addition to Plaintiff's Individual Settlement Payment paid pursuant to the Settlement, and is conditioned on the execution by Plaintiff of a stand-alone settlement agreement and general release of all claims.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33 1/3%, which is currently estimated to be \$105,000 and a Class Counsel Litigation Expenses Payment of not more than \$25,000.00. Defendant will not oppose requests for these payments provided that the requested costs and fees do not exceed these amounts. Plaintiff and/or Class Counsel will seek to recover such payments as part of her Motion for Final Approval which will be filed 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. The Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. A reduction by the Court of either the Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment(s) shall not be grounds to nullify this Agreement. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$8,400.50 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$8,400.50, the Administrator will retain the remainder in the Net Settlement Amount.

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

3.2.4.1. Tax Allocation of Individual Class Payments. 20% 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 an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to

settlement of claims for interest and penalties (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 Paid Taxes owed on their Individual Class Payment.

- 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. Non-Participating Class Members shall still receive an Individual PAGA Payment.
- 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$15,000.00 to be paid from the Gross Settlement Amount, with 75% (\$11,250.00) allocated to the LWDA PAGA Payment and 25% (\$3,750.00) allocated to the Individual PAGA Payments as a satisfaction and release of the Released PAGA claims.
- 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$3,750.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
- 3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms and 100% of such payments will be allocated as penalties.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, as of March 5, 2024, Defendant estimates there are 340 Class Members who collectively worked a total of 19,443 Workweeks, and 316 Aggrieved Employees who worked a total of 8,685 PAGA Pay Periods.
- 4.2. Class Data. Not later than fifteen (15) court days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify

Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay the Employer Paid Taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

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

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

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

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

6. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all Employer Paid Taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

6.1 Plaintiff's Release. As a condition of receiving any portion of the Class Representative Service Payment, Plaintiff and each of her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties (which as defined above specifically includes Defendant) from all known and unknown claims, transactions, or occurrences under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including but not limited to claims arising from or related to her employment with Defendant and her compensation while so employed ("Plaintiff's Release"). Plaintiff's Release includes all claims asserted in the Action and/or arising from or related to the facts and claims alleged in the Action or the PAGA Notice, or that could have been raised in the Action or the PAGA Notice based on the facts and claims alleged. Plaintiff's Release includes, but is not limited to, all claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; wages related to alleged illegal time rounding; failure to pay wages at least twice each calendar month; failure to timely pay wages; failure to timely pay final wages; missed/short/late/ interrupted meal period, rest period, and/or recovery period wages/premiums; failure to provide meal periods; failure to authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest period, and/or recovery period premiums; reimbursement for all necessary business expenses; payment for all hours worked, including off-the-clock work; wage statements; deductions; failure to keep accurate records; failure to provide suitable seating; failure to maintain temperature providing reasonable comfort; unlawful deductions and/or withholdings from wages; unfair business practices; penalties, including, but not limited to, recordkeeping penalties, wage statement and payroll reporting penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs. Plaintiff's Release includes all claims arising under the California Labor Code (including, but not limited to, sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5, 206, 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 227.3, 246, 247.5, 248.5,

256, 450, 510, 511, 512, 515, 516, 550, 551, 552, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1197.2, 1197.5, 1198, 1198.5, 2698 *et seq.*, 2699 *et seq.*, 2802, and 2804); all claims arising under: the Wage Orders of the California Industrial Welfare Commission; the California Equal Pay Act of 1949; the California Fair Pay Act; the California Private Attorneys General Act of 2004 (PAGA); California Business and Professions Code section 17200, *et seq.*; the California Civil Code, to include sections 3287, 3336 and 3294; 8 CCR §§ 3203, 11070, 11090, 11100; California Code of Civil Procedure § 1021.5; California Code of Civil Procedure § 1281.98; all state and local ordinances related to COVID-19 right of recall; the California common law of contract; the FLSA, 29 U.S.C. §§ 201, *et seq.*; 29 CFR 778.223; 29 CFR 778.315; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001, *et seq.* (ERISA). Plaintiff's Release also includes all claims for lost wages and benefits, emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment, retaliation, and wrongful termination, such as, by way of example only, (as amended) 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), as amended by OWBPA, and the California Fair Employment and Housing Act (FEHA); and the law of contract and tort. This release excludes the release of claims not permitted by law. Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. The specific terms of Plaintiff's Release will be detailed in a stand-alone individual settlement agreement.

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

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

6.2 Release by Participating Class Members:

Plaintiff and all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, shall fully and finally release the Released Parties of the "Released Class Claims." The Released Class Claims include all claims asserted in the Action, as amended, and/or arising from the facts alleged in the Action or the PAGA Notice, or that could have been raised in the Action or the PAGA Notice based on the facts

alleged. The Released Class Claims include all claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; wages related to alleged illegal time rounding; missed/short/late/interrupted meal period, rest period, and/or recovery period wages/premiums; failure to provide meal periods; failure to authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest period, and/or recovery period premiums; payment for all hours worked, including off-the-clock work; failure to reimburse business expenses; wage statements; failure to keep accurate records; failure to timely pay wages; failure to timely pay final wages; failure to provide suitable seating; unlawful agreements / unlawful criminal history inquiries and/or financial checks; violations of California's paid sick leave laws; failure to provide supplemental paid sick leave; unfair business practices related to the Labor Code violations alleged in the Operative Complaint; penalties, including recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; non-compliant wage statements; attorneys' fees and costs associated with recovery of the alleged Labor Code violations alleged in the Operative Complaint; and generally all claims that could have been brought based on the facts alleged in the Operative Complaint arising under: the California Labor Code (including, but not limited to, sections 201, 202, 203, 204, 210, 216, 218.5, 218.6, 223, 225.5, 234, 226, 226.3, 226.6, 226.7, 233, 234, 245-248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5); the Wage Orders of the California Industrial Welfare Commission; the California Business and Professions Code section 17200, *et seq.*; the California Civil Code, to include but not limited to, sections 1786, 3287, 3336 and 3294; 12 CCR § 11040; 8 CCR § 11060; California Code of Civil Procedure § 1021.5; 15 U.S.C. § 1681; the California common law of contract the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*; 29 CFR 778.223; 29 CFR 778.315; and federal common law. This release excludes the release of claims not permitted by law.

