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21 **SUPERIOR COURT OF CALIFORNIA**
22 **COUNTY OF CONTRA COSTA**

23 ARMANDO DELAMORA, an individual, on
24 behalf of himself and all others similarly situated,

25 Plaintiff,

26 v.

27 THORPE DESIGN, INC., a California
28 corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: **C22-00931**

**REPRESENTATIVE AND CLASS
ACTION**

Assigned to
Hon. Charles S. Treat
Dept. 12

**DECLARATION OF DAVID R.
MARKHAM IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND REPRESENTATIVE
ACTION SETTLEMENT**

1 I, David R. Markham, declare:

2 1. I am counsel of record for Plaintiff Armando Delamora in this action. I am a member
3 in good standing of the State Bar of California. I make this Declaration in support of Plaintiffs'
4 Unopposed Motion for Preliminary Approval of Class and Representative Action Settlement. I make
5 this Declaration based on my personal knowledge, and if called to testify, I could and would
6 competently testify to the matters contained in this Declaration.

7 **Prosecution of this Action**

8 2. This is a global settlement which includes this action, as well as *Cardenas v. Thorpe*
9 *Design, Inc.*, Case No. C22-01545 ("*Cardenas*"), also pending in this Court. As part of this settlement,
10 Plaintiffs will file a Second Amended Complaint, which consolidates *Delamora* and *Cardenas* into one
11 action for settlement purposes.

12 3. Plaintiff Delamora was employed by Victory Fire Protection, Inc. ("Victory") as a
13 pipefitter between October 2016 and November 2021. Plaintiff Cardenas worked as a journeyman
14 carpenter between April 2020 and February 2022. Defendant Thorpe Design, Inc. acquired Victory in
15 January of 2021 and hired all of its employees, including Plaintiffs. Delamora's duties included
16 installing fire sprinkler systems in residential homes, as well as performing inspections. Cardenas'
17 duties included pick up and delivery of raw materials at Defendant's job sites and completion of build
18 and repair projects for Defendant's clients. In addition to Plaintiffs, Defendant employed other non-
19 exempt field and office employees, as well as exempt office employees.

20 4. We filed a complaint on behalf of Plaintiff Delamora against Defendant on May 4,
21 2022, alleging Defendant failed to pay him and other field employees for all hours worked, and failed
22 to provide meal and rest breaks, or pay premiums for non-compliant breaks, failed to keep accurate
23 payroll records, and failed to reimburse employees for business expenses. Delamora also asserted
24 claims for violation of the UCL, claims for inaccurate wage statements, and untimely paid wages at
25 termination of employment. On July 7, 2022, Delamora amended his complaint to add claims for
26 penalties under PAGA.

27 5. Plaintiff Cardenas filed his complaint on July 28, 2022, alleging claims on behalf of all
28 non-exempt employees, as well as exempt employees, for unreimbursed business expenses, rest period

1 violations, wage statement violations, waiting-time penalties for wages due to separated employees,
2 unfair business practices under the UCL, and PAGA violations.

3 6. Plaintiffs' investigation revealed that field employees would be dispatched to conduct
4 installations, and then could be called away from the jobsite to perform time-sensitive inspections.
5 They were expected to complete each assigned installation and inspection each day but were routinely
6 not allowed to record overtime hours. Thorpe had an overtime pre-approval policy, yet also a policy
7 which required employees to finish their assignments within the day. This created a catch-22 situation,
8 because due to technical difficulties or other unforeseen delays that arise as the inspection or
9 installation is occurring, class members would not know about the need to seek overtime pre-approval
10 ahead of time, thus a pre-approval was impossible to obtain. Thus, class members end up working
11 overtime, off-the-clock.

12 7. Additionally, Plaintiffs allege that when field employees were called to leave a job site
13 to conduct inspections or respond to other time sensitive situations, it would result in late or
14 interrupted meal periods, or meal periods that would be missed completely. Plaintiffs and class
15 members were not able to record the time that they were called to work during their meal periods.
16 Further, Thorpe's policy expressly provides that employees must clock out for meal periods, and does
17 not explicitly provide for meal or rest period premium payments. Thus, Defendant appears to have no
18 system to pay any premium payments.

19 8. Additionally, Plaintiffs allege Defendant failed to maintain records showing the start
20 and end times for each shift, and for meal periods, for at least a part of the class period. Plaintiffs
21 argue that Defendant's time records which only show the total hours worked by non-exempt
22 employees, and do not record shift and meal break times, are insufficient under the Wage Order.

23 9. Further, Plaintiffs alleged that Thorpe does not provide for expense reimbursement for
24 non-exempt and exempt employees. Plaintiffs and other class members used their cellphones in the
25 regular course of employment by answering texts and calls from their supervisors while at work or on
26 a break, for purposes of scheduling and re-scheduling future work, being assigned tasks, and general
27 administrative matters, and required the use of various mobile phone applications, but did not pay a
28 reasonable portion of the Class Members' cellphone related expenses despite requiring the use of the

1 device and/or applications that required a data plan. Additionally, Plaintiffs used their personal
2 vehicles for work purposes. Plaintiffs sometimes had to commute to the various different job sites and
3 travel to up to five inspections per day and were not reimbursed for the mileage incurred using their
4 personal vehicles.

5 10. Plaintiffs further alleged derivative claims, including violation of Labor Code section
6 226(a) for inaccurate wage statements and Labor Code section 203 for waiting time penalties, and
7 violations of PAGA and UCL under the same predicate factual and legal theories.

8 11. We met and conferred with Defendant prior to the initial case management conference,
9 and agreed to attend mediation and stay formal discovery, including depositions, in lieu of an informal
10 exchange of data and information for mediation purposes.

11 12. In advance of mediation, Defendant produced the applicable policies and handbooks
12 in effect during the class period, and time records and payroll records for a 20% sample of class
13 members, amounting to hundreds of pages of documents and data. We reviewed the class data and
14 prepared a damages model.

15 13. We carefully investigated the claims and facts alleged in this action. We conducted
16 interviews with Plaintiffs and Settlement Class Members. We also made a thorough study of the legal
17 principles applicable to the claims asserted against Defendant. Both parties retained counsel with
18 extensive experience in litigating wage and hour class actions. The experience of our firm is presented
19 in the paragraphs below. Defendant was represented by seasoned attorneys at Littler Mendelson, P.C.
20 and Kraeber Law Office. As a result of an aggressive investigation of the claims in this action, a careful
21 review of numerous documents, and extensive discovery, both parties had a clear understanding of
22 their respective claims and defenses.

23 Settlement

24 14. On January 12, 2023, we mediated this case before Mark Rudy, Esq., a mediator vastly
25 experienced in wage and hour class actions. Although we did not reach settlement at the mediation
26 session, we continued the settlement dialogue with Defendant's counsel and exchanged more
27 information and documents, with the assistance of Mr. Rudy. After several weeks of contentious arms-
28 length negotiations facilitated by the mediator, we reached the settlement in principle, and executed a

Memorandum of Understanding. Defendant desired a global settlement, which would include both *Delamora* and *Cardenas* actions. We agreed to prosecute this case jointly with the Cardenas' counsel. After additional weeks of negotiations, the parties finalized the terms of the settlement agreement. The executed version of the Settlement Agreement is attached hereto as **Exhibit 1**.

15. At the time we settled this case, both parties knew and understood their respective positions. As a result of the work performed in this case, the real value of the class claims was well known, and Class Counsel determined that the Settlement with Thorpe is fair, reasonable, adequate, and in the best interest of the Class. Further, this Settlement is the result of extensive and hard-fought negotiations.

16. Even though my firm has been devoted to vigorously advancing and defending our client's position, we took into consideration the costs and uncertainty associated with any litigation, and determined that the settlement of this action represents the best possible outcome for the Class Members. Defendant also concluded that this action should be settled in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to avoid the expense, inconvenience, and burden of further legal proceedings, and the uncertainties of trial and appeals.

17. The settlement amount of \$750,000 derives primarily from Plaintiffs' unpaid overtime, meal and rest break, and expense reimbursement claims of both exempt and non-exempt employees. Defendant's records indicate there are 67,736 workweeks worked by all class members, over 91.5% of which (62,011) are attributed to non-exempt employees, and the remaining 5,725 workweeks, to exempt employees. The average hourly rate for class members is \$21.20. Class Members worked on average 8 hours per shift. Defendant produced a class sample data of pay and time records for 20% of class members during the class period. The analysis of this data, and Plaintiffs' investigation of the claims in this action, reveal Defendant's maximum potential exposure is as follows:

- Overtime claim: **\$1,646,578.08**. This is based on Plaintiffs' claim that Settlement Class Members were not able to complete their work duties during their scheduled shift time, but they were not able to record overtime. Investigation and class members' statements show that they worked on average 10 minutes a day off the clock. Thus, Plaintiffs calculate Defendant's exposure for unpaid overtime wages is as follows: \$31.80 average

overtime hourly rate * 62,011 workweeks worked by non-exempt employees * 5 shifts * 10 minutes (0.167 hours) off-the-clock work per shift = **\$1,646,578.08**. However, Plaintiff's class data review shows that Thorpe paid almost \$6,500,000 in overtime wages to the class during the class period. Thus, it is highly unlikely that Plaintiff's off-the-clock claim has any value. Where it appears Thorpe has paid substantial overtime on a regular basis, it would be difficult, if not impossible, for the class to prevail on their unpaid time claim.

- Meal break claim: \$3,286,583. This is based on Plaintiffs' claim that Defendant did not provide uninterrupted and timely meal breaks, and did not maintain proper time records showing the time and duration of meal breaks for at least a portion of the class period. However, Plaintiffs considered that the majority of non-exempt class members work on job sites without supervision, and that might allow them an opportunity to take a meal period. As such, Plaintiffs calculated the meal break violations on 50% of the shifts, as follows:

62,011 workweeks times 2.5 shifts per week, times \$21.20 average rate of pay for meal premium payment = \$3,286,583. There is no record of Defendant paying any meal break premiums during the class period, so this amount is not discounted.

- Rest break claim: \$2,629,266.40. This is based on 2 violations per workweek, based on Plaintiffs' allegation that the press of business prevented non-exempt class members from taking rest breaks, but also considering the counter argument that the majority of non-exempt class members work on job sites without supervision, and that might allow them an opportunity to take a rest period. Thus, Defendant's exposure for unpaid meal premiums is as follows:

62,011 workweeks * 2 shifts per workweek * \$21.20 hourly rate of pay for rest break premium payment owed = \$2,629,266.40. There is no record of Defendant paying any rest break premiums during the class period, so this amount is not discounted.

- Unreimbursed expenses: \$1,003,028. Plaintiffs allege non-exempt class members were not reimbursed for mileage costs they incurred when they were required to use their

1 personal vehicles in discharge of their work duties, travelling to multiple locations a
2 day. Plaintiffs further allege that non-exempt and exempt employees were not
3 reimbursed for the expenses they incurred by using their personal cell phones to
4 communicate with supervisors. Plaintiffs estimated that non-exempt class members are
5 entitled to \$150 per month in reimbursement for mileage and cell phone usage, and
6 exempt employees to \$25 per month for cellphone usage, as follows:

7 Non-exempt employees: \$100 times 15,502 months (62,011 workweeks divided by 4)
8 worked by non-exempt employees = \$1,550,200. This amount is subject to discount
9 based on the fact Thorpe reimbursed \$582,947 to putative class members for travel-
10 related expenses during the class period, resulting in \$967,253 in unreimbursed
11 expenses to non-exempt employees.

12 Exempt employees: \$25 times 1,431 months (5,725 workweeks divided by 4) worked
13 by exempt employees = \$35,775. The total for exempt and non-exempt employees for
14 this claim is \$1,003,028.

- 15 • Wage statement penalties: \$2,240,000. There are 560 class members and 23,276 pay
16 periods during the applicable limitations period. Defendant's maximum exposure is as
17 follows:

18 \$50 initial violation *560 employees = \$28,000.

19 \$100 subsequent violation * 22,716 pay periods (23,276 pay periods - 560) =

20 \$2,271,600, for a total of \$2,299,600. However, this exceeds the \$4,000 cap under 226
21 (the total is \$4,106 per employee). Thus, applying the \$4,000 cap, Defendant's
22 maximum exposure for section 226 violations is \$2,240,000.

- 23 • Waiting time penalties: \$2,289,600. 450 former employees multiplied by the daily pay
24 rate of \$169.60 (8-hour shift length and \$21.20 average pay rate) times 30 days, for a
25 total of approximately \$2,289,600.

- 26 • PAGA penalties: \$9,086,400 based on the \$100 per pay period for initial and
27 subsequent violations under *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207-
28 09 (2008), as follows: 560 initial pay periods times \$100, plus 22,716 subsequent pay

periods times \$100, multiplied by 4 penalties for unpaid time, meal breaks and rest breaks, and unreimbursed expenses per pay period = \$9,086,400. The PAGA penalties to be paid under this Settlement represent approximately 0.41% of the total potential PAGA penalties for Plaintiffs' direct claims, assuming class members suffered four types of violations in every single pay period.

- Thus, Defendant's potential maximum liability for Plaintiffs' direct claims is \$8,565,455.48, or, alternatively, \$6,918,877, without attaching any value to the overtime claim, and an additional \$4,529,600 for Plaintiffs' wage statement and waiting time penalties claims, possible only if Plaintiffs prevailed on their underlying claims. Thus, the Gross Settlement Amount of \$750,000 represents **8.75%** of Defendant's maximum potential liability for Plaintiffs' direct claims (or, alternatively, 10.83% without accounting for overtime), and **5.72%** of Defendant's maximum liability for all Plaintiffs' non-PAGA claims (or, alternatively, 6.55% without accounting for overtime).

18. Without accounting for the length of each class member's employment with Defendant, a non-exempt class member will recover over \$6.26 per workweek as a result of this settlement, and an exempt class member will recover \$3.57 per workweek. This is an excellent result when considering that Plaintiffs could face difficulties to establish liability and prevail at certification and trial, or recover anything at all based on Thorpe's financial condition, and is well within (or exceeds) the range of approved settlement payments.

19. Settlement Class Members will receive a portion of the Gross Settlement Amount based on the number of workweeks they worked for Defendant during the class period. However, to account for the fact that only non-exempt employees are eligible to recover for unpaid time and meal and rest break premiums, 95% of the Settlement Amount will be allocated to that group. We believe this formula is realistic because Settlement Class Members' individual recovery is proportionate to the amount of time they were employed with Defendant, and also proportional to the fact that only non-exempt employees can recover for the majority of the alleged violations. Further, discovery confirmed that non-exempt class members earned relatively the same hourly wage as would be applied to unpaid wages and meal and rest break premium payments. Further, derivative inaccurate wage statement and

1 waiting time penalties, if recoverable at all, are contingent on the success of Plaintiffs' primary claims,
2 and therefore, the per workweek distribution represents the fairest and most efficient distribution
3 approach.

4 20. The tax allocation structure of 20% to wages and 80% to penalties and interest is based
5 upon the nature of the claims, with only 34% of Plaintiffs' claims resulting in recovery of unpaid
6 wages. When allocating a portion of recovery to interest, and accounting for the fact that the 2802
7 reimbursements are not wages, and that the penalties are twice as high as wages in this action, the tax
8 allocation of 80% to penalties and interest and 20% to wages, is reasonable.

9 21. The parties agreed on the language of the proposed class notice. Because this is the
10 California-only class, and the mailing will occur only in California, 45 days to opt out from or object to
11 the Settlement is sufficient. Because the Settlement Administrator has sophisticated tools to ensure
12 that Class Members will receive the notice at their correct mailing address, notice given via U.S. First
13 Class Mail is in my opinion and experience the best means available to reach the greatest number of
14 class members. I also believe U.S. Mail is a better method than electronic mail, as e-mails can transfer
15 to junk/spam folders and are less likely to be received by the Class Members. Lastly, because Class
16 Members worked in California, communicating with customers and supervisors on daily basis in
17 English, and speaking English was a job requirement, English-only notice is sufficient.

18 **Further Litigation Risks if Case did not Settle**

19 22. Before deciding to settle this case, we considered the risks and delays of further
20 litigation. Even though Plaintiffs remain confident in their position, they acknowledge their claims
21 could face difficulties to establish certification and liability, and prevail at trial.

22 23. First, Defendant provided documents showing that since the COVID pandemic, it has
23 operated in a very difficult economic environment for housing construction, which places heavy
24 restraints on Defendant's ability to pay any judgment or settlement. Thus, should this case proceed, it
25 is likely class members would not see any recovery.

26 24. Second, regarding Plaintiff Delamora's off-the-clock and overtime claims, Defendant
27 will likely contend that where an employer provides a means to record work time, the employer is
28 entitled to rely on those time records, and is not required to audit other available records to ascertain if

1 any off-the-clock work is occurring. *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal.4th 1004, 1051 (2012) (“that
2 employees are clocked out creates a presumption they are doing no work”). Further, although
3 Defendant’s policy required overtime pre-approval, it did provide for payment for all hours worked,
4 whether preapproved, or not. In fact, Defendant’s timekeeping policy specifically forbids off-the-clock
5 work.

6 25. Third, Defendant will argue that its meal and rest break policy are facially lawful, and
7 class members are advised to notify Thorpe if they are unable to take their breaks. This could diminish
8 Plaintiffs’ chances to prevail at certification under *Brinker*, 53 Cal.4th 1004. Further, Defendant will
9 likely argue that most class members work in the field at job sites without supervision, they should not
10 encounter any difficulty taking their meal and rest breaks.

11 26. Fourth, with respect to Plaintiffs’ Labor Code 2802 claim, Thorpe will argue it has an
12 expense reimbursement policy which requires employees to submit documentation to Thorpe of an
13 incurred expense in a timely manner, and that it paid \$582,947 to class members for travel-related
14 expenses during the class period. Defendant will also argue that it provides reimbursement for mileage
15 driven between job sites and has a form for the employee to request reimbursement and provide
16 notice of the mileage. With respect to the Labor Code 2802 claims of exempt employees, Thorpe will
17 likely argue it provided company vehicles for work use with their own fuel and gas cards, as well as cell
18 phones, to some class members.

19 27. Lastly, with respect to wage statement and untimely wages claims, they are derivative of
20 Plaintiffs’ unpaid time and meal and rest break claims, so if Plaintiffs did not prevail on the underlying
21 claims, then Plaintiffs’ derivative claims would also fail. *See Gomez v. Lincare, Inc.*, 173 Cal.App.4th 508,
22 524-25 (2009). Also, Defendant will likely assert that wages that were not paid cannot form the basis
23 of these derivative claims based on *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37
24 (2019).

25 **Class Certification Elements are Satisfied**

26 28. Discovery revealed that the Class is composed of approximately 850 current and
27 former non-exempt and exempt employees of Defendant in California, who can be identified and
28 located from Defendant’s personnel and payroll records. The research shows that in California, as few

1 as ten (10) or twenty-eight (28) members satisfied numerosity. *Bowles v. Super. Ct.*, 44 Cal.2d 574 (1955);
2 *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972). Defendant will provide the Settlement
3 Administrator with a database with all Class Members' names and contact information after
4 preliminary approval, and further steps will be taken to locate the Class Members for whom the
5 addresses are not current, as provided in the Settlement Agreement. Thus, I believe numerosity is
6 satisfied, and the class is ascertainable.

7 29. There are common questions of law and fact that apply to Class Members across the
8 board, because all Class Members were subject to Defendant's employment policies and practices, and
9 Plaintiffs argue these policies and/or practices were unlawful. Those common questions predominate
10 over any individual inquiries, and include: (i) Whether or not Settlement Class Members were paid for
11 all hours worked, including additional time required to complete the required installations and
12 inspections, (ii) Whether or not Class Members were provided with off-duty, uninterrupted meal and
13 rest breaks; (iii) Whether or not Defendant reimbursed Class Members' business expenses; (iv)
14 Whether or not Class Members were provided with all wages due upon separation under Labor Code
15 section 203; (v) Whether or not Class Members were provided with accurate wage statements as
16 required by Labor Code section 226; (vi) Whether or not Defendant engaged in unfair business
17 practices in violation of the UCL. Thus, I believe commonality is met.

18 30. Just like the claims of other class members, Plaintiffs' claims arise from their
19 employment with Defendant in California. Because several issues are common to all Class Members, I
20 believe class action procedure here is superior to numerous individual actions, and the maintenance of
21 this action as a class action will save judicial resources, and help avoid inconsistent judgments. Class
22 Members' interests are relatively small, so they are unlikely to prosecute separate actions.

23 31. I believe Plaintiffs' claims are typical of the claims of the absent Class Members.
24 Plaintiffs' claims arise from the same facts and legal theories as the Class Members' claims. Plaintiffs
25 were employed by Thorpe in California, and subject to the same policies and practices of Defendant
26 with respect to timekeeping, meal and rest breaks, and expense reimbursement. Further, Plaintiffs'
27 concurrently filed declarations supports their adequacy as class representatives, including that they
28

1 attest that they considered the interests of other class members as their own interests, and do not have
2 any conflict of interest with class members.

3 32. The following paragraphs confirm my firm is - and will continue to - adequately
4 protecting the interests of the class.

5 **Qualifications of Class Counsel**

6 33. I am a graduate of Cornell University and Columbia Law School, and have been
7 practicing law since 1976. I have extensive experience in class action litigation, including wage-and-
8 hour, consumer, antitrust, and securities litigation. I have been lead or co-lead class counsel in
9 hundreds of class action cases in federal and state courts in California, and throughout the United
10 States. I was counsel of record in over thirty reported and widely-cited appellate cases. I have
11 conducted trials in over twenty cases, both bench and jury, including class action trials.

12 34. My firm has obtained many large class action settlements which have benefitted
13 consumers and employees. Two of those cases alone have resulted in recovery of over a billion dollars
14 for class members. In *Jordan v. California Department of Motor Vehicles*, we obtained a settlement fund of
15 over 665 million dollars for the benefit of new California residents who registered their out-of-state
16 vehicles and were unlawfully charged the \$300 smog impact fee. *Jordan v. California Dep't of Motor*
17 *Vehicles*, 100 Cal. App. 4th 431, 440, (2002), as modified on denial of reh'g (Aug. 20, 2002). In *Sparks v.*
18 *AT&T et al.*, a settlement fund of \$350 million was obtained for consumers nationwide who had been
19 overcharged for residential telephone equipment. Case No. 96-LM-983, 01-L-1668 (Ill. Cir. Ct.,
20 Madison County).

21 35. My firm's settlements in wage and hour cases include *Contreras v. Bank of America*, where
22 we reached a settlement fund of over \$16.5 million (San Francisco Superior Court, Case No. CGC-
23 07467749, Sept. 3, 2010). In *Nelson v. St. Paul Fire and Marine Insurance Company*, we reached a
24 settlement of \$24.5 million (Case No. 95-G-1088 Brazoria County, Texas, 1996). Further, I settled
25 *Zwart v. John Hancock Mutual Life Insurance Company* for \$3 million (Case No. 673902, San Diego
26 Superior Court, 1995). Other California wage and hour settlements in cases where I was lead counsel
27 include *Friend v. Wellpoint/Blue Shield*, Case No. BC345147 (Los Angeles Super. Ct., Aug. 22, 2007)
28

1 which settled for \$6 million, and *Gruender v. First American Title Co.*, Case No. 06CC0197 (Orange
2 County Superior Court, 2008), which settled for \$11 million.

3 36. More recent wage and hour settlements that my firm has reached include a \$11,500,000
4 settlement in *Harrison v. Bank of America*, Case No. 3:19-cv-00316-LB, United States District Court for
5 the Northern District of California, finally approved on November 24, 2021; a \$4,600,000 settlement
6 in *Vasquez v. Bank of America*, Case No. CGC-18-571669, San Francisco Superior Court, finally
7 approved on July 29, 2022; a \$2,900,000 settlement in *Swayzer et al. v. Circle K*, Case No. 34-2018-
8 00234999, Sacramento Superior Court, finally approved on February 18, 2022; a \$800,000 settlement
9 in *Slaughter v. California C.C.S. P.C., dba Wellpath*, Case No. CIVDS1935187, San Bernardino Superior
10 Court, finally approved on May 6, 2022; a \$750,000 settlement in *Antenucci v. Bank of the West*, Case No.
11 CGC-20-583746, San Francisco Superior Court, finally approved on December 7, 2022; a \$1,000,000
12 settlement in *Kelly v. Simco Electronics*, Case No. 20CV370177, Santa Clara Superior Court, finally
13 approved on January 19, 2022; a \$5,900,000 settlement in *Hurtubise v. Sutter East Bay Hospitals*, Case No.
14 RG17868819, Sacramento Superior Court, finally approved on December 27, 2021; a \$825,000
15 settlement in *Fritsch et al. v. Swift Transportation Co.*, Case No. 5:17-cv-02226-VAP-KKx, United States
16 District Court for the Central District of California, finally approved on January 4, 2022; a \$1.62
17 million PAGA-only Settlement in *Moreno, et al. v. Habit Employment, LP, et al.*, Case No. 37-2019-
18 00014576-CU-OE-CTL, San Diego Superior Court, approved on September 10, 2021; a \$2,295,000
19 settlement in *Veramendi v. Airtouch Cellular Inc., et al.*, Case No. BC647309, Los Angeles Superior Court,
20 finally approved on June 3, 2021; a \$438,000 settlement in *Valdez v. Pro Unlimited, Inc., et al.*, Case No.
21 CGC-19-574146, San Francisco Superior Court, finally approved on May 10, 2021, an average
22 settlement share of \$5,511.11 per employee in *Hopstein v. Hewlett Packard Enterprise Company (d.b.a.*
23 *HPE), et al.*, Case No. 17CV305577, Santa Clara Superior Court, finally approved on December 2,
24 2020; an average settlement share of \$1,139.71 per employee in *Cuevas v. Three Rivers Trucking, Inc.*, Case
25 No. BC655003, Los Angeles Superior Court, finally approved on July 29, 2020; a \$1.2 million class and
26 PAGA representative action settlement in *Hernandez et al. v. SFM, LLC*, Case No. 37-2016-00015169,
27 San Diego Superior Court, finally approved on July 21, 2020 (aff'd March 16, 2022); \$8.7 million
28 settlement in *Evans v. Wal-Mart Stores, Inc.*, Case No. 2:10-cv-1224, United States District Court for the

1 District of Nevada, finally approved on July 8, 2020 (Dkt. No. 135); \$35 million settlement in *Merino v.*
2 *Wells Fargo*, Case No. 2:16-cv-07840-ES-MA, United States District Court for the District of New
3 Jersey, finally approved on January 15, 2020 (Dkt. No. 144); an average settlement share of \$1,317.31
4 per employee in *Angala v. Kaiser Foundation Hospitals*, Case No. HG18899291, Alameda County Superior
5 Court, finally approved on January 13, 2020; \$600,000 settlement in *Hoover v. Sedgwick Claims*
6 *Management Services, Inc.*, Case No. 34-2018-00239159, Sacramento Superior Court, finally approved on
7 December 6, 2019; \$950,000 settlement in *Bessellieu v. Metro Shore Services, LLC, et al.*, Case No.
8 BC6737001, Los Angeles Superior Court, finally approved on May 21, 2019; \$1.6 million settlement in
9 *Jenkins v. The Mentor Network, Inc., et al.*, Case No. 34-2015-00187936, Sacramento Superior Court,
10 finally approved on September 13, 2018; \$27.5 million settlement in *Wells Fargo Wage and Hour Cases*,
11 Case No. JCCP004821, Alameda County Superior Court, finally approved on March 28, 2018; \$2.5
12 million settlement in *Geilenfeldt v. EDF Renewable Energy, Inc.*, Case No. 37-2016-00001369, San Diego
13 Superior Court, finally approved on March 9, 2018; \$3 million settlement in *Vangsonlatda v. Blue Shield*,
14 Case No. CGC-14-543296, San Francisco County Superior Court, finally approved on January 25,
15 2018; \$650,000 settlement in *McCarthy v. Marriott Hotel Services, Inc.*, Case No. 16-cv-293998, Santa Clara
16 Superior Court, finally approved on October 16, 2017; \$4.9 million settlement for insurance adjusters
17 in *Alvarez v. Farmers*, case number 3:14-cv-00574-WHO, finally approved on January 18, 2017 by Judge
18 Orrick (Dkt. No. 189); \$3.77 million settlement for California warehouse workers in *Saldana v. Amazon*,
19 case number 3:14-cv-00290-DJH (W.D. Ky.), finally approved on October 31, 2016 (Dkt. No. 228).

20 37. My other recent California wage and hour settlements also resulted in substantial
21 recoveries for class members. For instance, I settled *Kogok v. T-Mobile USA, Inc.*, Case No. 37-2012-
22 00076945 (San Diego Super. Ct. Jan. 2015) for \$2,750,000; *Johnson v. Metlife Ins. Co.*, Case No. 13-cv-
23 128-JLS-RNB (C.D. Cal. Mar. 19, 2015) for \$1,970,000; *Erickson v. Old Republic Title Company*, Case No.
24 13-cv-1210-NLS, (S.D. Cal. Jan. 17, 2014) for \$12,000,000 (co-counsel); *Loeza v. Chase Bank, NA*, Case
25 No. 3:13-cv-95-L-BGS (S.D. Cal. Feb. 10, 2016) for \$970,000 plus payroll taxes; *Campagna et al. v.*
26 *Language Line Services, Inc.*, Case No. 30-2012-00578934-CU-OE-CXC (Orange County Superior Court,
27 Mar. 14, 2014) for \$900,000; *Anderson et al. v. Oracle Corp.*, Case No. CIV469916/JCCP No. 4597
28

(Alameda Super. Ct., June 2013) for \$850,000; *McDonagh v. Harrah's Las Vegas, Inc, et al.*, Case No. 13-cv-01744 (United States District Court for the District of Nevada, Dec. 13, 2016), for \$850,000.

38. I have also been counsel and argued numerous appellate cases in the California Supreme Court and Courts of Appeal, as well as the Ninth Circuit. Among the published decisions from these cases are: *Daniels v. Philip Morris*, 18 F.Supp.2d 1110 (S.D. Cal. 1998); *Washington Mutual Bank v. Super. Ct.*, 24 Cal.4th 906 (2001); *Norwest Mortgage Inc. v. Super. Ct.*, 72 Cal.App. 4th 214 (1999); *Taiheiyu Cement Corp. v. Super. Ct.*, 105 Cal.App. 4th 398 (2003); *Ramos v. Countrywide Home Loans*, 82 Cal.App.4th 615; *In re Tobacco II*, 123 Cal.App.4th 617 (2004); *In re Steroid Hormone Prod. Cases*, 181 Cal.App.4th 145 (2010).

39. In total, I prosecuted over 150 wage-and-hour class actions.

40. Any attorneys' fees in this matter will be allocated as follows: 88% of the awarded attorneys' fees will be allocated to Delamora counsel (of which the Markham Law Firm will receive 66.67% of the fee and United Employees Law Group will receive 33.33% of the fee) and 12% will be allocated to Cardenas counsel. The clients consented to this fee allocation in writing.

41. I have no conflicts of interest with the class or with the class representative. I am not related to the representative Plaintiffs. I have not previously represented Defendant in any matter. I do not represent opposing factions within the class in that all claims are predicated upon the same theories of liability and benefit all class members equally. In sum, I am well-suited to act as Class Counsel and will continue to vigorously represent the interests of the class.

42. Based on my experience as Class Counsel, I believe that the proposed Settlement is fair, reasonable, and adequate for the Class.

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43. On May 2, 2023, concurrently with filing our motion for preliminary approval, we submitted the proposed settlement to the Labor and Workforce Development Agency (“LWDA”). Attached hereto as **Exhibit 2** is a proof of the submission of the settlement agreement to the LWDA.

I declare under the penalty of perjury of the laws of California that the foregoing is true and correct to the best of my knowledge.

Executed this May 2, 2023 in San Diego, California.


David R. Markham

Exhibit 1

1 RHONDA KRAEBER (SBN 154665)

2 *Rhonda@KraeberLaw.com*

3 LORA VAIL FRENCH (SBN 168306)

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14 **LITTLER MENDELSON, P.C.**

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17 415.433.1940 main; 415.294.9099 fax

18 Attorneys for Defendant

19 THORPE DESIGN, INC.

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Attorneys for Plaintiff

ARMANDO DELAMORA on behalf of

himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

ARMANDO DELAMORA, an individual, on
behalf of himself and all others similarly situated,

Plaintiff,

v.

THORPE DESIGN, INC., a California
corporation; and DOES 1 THROUGH 10,
inclusive,

Defendants.