Plaintiff and Participating Class Members who timely cash or otherwise negotiate their Settlement Payment Check will be deemed to have opted into the Action, as amended, for purposes of the FLSA and, as to those Class Members, the Released Class Claims include any and all claims the Class Members may have under the FLSA during the Class Period arising from the facts alleged in the Action, as amended, or that could have been alleged based on the facts alleged. Only those Class Members who timely cash or otherwise negotiate their Settlement Payment Check will be deemed to have opted into the Action for purposes of the FLSA and thereby release and waive any of their claims under the FLSA arising under or relating to the alleged claims.

The following language will be printed on the reverse of each Settlement Payment Check, or words to this effect: "By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in the Fair Labor Standards Act ("FLSA") portion of the [Actions], elect to participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement."

Upon entry of Judgment, Class Members are precluded from filing a wage and hour action under the Fair Labor Standards Act against the Released Parties for claims and/or causes of action encompassed by the Released Class Claims which are extinguished and precluded pursuant to the holding in *Rangel v. PLS Check Cashers of California, Inc.*, 899 F.3d 1106 (2018).

This release excludes the release of claims not permitted by law.

- 6.3 Release by Aggrieved Employees: Plaintiff, the Labor and Workforce Development Agency, and the State of California through Plaintiff as its agent and/or proxy, on behalf of herself and her respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, shall release the Released Parties from all claims for civil penalties under PAGA that were alleged, or could have been alleged, based on the facts asserted in Plaintiff's Operative Complaint, as amended, and in the PAGA Notice, including but not limited to, claims relating to failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; wages related to alleged illegal time rounding; missed/short/late/interrupted meal period, rest period, and/or recovery period wages/premiums; failure to provide meal periods; failure to authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest period, and/or recovery period premiums; payment for all hours worked, including off-the-clock work; failure to reimburse business expenses; wage statements; failure to keep accurate records; failure to timely pay wages; failure to timely pay final wages; failure to provide suitable seating; unlawful agreements / unlawful criminal history inquiries and/or financial checks; violations of California's paid sick leave laws; failure to provide supplemental paid sick leave; and alleged violations of Labor Code sections 201, 202, 203, 204, 210, 216, 218.5, 218.6, 223, 225.5, 234, 226, 226.3, 226.6, 226.7, 233, 234, 245-248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, 2698, *et seq.* and 2699 *et seq.* ("Released PAGA Claims"). The Released PAGA Claims are limited to the PAGA Period. Aggrieved Employees will be bound by the release of the Released PAGA Claims regardless of their decision to participate in or opt out of the release of the Released Class Claims.

7. **MOTION FOR PRELIMINARY APPROVAL.** Plaintiff will prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Riverside County Superior Court's current requirements for Preliminary Approvals, as applicable.

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

7.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar*; (ii) a draft proposed Order Granting Preliminary Approval; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; and all facts relevant to any actual or potential conflict of interest with Class Members or the Administrator; (vi) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court. In their Declarations, Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. Plaintiff will also prepare and deliver to the LWDA notice of this settlement and the Final Judgment.

7.3 Responsibilities of Counsel. Class Counsel shall be responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval. All Parties shall appear 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.

7.4 Duty to Cooperate. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION.

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

- 8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 8.4 Notice to Class Members.
- 8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data, and whether the escalator clause has been triggered.
- 8.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as Exhibit 1. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 8.4.3 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 8.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 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.
- 8.4.5 If the Administrator, Defendant 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 or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons

will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5 Requests for Exclusion (Opt-Outs).

8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion form shall (i) instruct the Class Member seeking exclusion that the exclusion form must be mailed or delivered the Administrator, (ii) state the name and address of the Administrator, and (iii) state the day by which the Request for Exclusion from must be mailed or otherwise delivered. The information required to be provided by a Class Member on the Request for Exclusion form shall not exceed the minimum information necessary to (i) identify the person as a Class Member and (ii) contact the person to clarify any uncertainties. The Request for Exclusion Form shall indicate that exclusion from the class settlement will not result in exclusion from any PAGA settlement. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

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

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

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

release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment regardless of their decision to opt-out of the class settlement.

- 8.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 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 and PAGA Pay Periods (if any) 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 and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

8.7 Objections to Settlement.

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

- 8.7.2 Participating Class Members may send written objections to the Settlement. The Objection form (Exhibit B) shall (i) instruct the objection Class Member that the objection must be mailed or delivered to the Administrator, (ii) state the name and address of the Administrator, and (iii) state the Response Deadline. The information required to be provided by an objecting Class member on the Objection Form shall not exceed the minimum information necessary to (i) identify the objector as a person entitled to object to the Settlement, (ii) describe the nature of and basis for the objection, and (iii) contact the objector to clarify any uncertainties. 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).

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

- 8.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.
- 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, and the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email 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).
- 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 8.8.5 Administrator’s Declaration. Not later than 14 days after the Response Deadline, 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: (a) a description of both the administrator’s distribution of the Class Notice, Objection Form, Exclusion Form, and the results thereof, distinguishing between valid forms and any invalid forms that are untimely, incomplete, or

otherwise invalid; (b) attaching and authenticating copies of the final versions of the Class Notice, Objection form, and Request for Exclusion form; (c) attaching and authenticating copies of every Objection form and Request for Exclusion form received; (d) an English translation of any Objection form or Request for Exclusion form received that is not in English; (d) a description of the services performed by the Administrator to the date of the declaration, including the time and expense incurred to perform those services and the fee charged for the services; (e) a description of the services to be performed by the Administrator after the date of the declaration, including an estimate of the time and expenses needed to perform those services and the estimated fee for those services; and (f) an estimate of the Defendant's payroll taxes that will need to be paid in addition to the Gross Settlement Amount. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

8.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to (i) the date the checks were mailed, (ii) the total number of checks mailed to Class Members, (iii) the average amount of those checks, (iv) the number of checks that remain uncashed, (v) the total value of those uncashed checks, (vi) the average amount of the uncashed checks, and (vii) the nature and date of the disposition of the uncashed funds. Class Counsel is responsible for filing the Administrator's declaration in Court.

9. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.

9.1. Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, there are approximately 340 Class Members who worked approximately 19,443 Total Workweeks during the Class Period and 316 Aggrieved Employees who worked 8,685 pay periods during the PAGA Period.

9.2. The Gross Settlement Amount was agreed upon based on Defendant's representations of the total number of Workweeks in the Class Period. If the actual number of Workweeks worked by Class Members during the Class Period grows by more than ten percent (10%), or more than 1,944 Workweeks, then Defendant agrees to increase the Gross Settlement Amount proportionally to the added Class Members and/or added Workweeks if the actual number of Class Members and/or Workweeks in the Class Period is more than 10% of the estimate stated herein in paragraph 9.1. For example, if the total number of Workweeks worked by Class Members during the time period of January 16, 2021, through Preliminary Approval, increases by twelve percent (12%) beyond 19,443 Workweeks, the Gross Settlement Amount will increase by 2% (actual increase minus the

10% tolerated increase). In the alternative, Defendant shall have the exclusive option to modify the applicable Class Period to a date prior to preliminary approval, to avoid incurring the *pro rata* increase. If this provision is triggered so as to increase the Gross Settlement Amount, the Parties agree that the Class Counsel Fees Payment will increase proportionally such that the total amount of attorneys' fees remains one-third of the Gross Settlement Amount after the upward adjustment required by this provision is implemented.

10. **DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds five percent (5%) of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

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

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

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

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

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

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

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

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

13. ADDITIONAL PROVISIONS.

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

litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

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

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

- 13.7. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 13.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement. Neither Plaintiff nor Plaintiff's Counsel shall issue any press release or announcement of any kind related in any way to the Settlement. This Settlement shall not be advertised or mentioned on any source, including Plaintiff's Counsel's personal or firm website(s).
- 13.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant 1 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. Following the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, and within 14 days of written request by Defendant, Plaintiff shall

destroy, all paper and electronic versions of Class Data received from Defendant.

- 13.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 13.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 13.17. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

ZACHARY M. CROSNER
zach@crosnerlegal.com
NIKKI TRENNER
nikki@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (310) 496-5818
Fax: (310) 510-6429

To Defendant:

Jason W. Kearnaghan, Esq.
Rachel P. Howard, Esq.
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071-1422
Telephone: (213) 620-1780
Facsimile: (213) 620-1398
jkearnaghan@sheppardmullin.com
rhoward@sheppardmullin.com

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

admissible in evidence to prove the existence and contents of this Agreement.

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

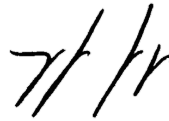
On Behalf of Plaintiff:

Dated: _____, 2024

STEPHANY CLUCK, Plaintiff

On Behalf of Defendant Childhelp, Inc.

Dated: November 25, 2024



Name: Michael Medoro
Title: Chief of Staff

APPROVED AS TO FORM & CONTENT

CROSNER LEGAL, PC

Dated: _____

Nikki Trenner, Esq.
Attorneys for Plaintiff Stephany Cluck

**SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP**

Dated: November 25, 2024



Jason W. Kearnaghan, Esq.
Attorneys for Defendant Childhelp, Inc.

On Behalf of Plaintiff:

Dated: 11 / 18 / 2024, 2024

Stephany Cluck

STEPHANY CLUCK, Plaintiff

On Behalf of Defendant Childhelp, Inc.

Dated: _____, 2024

Name:

Title:

APPROVED AS TO FORM & CONTENT

CROSNER LEGAL, PC

Dated: November 18, 2024

Nikki Trenner

Nikki Trenner, Esq.

Attorneys for Plaintiff Stephany Cluck

**SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP**

Dated: _____

Jason W. Kearnaghan, Esq.
Attorneys for Defendant Childhelp, Inc.

EXHIBIT “A”

CALIFORNIA SUPERIOR COURT, COUNTY OF RIVERSIDE
Stephany Cluck v. ChildHelp, Inc.
Case No. CVRI2202276

NOTICE OF CLASS ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don't act.*

YOU may be ENTITLED TO MONEY UNDER THE PROPOSED CLASS AND PAGA SETTLEMENT. READ CAREFULLY – THIS NOTICE INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

You have received this Notice because records indicate that you are a member of the settlement class settled in this action. The settlement class is comprised of all current and former non-exempt employees who for Defendant Childhelp, Inc. (“Defendant”) in California at any time during the Class Period, defined as January 16, 2021 through **INSERT DATE THE COURT GRANTED PRELIMINARY APPROVAL OF THE SETTLEMENT**. (“Class Members”).

On June 6, 2022, Plaintiff Stephany Cluck (“Plaintiff”) filed this lawsuit against Defendant in the Superior Court of the State of California for the County of Riverside, Case No. CVRI2202276. Thereafter, on October 4, 2022, Plaintiff filed a First Amended Complaint (the “Operative Complaint”). The Operative Complaint alleges causes of action against Defendant for (1) failure to pay minimum wages; (2) failure to pay overtime; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to provide accurate itemized wage statements; (6) failure to reimburse business expenses; (7) violation of Unfair Competition Law (“UCL”) and (8) violation of the Private Attorneys General Act of 2004 (“PAGA”);.

The Parties attended mediation on March 27, 2024, and subsequently reached a Settlement through a mediator subject to Court approval. Class Counsel believes that the Settlement is fair, reasonable, and adequate, and that it is in the best interests of Class Members. Defendant has decided that settlement is favorable because it avoids the time, risk, and expense of a lengthy lawsuit, and settlement immediately resolves, finally and completely, the pending and potential claims. By settling this lawsuit, Defendant does not admit, concede, or imply that it has done anything wrong or legally actionable.