Case No. C22-00931

Assigned to Hon. Charles S. Treat

Dept. 12

**CLASS AND REPRESENTATIVE
ACTION SETTLEMENT AND
AGREEMENT**

Delamora Action Filed:

May 4, 2022

Cardenas Action Filed:

July 28, 2022

1 JULIAN BURNS KING (Bar No. 298617)

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19 Attorneys for Plaintiff JESUS CARDENAS
20 on behalf of himself and others similarly situated
21
22
23
24
25
26
27
28

1
2 **CLASS AND REPRESENTATIVE ACTION SETTLEMENT AGREEMENT**

3 This Class and Representative Action Settlement and Release Agreement (“Settlement” or
4 “Agreement”) is entered into between Plaintiffs Armando Delamora (“*Delamora*”) and Jesus Cardenas
5 (“*Cardenas*,” collectively “Plaintiffs”), individually and in their capacity as the representatives of Class
6 Members and Aggrieved Employees as defined herein, on the one hand, and Defendant Thorpe
7 Design, Inc., a California Corporation (“Defendant”), on the other hand, subject to the terms and
8 conditions hereof and the approval of the Court. Plaintiffs and Defendant are referenced collectively
9 herein as “the Parties.”¹

10 **I. CONDITIONAL NATURE OF SETTLEMENT**

11 This Settlement is made in compromise of disputed claims as set forth in the following two
12 class and representative action lawsuits pending in Contra Costa Superior Court, captioned *Delamora*
13 *v. Thorpe Design, Inc.* (Case No. C22-00931) (“*Delamora Lawsuit*”) and *Cardenas v. Thorpe Design, Inc.* (Case
14 No. C22-01545) (“*Cardenas Lawsuit*”). The *Delamora Lawsuit* and *Cardenas Lawsuit* will be referred to
15 collectively as the “the Lawsuit.” This Agreement is made for the sole purpose of settling the Lawsuit
16 on a class-wide and representative basis. The Settling Parties (as defined in Section 2 of this
17 Agreement) enter into this Agreement on a conditional basis.

18 Furthermore, in the event that the Court does not enter the Final Approval Order, or a
19 Judgment is not entered in the Lawsuit, or the conditions precedent are not met for any reason, this
20 Settlement shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall
21 not be referred to or utilized for any purpose whatsoever, and the negotiations, terms and entry of the
22 Agreement shall remain subject to the provisions of California Evidence Code sections 1119 and 1152
23 and any other analogous rules of evidence that might apply. Notwithstanding this provision, the Parties
24 hereby stipulate that the terms of Section 15.12 shall survive and be admissible in evidence even if the
25 Settlement does not become final.

26 Defendant denies all claims as to liability, damages, penalties, interest, fees, restitution,
27 injunctive relief, and all other forms of relief as well as the class and representative allegations asserted
28 _____

¹ Capitalized terms are defined in Section 3 unless otherwise noted.

1 in the Lawsuit. Defendant has agreed to resolve the Lawsuit through this Settlement, but to the extent
2 this Settlement is deemed void, Defendant does not waive, but rather expressly reserves, all rights to
3 challenge all such claims and allegations in the Lawsuit upon all procedural and factual grounds,
4 including without limitation the ability to challenge class and representative action treatment on any
5 grounds, as well as asserting any and all other potential defenses or privileges. The Class
6 Representatives and Settlement Class Counsel agree that Defendant retains and reserves these rights.
7 Specifically, the Class Representatives and Settlement Class Counsel agree not to argue or present any
8 argument that, in the event this Settlement is not approved in full, that Defendant could not file a
9 motion for decertification, contest any class action certification on any grounds, or assert any and all
10 other potential defenses and privileges if this Lawsuit were to proceed. The Class Representatives and
11 Settlement Class Counsel hereby waive such arguments and agree they will not take a position contrary
12 to this provision.

13 **II. PARTIES TO AGREEMENT**

14 This Agreement is made and entered into by and among the following, herein referred to as
15 the “Settling Parties” or “Parties”: (i) the Class Representatives (on behalf of themselves and each of
16 the Class Members and Aggrieved Employees), with the assistance of Settlement Class Counsel; and
17 (ii) Defendant, with the assistance of its counsel. The Settling Parties intend this Agreement to fully,
18 finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the terms
19 and conditions hereof.

20 **III. DEFINITIONS**

21 As used in this Agreement, the following terms shall have the meanings specified below:

22 3.1 “Aggrieved Employees” means all current and former non-exempt and exempt
23 employees, who have worked in California for Thorpe Design, Inc. or Victory Fire Protection, Inc., at
24 any time during the period beginning May 2, 2021, through the date Preliminary Approval of the Class
25 Settlement is granted, or a sooner date per the procedure set forth in section 13.2 below, at Defendant’s
26 option.

27 3.2 “Attorneys’ Fees” means the fees for work performed by Settlement Class Counsel and
28 approved for reimbursement by the Court as set forth in Section 8.2 of this Agreement.

1 3.3 “Settlement Administrator” or “Administrator” means Simpluris, Inc., which the
2 Parties have selected to administer this Settlement. The Parties may jointly select a different settlement
3 administrator, subject to the approval of the Court.

4 3.4 “Settlement Administration Costs” mean the fees and expenses reasonably and
5 necessarily incurred by the Settlement Administrator as a result of performing the settlement
6 administration procedures and functions expressly required in this Settlement and shall include all costs
7 of administering the Settlement, including but not limited to: formatting, printing and mailing the
8 Notice Packet, including filling in individuating information about the amount each Settlement Class
9 Member is estimated to receive; performing a National Change of Address database search of Class
10 Member addresses to update prior to the initial mailing of the Notice Packet; skip-tracing of bad
11 addresses upon the return of undelivered Notice Packets; establishing a toll-free phone number and
12 post office box for receipt of Class Member communications; establishing a website where Class
13 Members may view and download the operative complaint, this Settlement Agreement, the Settlement
14 Notice, approval motions/briefing, as well as any Orders issued by the Court; calculating, processing,
15 reviewing, and issuing Settlement Payments to participating Class Members and others as ordered by
16 the Court; reviewing and resolving Class Members’ disputed claims regarding payments under this
17 Agreement; calculating tax withholdings and payroll taxes, making related payments to federal and state
18 tax authorities, and issuing tax forms relating to payments made under the Settlement; establishing a
19 QSF or other appropriate vehicle for receipt of the Gross Settlement Amount and disbursement of
20 payments provided by this Agreement and ordered by the Court; preparing any tax returns and any
21 other filings required by any governmental taxing authority or agency; and any other costs and fees
22 incurred and/or charged by the Settlement Administrator in connection with the execution of its duties
23 under this Agreement, which is estimated at Thirteen Thousand Dollars (\$13,000.00).

24 3.5 “Class,” “Class Members,” and/or “Putative Class” means all current and former non-
25 exempt and exempt employees, who have worked in California for Thorpe Design, Inc. or Victory Fire
26 Protection, Inc., at any time during the period beginning four years prior to the filing of the Lawsuit,
27 i.e. May 4, 2018, through the date Preliminary Approval of the Class Settlement is granted, or a sooner
28 date per the procedure set forth in section 13.2 below, at Defendant’s option. Class Members include,

collectively, the “Non-Exempt Employees” and “Exempt Employees,” as defined herein.

3.6 “Settlement Class Counsel” means David R. Markham, Maggie Realin, and Lisa Brevard of The Markham Law Firm; Walter Haines of the United Employees Law Group; Julian King, Elliot Siegel, and Zachary Tucker of King & Siegel; and Navid Barahmand of Barahmand Law Group.

3.7 “Settlement Class Period” means May 4, 2018, through the date Preliminary Approval of the Class Settlement is granted, or a sooner date per the procedure set forth in section 13.2 below, at Defendant’s option.

3.8 “Class Representatives” and “Plaintiffs” means collectively Plaintiffs Armando Delamora and Jesus Cardenas.

3.9 “Court” means the Superior Court for the State of California, County of Contra Costa.

3.10 “Day” means calendar day, unless expressly stated otherwise.

3.11 “Defendant” means defendant Thorpe Design, Inc.

3.12 “Defendant’s Counsel” means Rhonda Kraeber and Lora Vail French of Kraeber Law Office; and Robert G. Hulteng and William Cosmopulos of Littler Mendelson, P.C.

3.13 “Effective Date” of the Settlement shall mean the later of the following events: (i) the Court’s final approval of the settlement and entry of judgment, if no objections by or on behalf of Class Members have been filed, or if an objection has been filed but is withdrawn prior to or at the Final Approval Hearing; (ii) the time for appeal, writ or other appellate proceeding opposing Final Approval has expired if an objection has been filed and no appeal, writ or other appellate proceeding opposing Final Approval has been filed or it was withdrawn; or (iii) if any appeal, writ, or other appellate proceeding opposing Final Approval has been filed, five business days after any appeal, writ, or other appellate proceedings opposing the Settlement has been finally and conclusively dismissed with no right to pursue further remedies or relief.

3.14 “Employer Payroll Tax Liability” means payroll taxes paid by the employer (FICA, FUTA, Medicare, and California payroll and withholding taxes).

3.15 “Exempt Employees” means those current and former employees of Defendant, employed during the Settlement Class Period, who were employed in a position classified by Defendant as salaried-exempt, as defined under applicable state law.

1 3.16 “Final Approval Order” means an Order Granting Final Approval of Settlement of the
2 Lawsuit.

3 3.17 “Gross Settlement Amount,” “Settlement Fund,” and “Gross Settlement Fund” is the
4 sum of Seven Hundred and Fifty Thousand U.S. Dollars (\$750,000.00), to resolve the claims of the
5 Settlement Class Members. With the exception of Defendant’s share of employment taxes, which shall
6 be paid separately by Defendant, the Gross Settlement Amount will include all payments to be made
7 to Settlement Class Members, the Labor and Workforce Development Agency (“LWDA”), the PAGA
8 Aggrieved Employees, attorneys’ fees and costs approved by the Court, fees to be paid to a settlement
9 administrator, and the enhancement awards to Plaintiffs Armando Delamora and Jesus Cardenas. In
10 no event shall Defendant be liable for the payment of any amounts exceeding the Gross Settlement
11 Amount with the exception of the employer’s share of payroll taxes due and payable as a result of this
12 Settlement, which shall be paid separately from the Gross Settlement Amount.

13 3.18 “Judgment” means a judgment entered by the Court following entry of the Final
14 Approval Order.

15 3.19 “Last Known Address” means the most recently recorded mailing address for a Class
16 Member as such information is contained in the personnel records maintained by Defendant.

17 3.20 “Litigation Expenses” means the expenses and costs of litigation incurred by Settlement
18 Class Counsel as detailed in their billing statement and approved for reimbursement by the Court as
19 set forth in Section 8.2 of this Agreement.

20 3.21 “LWDA” means the California Labor and Workforce Development Agency.

21 3.22 “Net Settlement Amount” means the Gross Settlement Amount less Settlement Class
22 Counsel’s Attorneys’ Fees, Litigation Expenses, Settlement Administration Costs, the portion of the
23 PAGA Penalty Payment payable to the State of California (LWDA), and the Service Enhancement
24 Payments to the Class Representatives. To the extent the Court does not approve the full requested
25 amount of Attorneys’ Fees, Litigation Expenses, Settlement Administration Costs, or the Service
26 Enhancement Payments, the Net Settlement Amount will increase accordingly.

27 3.23 “Non-Exempt Employees” means current and former employees of Defendant,
28 employed during the Settlement Class Period, who are classified by Defendant as non-exempt, hourly

employees, as defined under applicable state law.

3.24 “Notice of Pendency of Class Action Settlement and Final Hearing” or “Notice” shall mean the notice of this Settlement to be provided to Class Members, in the same or substantially same form as set forth in **Exhibit A** to this Agreement, pending approval by the Court.

3.25 “Notice Period” means a period of forty-five (45) calendar days from the date the Settlement Administrator first mails the Notice Packet to Class Members. If the 45th day falls on a Sunday or holiday, the Notice Period shall end on the next business day that is not a Sunday or holiday.

3.26 “Notice Response Deadline” shall be the last day of the Notice Period.

3.27 “PAGA Penalty Payment” means amount to be paid to settle any and all penalties as, alleged in the Lawsuit, under California’s Private Attorneys General Act (“PAGA”), California Labor Code sections 2698 *et seq.* as set forth in Section 8.4 of this Agreement.

3.28 “PAGA Period” means period from May 2, 2021, through the date of Preliminary Approval of the Class Settlement or a sooner date per the procedure set forth in section 13.2 below, at Defendant’s option.

3.29 “PAGA Work Weeks” means the total number of weeks worked by an Aggrieved Employee during the PAGA Period, rounded up to the next full week.

3.30 “Settling Parties” means the Plaintiffs/Class Representatives and Thorpe Design, Inc.

3.31 “QSF” shall mean the Qualified Settlement Fund established by the Settlement Administrator for the benefit of the Class Members and from which the Settlement Payments and, if applicable, employee-side payroll taxes shall be paid.

3.32 “Reasonable Address Verification Measure” means utilization of the National Change of Address Database maintained by the United States Postal Service prior to the initial mailing of the Notice Packets, the customary skip-tracing measures used by the Administrator upon the return of undelivered Notice Packets, and the forwarding of Notice Packets returned to the Administrator with updated addresses affixed thereto by the U.S. Postal Service to the updated address.

3.33 “Released Claims” shall have the meaning set forth in Section 11 of this Agreement.

3.34 “Released Parties” is defined to include Defendant, and any of their past, present and future direct or indirect parents, subsidiaries, predecessors, successors and affiliates, including Victory

1 Fire Protection, Inc., as well as each of their past, present and future officers, directors, employees,
2 partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity
3 which could be jointly liable with Defendant.

4 3.35 “Request for Exclusion” means a timely and valid submitted request for exclusion from
5 the Settlement, according to the procedures set forth in Section 9.6 of this Agreement.

6 3.36 “Service Enhancement Payments” shall have the meaning set forth in Section 8.5 of
7 this Agreement.

8 3.37 “Settlement” means the terms and conditions set forth in this Agreement.

9 3.38 “Settlement Class” and “Settlement Class Member” mean all Class Members who have
10 not validly and timely requested exclusion from the Settlement after Notice and thus who will become
11 bound by the Judgment if and once the Effective Date occurs.

12 3.39 “Settlement Payments” mean the total amount due to an individual Settlement Class
13 Member, which shall be calculated and distributed as described in Section 8.7 of this Agreement.

14 3.40 “Updated Address” means a mailing address that was updated via a Reasonable
15 Address Verification Measure, or an updated mailing address provided by the United States Postal
16 Service, a Settlement Class Member, or any other valid source.

17 3.41 “Work Weeks” means the total number of weeks worked by a Class Member during
18 the Class Period, rounded up to the next full week.

19 **IV. PROCEDURAL BACKGROUND**

20 On May 4, 2022, Plaintiff Armando Delamora filed the *Delamora* lawsuit, a class action lawsuit
21 in Contra Costa Superior Court (Case No. C22--00931) on behalf of himself and a putative class of all
22 current and former non-exempt employees of Defendant, employed in California, who, during the time
23 period commencing four years before the complaint was filed, and until the present, worked as a
24 pipefitter, installer, technician or a position with similar duties and/or job titles. The complaint alleged
25 claims for unpaid wages, including overtime for time spent working outside of scheduled work hours
26 and during meal periods to complete required daily inspections and installations, meal and rest break
27 violations, unreimbursed mileage and cell phone expenses, Thorpe’s failure to keep records of
28 employees’ hours worked nor records of meal periods, unfair business practices, and derivative claims.

1 On July 7, 2022, Plaintiff Delamora filed a first amended complaint alleging a claim under the Private
2 Attorneys General Act (PAGA), under the same facts and theories.

3 On July 28, 2022, Plaintiff Jesus Cardenas filed the *Cardenas* lawsuit, a class and representative
4 action lawsuit in Contra Costa Superior Court, (Case No. C22-01545), on behalf of all exempt and
5 non-exempt employees who worked for Defendant for at least one day within the state of California
6 within four years prior to the filing of the complaint until the present. The complaint alleged claims for
7 failure to reimburse necessarily incurred business expenses, failure to provide rest periods, derivative
8 claims, unfair business practices, and violation of PAGA, under the same facts and theories. As part of
9 this settlement, the Settling Parties will stipulate that Plaintiffs will file a request to consolidate the
10 lawsuits via Second Amended Complaint (“SAC”) covering the claims alleged in both the *Delamora*
11 and *Cardenas* lawsuits (attached hereto as **Exhibit C**). Plaintiffs’ SAC seeks damages on behalf of
12 themselves and a class, including for unpaid wages, statutory penalties, interest, and attorney’s
13 fees and costs. Defendant will be permitted to file an Answer to the SAC within thirty (30) days of
14 filing. In the event the settlement does not become final for any reason as described in section 7.1
15 below, the SAC and answer will be deemed stricken, and the Settling Parties will revert to their
16 respective positions prior to filing of the SAC. Defendant agrees not to oppose or object to class
17 certification for the claims asserted in the SAC as part of this Settlement.

18 The parties engaged in discovery in advance of mediation. In November and December 2022,
19 Defendant produced an agreed upon sampling of class member time and pay records and policies in
20 effect during the Class Period. The parties engaged in arm’s length negotiation including, but not
21 limited to, a full day mediation session on January 12, 2023, facilitated by Mark Rudy, who has extensive
22 experience in labor and employment litigation. While the parties did not reach an agreement on the
23 day of mediation, they continued negotiations through the mediator and subsequently agreed to a
24 memorandum of understanding of the key terms of the Settlement, which was memorialized on
25 February 28, 2023.

26 The Settling Parties and their counsel are sufficiently familiar with the facts of this case and the
27 applicable laws to make an informed judgment as to the fairness of the Settlement, the respective
28 strengths and weaknesses of the claims of the class and the sub-classes Plaintiffs sought to certify, and

1 the risks of proceeding in litigation. The Settling Parties are represented by competent counsel and
2 have had the opportunity to consult with counsel prior to the signing this Agreement.

3 **V. DEFENDANT'S DENIAL OF LIABILITY**

4 Defendant specifically and generally denies any and all liability or wrongdoing of any sort with
5 regard to any of the claims alleged in the Lawsuit and makes no concessions or admissions of liability
6 of any sort. Defendant maintains that for any purpose other than settlement, the Lawsuit is not
7 appropriate for class action treatment pursuant to California Code of Civil Procedure, section 382, and
8 that had this matter proceeded, Defendant would have opposed class certification pursuant to
9 California Code of Civil Procedure, section 382. Nonetheless, Defendant has concluded that further
10 litigation would be protracted, distracting and expensive, and that it is desirable that the Lawsuit be
11 fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement.
12 Defendant has also taken into account the uncertainty and risks inherent in any litigation. Defendant
13 has therefore determined that it is desirable and beneficial to settle the Lawsuit in the manner and upon
14 the terms and conditions set forth in this Agreement.

15 The Settling Parties agree there is a bona fide dispute as to whether wages and/or penalties are
16 owed to Plaintiffs and the Class Members and neither this Agreement, nor the Settlement-related
17 documents, nor the Settlement itself shall be construed as an admission of either fact or law on any
18 issue by any party.

19 **VI. CLAIMS OF THE CLASS REPRESENTATIVES AND BENEFITS OF SETTLEMENT**

20 The Class Representatives and Settlement Class Counsel believe that the claims asserted in the
21 Lawsuit have merit and that evidence developed to date supports the claims. However, the Class
22 Representatives and Settlement Class Counsel recognize and acknowledge the significant expense,
23 resources and time required to continue proceedings necessary to prosecute the Lawsuit against
24 Defendant through trial and through appeals. The Class Representatives and Settlement Class Counsel
25 have also taken into account the uncertain outcome and the risks of litigation, the difficulties and delays
26 inherent in this and similar litigation, the financial condition of the Defendant, the challenges of
27 obtaining and maintaining class certification throughout the Lawsuit, and the problems of proving
28 liability and damages and rebutting possible defenses to the SAC. Based upon their evaluation, the

1 Class Representatives and Settlement Class Counsel have determined that the settlement set forth in
2 this Agreement is fair, reasonable, adequate, and in the best interests of the Class Representatives, the
3 Class, and the State of California. Both Settlement Class Counsel and the Class Representatives believe
4 that the settlement set forth in this Agreement confers substantial benefits upon the Class and each of
5 the Class Members.

6 **VII. CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT**

7 7.1 The Settling Parties enter into this Agreement and the Settlement on a conditional basis.
8 This Agreement and Settlement will become final and effective only upon the occurrence of all of the
9 following events:

10 7.1.1 The Court enters an order granting conditional certification of the proposed
11 class and subclasses;

12 7.1.2 The Court enters an order granting preliminary approval of the Settlement;

13 7.1.3 The Court enters a Final Approval Order; and

14 7.1.4 The Effective Date occurs, and any challenge to the Settlement, whether by
15 objection or appeal, is resolved in favor of enforcement of the Settlement.

16 7.2 Unless the Court orders otherwise or agreed in writing by the Settling Parties, this
17 Agreement shall be deemed null and void *ab initio* upon the failure of any of these four conditions to
18 occur.

19 **VIII. SETTLEMENT CONSIDERATION—NO CLAIM FORM REQUIRED;**
20 **DEDUCTIONS FROM THE GROSS SETTLEMENT AMOUNT;**
21 **CALCULATION OF SETTLEMENT PAYMENTS FROM THE NET**
22 **SETTLEMENT AMOUNT**

23 This shall be an all-in Settlement without a reversion. Class Members who do not request
24 exclusion from the Settlement using the procedures specified below will be automatically paid without
25 submitting any claim form.

26 8.1 **Payment of the Gross Settlement Amount:** Defendant will pay the
27 Gross Settlement Amount in full and final settlement of the Lawsuit. The Gross Settlement Amount
28 will constitute adequate consideration for this Settlement. Since any uncashed settlement check funds
will be distributed to California's Unclaimed Property Fund, this Agreement and the associated

Judgment do not and will not create any unpaid residue or unpaid residual, and no distribution of such shall be required. No money shall revert to Defendant.

8.1.1 The Gross Settlement Amount shall be paid by Defendant to the Settlement Administrator as follows: The first half (\$375,000.00) shall be payable within ten business days after the Effective Date, as defined in section 3.13, and the second half (\$375,000.00) payable within one year of the Court's Order granting final approval of the Settlement if no appeal, writ, or other appellate proceeding opposing Final Approval has been filed. If any appeal, writ, or other appellate proceeding opposing Final Approval has been filed, then the second half (\$375,000) shall be paid by the latter of five business days after any appeal, writ, or other appellate proceedings opposing the Settlement has been finally and conclusively dismissed with no right to pursue further remedies or relief, or within one year of the Court's Order granting final approval of the Settlement.

8.2 **Attorneys' Fees and Litigation Expenses:** Class Counsel will submit an application for: (a) an award of Attorneys' Fees of no more than 33 1/3% or one third of the Gross Settlement Amount (Two Hundred and Fifty Thousand U.S. Dollars (\$250,000)); and (b) an award of Class Counsel's actual Litigation Expenses in the amount not to exceed \$35,000 (as documented on an itemized cost sheet with appropriate support), both of which would be paid out of the Gross Settlement Amount. The amounts set forth in this section will constitute complete consideration for all work performed and expenses incurred to date and for all work to be performed and expenses to be incurred through the completion of the Lawsuit, its settlement, and the effort to secure final Judgment by Settlement Class Counsel. The Attorneys' Fees shall be allocated between the firms that serve as Class Counsel as set forth in their fee-sharing agreements which will be disclosed to the Court as part of filing the motion for preliminary approval. Except as provided herein, Plaintiff and Defendant shall bear their own attorney's fees and costs.

8.2.1 Under no circumstances will Defendant be liable for additional attorneys' fees and costs other than the amounts agreed upon in paragraph 8.2. Attorneys' fees and costs will be distributed proportionally to the distribution of the Gross Settlement Amount, i.e., the first half of the awarded attorneys' fees (\$125,000, or half the total fee award if gross amount of fees awarded is less than \$250,000) will be paid once the first half of the Gross Settlement Amount (\$375,000) is paid. The

1 second half of the awarded attorneys' fees (\$125,000, or remaining amount of fee award if awarded
2 less) will be paid once the second half of the Gross Settlement Amount (\$375,000) is paid.

3 8.2.2 In the event that the Court (or any appellate court) awards less than the amount
4 requested for Attorneys' Fees or Litigation Expenses, only the awarded amounts shall be paid and shall
5 constitute satisfaction of those obligations and full payment thereunder, and any remaining or
6 unawarded portion of the requested Attorneys' Fees or Litigation Expenses shall be made a part of the
7 Net Settlement Amount for distribution to Settlement Class Members. To the extent the Court does
8 not approve the requested amount of Attorneys' Fees or Litigation Expenses, the Settlement shall
9 remain binding except as otherwise provided, and this will not be a justification for Plaintiffs to withdraw
10 from the Settlement.

11 8.3 **Settlement Administration Costs:** From the Gross Settlement Amount, Settlement
12 Administration Costs shall be paid in an amount estimated at Thirteen Thousand U.S. Dollars
13 (13,000.00), subject to approval from the Court. The payment of Settlement Administrator's fees and
14 costs shall be deducted in full, and paid in full, from the first half of the Gross Settlement Amount.

15 8.4 **Payment of the PAGA Penalties:** From the Gross Settlement Amount, Defendant
16 will pay Thirty-Seven Thousand and Five Hundred Dollars (\$37,500.00) for settlement of any and all
17 claims alleged in the Lawsuits for which penalties under PAGA, Labor Code section 2698 *et seq.*, may
18 be sought or are otherwise available, as the PAGA Penalty Payment. Pursuant to the express
19 requirements of Labor Code section 2699(i), the PAGA Penalty Payment shall be allocated as follows:
20 \$28,125 (75%) to the LWDA for the enforcement of labor laws and education of employers, and \$9,375
21 (25%) to the Settlement Class Members who are also Aggrieved Employees as a part of the Net
22 Settlement Amount. The PAGA Penalty Payments to Settlement Class Members are not wages. The
23 PAGA Aggrieved Employees shall release their PAGA claims in their entirety and may not opt out of
24 or object to the PAGA release. The PAGA Penalty Payment to the LWDA shall be deducted in full,
25 and paid in full, from the first half of the Gross Settlement Amount. The PAGA Penalty Payment to
26 the Settlement Class Members shall be distributed as specified in section 8.7.1, below.

27 8.5 **Service Enhancement Payments to the Class Representatives:** From the Gross
28 Settlement Amount, Plaintiffs intend to request approval for, subject to Court approval, Service

1 Enhancement Payments of up to Seven Thousand and Five Hundred Dollars (\$7,500.00) each for the
2 Class Representatives, Plaintiffs Armando Delamora and Jesus Cardenas. The amount paid to the Class
3 Representatives are in consideration for their efforts in connection with the Lawsuit and in exchange
4 for their general release, as provided in section 11.2 below. The Class Representatives shall be issued
5 an Internal Revenue Service Form 1099 for the Service Enhancement Payments. The Class
6 Representatives hereby acknowledge that they have obtained no tax advice from Defendant and that
7 neither Defendant nor its attorneys have made any representation concerning the tax consequences, if
8 any, of the Service Enhancement Payments. The Class Representatives agree that they are solely
9 responsible for the tax consequences of the Service Enhancement Payments.

10 8.5.1 In the event that the Court (or any appellate court) awards less than the amount
11 requested for the Service Enhancement Payments, only the awarded amount shall be paid and shall
12 constitute satisfaction of those obligations and full payment thereunder, and any remaining or
13 unawarded portion of the requested Service Enhancement Payments shall be made a part of the Net
14 Settlement Amount for distribution to Settlement Class Members. To the extent the Court does not
15 approve the requested amount of the Service Enhancement Payments, the Settlement shall remain
16 binding except as otherwise provided, and this will not be a justification for Plaintiffs to withdraw from
17 the Settlement.

18 8.5.2 The Service Enhancement Payments, if approved by the Court, are in addition
19 to Plaintiffs' Settlement Payments as described in Section 8.7 below.

20 8.5.3. The Service Enhancement Payments shall be deducted in full, and paid in full,
21 from the first half of the Gross Settlement Amount.

22 8.6 **Employer Payroll Tax Liability:** The Employer Payroll Tax Liability on the portions
23 of all Settlement Payments on account of wages in the form of back pay (as described in Section 8.8
24 of this Agreement) shall be paid separate and in the addition to the Gross Settlement Amount.

25 8.7 **Payment to Settlement Class Members:** The Net Settlement Amount (as defined
26 in Section 3.22, after payment of all enumerated amounts from the Gross Settlement Amount) shall be
27 used to make the Settlement Payments described below.

28 8.7.1 Each Settlement Payment (not including the additional payment to Aggrieved

Employees) shall be calculated as follows: by dividing the Net Settlement Amount into 95% and 5% shares. The 95% share will be allocated to the Non-Exempt Employees, and 5% will be allocated to the Exempt Employees. The Settlement Payments will be determined by calculating the total number of Work Weeks worked by each respective group (the Non-Exempt Employees and Exempt Employees) during the Class Period, then dividing the Work Weeks worked by the Class Member by the total number of Work Weeks worked by the respective group (i.e., for a Non-Exempt Employee, the Settlement Payment will be calculated based on the number of workweeks worked by that Class Member during the Class Period by the number workweeks worked by all Non-Exempt Employees).

Each additional payment to Aggrieved Employees will be calculated by dividing the portion of the PAGA allocation to be paid to Aggrieved Employees by the total number of PAGA Work Weeks worked by Aggrieved Employees then multiplying that amount by the number of PAGA Work Weeks the Aggrieved Employee worked.

8.7.2 The payments to Settlement Class Members will occur in two separate payments. Settlement Payments will be distributed proportionally to the distribution of the Gross Settlement Amount, i.e., the first half of the total Class Member Settlement share will be paid once the first half of the Gross Settlement Amount (\$375,000) is paid, as provided in section 8.1.1, above. The second half and remaining balance will be paid once the second half of the Gross Settlement Amount (\$375,000) is paid.

8.8 **Taxes:** For the purpose of calculating applicable taxes for the Settlement Payments to Settlement Class Members (including any payments to the Class Representatives, exclusive of any Service Enhancement Payments), the Parties agree that twenty percent (20%) of the Net Settlement Amount distributed to each Qualified Class Member will be considered wages and will be reported as such to each Qualified Class Member on an IRS Form W-2. The Parties agree that eighty percent (80%) of the Net Settlement Amount distributed to each Qualified Class Member will be considered penalties and interest and will be reported as such to each Qualified Class Member on an IRS Form 1099 misc., if applicable. The Parties further agree that the PAGA payment distributed to each PAGA Employee will be treated entirely as civil penalties and will be reported as such to each PAGA Employee on an IRS Form 1099 misc., if applicable. Defendant shall not be responsible for payroll tax

1 payments on any portion of the Gross Settlement Amount that is attributable to Attorneys' Fees,
2 Litigation Expenses, PAGA Penalty Payments, penalties, or interest. The Parties further understand
3 that the Class Representatives and any Class Member who receives any Settlement Payment pursuant
4 to this Agreement shall be solely responsible for any and all tax obligations associated with such receipt.

5 8.9 Defendant will not use the Settlement Payments to calculate any additional benefits
6 including without limitation vacation, holiday pay, pension, or 401(k) plan contributions. Defendant
7 contends that the Settlement Payments do not represent any modification of previously credited hours
8 of service or other eligibility criteria under any employee pension or employee welfare benefit plan
9 sponsored by Defendant. Nor does Defendant consider the Settlement Payments "compensation" for
10 purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan, an
11 employee welfare benefit plan, or other plan sponsored by Defendant or its predecessors, subsidiaries,
12 or successors.

13 **IX. NOTICE PROCEDURE**

14 9.1 **Selection and Compensation of Settlement Administrator:** The Parties agree to
15 jointly utilize a third-party Settlement Administrator to give notice of and communicate with Class
16 Members regarding the Settlement and to establish a website where Class Members may view and
17 download the operative complaint, this Settlement Agreement, the Settlement Notice, approval
18 motions/briefing, as well as any Orders issued by the Court that relate to the Settlement. The Parties
19 have selected Simpluris, Inc., to administer the Settlement. If the actual cost of settlement
20 administration is less than the amount approved by the Court, the remaining amount shall be added to
21 the Net Settlement Amount and distributed as set forth in Section 8.7 of this Agreement. All costs
22 associated with settlement administration as approved by the Court shall come out of the Gross
23 Settlement Amount. The Settlement Administrator's actions shall be governed by the terms of this
24 Agreement.