The Court has not made any determination as to whether the claims advanced by Plaintiff have any merit or could proceed on a classwide basis. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties seek to avoid the risks and cost of a trial.

This Notice tells you of your rights to share in the proposed settlement of the Class Action (“Settlement”). There was a Preliminary Approval Hearing on **INSERT DATE OF PRELIMINARY APPROVAL HEARING**, in the Riverside County Superior Court. Judge Harold

Hopp determined only that the proposed settlement might be fair, adequate and reasonable and that a final determination of the issues will be made at the final approval hearing. Judge Harold Hopp also ordered that you receive this Notice.

The Court must approve the terms of the Settlement described herein as fair, adequate, and reasonable to the Class Members. The Settlement will affect all members of the class. Because your rights may be affected by this Settlement, it is important that you read this Notice carefully. This Notice will explain the terms of the Settlement and the amount of money you may receive under the Settlement.

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1. Why Have I Received This Notice?

A Preliminary Approval Hearing was held on **INSERT DATE OF PRELIMINARY APPROVAL HEARING**, in Department 1 of the California Superior Court, County of Riverside. A Preliminary Approval Hearing is a hearing at which the Court determines whether to preliminarily approve the settlement as fair, reasonable, and adequate. The Court conditionally certified the following class for settlement purposes and directed that you receive this Notice:

All non-exempt employees who worked for Defendant in the State of California at any time during the Class Period or from January 16, 2021, through **INSERT DATE THE COURT GRANTED PRELIMINARY APPROVAL OF THE SETTLEMENT**.

You have been identified as a Class Member from Defendant's records. The Settlement will resolve all Class Members' Released Class Claims, as described below, from January 16, 2021, through **May 26, 2024** (the "Class Period").

The Court will hold a Final Approval Hearing concerning the proposed settlement on **INSERT DATE OF FINAL APPROVAL HEARING** at **INSERT TIME OF FINAL APPROVAL HEARING**, before Department 1 of the Superior Court of California, for the County of Riverside, located at 4050 Main Street, Riverside, CA. 92501. A Final Approval Hearing is a hearing set by the Court to make a final determination on the fairness, adequacy, and reasonableness of the Settlement. At this time, the Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate and reasonable, and any final determination of those issues will be made at the Final Approval Hearing.

A. How Will I Know If the Court Changes the Date or Location of the Final Approval Hearing?

The Final Approval Hearing may be continued to another date without further notice. To determine if the Final Approval Hearing has changed, you may contact the Settlement Administrator or Class Counsel; or, you may check the online docket by using the following link and entering the Case No. CVRI2202276: <https://epublic-access.riverside.courts.ca.gov/public-portal/?q=node/379>.

B. I Want to Attend the Hearing. What Are the Court's COVID-19 Procedures?

If you wish to attend the Final Approval hearing, please check the Court's website (<https://www.riverside.courts.ca.gov>) for the Court's current social distancing procedures for attendance at hearings. The Court previously issued a General Order concerning Covid-19 guidelines, which is accessible on its website.

C. If I Do Not Go to the Final Approval Hearing, How Will I Know If the Court Granted Final Approval of the Settlement and Entered Final Judgment?

You may contact the Settlement Administrator or Class Counsel to find out if the Court granted Final Approval and entered Final Judgment. If you wish to obtain a copy of the Final Judgment, it will be posted on the Settlement Administrator's website at [INSERT WEBSITE ADDRESS] and is also available on the Court's docket (see above for instructions on how to access).

2. How Does This Class Action Settlement Work?

In this Class Action, Plaintiff sued on behalf of herself and all other non-exempt employees who worked for Defendant in California at any time during the Class Period. The Settlement resolves the Released Class Claims of all Class Members, except for those who request exclusion from the Settlement, in the manner set forth below.

The Court must review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the Settlement documents, which explain the Settlement in greater detail. See Section 7 if you would like to obtain documents filed in this Class Action.

3. How Does This Settlement Affect My Rights? What are the Released Claims?

If the proposed settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not request exclusion from the Settlement will be bound by the Court's Final Judgment and will release the "Defendant and each of its former and present directors, officers, employees, and agents" ("Released Parties") from the Released Class Claims. The Released Class Claims are defined as:

all claims asserted in the Action, as amended, and/or arising from the facts alleged in the Action, or that could have been raised in the Action based on the facts alleged. The Released Class Claims

include all claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; wages related to alleged illegal time rounding; missed/short/late/interrupted meal period, rest period, and/or recovery period wages/premiums; failure to provide meal periods; failure to authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest period, and/or recovery period premiums; payment for all hours worked, including off-the-clock work; failure to reimburse business expenses; wage statements; failure to timely pay wages; failure to timely pay final wages; unfair business practices related to the Labor Code violations alleged in the Operative Complaint; penalties, including wage statement penalties, minimum-wage penalties, and waiting-time penalties; attorneys' fees and costs associated with recovery of the alleged Labor Code violations alleged in the Operative Complaint; and generally all claims for damages that could have been brought based on the facts alleged in the Operative Complaint arising under: the California Labor Code (including, but not limited to, sections 201, 202, 203, 204, 223, 234, 226, 226.3, 226.6, 226.7, 510, 512, 558, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802); the Wage Orders of the California Industrial Welfare Commission; the California Business and Professions Code section 17200, *et seq.*; and claims arising under federal law. This release excludes the release of claims not permitted by law.

If you do not request exclusion from the Settlement, you will be bound by this Release.

PAGA Released Claims

The Judgment entered by the Court upon Final Approval of the Settlement will also have res judicata effect and be final and binding upon Plaintiff, the Aggrieved Employees, and the California Labor and Workforce Development Agency. The Aggrieved Employees include all non-exempt employees who worked for Defendant in California during the PAGA Period defined as the time period from April 2, 2021 through **INSERT DATE THE COURT GRANTED PRELIMINARY APPROVAL OF THE SETTLEMENT**.