25 9.2 **Establishment and Funding of the QSF:** The Parties agree that the QSF is intended
26 to be a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code and Treasury
27 Regulation § 1.468B-1 (26 C.F.R. § 1.468B-1 *et seq.*) and will be administered by the Settlement
28 Administrator as such. With respect to the QSF, the Settlement Administrator shall: 1) open and

1 administer a settlement account in such a manner as to qualify and maintain the qualification of the QSF
2 as a “Qualified Settlement Fund” under Section 468B of the Internal Revenue Code and Treasury
3 Regulation § 1.468B-1; (2) calculate, withhold, remit and report each Settlement Class Member’s share of
4 applicable payroll taxes (including, without limitation, federal, state and local income tax withholding,
5 FICA, Medicare and any state or local employment taxes) and indemnify Defendant for any penalty
6 arising out of any error or incorrect calculation and/or interest (if applicable) with respect to any late
7 deposit of the same; (3) satisfy all federal, state and local income and other tax reporting, return, and filing
8 requirements with respect to the QSF; and (4) satisfy out of the QSF all fees, expenses and costs incurred
9 in connection with the opening and administration of the QSF and the performance of its duties and
10 functions as described in this Agreement. The aforementioned taxes, fees, expenses, and costs shall be
11 treated as and included in the costs of administering the QSF and as Settlement Administration Costs.
12 The Settling Parties and the Settlement Administrator shall treat the QSF as coming into existence as
13 a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1(j)(2)(i),
14 and such election statement shall be attached to the appropriate returns as required by 26 C.F.R. §
15 1.468B-1(j)(2)(ii). The Settling Parties agree to cooperate with the Settlement Administrator and one
16 another to the extent reasonably necessary to carry out the provisions of this section of the Agreement.

17 9.3 **Settlement Administration:** Defendant will provide for each Class Member the
18 following information drawn from records of Defendant: (1) the full name, and last known address,
19 date of birth and full social security number of all Settlement Class Members; and (2) the information
20 necessary to determine the estimated settlement allocation to each Settlement Class Member, including
21 without limitation, the total number of workweeks worked by each Settlement Class Member and by
22 each PAGA Employee within the relevant Settlement Class Period and PAGA Period (“Class Data”)
23 to the Settlement Administrator. Defendant will provide the Class Data to the Settlement
24 Administrator no later than fourteen (14) calendar days (or, if that date falls on a weekend or holiday,
25 the next business day thereafter) after the date the Court enters an order granting preliminary approval
26 of the Settlement. Class Data shall be used by the Settlement Administrator solely for the purpose of
27 notifying the Class Members of the Settlement. The Settlement Administrator shall run the Class Data
28 list through the National Change of Address database and will use the most recent address for each

1 Class Member when mailing the Class Notice. Class Data shall be provided in a format to be mutually
2 agreed upon by the Settlement Administrator and Defendant.

3 9.4 **Notice to Class Members:** As soon as practicable after receiving the Class Data, but
4 no later than ten (10) business days after its receipt, the Settlement Administrator shall send the Notice
5 Packet to the Class Members via United States First Class Mail. The envelope containing the Notice
6 Packet shall include language beneath the Administrator's address which reads as follows: *Important Legal*
7 *Document – You May Get Money From A Class Action Settlement; Your Prompt Reply To Correct A Bad Address Is*
8 *Required.* The Notice shall specify the Court-approved Notice Response Deadline by which Class
9 Members must submit any dispute regarding the payment amount, Requests for Exclusion, or objections
10 to the Settlement. The costs of mailing this Notice Packet will be considered part of the Settlement
11 Administration Costs to be paid from the Gross Settlement Amount. Except as specifically set forth in
12 Subsections 9.4.1 through 9.4.4 below, the Notice Packet shall be deemed received by the Class Member
13 to whom it was sent.

14 9.4.1 In the event that subsequent to the first mailing of a Notice Packet and prior to
15 the Notice Response Deadline, the Notice Packet is returned to the Settlement Administrator by the
16 United States Postal Service with a forwarding address for the recipient, the Settlement Administrator
17 shall re-mail the Notice Packet to that address within five (5) business days, the Notice Packet will be
18 deemed mailed as of the date of re-mailing, the forwarding address shall be deemed the Updated Address
19 for that Class Member, and any responses from the Class Member (*i.e.*, a dispute regarding calculation
20 of Work Weeks, a Request for Exclusion, or an objection) are due to the Settlement Administrator by
21 the Notice Response Deadline or within fifteen (15) days from the date of re-mailing, whichever is later.

22 9.4.2 In the event that subsequent to the first mailing of a Notice Packet, the Notice
23 Packet is returned to the Settlement Administrator by the United States Postal Service because the
24 address of the recipient is no longer valid, but no forwarding address is provided, the Settlement
25 Administrator shall perform Reasonable Address Verification Measures in an effort to ascertain the
26 current address of the particular Class Member in question. If such an address is ascertained, the
27 Settlement Administrator shall re-mail the Notice Packet within five (5) business days of receiving such
28 information, the Notice Packet will be deemed mailed as of that date of re-mailing, the newly obtained

1 address shall be deemed the Updated Address for that Class Member, and any responses from the
2 Class Member (i.e., a dispute regarding calculation of Work Weeks, a Request for Exclusion, or an
3 objection) are due to the Settlement Administrator by the Notice Response Deadline or within fifteen
4 (15) days from the date of re-mailing, whichever is later.

5 9.4.3 In the event that subsequent to the first mailing of a Notice Packet, the Notice
6 Packet is returned to the Settlement Administrator by the United States Postal Service but no Updated
7 Address is obtained for that Class Member using either method specified above, the Notice Packet
8 shall be re-mailed to the Last Known Address within five (5) business days of receiving such
9 information, the Notice Packet will be deemed mailed as of that date of re-mailing, and the Class
10 Member shall have until the Notice Response Deadline or fifteen (15) days from the date of re-mailing
11 to submit a response, whichever is later. In either event, the Notice Packet shall be deemed received
12 when it is mailed for the second time under this paragraph.

13 9.4.4 In the event that any Notice Packet is returned to the Settlement Administrator
14 as undeliverable is associated with a Class Member who is currently employed by Defendant, counsel
15 for Defendant will make immediate efforts to obtain a current mailing address and provide such
16 updated address to the Settlement Administrator for remailing of the Notice Packet. In that scenario,
17 the Notice Packet will be deemed mailed as of that date of re-mailing, and the Class Member shall have
18 until the Notice Response Deadline or fifteen (15) days from the date of re-mailing to submit a
19 response, whichever is later.

20 9.5 **Disputes Regarding Work Weeks:** In calculating each individual Class Member's
21 share of the settlement, Defendant's reasonably available records regarding the Work Weeks of Class
22 Members shall be presumed to be correct. Class Members will be provided with the individualized
23 information upon which their respective shares of the Net Settlement Amount will be based. Class
24 Members who dispute Defendant's records must submit a challenge in writing to the Settlement
25 Administrator and will bear the burden of proof, *i.e.*, a Class Member who fails to provide written
26 documentation supporting a different number of Work Weeks than that specified in his or her Notice
27 will have his or her dispute denied. All such disputes must be submitted to the Settlement
28 Administrator by the Notice Response Deadline (as evidenced by the date of the postmark of the

1 submission), or as extended by applicable remailing as noted in paragraphs 9.4.1 through 9.4.4.
2 Defendant will investigate the dispute and determine whether any correction to the number of Work
3 Weeks for the Class Member raising the dispute should be made. The Settlement Administrator will
4 inform the Class Member of resolution of the Work Week dispute in writing (i.e. if a Class Member
5 submitted a dispute via e-mail, the Settlement Administrator will inform him or her of the resolution
6 via e-mail.). The Parties further agree that any dispute that cannot be resolved by Settlement Class
7 Counsel and Defendant's counsel may be brought before the Court before final approval of the Class
8 Settlement. In no case will a dispute regarding the number of Work Weeks result in a payment by
9 Defendant in excess of the Gross Settlement Amount.

10 9.6 **Requests for Exclusion:** Class Members who wish to be excluded from the Settlement
11 must submit a written Request for Exclusion to the Settlement Administrator by the Notice Response
12 Deadline (as evidenced by the date of the postmark of the submission), or as otherwise extended by
13 remailing as provided in paragraphs 9.4.1 through 9.4.4. The Notice will state that the Request for
14 Exclusion: (1) must contain the name, address, and telephone number of the Settlement Class Member
15 requesting exclusion; (2) must contain a statement expressing that the Settlement Class Member elects
16 to be excluded from the Settlement; (3) must be signed and dated by the Settlement Class Member; and
17 (4) must be postmarked by the Notice Deadline (or as otherwise extended by remailing in provided in
18 paragraphs 9.4.1 through 9.4.4) and returned to the Settlement Administrator at the specified address.
19 The date of the postmark on the return mailing envelope shall be the exclusive means used to determine
20 whether a Request for Exclusion has been timely submitted. Requests for Exclusion must be made
21 individually and cannot be made on behalf of a group or other Class Members. If a Class Member
22 submits a Request for Exclusion that fails to include all required information or that cannot be verified
23 by the Settlement Administrator as being an authentic submission by the Class Member, it will be
24 considered invalid, and the Settlement Administrator shall mail notification of the deficiency to the Class
25 Member within five (5) business days of receipt. The Class Member shall have until the Notice Response
26 Deadline or fifteen (15) days from the date of the mailing of notification of the deficiency (whichever is
27 later), to cure any deficiencies, at which point his or her Request for Exclusion will be rejected if not
28 received and that Class Member will be mailed his or her share of the Net Settlement Amount (according

1 to the formulas set forth in this Agreement).

2 Any valid Request for Exclusion will be effective only as to the Class Settlement. Any Class
3 Member who is an Aggrieved Employee will be bound by the release of PAGA claims and will receive
4 their share of the PAGA amount regardless of submitting a Request for Exclusion.

5 In the event that ten percent (10%) or more of all Class Members timely request exclusion from
6 the Class by submitting Requests for Exclusion or comparable documentation, Defendant shall have
7 the sole and absolute discretion to rescind/void the Settlement Agreement within fifteen (15) calendar
8 days after receiving from the Settlement Administrator the final list of opt-outs. Defendant agrees to
9 meet and confer in good faith with Settlement Class Counsel before rescinding or voiding the Settlement
10 Agreement. In the event that Defendant elects to rescind/void the Settlement Agreement, Defendant
11 shall provide written notice of such rescission to Settlement Class Counsel. Such rescission shall have
12 the same effect as a termination of the Settlement Agreement for failure to satisfy a condition of
13 settlement, and the Settlement Agreement shall become null and void and have no further force or
14 effect. Should Defendant elect to rescind/void the Settlement, Defendant will be solely responsible for
15 all administration costs and fees incurred by the Settlement Administrator as of the date of rescission.

16 9.7 **No Request for Exclusion by Class Representatives:** The Class Representatives
17 shall not request exclusion from the Settlement. The Class Representatives agree that by signing this
18 Agreement they are accepting the terms of this Settlement.

19 9.8 **Objections to Settlement:** Class Members who do not request exclusion from the
20 Class may object to the Agreement by submitting copies of their written objections to the Settlement
21 Administrator (as evidenced by the date of the postmark of the submission) by the Notice Response
22 Deadline (or as extended by remailing as provided in in paragraphs 9.4.1 through 9.4.4). This Notice
23 Response Deadline applies to any objections notwithstanding any argument regarding alleged non-
24 receipt of the Notice Packet. Written objections should be signed by the Class Member and should: (1)
25 state the objecting Class Member's name, address, telephone number and the last four digits of his/her
26 Social Security number, (2) state the case name and number as follows: *Delamora et al. v. Thorpe Design,*
27 *Inc.*, Case No. C22-00931 (3) state concisely each objection to the Settlement, (4) explain the basis for
28 each such objection, and (5) be dated and signed. If the Class Member intends to use any document(s)

1 to support his or her objection, a copy of the document(s) should be included with the written
2 objection at the time of submission. The Parties agree that written objections which substantially
3 comply with these requirements will be accepted, with the exception of written objections which are
4 **not** postmarked by the Notice Response Deadline or are not signed by the objector. Submitting an
5 objection to this Settlement does not affect the Class Members' right to obtain the benefits of this
6 Settlement. The Settlement Administrator shall forward a copy of any written objections and/or
7 supporting documentation that it receives to both Class Counsel and Counsel for Defendant within
8 two (2) business days of receipt. Settlement Class Counsel shall lodge a copy of any objection with the
9 Court. Plaintiffs and/or Defendant may file responses to any properly filed objections at least five (5)
10 court days before the date of the Final Approval Hearing.

11 9.9 **Anyone wishing to appear at the final approval hearing to discuss concerns or**
12 **objections to the Settlement shall be permitted to do so, whether or not they submit a written**
13 **objection.** Anyone wishing to appear at the final approval hearing to object to the Settlement can, but
14 is not required to, indicate this in his or her written objections.

15 9.10 Any Class Member who fails to serve timely written objections in the manner set forth
16 herein be deemed to have waived any objections and shall be foreclosed both from making any objection
17 to the Settlement and from filing any appeal from any Final Approval Order issued by the Court. Class
18 Members who timely and validly request exclusion from the Settlement shall have no right to object and
19 shall be foreclosed from making any objection to the Settlement.

20 **X. PAYMENT OF CLAIMS**

21 10.1 **Eligibility for Settlement Payments:** Settlement Class Members need not submit a
22 claim form to receive Settlement Payments. As a condition of receiving any Settlement Payment under
23 this Agreement, Class Members must not request exclusion from the Class. Each Settlement Class
24 Member shall be entitled to a payment equal to the sum of their individually determined Settlement
25 Payments, less the required taxes and withholdings, to be made in two installments as discussed in
26 section 8.7.2 above. Class Members who have submitted untimely or invalid Requests for Exclusion
27 will still be considered part of the Settlement Class, will still be bound by the Settlement and the
28 Released Claims, and will be entitled to receive Settlement Payments.

1 10.2 **Distribution of Settlement Payments.** After the Court grants final approval of the
2 Settlement, and the Effective Date has passed, the Settlement Administrator shall prepare a final list
3 of all Settlement Class Members. For each Settlement Class Member on this list, the Settlement
4 Administrator will calculate the amounts due to each Settlement Class Member using the methodology
5 set forth in section 8.7 of this Agreement (excluding any individuals who effectively and timely
6 requested exclusion from the Settlement) and provide that calculation to Class Counsel and
7 Defendant's Counsel within five (5) days after the Effective Date.

8 10.3 The payments to Settlement Class Members will occur in two separate payments.
9 Settlement Payments will be distributed proportionally to the distribution of the Gross Settlement
10 Amount, i.e., the first half of the total Class Member Settlement share will be paid once the first half of
11 the Gross Settlement Amount (\$375,000) is paid, as provided in section 8.1.1, above ("First Class
12 Member Settlement Payment.") The second half and remaining balance will be paid once the second
13 half of the Gross Settlement Amount (\$375,000) is paid ("Second Class Member Settlement Payment.")

14 10.4 No later than ten (10) business days after the Effective Date has passed, Defendant shall
15 pay to the Settlement Administrator the first payment (one-half of the Gross Settlement Amount, or
16 \$375,000). Defendant will wire the funds requested by the Settlement Administrator into the QSF set
17 up and controlled by the Settlement Administrator.

18 10.5 The second half of the Gross Settlement Amount (\$375,000.00) will be paid within one
19 year of the Court's Order granting final approval of the Settlement if no appeal, writ, or other appellate
20 proceeding opposing Final Approval has been filed. If any appeal, writ, or other appellate proceeding
21 opposing Final Approval has been filed, then the second half (\$375,000) shall be paid within the latter
22 of five (5) business days after any appeal, writ, or other appellate proceedings opposing the Settlement
23 has been finally and conclusively dismissed with no right to pursue further remedies or relief, or within
24 one year of the Court's Order granting final approval of the Settlement.

25 10.6 The First Class Member Settlement Payments and the PAGA Penalty Payment to the
26 LWDA will be paid by the Settlement Administrator no later than twenty-five (25) business days after
27 the Effective Date.

28 10.7 The Second Class Member Settlement Payments will be paid by the Settlement

1 Administrator no later than fifteen (15) business days after the second installment of the Gross
2 Settlement Amount is received by the Settlement Administrator, as provided in section 10.5.

3 10.8 Class Counsel's Attorneys' Fees and Litigation Expenses will be paid to Class Counsel
4 in two payments, as specified in section 8.2.1. The first payment will be paid by the Settlement
5 Administrator no later than twenty-five (25) business days after the Effective Date. The second payment
6 shall occur no later than fifteen (15) business days after the second payment is received, as provided in
7 section 8.2.1. Collectively, the payments made shall constitute full satisfaction of any claim for fees or
8 costs. Class Representatives and Class Counsel, on behalf of themselves and all Settlement Class
9 Members, agree that they shall not seek nor be entitled to any additional attorneys' fees or costs for the
10 Released Claims. Class Counsel shall provide the Settlement Administrator with the pertinent taxpayer
11 identification numbers and instructions on the total amount of the payment for wiring and reporting
12 purposes within five (5) days after the Effective Date has passed (or, if that date falls on a weekend or
13 holiday, the next business day thereafter). Other than any reporting of these fee payments as required
14 by this Agreement or law, which Defendant shall make, Class Counsel shall be responsible for the
15 reporting and payment of any federal, state, and/or local income or other form of tax on any payment
16 that they receive pursuant to this Agreement.

17 10.9 The Service Enhancement Payments to the Class Representatives will be paid as
18 specified in section 8.5. The payments will be made within twenty-five (25) business days of the Effective
19 Date. The Service Enhancement Payments shall be deducted in full, and paid in full, from the first half
20 of the Gross Settlement Amount.

21 10.10 Not later than seventy-five (75) calendar days following the Effective Date (or, if that
22 date falls on a weekend or holiday, the next business day thereafter), the Settlement Administrator shall
23 provide Class Counsel and Defendant's Counsel with a declaration under oath to verify the mailing of
24 Settlement Payment checks and the other distributions from the Gross Settlement Amount. The
25 Settlement Administrator will provide a declaration within seventy-five (75) calendar days after the First
26 Settlement Payments are mailed, and again within seventy-five (75) calendar days after the Second
27 Settlement Payments are mailed. Any checks issued to Settlement Class Members shall remain
28 negotiable for a period of one hundred eighty (180) calendar days from the date of mailing of the

1 Settlement Payment checks. Uncashed checks will be voided, and, subject to the Court's approval, the
2 funds represented by uncashed checks, plus interest, will be delivered to California's Unclaimed
3 Property Fund in the name of the intended recipient. No later than two hundred ten (210) calendar
4 days from the date of mailing of the Second (Final) Settlement Payment checks (or, if that date falls on
5 a weekend or holiday, the next business day thereafter), the Settlement Administrator shall provide Class
6 Counsel and Defendant's Counsel with a declaration as to the total amount of any uncashed settlement
7 checks. Settlement Class Members who fail to negotiate their Settlement Payment check(s) in a timely
8 fashion shall remain subject to the terms of the Settlement, the Released Claims, and the Final Approval
9 Order from the Court.

10 10.11 Defendant understands its legal obligation not to retaliate against the Class
11 Representatives or Class Members for their participation and/or election to participate in the benefits
12 to be afforded any of them by the Settlement Payments and/or the Lawsuit.

13 **XI. RELEASED CLAIMS**

14 11.1 **Settlement Class Member Released Claims.** Upon final approval by the Court, the
15 claims released by the Settlement Class Members and PAGA Aggrieved Employees will include all
16 claims pleaded in the Second Amended Complaint in the Lawsuit and the Amended PAGA letter sent
17 to the LWDA by Plaintiffs, and which could have been alleged under the same or similar facts,
18 allegations, and/or claims pleaded in the Lawsuit against the Released Parties (as defined in section
19 3.34), for work performed during the Settlement Class Period, including the following:

20 (a) The Claims set forth in the Lawsuit, specifically, (1) failure to pay and/or accurately calculate
21 wages, overtime wages, and double time wages (Violations of Labor Code §§ 218.5, 218.6, 510, 1194;
22 and the applicable Wage Order [IWC Wage Order 16-2001]); (2) failure to provide meal periods or pay
23 premiums in lieu thereof at the regular rate (Violation of Labor Code §§ 512, 226.7, and the applicable
24 Wage Order [IWC Wage Order 16-2001]); (3) failure to provide rest periods or pay premiums in lieu
25 thereof at the regular rate (Violation of Labor Code § 226.7, and the applicable Wage Order [IWC
26 Wage Order 16-2001]); (4) failure to furnish timely wages (Violation of Labor Code § 204); (5) failure
27 to pay minimum wage and wages for all hours worked; (Violations of Labor Code §§ 218.5, 218.6,
28 1194, and 1197.1); (6) failure to reimburse for business expenses (Violation of Labor Code §§ 2802

1 and the applicable Wage Order [IWC Wage Order 16-2001]); (7) failure to timely pay wages during and
2 upon termination of employment (i.e. waiting time penalties) (Violation of Labor Code §§ 201, 202,
3 203, 218.5 and 218.6); (8) failure to furnish accurate wage statements, and keep payroll records
4 (Violation of Labor Code § 226); (9) failure to keep accurate time and payroll records (Violation of
5 Labor Code §§ 1174, 1174.5 and the applicable Wage Order [IWC Wage Order 16-2001]); (10) violation
6 of California's Unfair Competition Law based upon the alleged Labor Code violations (Violation of
7 Business & Professions Code § 17200 et seq.; Labor Code § 90.5); and (11) Violation of the California
8 Private Attorneys General Act of 2004 (Labor Code § 2698, et seq.) predicated on the same or similar
9 facts and/or claims alleged in the Lawsuit and/or any PAGA letter sent to the LWDA by Plaintiffs in
10 or prior to the Lawsuit, as well as any claims that could have been pled under the California Labor
11 Code and California Industrial Welfare Commission Wage Orders or analogous federal, state, or local
12 law, under the same or similar facts, allegations, and/or claims pleaded in the Lawsuit.

13 (b) Any claims for injunctive relief, declaratory relief, restitution, fraudulent business
14 practices or punitive damages alleged or which could have been alleged under the facts, allegations,
15 and/or claims pleaded in the complaints filed as part of the Lawsuit; and

16 (c) Any and all other claims under California common law or the California Business and
17 Professions Code alleged in or that could have been alleged under the same or similar facts, allegations
18 and/or claims pleaded in the Lawsuit and/or and based on the alleged Labor Code violations. With
19 respect to the Released Claims only this release also includes such claims whether known or unknown,
20 whether anticipated or unanticipated, including such claims that Settlement Class Members did not
21 know or suspect to exist in their favor that accrued on or before the date of Preliminary Approval of
22 the Class Settlement is granted, or a sooner date per the procedure set forth in section 13.2 below, at
23 Defendant's option.

24 (d) The claims set forth in subparagraphs (a)-(c) hereinabove shall be collectively referred
25 to as the "Released Claims." The Released Claims expressly exclude all unrelated claims including but
26 not limited to claims for retaliation, discrimination, unemployment insurance, disability, workers'
27 compensation, and claims outside the Class Period.

28 11.1.2 All Class Members shall be bound by the release described in Section 11.1 and

1 considered Participating Class Members in this Settlement ***unless*** they formally request exclusion from
2 this Settlement by submitting a valid and timely Request for Exclusion or comparable documentation,
3 as set forth in section 9.6 above.

4 11.1.3 Consistent with the foregoing, Settlement Class Members may not sue or
5 otherwise make a claim against any of the Released Parties that is in any way related to, arises out of, or
6 is connected with any of the Released Claims set forth in this section.

7 11.2 **Class Representatives' Released Claims:** As to the claims of Plaintiffs and Class
8 Representatives Armando Delamora and Jesus Cardenas only, the Released Claims further include,
9 without limitation, any and all claims whatsoever regarding Plaintiffs' employment and/or the
10 termination of employment including, but not limited to, any claims for wages, bonuses, severance pay,
11 vacation pay, penalties, employment benefits, stock options, violation of any personnel policy, any claims
12 based on discrimination, harassment, retaliation, violation of public policy, or damages of any kind
13 whatsoever, arising out of any common law torts, contracts, express or implied, any covenant of good
14 faith and fair dealing, any theory of wrongful discharge, any theory of negligence, any legal restriction on
15 Defendant's and Released Parties' right to terminate the employment relationship, or any federal, state,
16 or other governmental statute, executive order, regulation or ordinance, or common law, or any other
17 basis whatsoever, to the fullest extent provided by law. Plaintiffs shall be deemed to have, and by
18 operation of the Judgment shall have, expressly waived and relinquished to the fullest extent permitted
19 by law the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other
20 similar provision under federal or state law that purports to limit the scope of a general release. Plaintiffs
21 have read Section 1542 of the Civil Code of the State of California, which provides as follows:

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

26 Plaintiffs understand that Section 1542 gives the right not to release existing claims of which they
27 are not now aware, unless Plaintiffs voluntarily choose to waive this right. Having been so apprised, both
28 Plaintiffs nevertheless voluntarily waive the rights described in Section 1542, and elect to assume all risks

1 for claims that now exist in each of their favor, known or unknown. The release of the claims of Class
2 Representatives as set forth in this paragraph is a condition precedent to enforcement of this Agreement.

3 11.2.1 The Class Representatives may hereafter discover facts in addition to or different from
4 those which they now know or believe to be true with respect to the subject matter of the Class
5 Representatives' Released Claims, but they shall be deemed to have, and by operation of the Judgment
6 shall have, fully, finally, and forever settled and released any and all Class Representatives' Released
7 Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not
8 concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now
9 existing or coming into existence in the future, including, but not limited to, conduct which is negligent,
10 intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent
11 discovery or existence of such different or additional facts.

12 **XII. MOTIONS FOR COURT APPROVAL**

13 12.1 **Motion for Preliminary Approval:** Settlement Class Counsel will file a motion for
14 preliminary approval. Settlement Class Counsel shall endeavor to provide to Defendant for review and
15 comment at least five (5) business days before the filing of the motion. Settlement Class Counsel shall
16 file, if required by the Court: (i) this Agreement and its Exhibits, (ii) a noticed motion seeking the Court's
17 preliminary approval of this Settlement, (iii) a proposed order granting such preliminary approval and
18 setting hearing for final approval, and (iv) any other document consistent with the Settlement and
19 reasonably necessary to obtain the Court's preliminary approval of the Settlement.

20 12.2 **Motion for Final Approval:** The Settling Parties shall request that the motion for final
21 approval be set for hearing a reasonable period of time after the Notice Response Deadline, as the
22 Court's calendar will allow. Settlement Class Counsel shall prepare the motion for final approval of the
23 Settlement according to the timeline the Court directs, and shall provide to Defendant for review and
24 comment a draft motion for final approval at least five (5) business days before the filing of the motion.
25 Sufficiently in advance of the final approval hearing to meet the statutory notice requirements, Plaintiffs
26 shall file with the Court: (i) a noticed motion for final approval which shall include Settlement Class
27 Counsel's motion for Attorneys' Fees, Litigation Expenses, and Service Enhancement Payments, (ii) a
28 proposed order granting final approval and entering Judgment thereon, and (iii) any other documents

consistent with the Settlement and reasonably necessary to obtain the Court's final approval of the Settlement and entry of Judgment. The Parties will ask the Court to maintain jurisdiction of this matter for the purpose of monitoring compliance with and performance under this Agreement and any and all orders and judgments, including the Judgment, entered by the Court.

XIII. RIGHT TO REVOKE

13.1 **Defendant's Right to Revoke:** If 10% or more Settlement Class Members timely opt out of the class settlement, Defendant shall have the sole and absolute discretion to rescind/void the Settlement Agreement within fifteen (15) calendar days after receiving from the Settlement Administrator the final list of opt-outs. Defendant agrees to meet and confer in good faith with Settlement Class Counsel before rescinding or voiding the Settlement Agreement. In the event that Defendant elects to rescind/void the Settlement Agreement, Defendant shall provide written notice of such rescission to Settlement Class Counsel. Such rescission shall have the same effect as a termination of the Settlement Agreement for failure to satisfy a condition of settlement, and the Settlement Agreement shall become null and void and have no further force or effect. Should Defendant elect to rescind/void the Settlement, Defendant will be solely responsible for all administration costs and fees incurred by the Settlement Administrator as of the date of rescission.

13.2 **Escalation Clause and Settlement Cut-Off Date:** Defendant represents that the calculated number of workweeks through and until January 12, 2023 is 67,736, broken out as follows:

Non-Exempt Class Member Field Employees	Non-Exempt Class Member Non- Field Employees	Exempt Class Member Employees	Total
46,338	15,673	5,725	67,736

Any finding of workweeks during the time frame from May 4, 2018 through Preliminary Approval that exceeds the 67,736 workweek count by more than 15% (77,896) at the option of Defendant, Defendant shall either increase the Gross Settlement Amount or elect to move the end date for the Settlement Class Period to the latest date before the Preliminary Approval that does not exceed 77,896 workweeks. In the event Defendant elects to extend the Class Period to a date wherein the total workweeks is more than 77,896, the Gross Settlement Amount will be increased by determining the workweek value calculated based on 77,896 workweeks divided by the Gross Settlement Amount multiplied by the additional number of workweeks. For example, if the total number of workweeks by

1 the end of the Class Period is 77,996 and the workweek value is \$9.62 per workweek, Defendant would
2 have to increase the Gross Settlement Amount by \$962.00 ($77,996 - 77,896 = 100 * \9.62).

3 13.3 **Termination of Settlement Agreement:** Plaintiffs or Defendant may terminate this
4 Settlement if after submitting the settlement for approval to the Court any Court declines to enter the
5 preliminary approval order, the final approval order, or judgment in substantially the form submitted by
6 the Settling Parties, without leave to amend, or if any appeal opposing the judgment is not ultimately
7 dismissed. If the conditions of the Settlement set forth in this Agreement are not satisfied, or if Defendant
8 terminates and withdraws from the Agreement pursuant to Section 13.1 above, the terminating Party
9 shall give to the other Party (through its/his counsel) written notice of its decision to terminate no later
10 than fourteen (14) calendar days after receiving notice that one of the enumerated events has occurred.
11 Termination shall have the following effects:

12 (a) The Memorandum of Understanding (MOU) and Settlement Agreement shall be
13 terminated and shall have no force or effect, and no Party shall be bound by any of its terms.

14 (b) In the event the Settlement Agreement is terminated, Defendant shall have no
15 obligation to make any payments to any party, Settlement Class Member, PAGA Aggrieved Employee,
16 or attorney. If there are any fees incurred by the Settlement Administrator and the settlement is
17 terminated, the Party responsible for terminating the Settlement Agreement shall solely be responsible
18 for any costs and fees incurred by the Settlement Administrator.

19 (c) The preliminary approval order, final approval order and judgment shall be vacated.

20 (d) The Stipulation of Settlement and all negotiations, statements and proceedings relating
21 thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to
22 their respective positions prior to the Settlement.

23 (e) Except as otherwise discoverable, neither the MOU, this Agreement, nor any ancillary
24 documents, actions, statements, or filings in furtherance of settlement (including all matters associated
25 with the mediation) shall be admissible or offered into evidence in the Lawsuit or any other action for
26 any purpose whatsoever.

27 If the Effective Date does not occur (due to failure of the Court to grant final approval or
28 otherwise), or if this Settlement is terminated, revoked, or canceled pursuant to its terms, the Parties to

1 this Settlement shall be deemed to have reverted to their respective status as of the date immediately prior
2 to the execution of this Settlement. Notwithstanding this provision, the Parties hereby stipulate that the
3 terms of Section 15.12 shall survive and be admissible in evidence even if the Settlement does not become
4 final.

5 **XIV. COOPERATION**

6 14.1 The Parties shall cooperate fully with one another in seeking approval of the Court of
7 this Agreement and to use their respective best efforts to consummate the Settlement and cause the
8 Final Approval Order and Judgment to be entered and to become final. The Parties therefore agree to
9 cooperate in good faith to promptly prepare, execute and finalize all Settlement-related documents, seek
10 all necessary Court approvals, and do all other things necessary to consummate the Settlement. The
11 Parties also agree to mutually seek to stay any pending or subsequently filed class action lawsuits that
12 allege any of the Released Claims set forth in Section 11 of this Agreement.

13 14.2 No Party to this Agreement shall seek to evade his, her, or its good faith obligations to
14 seek approval and implementation of this Settlement by virtue of any ruling, order, governmental
15 report, or other development, whether in the Lawsuit, in any other litigation, or otherwise, that
16 hereafter might occur and might be deemed to alter the relative strengths of the Parties with respect to
17 any claims or defenses or their relative bargaining power with respect to negotiating.