If you are an Aggrieved Employee, this Settlement will release the following PAGA Released Claims, regardless of whether or not you requested exclusion from the Settlement. Upon Defendant's final payment funding the Gross Settlement Amount, Aggrieved Employees shall forever release the Released Parties from the following PAGA Released Claims for the PAGA Period. The PAGA Released Claims are defined as:

Plaintiff, the Labor and Workforce Development Agency, and the State of California through Plaintiff as its agent and/or proxy, on behalf of herself and her respective former and present

representatives, agents, attorneys, heirs, administrators, successors, and assigns, shall release the Released Parties from all claims for civil penalties under PAGA that were alleged, or could have been alleged, based on the facts asserted in Plaintiff's Operative Complaint, as amended, and in the PAGA Notice, including but not limited to, claims relating to failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; wages related to alleged illegal time rounding; missed/short/late/interrupted meal period, rest period, and/or recovery period wages/premiums; failure to provide meal periods; failure to authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest period, and/or recovery period premiums; payment for all hours worked, including off-the-clock work; failure to reimburse business expenses; wage statements; failure to keep accurate records; failure to timely pay wages; failure to timely pay final wages; failure to provide suitable seating; unlawful agreements / unlawful criminal history inquiries and/or financial checks; violations of California's paid sick leave laws; failure to provide supplemental paid sick leave; and alleged violations of Labor Code sections 201, 202, 203, 204, 210, 216, 223, 225.5, 234, 226, 226.3, 226.6, 226.7, 233, 234, 245-248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, 2698, *et seq.* and 2699 *et seq.* ("Released PAGA Claims"). The Released PAGA Claims are limited to the PAGA Period. Aggrieved Employees will be bound by the release of the Released PAGA Claims regardless of their decision to participate in or opt out of the release of the Released Class Claims.

4. ***What Are My Options?***

The purpose of this Notice is to inform you of the proposed Settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: Defendant will not retaliate against you in any way for either participating or not participating in this Settlement.

Do Nothing:	If you do nothing and the Court grants final approval of the Settlement, you will become part of this Class Action and receive an Individual Settlement Payment. You will be bound to the release of the Released Class Claims as defined in the Settlement and the Final Judgment. You will also give up your right to pursue the Released Class Claims and PAGA Released Claims as defined in Section No. 3 above.
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Opt Out:	With the exception of the settlement of the PAGA claims, you have the right to request exclusion from the Settlement. To do so, you must complete and timely submit the Exclusion Form included herewith or otherwise timely provide a written request to opt-out of the class Settlement via mail or fax to the Settlement Administrator at [INSERT MAILING ADDRESS AND FACSIMILE NUMBER]. To be valid, a written request for exclusion from the class settlement must: (a) be signed by you; (b) state your full name, address, telephone number and the last four digits of your social security number; and, (c) clearly request to be excluded from the class settlement. The request for exclusion must be postmarked or faxed on or before [INSERT THE RESPONSE DEADLINE]. The postmark or fax receipt date will be the exclusive means to determine whether the request for exclusion was submitted on time. Unless you timely opt out of the class settlement, you will be bound by the judgment upon final approval of the settlement, including the Release described in this Notice. You may use the enclosed Exclusion Form for the purpose of requesting exclusion. Following Final Approval of the settlement, the Court will enter Final Judgment. The Final Judgment will bind all Class Members who do not request exclusion from the Settlement on time. Even if you opt out of the class settlement, you will still receive any PAGA settlement payment to which you may be entitled as an Aggrieved Employee and will still be bound by the release of the PAGA claims.
Object:	If you want to object to the Settlement and you have not requested exclusion or opted out of the Settlement, you may object to the Settlement, personally or through an attorney, by mailing or faxing your written objection to the Settlement Administrator at [INSERT MAILING ADDRESS AND FACSIMILE NUMBER]. The written objection must: (a) state your full name, address, telephone number and the last four digits of your social security number; (b) state all grounds for your objection, accompanied by any legal support; and, (c) contain your or your legal representative's signature. The written objection must be postmarked or faxed on or before [INSERT THE RESPONSE DEADLINE]. The postmark or fax receipt date will be the exclusive means to determine whether the written objection was submitted on time. You may use the enclosed Objection Form to submit any objections. If the Court rejects or overrules your objection, you will receive a settlement payment and be bound by the terms of the Settlement.

5. *How Much is the Settlement and What is my Estimated Settlement Payment?*

As obligated under the Settlement, Defendant will be required to pay a total sum of \$315,000.00 ("Gross Settlement Amount"). The following payments will be deducted from the Gross Settlement Amount: (1) Class Representative Service Payment to Plaintiff in an amount up to

\$10,000.00, for her time and efforts in the prosecution of the lawsuit and risks undertaken for the payment of attorneys' fees and costs; (2) payment of the Settlement Administrator's cost and fees not to exceed \$8,400.50; (3) PAGA Penalties in the amount of \$15,000.00 (\$11,750.00 to the California Labor Workforce Development Agency ("LWDA") for its 75% portion of the PAGA Penalties and \$3,250.00 to be distributed among the Aggrieved Employees for their 25% portion of the PAGA Penalties); and (4) payment to Class Counsel in an amount not to exceed \$105,000 (one-third of the Gross Settlement Amount) for attorneys' fees and an amount not to exceed \$25,000.00 for actual litigation costs. All of these payments are subject to Court approval and the Court has the discretion to award less than the amounts listed above.

A. How Are Individual Settlement Payments to Class Members Calculated?

After deducting the above-referenced items, the remaining Net Settlement Amount ("NSA") will be proportionately distributed amongst all Class Members who have not requested exclusion from the Settlement.

Individual Class Payments: Defendant will calculate the total number of workweeks worked by each Class Member in California during the Class Period ("Individual Workweeks") and the total number of workweeks worked by all Class Members in California during the Class Period ("Class Workweeks"). To determine each Class Member's Individual Class Payment, the Settlement Administrator will use the following formula:

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.