18 14.3 The Parties and their respective counsel of record deem this Settlement to be fair and
19 reasonable and have arrived at this Settlement after arms-length negotiations taking into account all
20 relevant factors, present and potential.

21 14.4 The Class Representatives and Settlement Class Counsel agree to waive appeals of an
22 order granting final approval of this Settlement or entering Judgment in the Lawsuit as to Defendant
23 so long as such order is consistent with the material terms of this Agreement.

24 14.5 Plaintiffs and Settlement Class Counsel will not make any public disclosure of the
25 Settlement until after the filing of the motion for preliminary approval of the Settlement. Plaintiffs and
26 Settlement Class Counsel represent that they have not made any such disclosure. Plaintiffs, Defendant,
27 Settlement Class Counsel, and defense counsel shall not encourage members of the Settlement Class
28 to opt-out. Settlement Class Counsel and Plaintiffs agree not to publicize the terms of this Settlement

1 with the media, including but not limited to, any newspaper, journal, magazine, website and/or online
2 reporter of settlements or on any website. However, for the limited purpose of allowing Settlement
3 Class Counsel to prove adequacy as class counsel in other actions, Settlement Class Counsel may
4 disclose the name of the Plaintiffs in this action and the venue/case number of this action for such
5 purposes. Settlement Class Counsel shall not disclose the amount of the settlement or the name of the
6 Defendant, but may describe Defendant as an “Engineering Contractor Company” in such disclosures.
7 Nothing in this provision shall prevent the Parties from making any required disclosure.

8 **XV. MISCELLANEOUS PROVISIONS**

9 15.1 All of the Settling Parties have been represented by counsel throughout all negotiations
10 that preceded the execution of this Agreement, and this Agreement is made with the consent and
11 advice of counsel.

12 15.2 This Agreement may not be modified or amended, except in a writing that is signed by
13 the respective counsel of record for the Parties and approved by the Court.

14 15.3 This Agreement and its Exhibits attached hereto constitute the entire agreement
15 between the Settling Parties concerning the subject matter hereof, and supersede and replace all prior
16 negotiations, understandings, memoranda of understanding and proposed agreements, written and
17 oral, relating thereto. No extrinsic oral or written representations or terms shall modify, vary, or
18 contradict the terms of the Agreement unless made in writing, signed by duly authorized
19 representatives of all Settling Parties, and approved in writing by a final order of the Court. No waiver
20 of any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one
21 or more instance shall be deemed to be or construed as a further or continuing waiver of any such
22 term, provision or condition.

23 15.4 This Agreement shall be subject to, governed by, construed, enforced, and administered
24 in accordance with the laws of the State of California, without giving effect to the principles of conflict
25 of laws, both in its procedural and substantive aspects, and shall be subject to the continuing jurisdiction
26 of the Court. This Agreement shall be construed as a whole according to its fair meaning and intent, and
27 not strictly for or against any party, regardless of who drafted (or was principally responsible for drafting)
28 this Agreement or any specific term or condition thereof. In any construction to be made of the

1 Agreement, the Agreement shall not be construed against any party and the canon of contract
2 interpretation set forth in California Civil Code section 1654 shall not be applied.

3 15.5 The Settlement shall be binding upon and inure to the benefit of the Settling Parties'
4 respective successors, assigns, heirs, spouses, marital communities, executors, administrators and legal
5 representatives. The Agreement and Settlement are not designed to and do not create any third-party
6 beneficiaries either express or implied.

7 15.6 The Settling Parties agree they can consult mediator Mark Rudy to advise on disputes
8 that may arise in connection with interpreting the terms of the Settlement. However, Mr. Rudy's
9 opinions will be non-binding on the Settling Parties and the Settling Parties agree only the Court shall
10 retain jurisdiction with respect to disputes that may arise in connection with interpreting the terms of
11 the Agreement, and the implementation and enforcement of the terms of the Agreement, and all
12 Settling Parties hereto submit to the jurisdiction of the Court for purposes of implementing and
13 enforcing the terms of the Agreement.

14 15.7 This Agreement may be executed in one or more counterparts, each of which shall be
15 deemed an original and together shall constitute one and the same instrument. When each of the
16 Parties has signed at least one such counterpart, this Agreement shall become effective and binding as
17 to all of the Parties as of the day and year last executed. Fax and/or electronically scanned signatures
18 shall be deemed as effective as originals.

19 15.8 The Parties hereto represent, covenant, and warrant that they have not directly or
20 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
21 person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
22 released and discharged except as set forth herein.

23 15.9 Each individual signing this Agreement warrants that he or she has the authority and is
24 expressly authorized to enter into this Agreement on behalf of the party (or parties) for which that
25 individual signs.

26 15.10 Any notices or other documents that must or may be transmitted to Settlement Class
27 Counsel and/or Defendant's Counsel, pursuant to any section of this Agreement, shall be transmitted
28 to the addresses and/or e-mails set forth in the caption above.

1 15.11 The Parties and all counsel acknowledge and agree that for the purposes of any claims,
2 actions, and/or proceedings arising out of this Agreement, notice provided to Settlement Class Counsel
3 shall be deemed to be notice to the Plaintiffs.

4 15.12 The Parties have stipulated to stay any and all deadline(s) to bring the case to trial,
5 including pursuant to Cal. Civ. Code Section 583.320. This stay shall remain in place until such time
6 as the Settlement is either approved or nullified, as set forth herein.

1 IN WITNESS WHEREOF, each of the undersigned has agreed to and accepted the foregoing
2 terms and conditions by executing this Agreement as of the date indicated below.

3 **APPROVED AND AGREED:**

4
5 Dated: Apr 28, 2023

By: 
ARMANDO DELAMORA
Representative Plaintiff

6
7
8
9 Dated: _____

By: _____
JESUS CARDENAS
Representative Plaintiff

10
11
12 Dated: _____

THORPE DESIGN, INC.

By: _____
Name:
Title:
Defendant Thorpe Design, Inc.

13
14
15
16 **APPROVED AS TO FORM:**

17
18 Dated: April 25, 2023

THE MARKHAM LAW FIRM

By: 
DAVID R. MARKHAM
MAGGIE REALIN
LISA BREVARD
Attorneys for Plaintiff ARMANDO DELAMORA
and the Proposed Class

19
20
21
22
23
24 Dated: April 23, 2023

UNITED EMPLOYEES LAW GROUP

By: 
WALTER L. HAINES
Attorney for Plaintiff ARMANDO DELAMORA
and the Proposed Class

1 IN WITNESS WHEREOF, each of the undersigned has agreed to and accepted the foregoing
2 terms and conditions by executing this Agreement as of the date indicated below.

3 **APPROVED AND AGREED:**

4
5 Dated: _____

By: _____
ARMANDO DELAMORA
Representative Plaintiff

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7
8 Dated: 04 / 25 / 2023

By: 
JESUS CARDENAS
Representative Plaintiff

9
10
11 Dated: _____

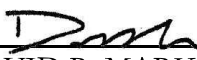
THORPE DESIGN, INC.

12
13 By: _____
14 Name:
15 Title:
Defendant Thorpe Design, Inc.

16 **APPROVED AS TO FORM:**

17
18 Dated: April 23, 2023

THE MARKHAM LAW FIRM

19
20 By: 
21 DAVID R. MARKHAM
22 MAGGIE REALIN
23 LISA BREVARD
Attorneys for Plaintiff ARMANDO DELAMORA
and the Proposed Class

24 Dated: April 23, 2023

UNITED EMPLOYEES LAW GROUP

25
26 By: 
27 WALTER L. HAINES
28 Attorney for Plaintiff ARMANDO DELAMORA
and the Proposed Class

1 IN WITNESS WHEREOF, each of the undersigned has agreed to and accepted the foregoing
2 terms and conditions by executing this Agreement as of the date indicated below.

3 **APPROVED AND AGREED:**

4
5 Dated: _____

By: _____
ARMANDO DELAMORA
Representative Plaintiff

6
7
8
9 Dated: _____

By: _____
JESUS CARDENAS
Representative Plaintiff

10
11
12 Dated: 4/22/23

THORPE DESIGN, INC.

13
14 By:  _____
Corey Gray
President
Defendant Thorpe Design, Inc.

15
16 **APPROVED AS TO FORM:**

17
18 Dated: _____

THE MARKHAM LAW FIRM

19
20 By: _____
DAVID R. MARKHAM
MAGGIE REALIN
LISA BREVARD
Attorneys for Plaintiff ARMANDO DELAMORA
and the Proposed Class

21
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24 Dated: _____

UNITED EMPLOYEES LAW GROUP

25
26 By: _____
WALTER L. HAINES
Attorney for Plaintiff ARMANDO DELAMORA
and the Proposed Class

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Dated: 4/26/23

KING & SIEGEL LLP

By: *Elliot Siegel*
JULIAN KING
ELLIOT SIEGEL
ZACHARY TUCKER
Attorneys for Plaintiff JESUS CARDENAS
and the Proposed Class

Dated: 04/26/2023

BARAHMAND LAW GROUP

By: *Navid Barahmand*
NAVID BARAHMAND
Attorney for Plaintiff JESUS CARDENAS
and the Proposed Class

Dated: _____

LITTLER MENDELSON, P.C.

By: _____
ROBERT G. HULTENG
WILLIAM A. COSMOPULOS
Attorneys for Defendant THORPE DESIGN, INC.

Dated: _____

KRAEBER LAW OFFICE

By: _____
LORA VAIL FRENCH
RHONDA KRAEBER
Attorneys for Defendant THORPE DESIGN, INC.

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Dated: _____

KING & SIEGEL LLP

By: _____
JULIAN KING
ELLIOT SIEGEL
ZACHARY TUCKER
Attorneys for Plaintiff JESUS CARDENAS
and the Proposed Class

Dated: _____

BARAHMAND LAW GROUP

By: _____
NAVID BARAHMAND
Attorney for Plaintiff JESUS CARDENAS
and the Proposed Class

Dated: April 24, 2023

LITTLER MENDELSON, P.C.

By:  _____
ROBERT G. HULTENG
WILLIAM A. COSMOPULOS
Attorneys for Defendant THORPE DESIGN, INC.

Dated: _____

KRAEBER LAW OFFICE

By: _____
LORA VAIL FRENCH
RHONDA KRAEBER
Attorneys for Defendant THORPE DESIGN, INC.

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Dated: _____

KING & SIEGEL LLP

By: _____
JULIAN KING
ELLIOT SIEGEL
ZACHARY TUCKER
Attorneys for Plaintiff JESUS CARDENAS
and the Proposed Class

Dated: _____

BARAHMAND LAW GROUP

By: _____
NAVID BARAHMAND
Attorney for Plaintiff JESUS CARDENAS
and the Proposed Class

Dated: _____

LITTLER MENDELSON, P.C.

By: _____
ROBERT G. HULTENG
WILLIAM A. COSMOPULOS
Attorneys for Defendant THORPE DESIGN, INC.

Dated: 5/1/2023

KRAEBER LAW OFFICE

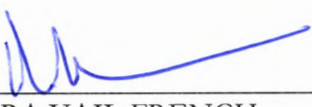
By:  _____
LORA VAIL FRENCH
RHONDA KRAEBER
Attorneys for Defendant THORPE DESIGN, INC.

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF CONTRA COSTA
DELAMORA ET AL. V. THORPE DESIGN, INC. (CASE NO. C22—00931)

ATTENTION: IF YOU WORKED FOR THORPE DESIGN, INC. OR VICTORY FIRE PROTECTION, INC., IN CALIFORNIA BETWEEN MAY 4, 2018 AND [INSERT PRELIMINARY APPROVAL OR OTHER DATE AS APPLICABLE], INCLUSIVE, THEN YOU COULD GET A PAYMENT FROM THIS SETTLEMENT.

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

- If approved by the Court, the Settlement will provide \$750,000.00 to resolve claims of individuals who were employed by Thorpe Design, Inc. or Victory Fire Protection, Inc. (collectively, “Defendant” or “Thorpe”) in California between May 4, 2018, and [insert preliminary approval or other date as applicable].
- Plaintiffs’ lawsuit alleges wage and hour claims against Thorpe including but not limited to, that Thorpe did not properly compensate employees for all hours worked (including overtime wages), did not provide required meal and rest breaks, and did not reimburse necessarily incurred business expenses, among other claims.
- The two sides disagree over whether there is liability for Plaintiffs’ claims, as well as how much money, if any, could have been awarded at trial.
- Your legal rights are affected whether you act or don’t act. **READ THIS NOTICE CAREFULLY!**

OVERVIEW OF YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT	
DO NOTHING	If the Court grants final approval of the settlement, receive settlement payments (to be paid in two installments), as estimated on page 3 of this Notice, (“Individual Settlement Payments,”) in exchange for a release of covered legal claims.
GO TO FINAL FAIRNESS HEARING	If you have an objection or concerns about the settlement, you may attend the final approval hearing which will be held on [insert date] in Department 12 of the Contra Costa County Superior Court, located at Wakefield Taylor Courthouse at 725 Court Street, Martinez, CA 94553.
EXCLUDE YOURSELF	Get no Individual Settlement payments. See page 5 of this Notice for more information. Deadline to Request Exclusion: [insert date] You may opt out of the settlement by submitting a Request for Exclusion. However, if you are a PAGA Employee and the Court

OVERVIEW OF YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT	
	grants final approval of the settlement, <u>you will still receive a share of the portion of the Net Settlement Amount allocated to the PAGA Employees and will be bound by the PAGA release provisions of the settlement, whether or not you submit a Request for Exclusion.</u>
OBJECT	If you do not exclude yourself from the Settlement, you may object to the Settlement. See page 6 of this Notice for more information. Deadline to Object: [insert date]
DISPUTE “WORKWEEKS”	Settlement amounts will be based on the number of weeks you worked in a covered position during the Class Period. If Thorpe’s records regarding your eligible workweeks are incorrect then you may dispute your workweeks by informing the Settlement Administrator, Simpluris, Inc. See page 3 of this Notice for more information (“Defendant’s Records Will be Presumed Correct But May Be Disputed.”) Deadline to Dispute Workweeks: [insert date]
UPDATE YOUR CONTACT INFORMATION	Update your contact information with Simpluris, Inc. so that future notices and settlement check(s) are sent to the correct address. Enclosed as Exhibit B is a Change of Address Form that you can use to update your address. This should be returned via U.S. Mail to the Settlement Administrator at P.O. Box 26170, Santa Ana, CA 92799, or via email at []. If you lose the form, then you may contact the Settlement Administrator or Class Counsel directly to provide your new address.
• These rights and options – and the deadlines to exercise them – are explained in further detail in this notice. • The Court handling this case still has to decide whether to approve the Settlement. Settlement payments will only be issued if the Court approves the Settlement and, if applicable, any appeal resolved. Please be patient. • Additional information is available by contacting Class Counsel, the Settlement Administrator, or online at [insert].	

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BASIC INFORMATION

1. Why did I get this notice?

Defendant Thorpe's records show that you were employed in California between May 4, 2018 and [insert preliminary approval or other applicable date].

This notice explains the lawsuit, the Settlement, and your legal rights.

2. What is this lawsuit about?

This class and representative action lawsuit, known as *DELAMORA ET AL. V. THORPE DESIGN, INC.*, case no. C22-00931 [filed May 4, 2022], is pending in the Superior Court of California for the County of Contra Costa.

The lawsuit involves claims under California's wage and hour laws. Plaintiffs worked for Thorpe as field technicians, including as a pipefitter and journeyman carpenter. They allege numerous claims against Defendant, including but not limited to that the Defendant did not properly compensate for all hours worked (including overtime pay), did not provide required meal and rest breaks, and did not compensate for necessarily incurred business expenses, among other claims.

Plaintiffs' complaint alleges claims on behalf of themselves, individually, and on behalf of the Class Members for wage and hour violations, including: (1) Failure to Pay Overtime Compensation; (2) Failure to Provide Meal Periods; (3) Failure to Provide Rest Periods; (4) Failure to Furnish Timely and Accurate Wage Statements; (5) Failure to Keep Accurate Payroll Records; (6) Failure to Pay All Wages Due Upon Termination; (7) Failure to Reimburse Necessarily Incurred Business Expenses; (8) Violation of California's Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200 et seq.; and (9) Violation of Private Attorneys General Act (PAGA) (Lab. Code § 2698, et seq.)

Defendant denies engaging in any wrongful conduct or that it violated the law in any way and believes that Plaintiffs and the Settlement Class were properly compensated for all time worked.

Both Plaintiffs and Defendant believe that the Settlement is fair, adequate, and reasonable, and that it is in the best interest of the members of the Settlement Class.

3. What is a class action lawsuit?

In a class action, one or more people called the "Plaintiff" or "Plaintiffs" (in this case, Plaintiffs Armando Delamora and Jesus Cardenas) sue on behalf of people who have similar alleged claims. All of these similar people are a "class" or "class members." The Court resolves the issues for all class members, except for those who exclude themselves from the class. On [Insert Date], the Court certified the class for purposes of settlement only.

4. Who is in the Settlement Class?

"Settlement Class Members" or "Settlement Class" means all current and former non-exempt and exempt employees, who were employed by Defendant Thorpe Design, Inc. or Victory Fire

Protection, Inc. in California, (“Class Members”) at any time between May 4, 2018, and [insert preliminary approval date or other date as applicable], inclusive (“Class Period”).

5. Why is there a settlement?

After conducting an investigation, including review of policies, timekeeping and payroll records, both sides agreed to the Settlement to avoid the cost and risk of further litigation. The Settlement does not mean that any law was broken. Defendant denies all of the claims asserted in the Action and denies that it has violated any laws. Plaintiffs and their lawyers believe that the Settlement is in the best interests of all Settlement Class Members.

THE SETTLEMENT BENEFITS

6. What are the terms of the settlement, and what do I get?

Terms of the Settlement

Under the proposed Settlement Defendant has agreed to pay a Gross Settlement Amount of \$750,000.00, payable in two installments of \$375,000. This Gross Settlement Amount will be used to pay Plaintiffs’ attorneys’ fees (not to exceed 33 1/3% of the Gross Settlement Amount, *i.e.*, \$250,000) and actual litigation expenses (not to exceed \$35,000), Service Enhancement Payments to Plaintiffs not to exceed \$7,500 each, a payment of \$28,125 to the Labor and Workforce Development Agency (“LWDA”) for alleged penalties under the Private Attorneys General Act (“PAGA”), and the fees and expenses of the Settlement Administrator, Simpluris, Inc., (estimated to be \$13,000). The remainder, referred to as the Net Settlement Amount, which is estimated to be \$408,875, will be distributed in full to participating Class Members.

The Settlement provides that if more than 10% of Class Members choose to exclude themselves from the Settlement (not to participate in the Settlement), Defendant has the option to void this Settlement.

PAGA Settlement Payment

The employees shall first share \$9,375 (*i.e.*, 25% of the \$37,500 total amount allocated to the PAGA claim) which shall be split amongst all Class Members that worked for Thorpe between May 2, 2021 through [insert preliminary approval date or other date as applicable], inclusive (the “PAGA Period”). This payment will be distributed to Class Members based on the number of Work Weeks worked for Defendant in a class position during the PAGA Period relative to the total number of Work Weeks worked by all Class Members during the PAGA Period.

According to Thorpe’s records, you worked for [redacted] weeks in a covered position during the PAGA Period. Based on these dates, your portion of the PAGA settlement payment is estimated to be \$ [redacted].

Class Members will receive their portion of the PAGA settlement payment regardless of whether they request exclusion or object to the Settlement. This payment shall be reported as penalties and reported by IRS Form 1099.

Individual Settlement Payment

Class Members who do not submit a timely request for exclusion will receive an Individual Settlement Payment along with the PAGA Settlement Payment described above.

The Net Settlement Amount will be distributed to Settlement Class Members as follows: 95% of the Net Settlement Amount (less the PAGA allocation) will be distributed to Non-Exempt Employees, and the remaining 5% will be distributed to Exempt Employees, based on the number of Work Weeks worked for Defendant in covered positions during the Class Period relative to the total number of Workweeks worked by each respective group of Settlement Class Members during the Class Period. The Net Settlement Amount, estimated to be \$408,875, will be distributed in full to participating Class Members, who worked an estimated [REDACTED] total workweeks during the Class Period.¹

According to Defendant's records, you worked for [REDACTED] weeks in a covered position during the Class Period. Based on these dates, your Individual Settlement Award is estimated to be \$[REDACTED], which will be paid in two installments. Your actual Individual Settlement Award may be different than this amount depending on, for example, the number of Settlement Class Members who participate and/or request to opt out of the Settlement.

Twenty percent (20%) of each Settlement Class Member's Individual Settlement Payment shall be treated as wages (reported on IRS Form W-2) and eighty percent (80%) shall be treated as interest and penalties (reported on IRS Form 1099). The employee's share of payroll taxes (FICA, EDD) shall be withheld from the W2 wage payment.

Class Members will receive their portion of the PAGA settlement payment regardless of whether they request exclusion or object to the Settlement. PAGA payments are not wages and shall be reported as penalties on 1099.

Class members should consult with their tax advisors concerning the tax consequences of any payment they receive. No provision of the Settlement, and no written communication or disclosure between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended). You must rely exclusively upon your own, independent legal and tax advisers-for advice (including tax advice) in connection with this Settlement. Your participation in this Settlement is not based upon the recommendation of any other party or any attorney or advisor to any other party. You are not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on you. No attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by you of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement.

¹ The final amount of your settlement share will be calculated based upon the final Net Settlement Amount and the final Total Number of Workweeks worked by the Settlement Class.

Defendant's Records Will be Presumed Correct But May Be Disputed

Defendant's records regarding workweeks, as set forth above, shall be presumed correct, unless evidence to the contrary is timely submitted to the Settlement Administrator, Simpluris, Inc. at the following contact information: [insert email], [insert address]. Class Members who disagree with Defendant's records of their workweeks total, as presented above, must notify the Settlement Administrator of the dispute, and submit documentation to support their claimed dates of employment (such as, without limitation, payroll or time keeping records or paycheck stubs). The dispute must be received by [RESPONSE DEADLINE] or else it will be disregarded, and you will be paid according to the dates listed in Defendant's records.

NOTE: A Class Member can only dispute his/her workweeks outside the PAGA Period if he/she does not exclude himself/herself from the Settlement. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Parties shall engage in a good faith effort to reach an agreement as to whether an adjustment for the Class Member is warranted and, if the Parties are unable to reach an agreement, the determination of the Settlement Administrator shall be deemed final. The Settlement Administrator will notify you of the resolution of your dispute by mail, and if you submitted your dispute by email, the Settlement Administrator will also notify you by message to that email address.

7. What am I giving up?

In this action, Plaintiffs alleged that they and other Class Members were not paid for all time, including overtime pay for time worked beyond the scheduled shift, were not provided meal and rest periods, nor paid premiums for non-compliant breaks, that Thorpe failed to keep records of employees' hours worked and records of meal periods, and that Class Members were not reimbursed for necessarily incurred business expenses, including personal cell phone use and mileage. Additionally, Plaintiffs alleged that, as a result, that they and Class Members' wage statements were not accurate nor timely, and they were not paid all the wages owed after termination of employment. The "release," as described in detail below, means that you will be barred from separately pursuing these claims. The release applies to claims between May 4, 2018, and [preliminary approval date or other date as applicable].

If the Settlement is approved then each member of the Settlement Class who do not submit a timely Request for Exclusion form (*see* response to Question 10 below) shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the "Released Parties" [Defendant, and any of their past, present and future direct or indirect parents, subsidiaries, predecessors, successors and affiliates, including Victory Fire Protection, Inc., as well as each of its past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendant] from the following claims, which pursuant to the Agreement are being released through and including the dates of the Class Period: all claims pleaded in the Second Amended Complaint in the Lawsuit and the Amended PAGA letter sent to the LWDA by Plaintiff, and which could have been alleged under the same or similar facts, allegations, and/or claims pleaded in the Lawsuit against the Released Parties, for work performed during the Settlement Class Period, including the following:

- (a) The Claims set forth in the Lawsuit, specifically, (1) failure to pay and/or accurately calculate wages, overtime wages, and double time wages (Violations of Labor Code §§ 218.5, 218.6, 510, 1194; and the applicable Wage Order [IWC Wage Order 16-2001]); (2) failure to provide meal periods or pay premiums in lieu thereof at the regular rate (Violation of Labor Code §§ 512, 226.7, and the applicable Wage Order [IWC Wage Order 16-2001]); (3) failure to provide rest periods or pay premiums in lieu thereof at the regular rate (Violation of Labor Code § 226.7, and the applicable Wage Order [IWC Wage Order 16-2001]); (4) failure to furnish timely wages (Violation of Labor Code § 204); (5) failure to pay minimum wage and wages for all hours worked; (Violations of Labor Code §§ 218.5, 218.6, 1194, and 1197.1); (6) failure to reimburse for business expenses (Violation of Labor Code §§ 2802 and the applicable Wage Order [IWC Wage Order 16-2001]); (7) failure to timely pay wages during and upon termination of employment (i.e. waiting time penalties) (Violation of Labor Code §§ 201, 202, 203, 218.5 and 218.6); (8) failure to furnish accurate wage statements, and keep payroll records (Violation of Labor Code § 226); (9) failure to keep accurate time and payroll records (Violation of Labor Code §§ 1174, 1174.5 and the applicable Wage Order [IWC Wage Order 16-2001]); (10) violation of California's Unfair Competition Law based upon the alleged Labor Code violations (Violation of Business & Professions Code § 17200 et seq.; Labor Code § 90.5); and (11) Violation of the California Private Attorneys General Act of 2004 (Labor Code § 2698, et seq.) predicated on the same or similar facts and/or claims alleged in the Lawsuit and/or any PAGA letter sent to the LWDA by Plaintiff in or prior to the Lawsuit, as well as any claims that could have been pled under the California Labor Code and California Industrial Welfare Commission Wage Orders or analogous federal, state, or local law, under the same or similar facts, allegations, and/or claims pleaded in the Lawsuit.
- (b) Any claims for injunctive relief, declaratory relief, restitution, fraudulent business practices or punitive damages alleged or which could have been alleged under the facts, allegations, and/or claims pleaded in the complaints filed as part of the Lawsuit; and
- (c) Any and all other claims under California common law or the California Business and Professions Code alleged in or that could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Lawsuit and/or and based on the alleged Labor Code violations. With respect to the Released Claims only this release also includes such claims whether known or unknown, whether anticipated or unanticipated, including such claims that Settlement Class Members did not know or suspect to exist in their favor that accrued on or before the date of Preliminary Approval of the Class Settlement is granted, or a sooner date per the procedure set forth in section 13.2 of the Settlement Agreement, at Defendant's option.
- (d) The claims set forth in subparagraphs (a)-(c) hereinabove shall be collectively referred to as the "Released Claims." The Released Claims expressly exclude all unrelated claims including but not limited to claims for retaliation, discrimination, unemployment insurance, disability, workers' compensation, and claims outside the Class Period.

All Class Members shall be bound by this release unless they formally request exclusion from this Settlement by following the request for exclusion procedures described in section 10 below by

[RESPONSE DEADLINE]. See Section 10 of this Notice for more information on requests for exclusion.

However, if you are a PAGA Employee and the Court grants final approval of the settlement, you will still receive a share of the portion of the Net Settlement Amount allocated to the PAGA Employees and will be bound by the PAGA release provisions of the settlement, whether or not you submit a Request for Exclusion.

In addition to the above release, Plaintiffs and Class Representatives Armando Delamora and Jesus Cardenas also provide a general release of claims that can be released as a matter of law, as provided in Section **11.2** of the Settlement Agreement.

HOW TO GET A SETTLEMENT PAYMENT

8. How do I get a settlement payment?

You need not do anything in order to receive a PAGA Settlement Payment and Individual Settlement Payment from this Settlement. If you do not make a timely request to be excluded then, provided the Settlement is approved by the Court, you will be sent both settlement payments (to the extent you are eligible) at the address where this Notice was mailed.

IMPORTANT: If this was sent to the wrong address, or you move before receiving all settlement checks and tax return documents, then it is very important that you provide a forwarding address to the Settlement Administrator! Otherwise, your settlement check(s) and/or your tax return documentation could be sent to the wrong address.

Enclosed as Exhibit B is a **Change of Address Form** that you can use to update your address. This should be returned to the Settlement Administrator at: **[address, email address, and fax]**. If you lose the form, you may contact the Settlement Administrator or Class Counsel directly to provide your new address.

9. When will I get my checks?

If the Court approves the Settlement Defendant will be required to fund the first half (\$375,000 of the \$750,000 Gross Settlement Amount) within 10 business days of the Effective Date of the Settlement. The Settlement Administrator will issue the first settlement payment(s) within 25 business days of the Effective Date of the Settlement.

The “Effective Date” is defined as the date on which the Court’s Final Approval Order becomes final. The Court’s Final Approval Order “becomes final” upon the last to occur of the following: (a) the date of final affirmance on appeal of the Judgment; (b) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review the Judgment; or (c) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the Court’s Judgment.

The second half of the Gross Settlement Amount (the remaining \$375,000 of \$750,000) will be funded within one year of the Court’s Order granting final approval of the Settlement if no appeal, writ, or other appellate proceeding opposing Final Approval has been filed. If any appeal, writ, or

other appellate proceeding opposing Final Approval has been filed, then the second half (\$375,000) shall be paid within five (5) business days after any appeal, writ, or other appellate proceedings opposing the Settlement has been finally and conclusively dismissed with no right to pursue further remedies or relief, or within one year of the Effective Date, whichever is later.

Please be advised that you will only have 180 days from the date that each check is issued to cash it. This is why it is so important to ensure the Settlement Administrator has your most up to date contact information. If Class Members fail to cash their settlement checks within 180 days, the checks will be cancelled and the respective funds will be delivered to California's Unclaimed Property Fund in the name of the intended recipient. No money will revert to Defendant.

EXCLUDING YOURSELF FROM THE SETTLEMENT

10. How do I ask the Court to exclude me from the Settlement Class?

If you do not want to participate in the Settlement ("opt out" or "request to be excluded"), you must submit, by First Class U.S. Mail, a request for exclusion to the Settlement Administrator by **[RESPONSE DEADLINE]**.

To be valid, your request for exclusion **must**: (1) contain your name, address, and telephone number; (2) contain a statement to the effect that "I choose to opt out of the class action settlement *Delamora et al. v Thorpe Design, Inc.*"; (3) be signed and dated; and (4) be postmarked no later than **[insert 45 days from date of mailing]** to the Settlement Administrator:

**Simpluris, Inc.
P.O. Box 26170
Santa Ana, CA 92799
888-369-3780, option 2**

Requests that do not include all required information and/or that are not timely will be deemed null, void, and ineffective. Class Members who fail to submit a valid and timely Request for Exclusion on or before **[RESPONSE DEADLINE]** shall be converted to Settlement Class Members, bound by all terms of the Settlement, and any Final Judgment entered in the Action if the Settlement is approved by the Court.

Class Members who timely request exclusion will no longer be eligible to receive an Individual Settlement Award but will also not be bound by the release of claims in the Class Settlement. Class Members cannot, however, seek exclusion from the PAGA component of the Settlement and will receive a PAGA Settlement Payment even if they submit a timely request for exclusion, to the extent they worked during the PAGA Period.

11. If I exclude myself, can I get anything from the settlement?

Yes. *If you exclude yourself now using the enclosed Request for Exclusion Form you will still get a pro rata share of the PAGA Settlement Payment if you are eligible for one.* You will not get Individual Settlement Payments and you will not be bound by the non-PAGA component of the Settlement.

12. If I don't exclude myself, can I sue later?

No. Unless you exclude yourself, you give up the right to sue Defendant for the claims in this lawsuit that are released by the Settlement. You must exclude yourself from the Settlement Class to start or continue your own lawsuit.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has appointed David R. Markham, Maggie Realin, and Lisa Brevard of The Markham Law Firm; Walter Haines of the United Employees Law Group; Julian King, Elliot Siegel, and Zachary Tucker of King & Siegel; and Navid Barahmand of Barahmand Law Group as Class Counsel. They represent the named Plaintiffs and the Settlement Class Members in this lawsuit. Their contact information is listed in Paragraph 20 ("Getting More Information").

OBJECTING TO THE SETTLEMENT

14. How do I object to the Settlement?

If you do not think the Settlement is fair then you may object to the proposed settlement in writing and/or you may appear at the Final Approval Hearing [on **date/time**] at your expense in person, or through an attorney, or remotely via the Court's procedures for remote appearances. **Anyone wishing to appear at the final approval hearing to make an objection to the Settlement shall be permitted to do so, whether or not they submit a written objection as set forth below.**

Only Class Members who do not request exclusion from the Class may object to the Agreement.

Written objections should be signed by the Class Member and should: (1) state the objecting Class Member's name, address, telephone number and the last four digits of his/her Social Security number, (2) state the case name and number as follows: *Delamora et al. v. Thorpe Design, Inc.*, Case No. C22-00931 (3) state concisely each objection to the Settlement, (4) explain the basis for each such objection, and (5) be dated and signed. If the Class Member intends to use any document(s) to support his or her objection, a copy of the document(s) should be included with the written objection at the time of submission. Submitting an objection to this Settlement does not affect the Class Members' right to obtain the benefits of this Settlement.

Written objections must be submitted to the Settlement Administrator (at the address set forth in Section 10) by [**DATE (45 days from date of notice mailing)**]. In order to be timely, the mailed Written Objection must be postmarked on or before the above date. **DO NOT FILE YOUR OBJECTION OR ANY OTHER DOCUMENTS WITH THE COURT.**

If you opt out of the Settlement, you may not object. You must be a Settlement Class Member in order to object to the Settlement. Any Settlement Class Member who submits an objection remains eligible to get paid from the Settlement so long as they did not request to be excluded from the Settlement.

15. What's the difference between objecting and asking to be excluded?

Excluding yourself is telling the Court that you do not want to be part of the Settlement. Objecting is telling the Court a reason(s) you do not want the Settlement to be approved by the Court.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing on [date/time] to decide whether to finally approve the settlement. Whether you have submitted an objection or not you may attend and you may ask to speak, but you don't have to. See Section 16 below for more details.

16. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing on [insert time/date] in Department 12 at the Superior Court of California for the County of Contra Costa, located at Wakefield Taylor Courthouse at 725 Court Street, Martinez, CA 94553. The hearing may be moved to a different date and/or time without additional notice. If you plan to attend the Final Approval Hearing, you may contact the Settlement Administrator to confirm the date and time. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate, the plan of distribution, and Class Counsel's request for attorneys' fees and costs and Plaintiffs' Service Enhancement Payments.

17. Do I have to come to the hearing?

No, you are not required to attend the hearing, although you may choose to do so. Class Counsel will be present at the hearing to answer any questions and provide any information requested by the Court. In the wake of the COVID-19 pandemic, many hearings are still being conducted remotely. Class Members who wish to appear at the final fairness hearing on [date/time] should contact Class Counsel or visit the Court's website to confirm the latest procedures for appearing remotely (<https://www.cc-courts.org/civil/civil.aspx>).

If you send a written objection, you don't have to come to Court to talk about it. As long as you mail your written objection on time, the Court will consider it. You may also pay (at your own expense) a lawyer to attend, but it is not required.

18. May I speak at the hearing?

Anyone wishing to appear at the final approval hearing on [date/time] to discuss concerns or objections to the Settlement shall be permitted to do so, whether or not they submit a written objection as set forth above.

IF YOU DO NOTHING

19. What happens if I do nothing at all?

If you do nothing and the Settlement is approved, you will be bound by the release of claims described in Section 7 above and will receive the Individual Settlement Payments described in Section 6.

GETTING MORE INFORMATION

20. How do I get more information?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, and to review the Settlement documents and court filings, as well as Orders issued by the Court thereon, please go to [Settlement Administrator's website]. There you can find the operative complaint (*DELAMORA ET AL. V. THROPE DESIGN, INC.* (Contra Costa Superior Court, C22-00931)); this Notice, the Settlement Agreement, the Court's Preliminary Approval Order, and all filings made in this matter relating to settlement approval, including all orders, and (once final approval is granted) all documents, orders, and judgment related to final approval of the Settlement. (Copies can also be requested from Class Counsel.)

The pleadings and other records in the Action, including the proposed Settlement, may also be examined at any time during regular business hours at the Office of the Clerk of Court for the Superior Court of California, County of Contra Costa, at 1111 Ward Street, Martinez, CA 94553 between 8:00 a.m. and 3:00 p.m. Monday through Friday, excluding court holidays. You may also review most of the filings, including the Motion for Preliminary Approval of the proposed Settlement, and the Settlement itself on the Court's website which is located at <https://odyportal.cc-courts.org/portal>. Accessing the Court's docket online is free and can be accessed by entering the case number (C22-00931) into the "Smart Search" feature, and selecting the "Submit" button to review documents.

If you want additional information about the Action and its proceedings, or copies of settlement paperwork, then you may also contact Class Counsel:

David R. Markham (SBN 71814)

dmarkham@markham-law.com

Maggie Realin (SBN 263639)

mrealin@markham-law.com

Lisa Brevard (SBN 323391)

lbrevard@markham-law.com

THE MARKHAM LAW FIRM

888 Prospect Street, Suite 200

La Jolla, CA 92037

Telephone: 619-399-3995

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UNITED EMPLOYEES LAW GROUP

5500 Bolsa Avenue, Suite 203

Huntington Beach, California 92649

Telephone: 310-234-5678

Navid Barahmand

navid@barahmandlaw.com

BARAHMAND LAW GROUP

7324 Sepulveda Boulevard, Suite B

Van Nuys, California 91405

Telephone: (818) 574-3355

Facsimile: (818) 574-3757

Additionally, the Settlement Administrator may be contacted at the contact information below:

[Insert]

EXHIBIT B

Thorpe Design, Inc. Wage and Hour Class Administration
SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF CONTRA COSTA
Delamora et al. v. Thorpe Design, Inc. (Case No. C22-00931)

CHANGE OF ADDRESS FORM

Please use this form if your Notice was sent to the wrong address, or you move before receiving your settlement checks and tax return documents. *FAILURE MAY RESULT IN YOUR CHECKS AND TAX RETURN DOCUMENTS BEING SENT TO THE WRONG ADDRESS.*

Name: _____

Address: _____

Signature _____

EXHIBIT C

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dmarkham@markham-law.com
Maggie Realin (SBN 263639)
mrealin@markham-law.com
Lisa Brevard (SBN 323391)
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Los Angeles, California 90014
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Facsimile: (213) 465-4803

[Additional Counsel Listed on Next Page]

Attorneys for Plaintiffs on behalf of themselves and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA**

ARMANDO DELAMORA, an individual,
and JESUS CARDENAS, an individual, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

THORPE DESIGN, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO. C22-00931

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) FAILURE TO PAY OVERTIME
COMPENSATION;**
- (2) FAILURE TO PROVIDE MEAL
PERIODS;**
- (3) FAILURE TO PROVIDE REST
PERIODS;**
- (4) FAILURE TO FURNISH TIMELY
AND ACCURATE WAGE
STATEMENTS;**
- (5) FAILURE TO KEEP ACCURATE
PAYROLL RECORDS**
- (6) FAILURE TO PAY ALL WAGES
DUE UPON TERMINATION;**
- (7) FAILURE TO REIMBURSE
NECESSARILY INCURRED BUSINESS
EXPENSES;**
- (8) VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION LAW
("UCL"), Bus. & Prof. Code § 17200
et seq.**
- (9) VIOLATION OF PRIVATE
ATTORNEYS GENERAL ACT (PAGA)
(Lab. Code §2698, et seq.)**

DEMAND FOR JURY TRIAL

1 Walter Haines (SBN 071075)
2 *walter@uelglaw.com*
3 **UNITED EMPLOYEES LAW GROUP**
4 5500 Bolsa Avenue, Suite 203
5 Huntington Beach, CA 92649
6 Telephone: (888) 474-7242
7 Facsimile: (562) 256-1006

8 Navid Barahmand
9 *navid@barahmandlaw.com*
10 **BARAHMAND LAW GROUP**
11 7324 Sepulveda Boulevard, Suite B
12 Van Nuys, California 91405
13 Telephone: (818) 574-3355
14 Facsimile: (818) 574-3757

15 Attorneys for Plaintiffs on behalf of themselves and all others similarly situated
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1 Plaintiffs ARMANDO DELAMORA and JESUS CARDENAS (“Plaintiffs”), by and
2 through their attorneys of record, bring this Class Action Complaint against Defendant THORPE
3 DESIGN, INC. (“Thorpe Design” or “Defendant”), and respectfully allege the following:

4 **NATURE OF THE ACTION**

5 1. This is a class action for wage and labor violations arising out of Defendant’s
6 failure to pay wages for all time worked and failure to provide timely and uninterrupted meal and
7 rest periods, and for derivative claims.

8 2. As set forth below, Defendant failed to pay its employees wages for all hours
9 worked, including overtime; failed to provide timely and uninterrupted meal and rest periods to its
10 California non-exempt employees in violation of California Labor Code §§ 512 and 226.7, and the
11 applicable Industrial Wage Order; failed to pay its employees one hour of pay at the regular rate of
12 compensation for each instance that Defendant failed to provide statutorily mandated rest periods
13 and timely off-duty meal periods; failed to maintain accurate records; failed to furnish timely and
14 accurate wage statements; failed to pay all wages due upon termination; failed to reimburse for
15 necessarily incurred business expenses; and, is in violation of California’s Unfair Competition Law
16 (“UCL”).

17 3. Plaintiffs seek to represent all those similarly situated who are or were residents of
18 the State of California.

19 **JURISDICTION AND VENUE**

20 4. This Court has jurisdiction over this action because this is a civil action where the
21 matter in controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of the
22 Court. The acts and omissions complained of in this action took place in the State of California.
23 Venue is proper because upon information and belief, Defendant has their corporate headquarters
24 in this county, conducts substantial business in this county and employs numerous employees in
25 California in this county.

26 **PARTIES**

27 5. Plaintiff ARMANDO DELAMORA is a resident of Antioch, California. Mr. Delamora
28 was employed by Defendant in Brentwood, California, from October 13, 2016 to November 5, 2021,

1 as a pipefitter.

2 6. Plaintiff JESUS CARDENAS is a resident of Sacramento, California. Mr. Cardenas
3 has worked for Defendant in Brentwood, California, as a non-exempt hourly employee from
4 approximately April 2020 through approximately February 2022.

5 7. At all times material herein, Defendant was a corporation registered to do business
6 in California, including but not limited to conducting business within the County of Contra Costa,
7 with its corporate headquarters located in Contra Costa, California. Defendant is in the fire
8 sprinkler system design and installation industry. On information and belief, Defendant is a fire
9 sprinkler systems contractor for residential and commercial buildings serving Northern California.
10 At all relevant times alleged herein, Plaintiffs are informed and believe that Defendant is
11 authorized to and conducts business in California, including but not necessarily limited to County
12 of Contra Costa. Defendant employed Plaintiffs in Contra Costa, California, and
13 employ/employed other pipefitters, installers, technicians and other non-exempt employees, as
14 well as exempt employees throughout Northern California.

15 8. Plaintiffs are currently unaware of the true names and capacities, whether
16 individual, corporate, associate, or otherwise, of the defendants sued herein under fictitious names
17 Does 1 through 10, inclusive, and therefore sue such defendants by such fictitious names. Plaintiffs
18 will seek leave to amend this complaint to allege the true names and capacities of said fictitiously
19 named defendants when their true names and capacities have been ascertained. Plaintiffs are
20 informed and believe and thereon allege that each of the fictitiously named defendants is legally
21 responsible in some manner for the events and occurrences alleged herein, and for the damages
22 suffered by the Class.

23 9. Plaintiffs are informed and believe and thereon allege that all defendants, including
24 the fictitious Doe defendants, were at all relevant times acting as actual agents, conspirators,
25 partners and/or joint ventures and/or employees of all other defendants, and that all acts alleged
26 herein occurred within the course and scope of said agency, employment, partnership, and joint
27 venture, conspiracy or enterprise, and with the express and/or implied permission, knowledge,
28 consent, authorization and ratification of their co-defendants.

FACTS

10. Between October 13, 2016 and November 5, 2021, Plaintiff Delamora was employed by Defendant, as a non-exempt, hourly-paid pipefitter in Contra Costa, California. Plaintiff Delamora's duties included installing fire sprinkler systems in residential homes as well as performing inspections. Plaintiff and other class members with similar job titles and/or duties were typically dispatched to one residential home per day to perform installations of fire sprinklers. Plaintiff and other class members frequently had to leave job sites they were working on to conduct inspections. Plaintiff and other class members were expected to complete their jobs and inspections each day within their scheduled hours, but it often took longer; however, Plaintiff and other class members were not allowed to record the overtime hours they worked. Plaintiff and other class members would be reprimanded if they recorded their actual hours worked and Defendant would alter Plaintiff and other class members' timecard to remove the overtime. Defendant failed to pay Plaintiff and other class members for all hours worked, including 1.5–times his regular rate for his work performed over 8 hours in a day, and/or 40 hours in a week. Defendant was aware of these violations.

11. From approximately April 2020 to approximately February 2022, Plaintiff Cardenas was employed by Defendant as a non-exempt, hourly-paid journeyman carpenter in Contra Costa, California. Plaintiff Cardenas' duties included pick up and delivery of raw materials at Defendant's job sites and completion of build and repair projects for Defendant's clients.

12. Often, Plaintiffs would have to delay their meal periods until after the end of the fifth hour of work or miss them completely due to press of business. Nonetheless, Plaintiffs were required to record their meal breaks as if they were compliant and timely taken. Plaintiffs were never paid a meal period premium for those late or missed meal periods.

13. Additionally, Plaintiffs often did not get their rest breaks due having to conduct inspections and the press of business. Plaintiffs were never paid a rest period premium for these missed rest periods.

14. Further, Plaintiffs were required to use their personal vehicles and cellphones for work purposes. Plaintiffs sometimes had to commute to the various different job sites and travel to

1 up to five inspections per day and were not reimbursed for the mileage incurred using their
2 personal vehicles. Plaintiffs were required to use their personal cellphones to receive calls and
3 texts from supervisors regarding status of projects and results of inspections, even if they were on a
4 break. Plaintiffs and other class members were not reimbursed for these necessarily incurred
5 business expenses.

6 15. Upon information and belief, the above-mentioned unlawful employment practices
7 by Defendant were applied the same to all non-exempt and exempt employees employed by
8 Defendant in the State of California.

9 16. Defendant's conduct, as alleged here, has caused Plaintiffs and class members
10 damages including, but not limited to, loss of wages and compensation. Defendant is liable to
11 Plaintiffs and the class for failing to pay all straight-time and overtime wages owed for each pay
12 period, failing to pay meal and rest break premiums, failing to provide timely and accurate wage
13 statements, failing to keep accurate payroll records, failing to pay all wages due upon termination,
14 failing to reimburse them for necessarily incurred business expenses, and unfair competition.

15 17. Plaintiffs are a member of, and seek to be a representative for, the class of other
16 employees who all have been exposed to, have suffered, and/or were permitted to work under
17 Defendant's unlawful employment practices as alleged herein.

18 **EXHAUSTION OF PAGA NOTICE REQUIREMENT**

19 18. Plaintiffs Delamora and Cardenas exhausted the notice requirement by filing a
20 complaint with the Labor and Workforce Development Agency ("LWDA") in their letters dated
21 May 2, 2022, and July 22, 2022, respectively, as required under the California Labor Code Private
22 Attorney General Act ("PAGA"). A true and correct copy of Plaintiff Delamora's letter is attached
23 hereto as **Exhibit 1**. A true and correct copy of Plaintiff Cardenas' letter is attached hereto as
24 **Exhibit 2**. Plaintiffs supplemented their PAGA notice by a supplemental/amended PAGA letter
25 dated March 17, 2023. A true and correct copy of Plaintiffs amended letter is attached hereto as
26 **Exhibit 3**. The LWDA did not assume jurisdiction over the applicable penalty claims alleged;
27 therefore, Plaintiffs have exhausted the procedural requirement under PAGA to pursue any and all
28 penalty claims as provided under PAGA.

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- d. Whether Defendant had a policy or practice of not paying meal or rest period premiums;
- e. Whether Defendant violated the applicable California Industrial Welfare Commission (“IWC”) Order by failing to provide Plaintiffs and the members of the class with timely off-duty thirty (30) minute meal periods;
- f. Whether Plaintiffs and the class were not paid all wages owed to them, including overtime;
- g. Whether Defendant engaged in a pattern or practice of unlawfully deducting wages of Plaintiffs and members of the class;
- h. Whether Defendants engaged in a pattern or practice of failing to reimburse business expenses necessarily incurred by Plaintiffs and the class;
- i. Whether Defendant engaged in unfair practices and violated California Business & Professions Code § 17200 by failing to provide Plaintiffs and the members of the class with their statutory off-duty meal and rest periods on a timely basis;
- j. Whether Defendant engaged in unfair practices and violated California Business & Professions Code section 17200 by failing to pay Plaintiffs and the members of the class for all time worked;
- k. Whether Defendant maintained accurate time records of off-duty thirty (30) minute meal breaks taken by Plaintiffs and members of the class in accordance with the applicable IWC Wage Order;
- l. Whether Defendant maintained accurate time records of all hours worked by Plaintiffs and members of the class in accordance with the applicable IWC Wage Order
- m. Whether Defendant violated Labor Code § 226(a) by issuing inaccurate itemized wage statements to Plaintiffs and members of the class that failed to include payments for missed, untimely, and/or on-duty meal periods throughout the Class period;
- n. Whether Defendant violated Labor Code § 226(a) by issuing inaccurate itemized wage statements to Plaintiffs and members of the class that failed to include payment for all hours worked;
- o. Whether Defendant violated Labor Code § 226(a) by issuing inaccurate itemized wage statements to Plaintiffs and members of the class that failed to accurately state the total

- hours worked, to the detriment of Plaintiffs and the class;
- p. Whether Defendant violated Labor Code § 1174 by failing to keep accurate payroll records;
- q. Whether Defendant violated Labor Code §§ 201-203 by failing to pay all wages due upon termination to all Class members who were terminated or voluntarily quit; and
- r. The nature and extent of class-wide injury and the measure of damages or restitution.

24. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the class they seek to represent because Plaintiffs, as a non-exempt employees of Defendant, were exposed and subjected to the same unlawful business practices as other employees employed by Defendant during the class period. Plaintiffs and the members of the class they seek to represent sustained the same types of damages and losses.

25. **Adequacy:** Plaintiffs are adequate representatives of the class they seek to represent because their interests do not conflict with the interests of the members of the class Plaintiffs seek to represent. Plaintiffs have retained counsel competent and experienced in complex class action litigation and Plaintiffs intend to prosecute this action vigorously. The interests of the members of the class will be fairly and adequately protected by Plaintiffs and their counsel.

26. **Superiority and Substantial Benefit:** The class action is superior to other available means for the fair and efficient adjudication of Plaintiffs' and the Class members' claims. The damages suffered by each individual Class member may be limited. Damages of such magnitude are small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. Further, it would be virtually impossible for the Class members to redress the wrongs done to them on an individual basis. Even if members of the Class themselves could afford such individual litigation, the court system could not. Individualized litigation increases the delay and expense to all parties and the court system due to the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

27. The Class should also be certified because:

- a. The prosecution of separate actions by individual members of the Class would create a

- 1 risk of inconsistent or varying adjudications with respect to individual Class members
2 which would establish incompatible standards of conduct for Defendant;
- 3 b. The prosecution of separate actions by individual members of the Class would create a
4 risk of adjudication with respect to them, which would, as a practical matter, be
5 dispositive of the interests of the other Class members not parties to the adjudications,
6 or substantially impair or impede their ability to protect their interests; and
- 7 c. Defendant has acted or refused to act on grounds generally applicable to the Class, and/or
8 the general public, thereby making appropriate final and injunctive relief with respect to the Class
9 as a whole.

10 **FIRST CAUSE OF ACTION**
11 **FAILURE TO PAY OVERTIME COMPENSATION**
12 **(Violation of Labor Code § 510)**
13 **(Against all defendants)**

14 28. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
15 herein.

16 29. Labor Code §510 and the applicable Wage Order provide that employees in
17 California shall not be employed more than eight hours in any workday or forty hours in a
18 workweek unless they receive additional compensation beyond their regular wages in amounts
19 specified by law. Specifically, Labor Code §510(a) requires that: Any work in excess of eight
20 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight
21 hours worked on the seventh day of work in any one workweek shall be compensated at the rate of
22 no less than one and one-half times the regular rate of pay for an employee. Any work in excess of
23 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay
24 for an employee.

25 30. Labor Code § 1194 establishes an employee's right to recover unpaid overtime
26 compensation, and interest thereon, together with the costs of suit, and attorneys' fees. Labor
27 Code §1198 makes employment of an employee for longer hours than the IWC set or under
28 conditions the IWC prohibits is unlawful.

31. At all times relevant hereto, Plaintiffs and other members of the class, have worked

1 more than eight hours in a workday, and/or more than forty hours in a workweek.

2 32. At all times relevant hereto, Defendant has failed to pay Plaintiffs, and the other
3 members of the class, the overtime compensation premium for those unpaid hours they have
4 worked in excess of the maximum hours permissible by law as required by Labor Code § 510 and
5 1198, and the applicable Wage Order.

6 33. By virtue of Defendant's unlawful failure to pay the lawful overtime rate of
7 compensation to the Plaintiffs, and the other members of the class, Plaintiffs and the other
8 members of the class, have suffered, and will continue to suffer, damages in amounts which are
9 presently unknown to them, but which exceed the jurisdictional limits of this Court and will be
10 ascertained according to proof at trial.

11 34. Defendant acted and is acting intentionally and oppressively toward Plaintiffs, and
12 the other members of the class, with a conscious disregard of their rights, or the consequences to
13 them, with the intent of depriving them of property and legal rights and otherwise causing them
14 injury. Defendant failed to pay Plaintiffs and other members of the class for all hours worked
15 including the time work beyond the prescheduled hours to complete jobs. To the extent this time
16 worked exceeded eight (8) hours in a day and/or forty (40) hours in a week, Plaintiffs and class
17 members are entitled to overtime wages.

18 35. Plaintiffs and the class, request recovery of overtime compensation according to
19 proof, interest, attorneys' fees, expenses, and costs pursuant to Labor Code § 1194(a), and Civil
20 Code §§3287(b) and 3289, as well as the assessment of any statutory penalties against Defendant,
21 in a sum as provided by the Labor Code, the applicable Wage Orders, and/or other statutes.

22 **SECOND CAUSE OF ACTION**
23 **FAILURE TO PROVIDE MEAL PERIODS**
24 **(Violation of Labor Code §§ 512, 226.7, and the applicable Wage Order)**
25 **(Against all defendants)**

26 36. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
27 herein.

28 37. California Labor Code § 226.7(b) provides, "An employer shall not require an
employee to work during a meal or rest period mandated pursuant to an applicable order of the

1 Industrial Welfare Commission”.

2 38. IWC Order No. 4-2001(11)(A) provides, in pertinent part: “[n]o employer shall
3 employ any person for a work period of more than five (5) hours without a meal period of not less
4 than 30 minutes, except that when a work period of not more than six (6) hours will complete the
5 day’s work the meal period may be waived by mutual consent of the employer and the employee.”

6 39. Labor Code § 512(a) provides, in pertinent part: “[a]n employer may not employ an
7 employee for a work period of more than five hours per day without providing the employee with a
8 meal period of not less than 30 minutes, except that if the total work period per day of the
9 employee is no more than six hours, the meal period may be waived by mutual consent of both the
10 employer and employee. An employer may not employ an employee for a work period of more
11 than 10 hours per day without providing the employee with a second meal period of not less than
12 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period
13 may be waived by mutual consent of the employer and the employee only if the first meal period
14 was not waived.”

15 40. As alleged herein, Defendant’s pattern, practice, and uniform policy required
16 Plaintiffs and other class members to effectively skip or delay their meal breaks due to conducting
17 required inspections and other press of business.

18 41. Defendant failed to authorize and permit timely and uninterrupted meal periods
19 during the Class period. Plaintiffs and members of the class were routinely required to work
20 without a timely and uninterrupted meal break at the direction of Defendant and/or with
21 Defendant’s knowledge and acquiescence.

22 42. By its actions in requiring its employees to work through meal periods and/or its
23 failure to relieve the employees of their duties for their off-duty meal periods, Defendant has
24 violated California Labor Code §§ 226.7, 512 and § 11 of IWC Wage Order No. 4-2001, and is
25 liable to Plaintiffs and the class.

26 43. As a result of the unlawful acts of Defendant, Plaintiffs and the class have been
27 deprived of timely off-duty meal periods, and are entitled to recovery under Labor Code §§
28 226.7(c), 512 and § 11 of IWC Wage Order No. 4-2001, in the amount of one additional hour of

1 pay at the employee's regular rate of compensation for each workday in which Defendant failed to
2 provide its employees with timely statutory off-duty meal periods.

3 44. Plaintiffs, and the other members of the class, are entitled to seek and recover
4 reasonable attorneys' fees and costs pursuant to Labor Code §§ 226.7 and 512.

5 **THIRD CAUSE OF ACTION**
6 **FAILURE TO PROVIDE REST PERIODS**
7 **(Violation of Labor Code §§ 226.7 and the applicable Wage Order)**
8 **(Against all defendants)**

9 45. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
10 herein.

11 46. California Labor Code § 226.7(b) provides, "An employer shall not require an
12 employee to work during a meal or rest period mandated pursuant to an applicable order of the
13 Industrial Welfare Commission".

14 47. The applicable Wage Order provides, in pertinent part: "[e]very employer shall
15 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
16 middle of each work period. The authorized rest period time shall be based on the total hours
17 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
18 thereof. However, a rest period need not be authorized for employees whose total daily work time
19 is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
20 worked for which there shall be no deduction from wages".

21 48. The applicable Wage Order further provides: "[i]f an employer fails to provide an
22 employee with a rest period in accordance with the applicable provisions of this order, the
23 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
24 compensation for each workday that the rest period is not provided".

25 49. As alleged herein, Defendant failed to authorize and permit rest breaks during the
26 Class period. Plaintiffs and members of the class were routinely required to work through rest
27 periods at the direction of Defendant and/or with Defendant's knowledge and acquiescence.

28 50. By its actions in requiring its employees during the class period to work through rest
periods and/or its failure to relieve the employees of their duties for their rest periods, Defendant

1 violated the Wage Order and California Labor Code § 226.7 and is liable to Plaintiffs and the class.

2 51. Defendant's unlawful conduct alleged herein occurred in the course of employment
3 of Plaintiffs and all others similarly situated and such conduct has continued through the filing of
4 this complaint.

5 52. As a direct and proximate result of Defendant's unlawful action, Plaintiffs and the
6 class have been deprived of timely rest periods and/or were not paid for rest periods taken during
7 the Class period, and are entitled to recovery under Labor Code § 226.7(c) in the amount of one
8 additional hour of pay at the employee's regular rate of compensation for each workday in which
9 Defendant failed to provide employees with timely and/or paid rest periods.

10 53. Plaintiffs, and the other members of the class, are entitled to seek and recover
11 reasonable attorneys' fees and costs pursuant to Labor Code § 226.7.

12 **FOURTH CAUSE OF ACTION**
13 **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS**
14 **(Violation of Labor Code §226)**
(Against all defendants)

15 54. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
16 herein.

17 55. California Labor Code § 226(a) provides: "[e]very employer shall, semimonthly or
18 at the time of each payment of wages, furnish each of his or her employees, either as a detachable
19 part of the check, draft, or voucher paying the employee's wages, or separately when wages are
20 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
21 earned, (2) total hours worked by the employee [...], (3) the number of piece-rate units earned and
22 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
23 that all deductions made on written orders of the employee may be aggregated and shown as one
24 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7)
25 the name of the employee and only the last four digits of his or her social security number, [...], (8)
26 the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in
27 effect during the pay period and the corresponding number of hours worked at each hourly rate by
28 the employee...".

1 56. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for the
2 initial pay period in which a violation of Labor Code § 226 occurs and \$100 for each subsequent
3 pay period, for all pay periods in which the employer knowingly and intentionally failed to provide
4 accurate itemized statements to the employee causing the employee to suffer injury.

5 57. Plaintiffs are informed, believe and thereon allege that at all times relevant,
6 Defendant knowingly and intentionally failed to furnish and continues to knowingly and
7 intentionally fail to furnish Plaintiffs and each Class member with timely and accurate itemized
8 statements showing the gross wages earned by each of them, as required by Labor Code § 226(a),
9 in that the premiums owed to Plaintiffs and the members of the Class for untimely or interrupted
10 meal and rest periods were not included in gross wages earned by Plaintiffs and the Class.

11 58. Further, wages owed to Plaintiffs and members of the class for overtime hours
12 worked, and the time worked through meal breaks, were not included in gross wages earned by
13 Plaintiffs and the Class.

14 59. Defendant's failure to provide Plaintiffs and members of the Class with accurate
15 itemized wage statements during the Class period has caused Plaintiffs and members of the Class
16 to incur economic damages in that they were not aware that they were owed and not paid
17 compensation for missed rest periods and on-duty meal periods, and for all hours worked. In
18 addition, Defendant provided inaccurate information regarding hours worked, which masked its
19 underpayment of wages to Plaintiffs and the Class.

20 60. As a result of Defendant's issuance of inaccurate itemized wage statements to
21 Plaintiffs and members of the Class in violation of Labor Code § 226(a), Plaintiffs and the
22 members of the Class are each entitled to recover penalties pursuant to Labor Code § 226(e).

23 **FIFTH CAUSE OF ACTION**
24 **FAILURE TO KEEP ACCURATE PAYROLL RECORDS**
25 **(Violation of Labor Code § 1174)**
26 **(Against all defendants)**

27 61. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
28 herein.

 62. Labor Code § 1174(d), requires an employer to keep at a central location in

1 California or at the plant or establishment at which the employees are employed, payroll records
2 showing the hours worked daily, and the wages paid to each employee. Plaintiffs are informed and
3 believe that Defendant willfully failed to make or keep accurate records for Plaintiffs and Class
4 members.

5 63. The applicable Wage Order requires that every employer shall keep accurate
6 information with respect to each employee, including time records showing when each employee
7 begins and ends each work period, the total daily hours worked by each employee and the total
8 hours worked in each payroll period, and applicable rates of pay. Plaintiffs are informed and
9 believe that Defendant willfully and intentionally failed to make and/or keep records which
10 accurately reflect the hours worked by Plaintiffs and Class members. Specifically, Plaintiffs believe
11 that Defendant's records do not accurately reflect the hours worked by Plaintiffs and the Class
12 members, do not correctly list regular and overtime rates of pay, do not accurately record Plaintiffs
13 and Class Members' meal breaks, and do not correctly list the gross wages and net wages, and
14 meal and rest break premiums earned by them.

15 64. Plaintiffs are informed and believe that Defendant's failure to keep accurate payroll
16 records, as described above, violated Labor Code § 1174(d) and the applicable wage order.
17 Plaintiffs and the Class members are entitled to penalties of \$100.00 for the initial violation and
18 \$200.00 for each subsequent violation for every pay period during which these records and
19 information were not kept by Defendant.

20 65. Plaintiffs are informed and believe that Defendant's failure to keep and maintain
21 accurate records and information, as described above, was willful, and Plaintiffs and the Class are
22 entitled to a statutory penalty of \$500.00 for Plaintiffs and each Class member pursuant to Labor
23 Code § 1174.5.

24 66. Plaintiffs and the members of the Class are each entitled to recover interest,
25 attorney's fees and costs pursuant to Labor Code §1174, as well as all statutory penalties and
26 attorneys' fees against Defendant.

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SIXTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES DUE UPON TERMINATION
(Violation of Labor Code §§ 201-204, 210)
(Against all defendants)

67. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

68. California Labor Code §§ 201-203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours prior 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.

69. Labor Code § 204 provides that all wages, other than those mentioned in Section 201 and 202, are due and payable twice during each calendar month, on days designated in advance by the employer as regular paydays.

70. During the Class period, Defendant willfully failed to pay Class members who are no longer employed by Defendant all their earned wages, specifically, meal and rest period premiums not paid for missed or interrupted meal and rest periods, and wages for all hours worked, including overtime, either at the time of discharge or within seventy-two hours of their leaving Defendant's employ, or upon Defendants' regularly scheduled paydays in violation of California Labor Code §§ 201, 202, 203, 204, and 210.

71. Therefore, Plaintiffs and members of the Class are entitled to waiting time penalties for each day that has passed that they have not received all wages owed to them, up to 30 days.

72. Employees are also entitled to civil penalties in the amount of \$100 per employee per initial violation and \$200 per employee for every subsequent violation of Labor Code section 201, 202, and 204, plus 25% of the amount unlawfully withheld. Labor Code § 210.