All Participating Class Members will be credited with at least one Workweek. The number of workweeks worked by all Class Members will be derived from Defendant's records.

Individual PAGA Payments: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$3,750.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.

B. What is my Estimated Individual Settlement Payment?

Although your exact Individual Settlement Payment cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your estimated Individual Class Payment is \$ [REDACTED], less taxes and your estimated Individual PAGA Payment is estimated to be \$ [REDACTED]. This estimate is based on Defendant's records, which show you worked [REDACTED] workweeks during the Class Period from January 16, 2021 through INSERT DATE THE COURT GRANTED PRELIMINARY APPROVAL OF THE SETTLEMENT and [REDACTED] PAGA Pay Periods from April 2, 2021 to INSERT DATE THE COURT GRANTED PRELIMINARY APPROVAL OF THE

SETTLEMENT. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

C. My Workweek or PAGA Pay Period Count is Incorrect. How do I Dispute it?

If you disagree with the number of workweeks or PAGA Pay Periods listed for you above, you may contact the Settlement Administrator and provide evidence demonstrating the numbers listed above are incorrect. Your dispute must be returned by mail or fax to the Settlement Administrator at [INSERT MAILING ADDRESS AND FACSIMILE NUMBER] and postmarked on or before the [INSERT RESPONSE DEADLINE]. The postmark or fax receipt date will be the exclusive means to determine whether a dispute was submitted on time.

The Settlement Administrator will evaluate your evidence and make a final decision as to the number of eligible workweeks and/or PAGA Pay Periods that should be used to determine your Individual Settlement Payment. Absent evidence demonstrating Defendant's records are incorrect, Defendant's records will be presumed accurate.

D. How Will my Individual Settlement Payment be Taxed?

Each Individual Class Payment will be apportioned as follows: 20% wages, 40% interest, and 40% penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported on IRS W-2 forms. The amounts paid as penalties and interest shall be reported on IRS 1099 forms.

E. What Happens if I do not Cash my Settlement Payment Check?

You must cash or deposit your Settlement Check before the 180-day void date shown on the check. If any checks remain uncashed by the expiration of the 180-day period, the uncashed amounts will be forwarded to the California State Controller's Unclaimed Property Fund.

6. Who Are the Attorneys Representing the Parties?

8. Attorneys for Plaintiff/Class Counsel	Attorneys for Defendant
CROSNER LEGAL PC Zachary Crosner Jamie Serb Nikki Trenner 9440 Santa Monica Blvd., #301 Beverly Hills, CA 90210 Telephone: (310) 496-5818 Facsimile: (310) 510-6429	SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP Jason W. Kearnaghan Rachel P. Howard 333 South Hope Street, 43rd Floor Los Angeles, CA 90071 Telephone: (213) 620-1780 Facsimile: (213) 620-1398

The Court has decided that the attorneys at Crosner Legal PC are qualified to represent you and all other Class Members. You do not need to hire your own attorney because Class Counsel is working on your behalf. However, if you want your own attorney, you may hire one at your own cost.

7. *How do I Obtain More Information?*

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact

Class Counsel listed above, or the Settlement Administrator at [INSERT PHONE NUMBER]. Please refer to the Childhelp, Inc. Class Action Settlement.

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you can request copies of documents filed with the Court, free of charge, from Class Counsel or the Settlement Administrator.

You may also obtain these documents from the Court's website for a fee. Go to <https://epublic-access.riverside.courts.ca.gov/public-portal/?q=node/379> and enter the Case No. CVRI2202276. Scroll down and click on the link entitled "Document Download." You will then be able to access for a fee Plaintiff's Notice of Motion and Motion for Preliminary Approval of Class Action Settlement and supporting documents, which includes the entire Settlement Agreement, which is attached as Exhibit 1 to the Declaration of Nikki Trenner filed on or about [INSERT DATE OF FILING PRELIMINARY APPROVAL MOTION]. You can also request record searches in person in the Clerk's Office at the Superior Court of California for the County of Riverside, located at 4050 Main Street, Riverside, CA. 92501.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

EXHIBIT “B”

OBJECTION FORM

Stephany Cluck v. ChildHelp, Inc.
Riverside County Superior Court Case No. CVRI2202276

AS EXPLAINED IN MORE DETAIL IN THE NOTICE ACCOMPANYING THIS FORM, YOU HAVE THE RIGHT TO OBJECT TO THE PROPOSED CLASS ACTION SETTLEMENT DESCRIBED IN THE NOTICE.

If you wish to object to the Settlement, you must complete this Objection Form and state the basis for your objection, and mail or otherwise submit the completed Objection Form to the address below, postmarked no later than [RESPONSE DEADLINE].

Alternatively, you may appear and be heard at the Final Approval Hearing and make your objection to the Court regardless of whether you submit an Objection Form.

Stephany Cluck v. ChildHelp, Inc.. Settlement Administration
c/o Settlement Administrator
[SETTLEMENT ADMINISTRATOR ADDRESS]

Your Name: _____

Your Address: _____

Your Phone Number: _____

Date: _____
_____ (signature)

Reasons Why You Object (you may attach additional pages if necessary): _____

EXHIBIT “C”

REQUEST FOR EXCLUSION FORM

Stephany Cluck v. ChildHelp, Inc.
Riverside County Superior Court Case No. CVRI2202276

AS EXPLAINED IN MORE DETAIL IN THE NOTICE ACCOMPANYING THIS FORM, YOU HAVE THE RIGHT TO EXCLUDE YOURSELF FROM THE PROPOSED CLASS ACTION SETTLEMENT DESCRIBED IN THE NOTICE.