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE INCURRED NECESSARY BUSINESS EXPENSES
Violation of Labor Code § 2802, et seq.)
(Against all defendants)

73. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth

1 herein.

2 74. California Labor Code § 2802 provides that “[a]n employer shall indemnify his or
3 his employee for all necessary expenditures or losses incurred by the employee in direct
4 consequence of the discharge of his or his duties, or of his or his obedience to the directions of the
5 employer.” Lab. Code § 2802. The purpose of Labor Code section 2802 is to prevent employers
6 from passing off their cost of doing business and operating expenses on to their employees.
7 *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

8 75. At all relevant times during the class period, Plaintiffs and other members of the
9 class incurred necessary business-related expenses and costs that were not fully reimbursed by
10 Defendant, including, but not limited to requiring Plaintiffs and other members of the class to use
11 their cellphones in the regular course of employment by answering texts and calls from their
12 supervisors while at work or on a break, for purposes of scheduling and re-scheduling future work,
13 being assigned tasks, and general administrative matters, and required the use of various mobile
14 phone applications but not paying a reasonable portion of the Class Members’ cellphone related
15 expenses despite requiring the use of the device and/or applications that required a data plan. *See*
16 *Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 (“We hold that when
17 employees must use their personal cell phones for work related calls, Labor Code section 2802
18 requires the employer to reimburse them. Whether the employees have cell phone plans with
19 unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their
20 cell phone bills.”).

21 76. Additionally, at all relevant times during the class period, Plaintiffs were required to
22 use their personal vehicles for work purposes. Plaintiffs sometimes had to commute to the various
23 different job sites and travel to up to five inspections per day and were not reimbursed for the
24 mileage incurred using their personal vehicles.

25 77. Defendant has intentionally and willfully failed to fully reimburse Plaintiffs and the
26 Class for necessary business-related expenses and costs. Defendant’s conduct violates California
27 Labor Code § 2802.

28 78. Plaintiffs and Class members are entitled to recover from Defendant their business-

1 related expenses incurred during the course and scope of their employment, plus interest, pursuant
2 to California Labor Code § 2802.

3 **EIGHTH CAUSE OF ACTION**
4 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**
5 **(Bus. & Prof. Code §§ 17200 *et seq.*)**
6 **(Against all defendants)**

7 79. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
8 herein.

9 80. Section 17200 of the California Business and Professions Code (the "UCL")
10 prohibits any unlawful, unfair, or fraudulent business practices.

11 81. Through its action alleged herein, Defendant has engaged in unfair competition
12 within the meaning of the UCL. Defendant's conduct, as alleged herein, constitutes unlawful,
13 unfair, and/or fraudulent business practices under the UCL.

14 82. Defendant's unlawful conduct under the UCL includes, but is not limited to,
15 violating the statutes alleged herein. Defendant's unfair conduct under the UCL includes, but is not
16 limited to, failure to pay Class members wages and compensation they earned through labor
17 provided, failure to provide meal and rest breaks, reimburse business expenses, and failure to
18 otherwise compensate Class members as alleged herein. Defendant's fraudulent conduct includes,
19 but is not limited to, issuing wage statements containing false and/or misleading information about
20 the time the Class members worked and the amount of wages or compensation due.

21 83. Plaintiffs have standing to assert this claim because they have suffered injury in fact
22 and has lost money as a result of Defendant's conduct.

23 84. Plaintiffs and the Class seek restitutionary disgorgement from Defendant of monies
24 owed for all hours worked and for unpaid meal and rest period premiums.

25 85. Plaintiffs have assumed the responsibility of enforcement of the laws and public
26 policies specified here by suing on behalf of themselves and other similarly situated Class
27 members previously or presently working for Defendant in California. Plaintiffs' success in this
28 action will enforce important rights affecting the public interest. Plaintiffs will incur a financial
burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys'

1 fees to Plaintiffs is appropriate pursuant to Code of Civil Procedure § 1021.5.

2 **NINTH CAUSE OF ACTION**

3 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT (PAGA)**
4 **(Cal. Lab. Code §§2698 and 2699, *et. seq.*)**
5 **(Against all defendants)**

6 86. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
7 herein.

8 87. Labor Code §§ 2698 and 2699 (The California Private Attorneys General Act of
9 2004, or “PAGA”), expressly establish that any provision of the California Labor Code which
10 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
11 Agency (“LWDA”), or any of its departments, divisions, commissions, boards, agencies or
12 employees for a violation of the California Labor Code, may be recovered through a civil action
13 brought by an aggrieved employee on behalf of himself or herself, and other current or former
14 employees.

15 88. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
16 agencies or employees has discretion to assess a civil penalty, a fact-finder in a civil action is
17 authorized to exercise the same discretion, subject to the same limitations and conditions, to assess
18 a civil penalty.

19 89. Plaintiffs are “aggrieved employees” as defined by Labor Code § 2699, because
20 they were employees of Defendant, and one or more of the Labor Code violations was committed
21 against them.

22 90. Plaintiffs assert all of their claims in this Complaint against Defendant on behalf of
23 themselves, and all other members of the Class and/or on behalf of all aggrieved employees, as
24 well as the general public, in their capacity as “private attorney generals,” and seek all statutory
25 penalties available under the Labor Code.

26 91. In addition to the previously asserted claims, Plaintiffs also allege Defendant
27 violated California Labor Code Section 226.3 based on the previously alleged violation of Labor
28 Code section 226(a), as described in the fifth cause of action.

92. By reason of the above and pursuant to Labor Code § 2699, Plaintiffs Delamora and

1 Cardenas on behalf of themselves, and all other members of the Class and/or behalf of all
2 aggrieved employees, as well as the general public, are entitled to payment of a penalty of \$100 per
3 pay period for each employee for the initial violation, and \$200 per pay day period for each
4 employee for each subsequent violation, plus interest.

5 93. In addition, Plaintiffs Delamora and Cardenas, on behalf of themselves, and all
6 other members of the Class and/or behalf of all aggrieved employees, as well as the general public,
7 seek and are entitled to have 75% of all recovered penalties and interest allocated to the LWDA
8 and 25% to the Plaintiffs and aggrieved employees. Further, Plaintiffs are entitled to seek and
9 recover reasonable attorneys' fees, expenses and costs pursuant to Labor Code §2699, and any
10 other applicable statutes.

11 94. Plaintiffs complied with the notice requirements of Labor Code §2699.3(a)(1) prior
12 to commencing this action. A copy of the letters sent to the California LWDA on May 2, 2022, and
13 July 22, 2022, via certified mail, and copied to Defendant's Agent for Service of Process in
14 California on the same dates, via certified mail, in accordance with §2699.3(a)(1), are attached
15 hereto, as **Exhibit 1** and **Exhibit 2**, respectively, and by reference incorporated herein. Plaintiffs
16 supplemented their PAGA notice by a supplemental/amended PAGA letter dated March 17, 2023.
17 A true and correct copy of Plaintiffs amended letter is attached hereto as **Exhibit 3**.

18 95. As of today's date, the LWDA has not responded to Plaintiffs' notices.

19 96. Plaintiffs and the Plaintiff Class are also entitled to reasonable attorneys' fees and
20 costs, pursuant to California Labor Code §2699.3(g)(1).

21 **PRAYER**

22 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray
23 for judgment against Defendant as to the appropriate causes of action as follows:

24 **ON THE FIRST CAUSE OF ACTION**

- 25 1. For all overtime compensation owed to Plaintiffs and each Class Member for all hours
26 worked according to proof;
- 27 2. For interest on any compensatory damages;
- 28 3. For attorneys' fees, expenses, and costs pursuant to Labor Code §1194(a), and Civil Code

1 §§3287(b) and 3289;

- 2 4. For any statutory penalties against Defendant, in a sum as provided by the Labor Code, the
3 applicable Wage Order, and/or other statutes.

4 **ON THE SECOND CAUSE OF ACTION**

- 5 1. For one hour of wages due to Plaintiffs and each Class member for each work period of
6 more than five (5) hours when they did not receive an uninterrupted thirty (30) minute meal
7 period;
8 2. For waiting time penalties according to proof;
9 3. For statutory costs according to proof; and
10 4. For statutory interest according to proof.

11 **ON THE THIRD CAUSE OF ACTION**

- 12 1. For one hour of wages due to Plaintiffs and each Class member for each work period of
13 more than three and one-half (3 ½) hours when they did not receive an uninterrupted ten
14 (10) minute rest period for each four (4) hours or major fraction thereof worked;
15 2. For waiting penalties according to proof;
16 3. For statutory costs according to proof; and
17 4. For statutory interest according to proof.

18 **ON THE FOURTH CAUSE OF ACTION**

- 19 1. For statutory compensation for any harm caused;
20 2. For compensatory damages and interest thereon for actual harm caused; and
21 3. For statutory penalties under Labor Code § 226(e), interest and attorneys' fees and
22 costs.

23 **ON THE FIFTH CAUSE OF ACTION**

- 24 1. For statutory penalties pursuant to Labor Code § 1174.5;
25 2. For statutory interest according to proof; and
26 3. For reasonable attorney's fees and costs pursuant to the Labor Code.

27 **ON THE SIXTH CAUSE OF ACTION**

- 28 1. For statutory penalties, including thirty (30) days' wages at the correct hourly rate for

- 1 all wages not timely paid upon termination;
- 2 2. For penalty enhancement for willful conduct;
- 3 3. For statutory interest according to proof; and
- 4 4. For reasonable attorney's fees and costs pursuant to the Labor Code.

5 **ON THE SEVENTH CAUSE OF ACTION**

- 6 1. For reimbursement of incurred necessary business expenses under Labor Code § 2802;
- 7 2. For statutory interest according to proof; and
- 8 3. For reasonable attorney's fees and costs pursuant to the Labor Code.

9 **ON THE EIGHTH CAUSE OF ACTION**

- 10 1. For the equitable, injunctive and declaratory relief;
- 11 2. For liquidated damages pursuant to Labor Code § 1194.1; and
- 12 3. For restitutionary disgorgement pursuant to the UCL.

13 **ON THE NINTH CAUSE OF ACTION**

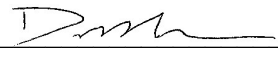
- 14 1. For penalties for each violation of the Private Attorneys General Act ("PAGA");
- 15 2. For interest on statutory penalties from the date of violation until paid in full; and
- 16 3. For reasonable attorneys' fees, expenses, and costs pursuant to the Labor Code.

17 **ON ALL CAUSES OF ACTION**

- 18 1. An order that this action may proceed and be maintained as a class action;
- 19 2. Reasonable attorney's fees;
- 20 3. General, special and consequential damages, to the extent allowed by law;
- 21 4. Costs of suit;
- 22 5. For attorneys' fees pursuant to Code of Civil Procedure § 1021.5;
- 23 6. Prejudgment interest at the maximum legal rate; and
- 24 7. Such other relief as the Court may deem just and proper.

25 DATED: May 23, 2023

THE MARKHAM LAW FIRM

26 By: 
27 David R. Markham
28 Maggie Realin
Lisa Brevard

KING & SIEGEL LLP

Julian Burns King
Elliot J. Siegel
Zachary Tucker

BARAHMAND LAW GROUP

Navid Barahmand

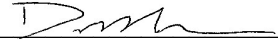
*Attorneys for Plaintiffs and all others
similarly situated*

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury for themselves and the Class members on all claims so triable.

DATED: May 23, 2023

THE MARKHAM LAW FIRM

By: 

David R. Markham
Maggie Realin
Lisa Brevard

KING & SIEGEL LLP

Julian Burns King
Elliot J. Siegel
Zachary Tucker

BARAHMAND LAW GROUP

Navid Barahmand

*Attorneys for Plaintiffs
and all others similarly situated*

Exhibit 1

THE MARKHAM LAW FIRM

- 888 Prospect Street, Suite 200 • La Jolla, California 92037 •
- Phone: (619) 399-3995 • Fax: (619) 615-2067 •
- Email: *contact@markham-law.com* •

May 2, 2022

Via Online Filing:

<https://dir.tfaforms.net/260>

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, California 94612

Re: Wage/Hour Claims of Armando Delamora (“Employee”), on behalf of himself and other aggrieved employees in California against Thorpe Design, Inc. (“Thorpe” or “Employer”)

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE § 2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency
 (“LWDA”)

From: Armando Delamora (“Employee”), on behalf of himself and other aggrieved employees in California, who was subjected to the wage and hour practices as set forth below

Pursuant to California Labor Code § 2699.3, this letter is intended to provide written notice of intent to file a representative civil action by an aggrieved employee pursuant to subdivisions (a) and (f) of California Labor Code § 2699. The aggrieved employee is Armando Delamora. The provisions of the California Labor Code that have been violated, including the facts and theories to support the alleged violation, are set forth below. For a more detailed explanation, see **Attachment A**.

Mr. Delamora is a resident of the State of California. During the applicable time period, Mr. Delamora was employed in California by Thorpe as a non-exempt, hourly-paid pipefitter. Mr. Delamora’s job duties consisted of maintenance, repair, and installation of fire sprinkler systems.

Thorpe employs numerous non-exempt, hourly-paid pipefitters, installers, technicians, and other employees with similar job titles and/or duties in the State of California, which are aggrieved employees in this proposed action. During the relevant time period, the Employer utilized consistent policies and procedures regarding the Employee and others similarly situated, in violation of Labor Code §§ 201-203, 204, 226(a), 226.7, 510, 512, 1174, 1198, and 2802 as follows:

First, Employer did not pay Employee and other aggrieved employees for all hours worked. Employee and other aggrieved employees were required by Employer to finish the jobs assigned each day which would frequently require Employee and other aggrieved employees to work beyond their scheduled hours. However, Employee and other aggrieved employees were only allowed to

record their hours as scheduled. As such, in violation of Labor Code §§ 510(a) and 1198 and the applicable Industrial Wage Orders, the Employer, by failing to pay the Employee and all others similarly situated for all hours worked, failed to timely pay all straight time and overtime wages due.

Second, Employer's policies and procedures prevented Employee and other aggrieved employees from taking timely and uninterrupted meal breaks. Employee was required to complete inspections, which often caused Employee to delay his meal break beyond the end of his fifth hour of work or miss it completely due to press of business. Regardless, Employer still required Employee to record his meal breaks as if they were compliant and timely taken. This violates Labor Code § 512(a), which provides that: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of at least 30 minutes..." Employee and other aggrieved employees were not paid meal break premiums for those late and/or missed meal breaks, in violation of Labor Code § 226.7(c).

Further, here, the work time and meal recordings violate California law. The applicable Wage Order provides that: "[e]very employer shall keep accurate information with respect to each employee including ... [t]ime records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded." Here, Employer's records are incomplete, and they fail to accurately state the beginning and end of all of aggrieved employees' shifts, and fail to accurately record the meal breaks.

Additionally, for the same reasons Employee was not able to take his meal breaks, as detailed above, often, Employee was not allowed to take rest breaks as provided by Labor Code § 226.7 and the applicable Wage Order. Employee and other aggrieved employees were not paid rest break premiums for those non-complaint rest breaks, in violation of Labor Code § 226.7(c).

Further, California Labor Code § 226(a) provides that every employer is required to furnish each employee with accurate itemized statements in writing showing, in part, "gross wages earned," (Labor Code § 226(a)(1)), "net wages earned" (Labor Code § 226(a)(5)), and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee..." (Labor Code § 226(a)(9)). Here, because the Employer failed to pay for all regular and/or overtime hours worked at the appropriate straight time and overtime rate, and failed to pay meal and rest break premiums, improper paystubs were issued to Employee and other aggrieved employees. Employee alleges that the Employer has violated Labor Code § 226(a) and Employee is entitled to recover civil penalties pursuant to Labor Code § 226.3.

Labor Code § 1174(d) provides that "[e]very person employing labor in this state shall...[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants..." Labor Code § 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code § 1174(d), Thorpe willfully and intentionally failed to make and/or keep records which accurately reflect the hours worked by Mr. Delamora and other aggrieved employees, failed to correctly list regular and overtime rates of pay, and failed to correctly list the gross wages and net wages, and meal and rest break premiums earned by them.

Further, Employer failed to pay all aggrieved employees, whose employment with Thorpe terminated within the applicable time period, all their earned wages, specifically meal and rest period premiums not paid for missed or interrupted meal and rest periods, and wages for all hours worked, including overtime, either at the time of discharge or within seventy-two hours of their leaving Employer's employ, in violation of California Labor Code § 201, 202, and 203. To the extent allowed by law, Employee seeks wages as penalties pursuant to Labor Code § 558 and expressly preserves Employee's right to do so.

Employer also failed to pay all wages due to employees within the time period specified by Labor Code § 204—specifically, meal and rest break premium wages and overtime wages. California Labor Code § 204 requires all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee are due and payable between the 1st and 10th day of the following month. Labor Code § 204 also requires all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

Lastly, during the applicable time period, Mr. Delamora and other aggrieved employees incurred necessary expenditures and losses in direct consequence of the discharge of their employment duties and their obedience to the directions of Thorpe. Expenses include, but are not limited to, mileage and cellphone charges, as Mr. Delamora was required to use his own vehicle to commute between jobs, regularly traveling hundreds of miles but was not reimbursed for mileage. This violates California Labor Code § 2802, which provides that the “[E]mployer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

Employee and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210, 218.5, 218.6, 226(e), 226.3, 558, 1174.5, 1194, 1197.1 and/or 2699(a), (f)-(g).

Mr. Delamora, as an aggrieved employee and on behalf of himself and all other current or former non-exempt, hourly paid pipefitters, installers, technicians, and other employees with similar job duties and/or titles, seeks all penalties or remedies as may be allowed under PAGA, and by this letter gives written notice of his PAGA claim pursuant to Labor Code § 2699.3. Please advise within sixty (60) calendar days of the postmark date of this Notice whether the LWDA intends to investigate the violations alleged above. We understand that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this Notice that the LWDA intends to investigate these allegations, the aggrieved Employee may immediately thereafter commence a civil action against the Employer pursuant to Labor Code § 2699.

Mr. Delamora is represented in this matter by The Markham Law Firm and United Employees Law Group.

cc: (via Certified Mail)

Capitol Services Inc.
Agent for Service of Process for
Thorpe Design, Inc.
7011 Sylvan Rd #D
Citrus Heights, CA 95610

Thorpe Design Inc.
Attn: Legal Department
410 Beatrice Ct, Suite A
Brentwood, CA 94513

Very truly yours,

THE MARKHAM LAW FIRM



David R. Markham
Maggie K. Realin
Lisa Brevard

cc: (via email)

walter@nelglaw.com

Attachment A

David R. Markham (SBN 071814)
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Maggie Realin (SBN 263639)
mrealin@markham-law.com
Lisa Brevard (SBN 323391)
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Walter Haines (SBN 071075)
walter@uelglaw.com
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Huntington Beach, CA 92649
Telephone: (888) 474-7242
Facsimile: (562) 256-1006

Attorneys for Plaintiff on behalf of himself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA**

ARMANDO DELAMORA, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

THORPE DESIGN, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO.

CLASS ACTION COMPLAINT FOR:

- (1) **FAILURE TO PAY OVERTIME
COMPENSATION;**
- (2) **FAILURE TO PROVIDE MEAL
PERIODS;**
- (3) **FAILURE TO PROVIDE REST
PERIODS;**
- (4) **FAILURE TO FURNISH TIMELY
AND ACCURATE WAGE
STATEMENTS;**
- (5) **FAILURE TO KEEP ACCURATE
PAYROLL RECORDS**
- (6) **FAILURE TO PAY ALL WAGES
DUE UPON TERMINATION;**
- (7) **FAILURE TO REIMBURSE
NECESSARILY INCURRED BUSINESS
EXPENSES;**
- (8) **VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION LAW
("UCL"), Bus. & Prof. Code § 17200
et seq.**
- (9) **VIOLATION OF PRIVATE
ATTORNEYS GENERAL ACT (PAGA)
(Lab. Code §2698, et seq.)**

DEMAND FOR JURY TRIAL

1 Plaintiff ARMANDO DELAMORA (“Plaintiff”), by and through his attorneys of record,
2 brings this Class Action Complaint against Defendant THORPE DESIGN, INC. (“Thorpe Design”
3 or “Defendant”), and respectfully alleges the following:

4 **NATURE OF THE ACTION**

5 1. This is a class action for wage and labor violations arising out of Defendant’s
6 failure to pay wages for all time worked and failure to provide timely and uninterrupted meal and
7 rest periods, and for derivative claims.

8 2. As set forth below, Defendant failed to pay its employees wages for all hours
9 worked, including overtime; failed to provide timely and uninterrupted meal and rest periods to its
10 California non-exempt employees in violation of California Labor Code §§ 512 and 226.7, and the
11 applicable Industrial Wage Order; failed to pay its employees one hour of pay at the regular rate of
12 compensation for each instance that Defendant failed to provide statutorily mandated rest periods
13 and timely off-duty meal periods; failed to maintain accurate records; failed to furnish timely and
14 accurate wage statements; failed to pay all wages due upon termination; failed to reimburse for
15 necessarily incurred business expenses; and, is in violation of California’s Unfair Competition Law
16 (“UCL”).

17 3. Plaintiff seeks to represent all those similarly situated who are or were residents of
18 the State of California.

19 **JURISDICTION AND VENUE**

20 4. This Court has jurisdiction over this action because this is a civil action where the
21 matter in controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of the
22 Court. The acts and omissions complained of in this action took place in the State of California.
23 Venue is proper because upon information and belief, Defendant has their corporate headquarters
24 in this county, conducts substantial business in this county and employs numerous employees in
25 California in this county.

26 **PARTIES**

27 5. Plaintiff ARMANDO DELAMORA is a resident of Antioch, California. Plaintiff was
28 employed by Defendant in Brentwood, California, from October 13, 2016 to November 5, 2021, as a

1 pipefitter.

2 6. At all times material herein, Defendant was a corporation registered to do business
3 in California, including but not limited to conducting business within the County of Contra Costa,
4 with its corporate headquarters located in Contra Costa, California. Defendant is in the fire
5 sprinkler system design and installation industry. On information and belief, Defendant is a fire
6 sprinkler systems contractor for residential and commercial buildings serving Northern California.
7 At all relevant times alleged herein, Plaintiff is informed and believes that Defendant is authorized
8 to and conducts business in California, including but not necessarily limited to County of Contra
9 Costa. Defendant employed Plaintiff in Contra Costa, California, and employ/employed other
10 pipefitters, installers, technicians and other non-exempt employees with similar job duties and/or
11 titles throughout Northern California.

12 7. Plaintiff is currently unaware of the true names and capacities, whether individual,
13 corporate, associate, or otherwise, of the defendants sued herein under fictitious names Does 1
14 through 10, inclusive, and therefore sue such defendants by such fictitious names. Plaintiff will
15 seek leave to amend this complaint to allege the true names and capacities of said fictitiously
16 named defendants when their true names and capacities have been ascertained. Plaintiff is
17 informed and believes and thereon alleges that each of the fictitiously named defendants is legally
18 responsible in some manner for the events and occurrences alleged herein, and for the damages
19 suffered by the Class.

20 8. Plaintiff is informed and believes and thereon alleges that all defendants, including
21 the fictitious Doe defendants, were at all relevant times acting as actual agents, conspirators,
22 partners and/or joint ventures and/or employees of all other defendants, and that all acts alleged
23 herein occurred within the course and scope of said agency, employment, partnership, and joint
24 venture, conspiracy or enterprise, and with the express and/or implied permission, knowledge,
25 consent, authorization and ratification of their co-defendants.

26 **FACTS**

27 9. Between October 13, 2016 and November 5, 2021, Plaintiff was employed by
28 Defendant, as a non-exempt, hourly-paid pipefitter in Contra Costa, California. Plaintiff's duties

1 included installing fire sprinkler systems in residential homes as well as performing inspections.
2 Plaintiff was typically dispatched to one residential home per day to perform installations of fire
3 sprinklers. Plaintiff frequently had to leave job sites he was working on to conduct inspections.
4 Plaintiff was expected to complete his jobs and inspections each day within his scheduled hours,
5 but it often took longer; however, Plaintiff was not allowed to record the overtime hours he
6 worked. Plaintiff would be reprimanded if he recorded his actual hours worked and Defendant
7 would alter Plaintiff's timecard to remove the overtime. Defendant failed to pay Plaintiff for all
8 hours worked, including 1.5-times his hourly rate for his work performed over 8 hours in a day,
9 and/or 40 hours in a week. Defendant was aware of these violations.

10 10. Often, Plaintiff would have to leave his job sites to conduct inspections, which
11 would delay his meal period until after then end of the fifth hour of work or cause him to miss it
12 completely. Nonetheless, Plaintiff was required to record his meal breaks as if they were compliant
13 and timely taken. Plaintiff was never paid a meal period premium for those late or missed meal
14 periods.

15 11. Additionally, Plaintiff often did not get his rest breaks due having to conduct
16 inspections and the press of business. Plaintiff was never paid a rest period premium for these
17 missed rest periods.

18 12. Further, Plaintiff was required to use his personal vehicle and cellphone for work
19 purposes. Plaintiff sometimes had to commute to the various different job sites and travel to up to
20 five inspections per day and was not reimbursed for the mileage incurred using his personal
21 vehicle. Plaintiff was required to use his personal cellphone to receive calls and texts from
22 supervisors regarding status of projects and results of inspections. Plaintiff and other class
23 members were not reimbursed for these necessarily incurred business expenses.

24 13. Upon information and belief, the above-mentioned unlawful employment practices
25 by Defendant were applied the same to all pipefitters, installers, technicians and other non-exempt
26 employees with similar job duties and/or titles employed by Defendant in the State of California.

27 14. Defendant's conduct, as alleged here, has caused Plaintiff and class members
28 damages including, but not limited to, loss of wages and compensation. Defendant is liable to

1 Plaintiff and the class for failing to pay all straight-time and overtime wages owed for each pay
2 period, failing to pay meal and rest break premiums, failing to provide timely and accurate wage
3 statements, failing to keep accurate payroll records, failing to pay all wages due upon termination,
4 and unfair competition.

5 15. Plaintiff is a member of, and seeks to be a representative for, the class of similarly
6 situated employees who all have been exposed to, have suffered, and/or were permitted to work
7 under Defendant's unlawful employment practices as alleged herein.

8 **EXHAUSTION OF PAGA NOTICE REQUIREMENT**

9 16. Plaintiff Delamora exhausted the notice requirement by filing a complaint with the
10 Labor and Workforce Development Agency ("LWDA") in his letter dated May 2, 2022, as
11 required under the California Labor Code Private Attorney General Act ("PAGA"). A true and
12 correct copy of Plaintiff's letter is attached hereto as **Exhibit A**. The LWDA did not assume
13 jurisdiction over the applicable penalty claims alleged; therefore, Plaintiff has exhausted the
14 procedural requirement under PAGA to pursue any and all penalty claims as provided under
15 PAGA.

16 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

17 17. Plaintiff brings this action on behalf of himself and on behalf of all others similarly
18 situated, and as a member of the Class he seeks to represent. The class period is from four years
19 prior to the filing of the Complaint in this action until the trial of this action ("class period.") The
20 Class is defined as:

21 *All current and former non-exempt employees of Defendant, employed in*
22 *California, who, during the time period commencing four years before this*
23 *complaint was filed, and until the present ("class period"), worked as a*
pipefitter, installer, technician or a position with similar duties and/or job
titles.

24 18. Plaintiff further seeks to represent the following subclasses:

25 **The Overtime Subclass:**

26 "All current and former non-exempt employees of Defendant, employed in
27 California, who, during the time period commencing four years before this
28 complaint was filed, and until the present ("class period"), worked as a
pipefitter, installer, technician, or a position with similar duties and/or job
titles, and who worked at least one shift longer than eight hours in a workday
and/or worked more than 40 hours during the workweek."

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1 pursuant to the provisions of Code of Civil Procedure § 382 and other applicable law.

2 21. **Numerosity of the Class:** Pursuant to Code of Civil Procedure § 382, members of
3 the Class are so numerous that their individual joinder is impracticable. Plaintiff estimates, on
4 information and belief, that there are several hundred current and former non-exempt employees of
5 Defendant employed in California during the class period. The precise number of Class members
6 and their addresses are known to Plaintiff or will be known to Plaintiff through discovery. Class
7 members may be notified of the pendency of this action by mail, electronic mail, the Internet, or
8 published notice.

9 22. **Existence of Predominance of Common Questions of Law and Fact:** Pursuant
10 to Code of Civil Procedure § 382, common questions of law and fact and common answers exist as
11 to all members of the Class. These questions predominate over any questions affecting only
12 individual Class members. These common legal and factual questions and answers include:

- 13 a. Whether Defendant had a policy or practice of not paying for all hours worked, including
14 overtime;
15 b. Whether Plaintiff and the class were not provided with timely, off-duty meal periods of at
16 least 30 minutes;
17 c. Whether Plaintiff and the class were not permitted and/or authorized to take uninterrupted
18 rest breaks;
19 d. Whether Defendant had a policy or practice of not paying meal or rest period premiums;
20 e. Whether Defendant violated the applicable California Industrial Welfare Commission
21 (“IWC”) Order by failing to provide Plaintiff and the members of the class with timely off-
22 duty thirty (30) minute meal periods;
23 f. Whether Plaintiffs and the class were not paid all wages owed to them, including overtime;
24 g. Whether Defendant engaged in a pattern or practice of unlawfully deducting wages of
25 Plaintiffs and members of the class;
26 h. Whether Defendants engaged in a pattern or practice of failing to reimburse business
27 expenses necessarily incurred by Plaintiffs and the class;
28 i. Whether Defendant engaged in unfair practices and violated California Business &

- 1 Professions Code § 17200 by failing to provide Plaintiff and the members of the class with
2 their statutory off-duty meal and rest periods on a timely basis;
- 3 j. Whether Defendant engaged in unfair practices and violated California Business &
4 Professions Code section 17200 by failing to pay Plaintiff and the members of the class for
5 all time worked;
- 6 k. Whether Defendant maintained accurate time records of off-duty thirty (30) minute meal
7 breaks taken by Plaintiff and members of the class in accordance with the applicable IWC
8 Wage Order;
- 9 l. Whether Defendant maintained accurate time records of all hours worked by Plaintiff and
10 members of the class in accordance with the applicable IWC Wage Order
- 11 m. Whether Defendant violated Labor Code § 226(a) by issuing inaccurate itemized wage
12 statements to Plaintiff and members of the class that failed to include payments for missed,
13 untimely, and/or on-duty meal periods throughout the Class period;
- 14 n. Whether Defendant violated Labor Code § 226(a) by issuing inaccurate itemized wage
15 statements to Plaintiff and members of the class that failed to include payment for all hours
16 worked;
- 17 o. Whether Defendant violated Labor Code § 226(a) by issuing inaccurate itemized wage
18 statements to Plaintiff and members of the class that failed to accurately state the total
19 hours worked, to the detriment of Plaintiff and the class;
- 20 p. Whether Defendant violated Labor Code § 1174 by failing to keep accurate payroll records;
- 21 q. Whether Defendant violated Labor Code §§ 201-203 by failing to pay all wages due upon
22 termination to all Class members who were terminated or voluntarily quit; and
- 23 r. The nature and extent of class-wide injury and the measure of damages or restitution.

24 23. **Typicality:** Plaintiff's claims are typical of the claims of the members of the class
25 he seeks to represent because Plaintiff, as a non-exempt employee of Defendant, was exposed and
26 subjected to the same unlawful business practices as other employees employed by Defendant
27 during the class period. Plaintiff and the members of the class he seeks to represent sustained the
28 same types of damages and losses.

1 24. **Adequacy:** Plaintiff is an adequate representative of the class he seeks to represent
2 because his interests do not conflict with the interests of the members of the class Plaintiff seeks to
3 represent. Plaintiff has retained counsel competent and experienced in complex class action
4 litigation and Plaintiff intends to prosecute this action vigorously. The interests of the members of
5 the class will be fairly and adequately protected by Plaintiff and his counsel.

6 25. **Superiority and Substantial Benefit:** The class action is superior to other
7 available means for the fair and efficient adjudication of Plaintiff's and the Class members' claims.
8 The damages suffered by each individual Class member may be limited. Damages of such
9 magnitude are small given the burden and expense of individual prosecution of the complex and
10 extensive litigation necessitated by Defendant's conduct. Further, it would be virtually impossible
11 for the Class members to redress the wrongs done to them on an individual basis. Even if members
12 of the Class themselves could afford such individual litigation, the court system could not.
13 Individualized litigation increases the delay and expense to all parties and the court system due to
14 the complex legal and factual issues of the case. By contrast, the class action device presents far
15 fewer management difficulties and provides the benefits of single adjudication, economy of scale,
16 and comprehensive supervision by a single court.