If you do **not** want to be included in the Settlement, and do **not** want to receive a settlement payment, you must complete this form and return it to the address or fax number below, postmarked or faxed no later than [response deadline]:

Stephany Cluck v. ChildHelp, Inc. Settlement Administration
c/o Settlement Administrator
[SETTLEMENT ADMINISTRATOR ADDRESS]

I wish to be excluded from the class and I do **not** want to participate in the proposed settlement. I understand this means that I will **not** be bound by the settlement and will **not** receive any payment from the settlement, but I will retain whatever rights I may have, if any, to pursue a claim against Childhelp, Inc. with respect to the claims raised in the lawsuit referenced above.

NOTE: If you request exclusion from the Settlement and are also an Aggrieved Employee, you will still receive your proportionate payment of the PAGA Settlement.

Your Name: _____

Your Address: _____

Your Phone Number: _____

Date: _____

(signature)

EXHIBIT

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May 20, 2022

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

CT Corporation System
Agent for Service of Process for:
Childhelp, Inc.
330 N. Brand Blvd. Ste 700
Glendale, CA 91203

Childhelp, Inc.

Attn: Human Resources/Legal Department
6730 N Scottsdale Road Suite 150
Scottsdale, AZ 85253

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Childhelp,
Date: Inc. May 20, 2022
Subject: *Stephany Cluck v. Childhelp Inc.*

Introduction

This office represents COMPLAINANT, Stephany Cluck (hereinafter "COMPLAINANT") in connection with COMPLAINANT's claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entity and individual

managing agents of said entity: Childhelp, Inc. (hereinafter, this entity and its managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed by EMPLOYER in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by EMPLOYER in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process as provided to the California Secretary of State, and the address listed on COMPLAINANT’s wage statement as the employer address.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT’s claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT’s intent to seek civil penalties against EMPLOYER.

COMPLAINANT, on behalf of COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/ABC, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of employer(s) who violated

COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

EMPLOYER owns, manages or otherwise operates a non-profit organization working on the prevention and treatment of child abuse through various programs including but not limited to short term residential therapeutic programs and 24-hour treatment centers for children with various locations and chapters assisting in the operation of such programs including but not limited to the Greater Los Angeles Area Chapter, Indian Wells Chapter, Inland Empire Chapter, Orange County Chapter, Orange County Wings Chapter, Angels Auxiliary Chapter, and Eagles Auxiliary Chapter.¹ Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as an instructional assistant and driver (and/or similar position/title) and as a direct care staff member (and/or similar position/title). COMPLAINANT worked for EMPLOYER from in or about August 2019 through in or around September 2021. COMPLAINANT regularly worked at EMPLOYER's Childhelp Merv Griffin Village in Beaumont, California in Riverside County, California. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked. COMPLAINANT also earned non-discretionary compensation in addition to her base hourly rate. COMPLAINANT regularly worked 8-12 hours (or more) per shift, 5-6 shifts per week.

¹ See <https://www.childhelp.org/>. Last visited on May 19, 2022.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) failed and continues to fail to provide suitable resting facilities; (13) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (14) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; and (15) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. All

applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, EMPLOYER failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of EMPLOYER's time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices.

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER's failure to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, EMPLOYER further failed, and continues to fail, to record the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods.

Based on further information and belief, EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' work shifts.

Additionally, EMPLOYER failed, and continues to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction." An employer's failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, COMPLAINANT sent a request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to timely produce complete records within the time periods delineated by California labor law, including but not limited to records showing when COMPLAINANT started and ended each work period and meal period and total daily hours worked. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject EMPLOYER to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, COMPLAINANT did not sign a valid meal period waiver throughout COMPLAINANT's employment by EMPLOYER.

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES worked shifts of five and one-half (5 ½) hours or more, entitling them to at least one meal period. However, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, COMPLAINANT was consistently unable to take a timely, duty-free meal period (or any sort of meal period) due to understaffing and the nature and constraints of her job duties, including but not limited to the need to monitor, supervise, and/or instruct children she was overseeing. Children in EMPLOYER's

programs had to be supervised at all times, yet EMPLOYER frequently understaffed the number of employees needed to supervise/monitor children. As such, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were frequently unable to take timely off-duty meal periods due to understaffing and lack of relief workers. COMPLAINANT was frequently deprived of any opportunity to take a meal period.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, and/or otherwise on duty due to commentary from supervisors, understaffing, and/or the nature and constraints of their job duties.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal breaks.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which were free of EMPLOYER's control owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Moreover, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break. For example, COMPLAINANT frequently worked more than ten hours in a single shift but was not provided with a second, duty free meal period.

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed, on-duty and/or otherwise unlawful meal periods despite having actual and/or constructive knowledge that NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

Moreover, based on information and belief, EMPLOYER failed to keep accurate records of the true start and end times of NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or failed to keep any record of purported meal periods. Based on information and belief, EMPLOYER illegally rounded the start and end times of purported meal periods resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, EMPLOYER failed to instruct NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, EMPLOYER did not have a compliant written meal break policy, nor did EMPLOYER have a compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break

policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual and/or constructive knowledge that its time-rounding and/or auto-deduction policies and practices resulted in the denial of lawful meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Moreover, EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed meal period premium. For example, during her employment by EMPLOYER, COMPLAINANT earned non-discretionary compensation including but not limited to bonuses and shift differentials when working a night shift. Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration into the regular rate of pay for purposes of calculating the owed meal period premium. As such, EMPLOYER failed to pay a meal period premium and/or failed to pay the meal period premium at COMPLAINANT's regular rate of pay.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, and 1199 discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have a compliant rest period policy in practice. For example, COMPLAINANT was consistently unable to take a timely off-duty rest period (or any rest period at all) due to her need to remain on EMPLOYER's premises and supervise children and/or complete other work tasks. Moreover, COMPLAINANT was unable to take rest periods due to understaffing and lack of relief workers.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES' rest periods were interrupted, cut short, on duty, and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Furthermore, EMPLOYER failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period

in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Failure to Provide Suitable Resting Facilities: Per section 13 of all applicable IWC Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: “Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

Based on information and belief, EMPLOYER’s locations are generally similar in layout and design, and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. EMPLOYER could have provided COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with a suitable resting facility within EMPLOYER’s locations with reasonable or no modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a breakroom).