17 26. The Class should also be certified because:

- 18 a. The prosecution of separate actions by individual members of the Class would create a
19 risk of inconsistent or varying adjudications with respect to individual Class members
20 which would establish incompatible standards of conduct for Defendant;
- 21 b. The prosecution of separate actions by individual members of the Class would create a
22 risk of adjudication with respect to them, which would, as a practical matter, be
23 dispositive of the interests of the other Class members not parties to the adjudications,
24 or substantially impair or impede their ability to protect their interests; and
- 25 c. Defendant has acted or refused to act on grounds generally applicable to the Class,
26 and/or the general public, thereby making appropriate final and injunctive relief with
27 respect to the Class as a whole.

FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME COMPENSATION
(Violation of Labor Code § 510)
(Against all defendants)

27. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

28. Labor Code §510 and the applicable Wage Order provide that employees in California shall not be employed more than eight hours in any workday or forty hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law. Specifically, Labor Code §510(a) requires that: Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.

29. Labor Code § 1194 establishes an employee's right to recover unpaid overtime compensation, and interest thereon, together with the costs of suit, and attorneys' fees. Labor Code §1198 makes employment of an employee for longer hours than the IWC set or under conditions the IWC prohibits is unlawful.

30. At all times relevant hereto, Plaintiff and other members of the class, have worked more than eight hours in a workday, and/or more than forty hours in a workweek.

31. At all times relevant hereto, Defendant has failed to pay Plaintiff, and the other members of the class, the overtime compensation premium for those unpaid hours they have worked in excess of the maximum hours permissible by law as required by Labor Code § 510 and 1198, and the applicable Wage Order.

32. By virtue of Defendant's unlawful failure to pay the lawful overtime rate of compensation to the Plaintiff, and the other members of the class, Plaintiff and the other members of the class, have suffered, and will continue to suffer, damages in amounts which are presently unknown to them, but which exceed the jurisdictional limits of this Court and will be ascertained

1 according to proof at trial.

2 33. Defendant acted and is acting intentionally and oppressively toward Plaintiff, and
3 the other members of the class, with a conscious disregard of their rights, or the consequences to
4 them, with the intent of depriving them of property and legal rights and otherwise causing them
5 injury. Defendant failed to pay Plaintiff and other members of the class for all hours worked
6 including the time work beyond the prescheduled hours to complete jobs. To the extent this time
7 worked exceeded eight (8) hours in a day and/or forty (40) hours in a week, Plaintiff and class
8 members are entitled to overtime wages.

9 34. Plaintiff and the class, request recovery of overtime compensation according to
10 proof, interest, attorneys' fees, expenses, and costs pursuant to Labor Code § 1194(a), and Civil
11 Code §§3287(b) and 3289, as well as the assessment of any statutory penalties against Defendant,
12 in a sum as provided by the Labor Code, the applicable Wage Orders, and/or other statutes.

13 **SECOND CAUSE OF ACTION**
14 **FAILURE TO PROVIDE MEAL PERIODS**
15 **(Violation of Labor Code §§ 512, 226.7, and the applicable Wage Order)**
16 **(Against all defendants)**

17 35. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth
18 herein.

19 36. California Labor Code § 226.7(b) provides, "An employer shall not require an
20 employee to work during a meal or rest period mandated pursuant to an applicable order of the
21 Industrial Welfare Commission".

22 37. IWC Order No. 4-2001(11)(A) provides, in pertinent part: "[n]o employer shall
23 employ any person for a work period of more than five (5) hours without a meal period of not less
24 than 30 minutes, except that when a work period of not more than six (6) hours will complete the
25 day's work the meal period may be waived by mutual consent of the employer and the employee."

26 38. Labor Code § 512(a) provides, in pertinent part: "[a]n employer may not employ an
27 employee for a work period of more than five hours per day without providing the employee with a
28 meal period of not less than 30 minutes, except that if the total work period per day of the
employee is no more than six hours, the meal period may be waived by mutual consent of both the

1 employer and employee. An employer may not employ an employee for a work period of more
2 than 10 hours per day without providing the employee with a second meal period of not less than
3 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period
4 may be waived by mutual consent of the employer and the employee only if the first meal period
5 was not waived.”

6 39. As alleged herein, Defendant’s pattern, practice, and uniform policy required
7 Plaintiff and other class members to effectively skip or delay their meal breaks due to conducting
8 required inspections and other press of business.

9 40. Defendant failed to authorize and permit timely and uninterrupted meal periods
10 during the Class period. Plaintiff and members of the class were routinely required to work without
11 a timely and uninterrupted meal break at the direction of Defendant and/or with Defendant’s
12 knowledge and acquiescence.

13 41. By its actions in requiring its employees to work through meal periods and/or its
14 failure to relieve the employees of their duties for their off-duty meal periods, Defendant has
15 violated California Labor Code §§ 226.7, 512 and § 11 of IWC Wage Order No. 4-2001, and is
16 liable to Plaintiff and the class.

17 42. As a result of the unlawful acts of Defendant, Plaintiff and the class have been
18 deprived of timely off-duty meal periods, and are entitled to recovery under Labor Code §§
19 226.7(c), 512 and § 11 of IWC Wage Order No. 4-2001, in the amount of one additional hour of
20 pay at the employee’s regular rate of compensation for each workday in which Defendant failed to
21 provide its employees with timely statutory off-duty meal periods.

22 43. Plaintiff, and the other members of the class, are entitled to seek and recover
23 reasonable attorneys’ fees and costs pursuant to Labor Code §§ 226.7 and 512.

24 **THIRD CAUSE OF ACTION**
25 **FAILURE TO PROVIDE REST PERIODS**
26 **(Violation of Labor Code §§ 226.7 and the applicable Wage Order)**
27 **(Against all defendants)**

28 44. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth
herein.

1 45. California Labor Code § 226.7(b) provides, “An employer shall not require an
2 employee to work during a meal or rest period mandated pursuant to an applicable order of the
3 Industrial Welfare Commission”.

4 46. The applicable Wage Order provides, in pertinent part: “[e]very employer shall
5 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
6 middle of each work period. The authorized rest period time shall be based on the total hours
7 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
8 thereof. However, a rest period need not be authorized for employees whose total daily work time
9 is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
10 worked for which there shall be no deduction from wages”.

11 47. The applicable Wage Order further provides: “[i]f an employer fails to provide an
12 employee with a rest period in accordance with the applicable provisions of this order, the
13 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
14 compensation for each workday that the rest period is not provided”.

15 48. As alleged herein, Defendant failed to authorize and permit rest breaks during the
16 Class period. Plaintiff and members of the class were routinely required to work through rest
17 periods at the direction of Defendant and/or with Defendant’s knowledge and acquiescence.

18 49. By its actions in requiring its employees during the class period to work through rest
19 periods and/or its failure to relieve the employees of their duties for their rest periods, Defendant
20 violated the Wage Order and California Labor Code § 226.7 and is liable to Plaintiff and the class.

21 50. Defendant’s unlawful conduct alleged herein occurred in the course of employment
22 of Plaintiff and all others similarly situated and such conduct has continued through the filing of
23 this complaint.

24 51. As a direct and proximate result of Defendant’s unlawful action, Plaintiff and the
25 class have been deprived of timely rest periods and/or were not paid for rest periods taken during
26 the Class period, and are entitled to recovery under Labor Code § 226.7(c) in the amount of one
27 additional hour of pay at the employee’s regular rate of compensation for each workday in which
28 Defendant failed to provide employees with timely and/or paid rest periods.

1 52. Plaintiff, and the other members of the class, are entitled to seek and recover
2 reasonable attorneys' fees and costs pursuant to Labor Code § 226.7.

3 **FOURTH CAUSE OF ACTION**
4 **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS**
5 **(Violation of Labor Code §226)**
6 **(Against all defendants)**

7 53. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth
8 herein.

9 54. California Labor Code § 226(a) provides: “[e]very employer shall, semimonthly or
10 at the time of each payment of wages, furnish each of his or her employees, either as a detachable
11 part of the check, draft, or voucher paying the employee’s wages, or separately when wages are
12 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
13 earned, (2) total hours worked by the employee [...], (3) the number of piece-rate units earned and
14 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
15 that all deductions made on written orders of the employee may be aggregated and shown as one
16 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7)
17 the name of the employee and only the last four digits of his or her social security number, [...], (8)
18 the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in
19 effect during the pay period and the corresponding number of hours worked at each hourly rate by
20 the employee...”.

21 55. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for the
22 initial pay period in which a violation of Labor Code § 226 occurs and \$100 for each subsequent
23 pay period, for all pay periods in which the employer knowingly and intentionally failed to provide
24 accurate itemized statements to the employee causing the employee to suffer injury.

25 56. Plaintiff is informed, believes and thereon alleges that at all times relevant,
26 Defendant knowingly and intentionally failed to furnish and continues to knowingly and
27 intentionally fail to furnish Plaintiff and each Class member with timely and accurate itemized
28 statements showing the gross wages earned by each of them, as required by Labor Code § 226(a),
in that the premiums owed to Plaintiff and the members of the Class for untimely or interrupted

1 meal and rest periods were not included in gross wages earned by Plaintiff and the Class.

2 57. Further, wages owed to Plaintiff and members of the class for overtime hours
3 worked, and the time worked through meal breaks, were not included in gross wages earned by
4 Plaintiff and the Class.

5 58. Defendant's failure to provide Plaintiff and members of the Class with accurate
6 itemized wage statements during the Class period has caused Plaintiff and members of the Class to
7 incur economic damages in that they were not aware that they were owed and not paid
8 compensation for missed rest periods and on-duty meal periods, and for all hours worked. In
9 addition, Defendant provided inaccurate information regarding hours worked, which masked its
10 underpayment of wages to Plaintiff and the Class.

11 59. As a result of Defendant's issuance of inaccurate itemized wage statements to
12 Plaintiff and members of the Class in violation of Labor Code § 226(a), Plaintiff and the members
13 of the Class are each entitled to recover penalties pursuant to Labor Code § 226(e).

14 **FIFTH CAUSE OF ACTION**
15 **FAILURE TO KEEP ACCURATE PAYROLL RECORDS**
16 **(Violation of Labor Code § 1174)**
17 **(Against all defendants)**

18 60. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth
19 herein.

20 61. Labor Code § 1174(d), requires an employer to keep at a central location in
21 California or at the plant or establishment at which the employees are employed, payroll records
22 showing the hours worked daily, and the wages paid to each employee. Plaintiff is informed and
23 believes that Defendant willfully failed to make or keep accurate records for Plaintiff and Class
24 members.

25 62. The applicable Wage Order requires that every employer shall keep accurate
26 information with respect to each employee, including time records showing when each employee
27 begins and ends each work period, the total daily hours worked by each employee and the total
28 hours worked in each payroll period, and applicable rates of pay. Plaintiff is informed and believes
that Defendant willfully and intentionally failed to make and/or keep records which accurately

1 reflect the hours worked by Plaintiff and Class members. Specifically, Plaintiff believes that
2 Defendant's records do not accurately reflect the hours worked by Plaintiff and the Class members,
3 do not correctly list regular and overtime rates of pay, do not accurately record Plaintiff and Class
4 Members' meal breaks, and do not correctly list the gross wages and net wages, and meal and rest
5 break premiums earned by them.

6 63. Plaintiff is informed and believes that Defendant's failure to keep accurate payroll
7 records, as described above, violated Labor Code § 1174(d) and the applicable wage order.
8 Plaintiff and the Class members are entitled to penalties of \$100.00 for the initial violation and
9 \$200.00 for each subsequent violation for every pay period during which these records and
10 information were not kept by Defendant.

11 64. Plaintiff is informed and believes that Defendant's failure to keep and maintain
12 accurate records and information, as described above, was willful, and Plaintiff and the Class are
13 entitled to a statutory penalty of \$500.00 for Plaintiff and each Class member pursuant to Labor
14 Code § 1174.5

15 65. Plaintiff and the members of the Class are each entitled to recover interest,
16 attorney's fees and costs pursuant to Labor Code §1174, as well as all statutory penalties and
17 attorneys' fees against Defendant.

18 **SIXTH CAUSE OF ACTION**
19 **FAILURE TO PAY ALL WAGES DUE UPON TERMINATION**
20 **(Violation of Labor Code §§ 201-203)**
21 **(Against all defendants)**

22 66. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth
23 herein.

24 67. California Labor Code §§ 201-203 provide that if an employer discharges an
25 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
26 and that if an employee voluntarily leaves his or her employment, his or her wages shall become
27 due and payable not later than seventy-two hours thereafter, unless the employee has given
28 seventy-two hours prior 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.

1 68. During the Class period, Defendant willfully failed to pay Class members who are
2 no longer employed by Defendant all their earned wages, specifically, meal and rest period
3 premiums not paid for missed or interrupted meal and rest periods, and wages for all hours worked,
4 including overtime, either at the time of discharge or within seventy-two hours of their leaving
5 Defendant's employ in violation of California Labor Code §§ 201, 202, and 203.

6 69. Therefore, Plaintiff and members of the Class are entitled to waiting time penalties
7 for each day that has passed that they have not received all wages owed to them, up to 30 days.

8 **SEVENTH CAUSE OF ACTION**
9 **FAILURE TO REIMBURSE INCURRED NECESSARY BUSINESS EXPENSES**
10 **Violation of Labor Code § 2802, et seq.)**
11 **(Against all defendants)**

12 70. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth
13 herein.

14 71. California Labor Code § 2802 provides that an employer must reimburse employees
15 for all necessary expenditures.

16 72. At all relevant times during the class period, Plaintiff and other members of the
17 class incurred necessary business-related expenses and costs that were not fully reimbursed by
18 Defendant, including, but not limited to, work related mileage expenses and personal cellphone
19 usage.

20 73. Defendant has intentionally and willfully failed to fully reimburse Plaintiff and the
21 Class for necessary business-related expenses and costs. Defendant's conduct violates California
22 Labor Code § 2802.

23 74. Plaintiff and Class members are entitled to recover from Defendant their business-
24 related expenses incurred during the course and scope of their employment, plus interest, pursuant
25 to California Labor Code § 2802.

26 **EIGHTH CAUSE OF ACTION**
27 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**
28 **(Bus. & Prof. Code §§ 17200 et seq.)**
 (Against all defendants)

 75. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth
herein.

76. Section 17200 of the California Business and Professions Code (the “UCL”) prohibits any unlawful, unfair, or fraudulent business practices.

77. Through its action alleged herein, Defendant has engaged in unfair competition within the meaning of the UCL. Defendant's conduct, as alleged herein, constitutes unlawful, unfair, and/or fraudulent business practices under the UCL.

78. Defendant's unlawful conduct under the UCL includes, but is not limited to, violating the statutes alleged herein. Defendant's unfair conduct under the UCL includes, but is not limited to, failure to pay Class members wages and compensation they earned through labor provided, failure to provide meal and rest breaks, reimburse business expenses, and failure to otherwise compensate Class members as alleged herein. Defendant's fraudulent conduct includes, but is not limited to, issuing wage statements containing false and/or misleading information about the time the Class members worked and the amount of wages or compensation due.

79. Plaintiff has standing to assert this claim because he has suffered injury in fact and has lost money as a result of Defendant's conduct.

80. Plaintiff and the Class seek restitutionary disgorgement from Defendant of monies owed for all hours worked and for unpaid meal and rest period premiums.

81. Plaintiff has assumed the responsibility of enforcement of the laws and public policies specified here by suing on behalf of themselves and other similarly situated Class members previously or presently working for Defendant in California. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure § 1021.5.

NINTH CAUSE OF ACTION

VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT (PAGA)
(Cal. Lab. Code §§2698 and 2699, *et. seq.*)
(Against all defendants)

82. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

83. Labor Code §§ 2698 and 2699 (The California Private Attorneys General Act of

2004, or “PAGA”), expressly establish that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

84. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees has discretion to assess a civil penalty, a fact-finder in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

85. Plaintiff is an “aggrieved employee” as defined by Labor Code § 2699, because he was an employee of Defendant, and one or more of the Labor Code violations was committed against him.

86. Plaintiff assert all of his claims in this Complaint against Defendant on behalf of himself, and all other members of the Class and/or on behalf of all aggrieved employees, as well as the general public, in his capacity as a “private attorney general,” and seeks all statutory penalties available under the Labor Code.

87. In addition to the previously asserted claims, Plaintiff also alleges Defendant violated California Labor Code Section 226.3 based on the previously alleged violation of Labor Code section 226(a), as described in the fifth cause of action.

88. By reason of the above and pursuant to Labor Code § 2699, Plaintiff Delamora on behalf of himself, and all other members of the Class and/or behalf of all aggrieved employees, as well as the general public, are entitled to payment of a penalty of \$100 per pay period for each employee for the initial violation, and \$200 per pay day period for each employee for each subsequent violation, plus interest.

89. In addition, Plaintiff Delamora, on behalf of himself, and all other members of the Class and/or behalf of all aggrieved employees, as well as the general public, seek and are entitled to have 75% of all recovered penalties and interest allocated to the LWDA and 25% to the Plaintiff

1 and aggrieved employees. Further, Plaintiff is entitled to seek and recover reasonable attorneys'
2 fees, expenses and costs pursuant to Labor Code §2699, and any other applicable statutes.

3 90. Plaintiff complied with the notice requirements of Labor Code §2699.3(a)(1) prior
4 to commencing this action. A copy of the letter sent to the California LWDA on May 2, 2022, via
5 certified mail, and copied to Defendant's Agent for Service of Process in California on the same
6 date, via certified mail, in accordance with §2699.3(a)(1), is attached hereto, as **Exhibit 1**, and by
7 reference incorporated herein.

8 91. As of today's date, the LWDA has not responded to Plaintiff's notice.

9 92. Plaintiff and the Plaintiff Class are also entitled to reasonable attorneys' fees and
10 costs, pursuant to California Labor Code §2699.3(g)(1).

11 **PRAYER**

12 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
13 judgment against Defendant as to the appropriate causes of action as follows:

14 **ON THE FIRST CAUSE OF ACTION**

- 15 1. For all overtime compensation owed to Plaintiff and each Class Member for all hours
16 worked according to proof;
- 17 2. For interest on any compensatory damages;
- 18 3. For attorneys' fees, expenses, and costs pursuant to Labor Code §1194(a), and Civil Code
19 §§3287(b) and 3289;
- 20 4. For any statutory penalties against Defendant, in a sum as provided by the Labor Code, the
21 applicable Wage Order, and/or other statutes.

22 **ON THE SECOND CAUSE OF ACTION**

- 23 1. For one hour of wages due to Plaintiff and each Class member for each work period of
24 more than five (5) hours when they did not receive an uninterrupted thirty (30) minute meal
25 period;
- 26 2. For waiting time penalties according to proof;
- 27 3. For statutory costs according to proof; and
- 28 4. For statutory interest according to proof.

1 **ON THE THIRD CAUSE OF ACTION**

- 2 1. For one hour of wages due to Plaintiff and each Class member for each work period of
3 more than three and one-half (3 ½) hours when they did not receive an uninterrupted ten
4 (10) minute rest period for each four (4) hours or major fraction thereof worked;
5 2. For waiting penalties according to proof;
6 3. For statutory costs according to proof; and
7 4. For statutory interest according to proof.

8 **ON THE FOURTH CAUSE OF ACTION**

- 9 1. For statutory compensation for any harm caused;
10 2. For compensatory damages and interest thereon for actual harm caused; and
11 3. For statutory penalties under Labor Code § 226(e), interest and attorneys' fees and
12 costs.

13 **ON THE FIFTH CAUSE OF ACTION**

- 14 1. For statutory penalties pursuant to Labor Code § 1174.5;
15 2. For statutory interest according to proof; and
16 3. For reasonable attorney's fees and costs pursuant to the Labor Code.

17 **ON THE SIXTH CAUSE OF ACTION**

- 18 1. For statutory penalties, including thirty (30) days' wages at the correct hourly rate for
19 all wages not timely paid upon termination;
20 2. For penalty enhancement for willful conduct;
21 3. For statutory interest according to proof; and
22 4. For reasonable attorney's fees and costs pursuant to the Labor Code.

23 **ON THE SEVENTH CAUSE OF ACTION**

- 24 1. For reimbursement of incurred necessary business expenses under Labor Code § 2802;
25 2. For statutory interest according to proof; and
26 3. For reasonable attorney's fees and costs pursuant to the Labor Code.

27 **ON THE EIGHTH CAUSE OF ACTION**

- 28 1. For the equitable, injunctive and declaratory relief;
2. For liquidated damages pursuant to Labor Code § 1194.1; and

3. For restitutionary disgorgement pursuant to the UCL.

ON THE NINTH CAUSE OF ACTION

1. For penalties for each violation of the Private Attorneys General Act (“PAGA”);
2. For interest on statutory penalties from the date of violation until paid in full; and
3. For reasonable attorneys’ fees, expenses, and costs pursuant to the Labor Code.

ON ALL CAUSES OF ACTION

1. An order that this action may proceed and be maintained as a class action;
2. Reasonable attorney’s fees;
3. General, special and consequential damages, to the extent allowed by law;
4. Costs of suit;
5. For attorneys’ fees pursuant to Code of Civil Procedure § 1021.5;
6. Prejudgment interest at the maximum legal rate; and
7. Such other relief as the Court may deem just and proper.

DATED: May __, 2022

THE MARKHAM LAW FIRM

By: 

David R. Markham

Maggie Realin

Lisa Brevard

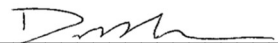
*Attorneys for Plaintiff and all others
similarly situated*

DEMAND FOR JURY TRIAL

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

DATED: May __, 2022

THE MARKHAM LAW FIRM

By: 

David R. Markham

Maggie Realin

Lisa Brevard

*Attorneys for Plaintiff
and all others similarly situated*

Mail Receipt:

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TRANSACTION DATE:
MON 2 MAY 2022

EXPECTED DELIVERY DATE:

N/A
THE MARKHAM LAW FIRM
LEE ANNA CARCIONE
888 PROSPECT ST
SUITE 200
LA JOLLA CA 92037

MAIL FROM:
(619) 399-3995
MAIL TO:
THORPE DESIGN INC
LEGAL DEPARTMENT
410 BEATRICE CT
STE A
BRENTWOOD CA 94513-7366
BUSINESS

MAILED THROUGH:
THE UPS STORE #5590
ESCONDIDO, CA 92027-2322
(760) 738-8550

MAIL INFORMATION:
USPS FIRST CLASS MAIL
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0 lb 4.9 oz each piece
15.00X12.00X0.75
1 PIECE
CERTIFIED MAIL
RETURN RECEIPT

TRACKING & REFERENCE
SHIPMENT ID: MHZBRTWFS0G2
ORDER/ITEM #: - -
REF#: - -
CERT MAIL #: 70190140000048088125

DESCRIPTION:
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POSTAGE CHARGES	
FIRST CLASS MAIL	19.47
PIECES	X 1
TOTAL	\$19.47

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TRANSACTION DATE:
MON 2 MAY 2022

EXPECTED DELIVERY DATE:

N/A
THE MARKHAM LAW FIRM
LEE ANNA CARCIONE
888 PROSPECT ST
SUITE 200
LA JOLLA CA 92037
MAIL FROM:
(619) 399-3995
MAIL TO:
CAPITOL SERVICES INC
7011 SYLVAN RD
#D
CITRUS HEIGHTS CA 95610
BUSINESS

MAIL INFORMATION:
USPS FIRST CLASS MAIL
0 lb 5.1 oz total weight
0 lb 5.1 oz each piece
15.00X12.00X0.75
1 PIECE
CERTIFIED MAIL
RETURN RECEIPT

TRACKING & REFERENCE
SHIPMENT ID: MHZBRTW701CX0
ORDER/ITEM #: - -
REF#: - -
CERT MAIL #: 70190140000048088118

DESCRIPTION:
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POSTAGE CHARGES	
FIRST CLASS MAIL	19.91
PIECES	X 1
TOTAL	\$19.91

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Exhibit 2



Julian Burns King
julian@kingsiegel.com

Elliot J. Siegel
elliot@kingsiegel.com

Robert J. King
robert@kingsiegel.com

July 22, 2022

Via Electronic Filing:

Labor & Workforce Development Agency

1515 Clay Street, Ste. 801
Oakland, CA 94612

Via Certified Mail:

Thorpe Design, Inc.

c/o Karen E. Bowen, Esq.
Kraeber Law Office
1191 Central Blvd., Ste. C
Brentwood, CA 94513

Re: *Jesus Cardenas v. Thorpe Design, Inc.; California Labor Code § 2699.3 Notice of Intent to File Suit*

To Whom It May Concern,

This office represents **Jesus Cardenas** ("Plaintiff") and a proposed group of current and former non-exempt employees (the "Class") employed by **Thorpe Design, Inc.** ("Defendant"). This letter provides timely notice of Mr. Cardenas' claims under the Private Attorney's General Act ("PAGA"). A copy of the Complaint filed in the Action is enclosed as **Exhibit A**.

This letter serves as notice that we intend to prosecute representative claims for civil penalties under the Private Attorney's General Act ("PAGA") on behalf of those class members employed by Defendants within the year preceding the date of this notice through the date of trial in the Action (the "Aggrieved Employees").

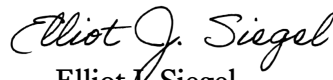
As set forth in the Complaint, Defendant violated its obligations under California law to, at least, (1) reimburse necessary business expenses; (2) provide meal and rest periods for the Aggrieved Employees, as well providing inaccurate pay stubs and failing to pay all wages earned during and after employment. Defendant's violations of Labor Code sections 201-202, 204, 210, 226, 226.7, 512, 558, 1174, 1198, 2802 trigger penalties under PAGA in addition to whatever other substantive rights the Aggrieved Employees have.

King & Siegel ||| LLP

Together with this correspondence, the enclosed complaint serves as notice pursuant to Labor Code § 2699.3, *et seq.*, that we intend to prosecute representative claims for civil penalties under the Private Attorney General Act of 2004 (“PAGA”) on behalf of all the Aggrieved Employees. *See* Cal. Lab. Code §§ 2699, *et seq.*

Please feel free to contact us with any questions.

Sincerely,


Elliot J. Siegel

KING & SIEGEL LLP

Exhibit 3

THE MARKHAM LAW FIRM

- 888 Prospect Street, Suite 200 • La Jolla, California 92037 •
- Phone: (619) 399-3995 • Fax: (619) 615-2067 •
- Email: *contact@markham-law.com* •

March 17, 2023

Via Online Filing:

<https://dir.tfaforms.net/260>

Labor and Workforce Development Agency

Attn. PAGA Administrator

1515 Clay Street, Ste. 801

Oakland, California 94612

Re: Wage/Hour Claims of Armando Delamora and Jesus Cardenas (“Employees”), on behalf of themselves and other aggrieved employees in California against Thorpe Design, Inc. (“Thorpe” or “Employer”)

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE § 2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency
 (“LWDA”)

From: Armando Delamora and Jesus Cardenas (“Employees”), on behalf of themselves and other aggrieved employees in California, who were subjected to the wage and hour practices as set forth below

Pursuant to California Labor Code § 2699.3, this letter is intended to provide written notice of intent to file and/or amend a representative civil action by an aggrieved employee pursuant to subdivisions (a) and (f) of California Labor Code § 2699. The aggrieved employees are Armando Delamora and Jesus Cardenas. The provisions of the California Labor Code that have been violated, including the facts and theories to support the alleged violation, are set forth below. For a more detailed explanation, see **Attachment A**.

Mr. Delamora and Mr. Cardenas are residents of the State of California. During the applicable time period, Employees were employed in California by Thorpe as non-exempt, hourly-paid employees, whose duties consisted of maintenance, repair, and installation of fire sprinkler systems in residential, commercial, and multi-family buildings, and/or delivery of raw materials and build and repair projects for Thorpe, among other duties.

Thorpe employs numerous non-exempt, hourly-paid pipefitters, installers, technicians, journeyman carpenters and other employees with similar job titles and/or duties, as well as non-exempt office employees and exempt employees in the State of California, all of whom are aggrieved employees in this proposed action. During the relevant time period, the Employer utilized consistent policies and procedures regarding the Employees and others similarly situated, in violation of Labor Code §§ 201-203, 204, 210, 226(a), 226.7, 510, 512, 1174, 1198, and 2802 as follows:

First, Employer did not pay Employees and other aggrieved employees for all hours worked. Employees and other aggrieved employees were required by Employer to finish the jobs assigned each day which would frequently require Employees and other aggrieved employees to work beyond their scheduled hours. However, Employees and other aggrieved employees were only allowed to record their hours as scheduled. As such, in violation of Labor Code §§ 510(a) and 1198 and the applicable Industrial Wage Orders, the Employer, by failing to pay the Employees and all others similarly situated for all hours worked, failed to timely pay all straight time and overtime wages due.

Second, Employer's policies and procedures prevented Employees and other aggrieved employees from taking timely and uninterrupted meal breaks. Employees were required to complete inspections, which often caused Employees to delay their meal break beyond the end of their fifth hour of work or miss it completely due to press of business. Regardless, Employer still required Employees to record meal breaks as if they were compliant and timely taken. This violates Labor Code § 512(a), which provides that: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of at least 30 minutes..." Employees and other aggrieved employees were not paid meal break premiums for those late and/or missed meal breaks, in violation of Labor Code § 226.7(c).

Further, here, the work time and meal recordings violate California law. The applicable Wage Order provides that: "[e]very employer shall keep accurate information with respect to each employee including ... [t]ime records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded." Here, Employer's records are incomplete, and they fail to accurately state the beginning and end of all of aggrieved employees' shifts, and fail to accurately record the meal breaks.

Additionally, for the same reasons Employees were not able to take their meal breaks, as detailed above, often, Employees were not allowed to take rest breaks as provided by Labor Code § 226.7 and the applicable Wage Order. Employees and other aggrieved employees were not paid rest break premiums for those non-complaint rest breaks, in violation of Labor Code § 226.7(c).

Further, California Labor Code § 226(a) provides that every employer is required to furnish each employee with accurate itemized statements in writing showing, in part, "gross wages earned," (Labor Code § 226(a)(1)), "net wages earned" (Labor Code § 226(a)(5)), and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee..." (Labor Code § 226(a)(9)). Here, because the Employer failed to pay for all regular and/or overtime hours worked at the appropriate straight time and overtime rate, and failed to pay meal and rest break premiums, improper paystubs were issued to Employees and other aggrieved employees. Employees allege that the Employer has violated Labor Code § 226(a) and Employees are entitled to recover civil penalties pursuant to Labor Code § 226.3.

Labor Code § 1174(d) provides that "[e]very person employing labor in this state shall...[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants..." Labor Code § 1174.5 provides that employers are subject to a \$500 civil penalty if they

fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code § 1174(d), Thorpe willfully and intentionally failed to make and/or keep records which accurately reflect the hours worked by Employees and other aggrieved employees, failed to correctly list regular and overtime rates of pay, and failed to correctly list the gross wages and net wages earned by them, and meal and rest break premiums due to them.

Further, Employer failed to pay all aggrieved employees, whose employment with Thorpe terminated within the applicable time period, all their earned wages, specifically meal and rest period premiums not paid for missed or interrupted meal and rest periods, and wages for all hours worked, including overtime, either at the time of discharge or within seventy-two hours of their leaving Employer's employ, in violation of California Labor Code § 201, 202, and 203. To the extent allowed by law, Employees seek wages as penalties pursuant to Labor Code § 558 and expressly preserves Employees' right to do so.

Employer also failed to pay all wages due to employees within the time period specified by Labor Code § 204—specifically, meal and rest break premium wages and overtime wages. California Labor Code § 204 requires all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee are due and payable between the 1st and 10th day of the following month. Labor Code § 204 also requires all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

Lastly, during the applicable time period, Employees and other aggrieved employees incurred necessary expenditures and losses in direct consequence of the discharge of their employment duties and their obedience to the directions of Thorpe. Expenses include, but are not limited to, mileage and cellphone charges, as Employees were required to use their own vehicles to commute between jobs, regularly traveling hundreds of miles but were not reimbursed for mileage. This violates California Labor Code § 2802, which provides that the “[E]mployer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

Employees and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210, 218.5, 218.6, 226(e), 226.3, 558, 1174.5, 1194, 1197.1 and/or 2699(a), (f)-(g).