EMPLOYER did not provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with suitable resting facilities during their hours of work, particularly during meal and/or rest periods. Moreover, EMPLOYER did not inform COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of their right to suitable resting facilities under California law.

EMPLOYER’s failure to provide suitable resting facilities to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violated and continues to violate section 13(B) of the applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” See all applicable Wage Orders section 4. The applicable Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” See all applicable Wage Orders section 2. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

Based on information and belief, EMPLOYER failed to compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER’s automatic deduction and time rounding policies, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods. Based on information and belief, EMPLOYER implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not afforded lawful meal periods, depriving COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER’s policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For example, COMPLAINANT was frequently required to perform post-shift off-the-clock work. After clocking out for a shift, COMPLAINANT was frequently asked to assist with work tasks on her way out of the facility. For instance, at times COMPLAINANT was asked to assist with a child’s supervision or assist with laundry tasks *after* clocking out. At other times, when working the night shift, COMPLAINANT was asked to help cook breakfast *after* clocking out. This work time was off-the-clock and uncompensated.

Based on information and belief, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by EMPLOYER. Moreover, based on information and belief, EMPLOYER required COMPLAINANT to submit to mandatory drug testing. Based on information and belief, this work time was completed off-the-clock and was not compensated. Moreover, based on information and belief, COMPLAINANT was not compensated for time spent completing EMPLOYER-mandated trainings and/or continued education courses/tranings.

Based on information and belief, EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES split shift compensation whenever their work schedules were interrupted by non-paid non-working periods established by EMPLOYER, which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage orders, “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday...).

Based on further information and belief, EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. EMPLOYER’s failure to pay for all time worked by virtue of its time-rounding practices resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

EMPLOYER’s failure to pay for all time worked by virtue of its time rounding, auto-deduction policies and practices for meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, and failure to pay for all hours worked resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work (including but not limited to post-shift off-the-clock work and/or other off-the-clock work described above) resulted in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED

EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

Based on information and belief, EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's automatic deduction and time rounding policies and practices for meal periods, payment according to scheduled hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal periods, and/or other off-the-clock work (including but not limited to post-shift off-the-clock work and/or other off-the-clock work described above), resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, at times, EMPLOYER requires NON-EXEMPT AGGRIEVED EMPLOYEES to work two shifts in the same day but fails to pay the owed overtime for all hours worked over eight hours in a day and/or forty hours in a week.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or other non-

⁵ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. For example, COMPLAINANT earned non-discretionary compensation including but not limited to bonuses and shift differentials. Based on information and belief, EMPLOYER failed to incorporate all non-discretionary compensation into the regular rate of pay for purposes of calculating the owed overtime rate.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to post-shift off-the-clock and/or other off-the-clock work described above) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, EMPLOYER further failed to provide notice of the correct sick leave amount balance available to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statement.

Based on information and belief, EMPLOYER failed to put NON-EXEMPT AGGRIEVED EMPLOYEES on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to NON-EXEMPT AGGRIEVED EMPLOYEES throughout the relevant time period.

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Based on information and belief, throughout the relevant period, EMPLOYER failed to provide notice of the sick leave amount balance left for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid but was not, as a result of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered

employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, EMPLOYER violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁷

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (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; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements EMPLOYER issued to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

⁷ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Based on further information and belief, EMPLOYER issued wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES that failed to list the accurate total hours worked whenever shift differential wages were paid in violation of Labor Code section 226.

EMPLOYER's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

As a result, the wage statements provided to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁸

⁸ See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by, including but not limited to, failing to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, business expenses, and suitable resting facilities result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention

to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, EMPLOYER untimely provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Based on information and belief, upon separation of employment, COMPLAINANT's NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁹

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. See Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. See applicable IWC Wage Order, § 9 (b).

⁹ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. Further, "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State." *See* Cal. Lab. Code § 2804.

Based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, EMPLOYER shifted its costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, use of a personal mobile phone and data usage for work related purposes including but not limited to receiving and responding to work related messages and/or phone calls. For example, whenever a child under COMPLAINANT's supervision experienced or displayed a behavioral issue, COMPLAINANT was required to call/report the incident to an on-duty officer within EMPLOYER's network to come assist with the behavior issue. COMPLAINANT was required to use her personal phone to make these calls and was not reimbursed for the cost of using her personal phone for work related purposes.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to the use of a personal cell phone.

As a pattern and practice, EMPLOYER regularly failed to fully reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out EMPLOYER's orders and/or carrying out the duties assigned by EMPLOYER.

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT, NON-EXEMPT AGGRIEVED

EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that “no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law.” Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

The California Labor Code places certain procedural and substantive limits on employers’ ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements. Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER also required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA. For example, COMPLAINANT’s offer of employment by EMPLOYER was contingent, among other things, upon the completion of a background screening. Based on information and belief, EMPLOYER failed to comply with the requirements of the ICRAA and FCRA when conducting background screenings.

Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide

a clear and conspicuous disclosure (or any disclosure at all), failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER violated Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, EMPLOYER knew that requiring COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful provisions as a condition of employment, EMPLOYER violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law.

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act ("FEHA"), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law.

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California's Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and

EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

As such, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Zachary Crosner
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: zach@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

Zachary M. Crosner

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC



Alberto Villavicencio <alberto@crosnerlegal.com>

Thank you for submission of your PAGA Case.

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Fri, May 20, 2022 at 1:18 PM

To: "alberto@crosnerlegal.com" <alberto@crosnerlegal.com>

5/20/2022

LWDA Case No. LWDA-CM-884854-22

Law Firm : Crosner Legal

Plaintiff Name : Stephany Cluck

Employer: Childhelp, Inc.

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT

3

Thank you for your Court Complaint Submission.

DIR PAGA Unit <no-reply@formassembly.com>
To: mathew@crosnerlegal.com

Thu, Feb 6, 2025 at 5:15 PM

02/06/2025 05:15:30 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Complaint

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT

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