Mr. Delamora and Mr. Cardenas, as aggrieved employees, and on behalf of themselves and all other current or former non-exempt, hourly paid employees, and exempt employees, seek all penalties or remedies as may be allowed under PAGA, and by this letter gives written notice of their PAGA claim pursuant to Labor Code § 2699.3. Please advise within sixty (60) calendar days of the postmark date of this Notice whether the LWDA intends to investigate the violations alleged above. We understand that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this Notice that the LWDA intends to investigate these allegations, the aggrieved Employees may immediately thereafter commence and/or amend a civil action against the Employer pursuant to Labor Code § 2699.

Mr. Delamora and Mr. Cardenas are represented in this matter by The Markham Law Firm, United Employees Law Group, King & Siegel LLP, and Barahmand Law Group.

Very truly yours,

THE MARKHAM LAW FIRM



David R. Markham
Maggie K. Realin
Lisa Brevard

cc: (via Certified Mail)

Capitol Services Inc.
Agent for Service of Process for
Thorpe Design, Inc.
7011 Sylvan Rd #D
Citrus Heights, CA 95610

Thorpe Design Inc.
Attn: Legal Department
410 Beatrice Ct, Suite A
Brentwood, CA 94513

cc: (via email)

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julian@kingsiegel.com
zac@kingsiegel.com
navid@barahmandlaw.com

Attachment A

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Facsimile: (213) 465-4803

[Additional Counsel Listed on Next Page]

Attorneys for Plaintiffs on behalf of themselves and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA**

ARMANDO DELAMORA, an individual,
and JESUS CARDENAS, an individual, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

THORPE DESIGN, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO. C22-00931

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) **FAILURE TO PAY OVERTIME
COMPENSATION;**
- (2) **FAILURE TO PROVIDE MEAL
PERIODS;**
- (3) **FAILURE TO PROVIDE REST
PERIODS;**
- (4) **FAILURE TO FURNISH TIMELY
AND ACCURATE WAGE
STATEMENTS;**
- (5) **FAILURE TO KEEP ACCURATE
PAYROLL RECORDS**
- (6) **FAILURE TO PAY ALL WAGES
DUE UPON TERMINATION;**
- (7) **FAILURE TO REIMBURSE
NECESSARILY INCURRED BUSINESS
EXPENSES;**
- (8) **VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION LAW
("UCL"), Bus. & Prof. Code § 17200
et seq.**
- (9) **VIOLATION OF PRIVATE
ATTORNEYS GENERAL ACT (PAGA)
(Lab. Code §2698, et seq.)**

DEMAND FOR JURY TRIAL

1 Walter Haines (SBN 071075)
2 *walter@uelglaw.com*
3 **UNITED EMPLOYEES LAW GROUP**
4 5500 Bolsa Avenue, Suite 203
5 Huntington Beach, CA 92649
6 Telephone: (888) 474-7242
7 Facsimile: (562) 256-1006

8 Navid Barahmand
9 *navid@barahmandlaw.com*
10 **BARAHMAND LAW GROUP**
11 7324 Sepulveda Boulevard, Suite B
12 Van Nuys, California 91405
13 Telephone: (818) 574-3355
14 Facsimile: (818) 574-3757

15 Attorneys for Plaintiffs on behalf of themselves and all others similarly situated
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DRAFT

1 Plaintiffs ARMANDO DELAMORA and JESUS CARDENAS (“Plaintiffs”), by and
2 through their attorneys of record, bring this Class Action Complaint against Defendant THORPE
3 DESIGN, INC. (“Thorpe Design” or “Defendant”), and respectfully allege the following:

4 **NATURE OF THE ACTION**

5 1. This is a class action for wage and labor violations arising out of Defendant’s
6 failure to pay wages for all time worked and failure to provide timely and uninterrupted meal and
7 rest periods, and for derivative claims.

8 2. As set forth below, Defendant failed to pay its employees wages for all hours
9 worked, including overtime; failed to provide timely and uninterrupted meal and rest periods to its
10 California non-exempt employees in violation of California Labor Code §§ 512 and 226.7, and the
11 applicable Industrial Wage Order; failed to pay its employees one hour of pay at the regular rate of
12 compensation for each instance that Defendant failed to provide statutorily mandated rest periods
13 and timely off-duty meal periods; failed to maintain accurate records; failed to furnish timely and
14 accurate wage statements; failed to pay all wages due upon termination; failed to reimburse for
15 necessarily incurred business expenses; and, is in violation of California’s Unfair Competition Law
16 (“UCL”).

17 3. Plaintiffs seek to represent all those similarly situated who are or were residents of
18 the State of California.

19 **JURISDICTION AND VENUE**

20 4. This Court has jurisdiction over this action because this is a civil action where the
21 matter in controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of the
22 Court. The acts and omissions complained of in this action took place in the State of California.
23 Venue is proper because upon information and belief, Defendant has their corporate headquarters
24 in this county, conducts substantial business in this county and employs numerous employees in
25 California in this county.

26 **PARTIES**

27 5. Plaintiff ARMANDO DELAMORA is a resident of Antioch, California. Mr. Delamora
28 was employed by Defendant in Brentwood, California, from October 13, 2016 to November 5, 2021,

1 as a pipefitter.

2 6. Plaintiff JESUS CARDENAS is a resident of Sacramento, California. Mr. Cardenas
3 has worked for Defendant in Brentwood, California, as a non-exempt hourly employee from
4 approximately April 2020 through approximately February 2022.

5 7. At all times material herein, Defendant was a corporation registered to do business
6 in California, including but not limited to conducting business within the County of Contra Costa,
7 with its corporate headquarters located in Contra Costa, California. Defendant is in the fire
8 sprinkler system design and installation industry. On information and belief, Defendant is a fire
9 sprinkler systems contractor for residential and commercial buildings serving Northern California.
10 At all relevant times alleged herein, Plaintiffs are informed and believe that Defendant is
11 authorized to and conducts business in California, including but not necessarily limited to County
12 of Contra Costa. Defendant employed Plaintiffs in Contra Costa, California, and
13 employ/employed other pipefitters, installers, technicians and other non-exempt employees, as
14 well as exempt employees throughout Northern California.

15 8. Plaintiffs are currently unaware of the true names and capacities, whether
16 individual, corporate, associate, or otherwise, of the defendants sued herein under fictitious names
17 Does 1 through 10, inclusive, and therefore sue such defendants by such fictitious names. Plaintiffs
18 will seek leave to amend this complaint to allege the true names and capacities of said fictitiously
19 named defendants when their true names and capacities have been ascertained. Plaintiffs are
20 informed and believe and thereon allege that each of the fictitiously named defendants is legally
21 responsible in some manner for the events and occurrences alleged herein, and for the damages
22 suffered by the Class.

23 9. Plaintiffs are informed and believe and thereon allege that all defendants, including
24 the fictitious Doe defendants, were at all relevant times acting as actual agents, conspirators,
25 partners and/or joint ventures and/or employees of all other defendants, and that all acts alleged
26 herein occurred within the course and scope of said agency, employment, partnership, and joint
27 venture, conspiracy or enterprise, and with the express and/or implied permission, knowledge,
28 consent, authorization and ratification of their co-defendants.

FACTS

10. Between October 13, 2016 and November 5, 2021, Plaintiff Delamora was employed by Defendant, as a non-exempt, hourly-paid pipefitter in Contra Costa, California. Plaintiff Delamora's duties included installing fire sprinkler systems in residential homes as well as performing inspections. Plaintiff and other class members with similar job titles and/or duties were typically dispatched to one residential home per day to perform installations of fire sprinklers. Plaintiff and other class members frequently had to leave job sites they were working on to conduct inspections. Plaintiff and other class members were expected to complete their jobs and inspections each day within their scheduled hours, but it often took longer; however, Plaintiff and other class members were not allowed to record the overtime hours they worked. Plaintiff and other class members would be reprimanded if they recorded their actual hours worked and Defendant would alter Plaintiff and other class members' timecard to remove the overtime. Defendant failed to pay Plaintiff and other class members for all hours worked, including 1.5-times his regular rate for his work performed over 8 hours in a day, and/or 40 hours in a week. Defendant was aware of these violations.

11. From approximately April 2020 to approximately February 2022, Plaintiff Cardenas was employed by Defendant as a non-exempt, hourly-paid journeyman carpenter in Contra Costa, California. Plaintiff Cardenas' duties included pick up and delivery of raw materials at Defendant's job sites and completion of build and repair projects for Defendant's clients.

12. Often, Plaintiffs would have to delay their meal periods until after the end of the fifth hour of work or miss them completely due to press of business. Nonetheless, Plaintiffs were required to record their meal breaks as if they were compliant and timely taken. Plaintiffs were never paid a meal period premium for those late or missed meal periods.

13. Additionally, Plaintiffs often did not get their rest breaks due having to conduct inspections and the press of business. Plaintiffs were never paid a rest period premium for these missed rest periods.

14. Further, Plaintiffs were required to use their personal vehicles and cellphones for work purposes. Plaintiffs sometimes had to commute to the various different job sites and travel to

1 up to five inspections per day and were not reimbursed for the mileage incurred using their
2 personal vehicles. Plaintiffs were required to use their personal cellphones to receive calls and
3 texts from supervisors regarding status of projects and results of inspections, even if they were on a
4 break. Plaintiffs and other class members were not reimbursed for these necessarily incurred
5 business expenses.

6 15. Upon information and belief, the above-mentioned unlawful employment practices
7 by Defendant were applied the same to all non-exempt and exempt employees employed by
8 Defendant in the State of California.

9 16. Defendant's conduct, as alleged here, has caused Plaintiffs and class members
10 damages including, but not limited to, loss of wages and compensation. Defendant is liable to
11 Plaintiffs and the class for failing to pay all straight-time and overtime wages owed for each pay
12 period, failing to pay meal and rest break premiums, failing to provide timely and accurate wage
13 statements, failing to keep accurate payroll records, failing to pay all wages due upon termination,
14 failing to reimburse them for necessarily incurred business expenses, and unfair competition.

15 17. Plaintiffs are a member of, and seek to be a representative for, the class of other
16 employees who all have been exposed to, have suffered, and/or were permitted to work under
17 Defendant's unlawful employment practices as alleged herein.

18 **EXHAUSTION OF PAGA NOTICE REQUIREMENT**

19 18. Plaintiffs Delamora and Cardenas exhausted the notice requirement by filing a
20 complaint with the Labor and Workforce Development Agency ("LWDA") in their letters dated
21 May 2, 2022, and July 22, 2022, respectively, as required under the California Labor Code Private
22 Attorney General Act ("PAGA"). A true and correct copy of Plaintiff Delamora's letter is attached
23 hereto as **Exhibit 1**. A true and correct copy of Plaintiff Cardenas' letter is attached hereto as
24 **Exhibit 2**. Plaintiffs supplemented their PAGA notice by a supplemental/amended PAGA letter
25 dated March 17, 2023. A true and correct copy of Plaintiffs amended letter is attached hereto as
26 **Exhibit 3**. The LWDA did not assume jurisdiction over the applicable penalty claims alleged;
27 therefore, Plaintiffs have exhausted the procedural requirement under PAGA to pursue any and all
28 penalty claims as provided under PAGA.

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- 1 d. Whether Defendant had a policy or practice of not paying meal or rest period premiums;
- 2 e. Whether Defendant violated the applicable California Industrial Welfare Commission
- 3 (“IWC”) Order by failing to provide Plaintiffs and the members of the class with timely
- 4 off-duty thirty (30) minute meal periods;
- 5 f. Whether Plaintiffs and the class were not paid all wages owed to them, including overtime;
- 6 g. Whether Defendant engaged in a pattern or practice of unlawfully deducting wages of
- 7 Plaintiffs and members of the class;
- 8 h. Whether Defendants engaged in a pattern or practice of failing to reimburse business
- 9 expenses necessarily incurred by Plaintiffs and the class;
- 10 i. Whether Defendant engaged in unfair practices and violated California Business &
- 11 Professions Code § 17200 by failing to provide Plaintiffs and the members of the class with
- 12 their statutory off-duty meal and rest periods on a timely basis;
- 13 j. Whether Defendant engaged in unfair practices and violated California Business &
- 14 Professions Code section 17200 by failing to pay Plaintiffs and the members of the class
- 15 for all time worked;
- 16 k. Whether Defendant maintained accurate time records of off-duty thirty (30) minute meal
- 17 breaks taken by Plaintiffs and members of the class in accordance with the applicable IWC
- 18 Wage Order;
- 19 l. Whether Defendant maintained accurate time records of all hours worked by Plaintiffs and
- 20 members of the class in accordance with the applicable IWC Wage Order
- 21 m. Whether Defendant violated Labor Code § 226(a) by issuing inaccurate itemized wage
- 22 statements to Plaintiffs and members of the class that failed to include payments for
- 23 missed, untimely, and/or on-duty meal periods throughout the Class period;
- 24 n. Whether Defendant violated Labor Code § 226(a) by issuing inaccurate itemized wage
- 25 statements to Plaintiffs and members of the class that failed to include payment for all
- 26 hours worked;
- 27 o. Whether Defendant violated Labor Code § 226(a) by issuing inaccurate itemized wage
- 28 statements to Plaintiffs and members of the class that failed to accurately state the total

- hours worked, to the detriment of Plaintiffs and the class;
- p. Whether Defendant violated Labor Code § 1174 by failing to keep accurate payroll records;
- q. Whether Defendant violated Labor Code §§ 201-203 by failing to pay all wages due upon termination to all Class members who were terminated or voluntarily quit; and
- r. The nature and extent of class-wide injury and the measure of damages or restitution.

24. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the class they seek to represent because Plaintiffs, as a non-exempt employees of Defendant, were exposed and subjected to the same unlawful business practices as other employees employed by Defendant during the class period. Plaintiffs and the members of the class they seek to represent sustained the same types of damages and losses.

25. **Adequacy:** Plaintiffs are adequate representatives of the class they seek to represent because their interests do not conflict with the interests of the members of the class Plaintiffs seek to represent. Plaintiffs have retained counsel competent and experienced in complex class action litigation and Plaintiffs intend to prosecute this action vigorously. The interests of the members of the class will be fairly and adequately protected by Plaintiffs and their counsel.

26. **Superiority and Substantial Benefit:** The class action is superior to other available means for the fair and efficient adjudication of Plaintiffs' and the Class members' claims. The damages suffered by each individual Class member may be limited. Damages of such magnitude are small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. Further, it would be virtually impossible for the Class members to redress the wrongs done to them on an individual basis. Even if members of the Class themselves could afford such individual litigation, the court system could not. Individualized litigation increases the delay and expense to all parties and the court system due to the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

27. The Class should also be certified because:

- a. The prosecution of separate actions by individual members of the Class would create a

1 risk of inconsistent or varying adjudications with respect to individual Class members
2 which would establish incompatible standards of conduct for Defendant;

3 b. The prosecution of separate actions by individual members of the Class would create a
4 risk of adjudication with respect to them, which would, as a practical matter, be
5 dispositive of the interests of the other Class members not parties to the adjudications,
6 or substantially impair or impede their ability to protect their interests; and

7 c. Defendant has acted or refused to act on grounds generally applicable to the Class, and/or
8 the general public, thereby making appropriate final and injunctive relief with respect to the Class
9 as a whole.

10 **FIRST CAUSE OF ACTION**
11 **FAILURE TO PAY OVERTIME COMPENSATION**
12 **(Violation of Labor Code § 510)**
13 **(Against all defendants)**

14 28. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
15 herein.

16 29. Labor Code §510 and the applicable Wage Order provide that employees in
17 California shall not be employed more than eight hours in any workday or forty hours in a
18 workweek unless they receive additional compensation beyond their regular wages in amounts
19 specified by law. Specifically, Labor Code §510(a) requires that: Any work in excess of eight
20 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight
21 hours worked on the seventh day of work in any one workweek shall be compensated at the rate of
22 no less than one and one-half times the regular rate of pay for an employee. Any work in excess of
23 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay
24 for an employee.

25 30. Labor Code § 1194 establishes an employee's right to recover unpaid overtime
26 compensation, and interest thereon, together with the costs of suit, and attorneys' fees. Labor
27 Code §1198 makes employment of an employee for longer hours than the IWC set or under
28 conditions the IWC prohibits is unlawful.

31. At all times relevant hereto, Plaintiffs and other members of the class, have worked

1 more than eight hours in a workday, and/or more than forty hours in a workweek.

2 32. At all times relevant hereto, Defendant has failed to pay Plaintiffs, and the other
3 members of the class, the overtime compensation premium for those unpaid hours they have
4 worked in excess of the maximum hours permissible by law as required by Labor Code § 510 and
5 1198, and the applicable Wage Order.

6 33. By virtue of Defendant's unlawful failure to pay the lawful overtime rate of
7 compensation to the Plaintiffs, and the other members of the class, Plaintiffs and the other
8 members of the class, have suffered, and will continue to suffer, damages in amounts which are
9 presently unknown to them, but which exceed the jurisdictional limits of this Court and will be
10 ascertained according to proof at trial.

11 34. Defendant acted and is acting intentionally and oppressively toward Plaintiffs, and
12 the other members of the class, with a conscious disregard of their rights, or the consequences to
13 them, with the intent of depriving them of property and legal rights and otherwise causing them
14 injury. Defendant failed to pay Plaintiffs and other members of the class for all hours worked
15 including the time work beyond the prescheduled hours to complete jobs. To the extent this time
16 worked exceeded eight (8) hours in a day and/or forty (40) hours in a week, Plaintiffs and class
17 members are entitled to overtime wages.

18 35. Plaintiffs and the class, request recovery of overtime compensation according to
19 proof, interest, attorneys' fees, expenses, and costs pursuant to Labor Code § 1194(a), and Civil
20 Code §§3287(b) and 3289, as well as the assessment of any statutory penalties against Defendant,
21 in a sum as provided by the Labor Code, the applicable Wage Orders, and/or other statutes.

22 **SECOND CAUSE OF ACTION**
23 **FAILURE TO PROVIDE MEAL PERIODS**
24 **(Violation of Labor Code §§ 512, 226.7, and the applicable Wage Order)**
25 **(Against all defendants)**

26 36. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
27 herein.

28 37. California Labor Code § 226.7(b) provides, "An employer shall not require an
employee to work during a meal or rest period mandated pursuant to an applicable order of the

1 Industrial Welfare Commission”.

2 38. IWC Order No. 4-2001(11)(A) provides, in pertinent part: “[n]o employer shall
3 employ any person for a work period of more than five (5) hours without a meal period of not less
4 than 30 minutes, except that when a work period of not more than six (6) hours will complete the
5 day’s work the meal period may be waived by mutual consent of the employer and the employee.”

6 39. Labor Code § 512(a) provides, in pertinent part: “[a]n employer may not employ an
7 employee for a work period of more than five hours per day without providing the employee with a
8 meal period of not less than 30 minutes, except that if the total work period per day of the
9 employee is no more than six hours, the meal period may be waived by mutual consent of both the
10 employer and employee. An employer may not employ an employee for a work period of more
11 than 10 hours per day without providing the employee with a second meal period of not less than
12 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period
13 may be waived by mutual consent of the employer and the employee only if the first meal period
14 was not waived.”

15 40. As alleged herein, Defendant’s pattern, practice, and uniform policy required
16 Plaintiffs and other class members to effectively skip or delay their meal breaks due to conducting
17 required inspections and other press of business.

18 41. Defendant failed to authorize and permit timely and uninterrupted meal periods
19 during the Class period. Plaintiffs and members of the class were routinely required to work
20 without a timely and uninterrupted meal break at the direction of Defendant and/or with
21 Defendant’s knowledge and acquiescence.

22 42. By its actions in requiring its employees to work through meal periods and/or its
23 failure to relieve the employees of their duties for their off-duty meal periods, Defendant has
24 violated California Labor Code §§ 226.7, 512 and § 11 of IWC Wage Order No. 4-2001, and is
25 liable to Plaintiffs and the class.

26 43. As a result of the unlawful acts of Defendant, Plaintiffs and the class have been
27 deprived of timely off-duty meal periods, and are entitled to recovery under Labor Code §§
28 226.7(c), 512 and § 11 of IWC Wage Order No. 4-2001, in the amount of one additional hour of

1 pay at the employee's regular rate of compensation for each workday in which Defendant failed to
2 provide its employees with timely statutory off-duty meal periods.

3 44. Plaintiffs, and the other members of the class, are entitled to seek and recover
4 reasonable attorneys' fees and costs pursuant to Labor Code §§ 226.7 and 512.

5 **THIRD CAUSE OF ACTION**
6 **FAILURE TO PROVIDE REST PERIODS**
7 **(Violation of Labor Code §§ 226.7 and the applicable Wage Order)**
8 **(Against all defendants)**

9 45. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
10 herein.

11 46. California Labor Code § 226.7(b) provides, "An employer shall not require an
12 employee to work during a meal or rest period mandated pursuant to an applicable order of the
13 Industrial Welfare Commission".

14 47. The applicable Wage Order provides, in pertinent part: "[e]very employer shall
15 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
16 middle of each work period. The authorized rest period time shall be based on the total hours
17 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
18 thereof. However, a rest period need not be authorized for employees whose total daily work time
19 is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
20 worked for which there shall be no deduction from wages".

21 48. The applicable Wage Order further provides: "[i]f an employer fails to provide an
22 employee with a rest period in accordance with the applicable provisions of this order, the
23 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
24 compensation for each workday that the rest period is not provided".

25 49. As alleged herein, Defendant failed to authorize and permit rest breaks during the
26 Class period. Plaintiffs and members of the class were routinely required to work through rest
27 periods at the direction of Defendant and/or with Defendant's knowledge and acquiescence.

28 50. By its actions in requiring its employees during the class period to work through rest
periods and/or its failure to relieve the employees of their duties for their rest periods, Defendant

1 violated the Wage Order and California Labor Code § 226.7 and is liable to Plaintiffs and the class.

2 51. Defendant's unlawful conduct alleged herein occurred in the course of employment
3 of Plaintiffs and all others similarly situated and such conduct has continued through the filing of
4 this complaint.

5 52. As a direct and proximate result of Defendant's unlawful action, Plaintiffs and the
6 class have been deprived of timely rest periods and/or were not paid for rest periods taken during
7 the Class period, and are entitled to recovery under Labor Code § 226.7(c) in the amount of one
8 additional hour of pay at the employee's regular rate of compensation for each workday in which
9 Defendant failed to provide employees with timely and/or paid rest periods.

10 53. Plaintiffs, and the other members of the class, are entitled to seek and recover
11 reasonable attorneys' fees and costs pursuant to Labor Code § 226.7.

12 **FOURTH CAUSE OF ACTION**
13 **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS**
14 **(Violation of Labor Code §226)**
15 **(Against all defendants)**

16 54. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
17 herein.

18 55. California Labor Code § 226(a) provides: "[e]very employer shall, semimonthly or
19 at the time of each payment of wages, furnish each of his or her employees, either as a detachable
20 part of the check, draft, or voucher paying the employee's wages, or separately when wages are
21 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
22 earned, (2) total hours worked by the employee [...], (3) the number of piece-rate units earned and
23 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
24 that all deductions made on written orders of the employee may be aggregated and shown as one
25 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7)
26 the name of the employee and only the last four digits of his or her social security number, [...], (8)
27 the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in
28 effect during the pay period and the corresponding number of hours worked at each hourly rate by
the employee...".

1 56. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for the
2 initial pay period in which a violation of Labor Code § 226 occurs and \$100 for each subsequent
3 pay period, for all pay periods in which the employer knowingly and intentionally failed to provide
4 accurate itemized statements to the employee causing the employee to suffer injury.

5 57. Plaintiffs are informed, believe and thereon allege that at all times relevant,
6 Defendant knowingly and intentionally failed to furnish and continues to knowingly and
7 intentionally fail to furnish Plaintiffs and each Class member with timely and accurate itemized
8 statements showing the gross wages earned by each of them, as required by Labor Code § 226(a),
9 in that the premiums owed to Plaintiffs and the members of the Class for untimely or interrupted
10 meal and rest periods were not included in gross wages earned by Plaintiffs and the Class.

11 58. Further, wages owed to Plaintiffs and members of the class for overtime hours
12 worked, and the time worked through meal breaks, were not included in gross wages earned by
13 Plaintiffs and the Class.

14 59. Defendant's failure to provide Plaintiffs and members of the Class with accurate
15 itemized wage statements during the Class period has caused Plaintiffs and members of the Class
16 to incur economic damages in that they were not aware that they were owed and not paid
17 compensation for missed rest periods and on-duty meal periods, and for all hours worked. In
18 addition, Defendant provided inaccurate information regarding hours worked, which masked its
19 underpayment of wages to Plaintiffs and the Class.

20 60. As a result of Defendant's issuance of inaccurate itemized wage statements to
21 Plaintiffs and members of the Class in violation of Labor Code § 226(a), Plaintiffs and the
22 members of the Class are each entitled to recover penalties pursuant to Labor Code § 226(e).

23 **FIFTH CAUSE OF ACTION**
24 **FAILURE TO KEEP ACCURATE PAYROLL RECORDS**
25 **(Violation of Labor Code § 1174)**
26 **(Against all defendants)**

27 61. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
28 herein.

 62. Labor Code § 1174(d), requires an employer to keep at a central location in

1 California or at the plant or establishment at which the employees are employed, payroll records
2 showing the hours worked daily, and the wages paid to each employee. Plaintiffs are informed and
3 believe that Defendant willfully failed to make or keep accurate records for Plaintiffs and Class
4 members.

5 63. The applicable Wage Order requires that every employer shall keep accurate
6 information with respect to each employee, including time records showing when each employee
7 begins and ends each work period, the total daily hours worked by each employee and the total
8 hours worked in each payroll period, and applicable rates of pay. Plaintiffs are informed and
9 believe that Defendant willfully and intentionally failed to make and/or keep records which
10 accurately reflect the hours worked by Plaintiffs and Class members. Specifically, Plaintiffs believe
11 that Defendant's records do not accurately reflect the hours worked by Plaintiffs and the Class
12 members, do not correctly list regular and overtime rates of pay, do not accurately record Plaintiffs
13 and Class Members' meal breaks, and do not correctly list the gross wages and net wages, and
14 meal and rest break premiums earned by them.

15 64. Plaintiffs are informed and believe that Defendant's failure to keep accurate payroll
16 records, as described above, violated Labor Code § 1174(d) and the applicable wage order.
17 Plaintiffs and the Class members are entitled to penalties of \$100.00 for the initial violation and
18 \$200.00 for each subsequent violation for every pay period during which these records and
19 information were not kept by Defendant.

20 65. Plaintiffs are informed and believe that Defendant's failure to keep and maintain
21 accurate records and information, as described above, was willful, and Plaintiffs and the Class are
22 entitled to a statutory penalty of \$500.00 for Plaintiffs and each Class member pursuant to Labor
23 Code § 1174.5.

24 66. Plaintiffs and the members of the Class are each entitled to recover interest,
25 attorney's fees and costs pursuant to Labor Code §1174, as well as all statutory penalties and
26 attorneys' fees against Defendant.

27 ///

28 ///

SIXTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES DUE UPON TERMINATION
(Violation of Labor Code §§ 201-204, 210)
(Against all defendants)

67. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

68. California Labor Code §§ 201-203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours prior 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.

69. Labor Code § 204 provides that all wages, other than those mentioned in Section 201 and 202, are due and payable twice during each calendar month, on days designated in advance by the employer as regular paydays.

70. During the Class period, Defendant willfully failed to pay Class members who are no longer employed by Defendant all their earned wages, specifically, meal and rest period premiums not paid for missed or interrupted meal and rest periods, and wages for all hours worked, including overtime, either at the time of discharge or within seventy-two hours of their leaving Defendant's employ, or upon Defendants' regularly scheduled paydays in violation of California Labor Code §§ 201, 202, 203, 204, and 210.

71. Therefore, Plaintiffs and members of the Class are entitled to waiting time penalties for each day that has passed that they have not received all wages owed to them, up to 30 days.

72. Employees are also entitled to civil penalties in the amount of \$100 per employee per initial violation and \$200 per employee for every subsequent violation of Labor Code section 201, 202, and 204, plus 25% of the amount unlawfully withheld. Labor Code § 210.

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE INCURRED NECESSARY BUSINESS EXPENSES
Violation of Labor Code § 2802, et seq.)
(Against all defendants)

73. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth

herein.

74. California Labor Code § 2802 provides that “[a]n employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or his obedience to the directions of the employer.” Lab. Code § 2802. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

75. At all relevant times during the class period, Plaintiffs and other members of the class incurred necessary business-related expenses and costs that were not fully reimbursed by Defendant, including, but not limited to requiring Plaintiffs and other members of the class to use their cellphones in the regular course of employment by answering texts and calls from their supervisors while at work or on a break, for purposes of scheduling and re-scheduling future work, being assigned tasks, and general administrative matters, and required the use of various mobile phone applications but not paying a reasonable portion of the Class Members’ cellphone related expenses despite requiring the use of the device and/or applications that required a data plan. *See Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 (“We hold that when employees must use their personal cell phones for work related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”).

76. Additionally, at all relevant times during the class period, Plaintiffs were required to use their personal vehicles for work purposes. Plaintiffs sometimes had to commute to the various different job sites and travel to up to five inspections per day and were not reimbursed for the mileage incurred using their personal vehicles.

77. Defendant has intentionally and willfully failed to fully reimburse Plaintiffs and the Class for necessary business-related expenses and costs. Defendant’s conduct violates California Labor Code § 2802.

78. Plaintiffs and Class members are entitled to recover from Defendant their business-

1 related expenses incurred during the course and scope of their employment, plus interest, pursuant
2 to California Labor Code § 2802.

3 **EIGHTH CAUSE OF ACTION**
4 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**
5 **(Bus. & Prof. Code §§ 17200 *et seq.*)**
6 **(Against all defendants)**

7 79. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
8 herein.

9 80. Section 17200 of the California Business and Professions Code (the "UCL")
10 prohibits any unlawful, unfair, or fraudulent business practices.

11 81. Through its action alleged herein, Defendant has engaged in unfair competition
12 within the meaning of the UCL. Defendant's conduct, as alleged herein, constitutes unlawful,
13 unfair, and/or fraudulent business practices under the UCL.

14 82. Defendant's unlawful conduct under the UCL includes, but is not limited to,
15 violating the statutes alleged herein. Defendant's unfair conduct under the UCL includes, but is not
16 limited to, failure to pay Class members wages and compensation they earned through labor
17 provided, failure to provide meal and rest breaks, reimburse business expenses, and failure to
18 otherwise compensate Class members as alleged herein. Defendant's fraudulent conduct includes,
19 but is not limited to, issuing wage statements containing false and/or misleading information about
20 the time the Class members worked and the amount of wages or compensation due.

21 83. Plaintiffs have standing to assert this claim because they have suffered injury in fact
22 and has lost money as a result of Defendant's conduct.

23 84. Plaintiffs and the Class seek restitutionary disgorgement from Defendant of monies
24 owed for all hours worked and for unpaid meal and rest period premiums.

25 85. Plaintiffs have assumed the responsibility of enforcement of the laws and public
26 policies specified here by suing on behalf of themselves and other similarly situated Class
27 members previously or presently working for Defendant in California. Plaintiffs' success in this
28 action will enforce important rights affecting the public interest. Plaintiffs will incur a financial
burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys'

1 fees to Plaintiffs is appropriate pursuant to Code of Civil Procedure § 1021.5.

2 **NINTH CAUSE OF ACTION**

3 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT (PAGA)**
4 **(Cal. Lab. Code §§2698 and 2699, *et. seq.*)**
5 **(Against all defendants)**

6 86. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
7 herein.

8 87. Labor Code §§ 2698 and 2699 (The California Private Attorneys General Act of
9 2004, or “PAGA”), expressly establish that any provision of the California Labor Code which
10 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
11 Agency (“LWDA”), or any of its departments, divisions, commissions, boards, agencies or
12 employees for a violation of the California Labor Code, may be recovered through a civil action
13 brought by an aggrieved employee on behalf of himself or herself, and other current or former
14 employees.

15 88. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
16 agencies or employees has discretion to assess a civil penalty, a fact-finder in a civil action is
17 authorized to exercise the same discretion, subject to the same limitations and conditions, to assess
18 a civil penalty.

19 89. Plaintiffs are “aggrieved employees” as defined by Labor Code § 2699, because
20 they were employees of Defendant, and one or more of the Labor Code violations was committed
21 against them.

22 90. Plaintiffs assert all of their claims in this Complaint against Defendant on behalf of
23 themselves, and all other members of the Class and/or on behalf of all aggrieved employees, as
24 well as the general public, in their capacity as “private attorney generals,” and seek all statutory
25 penalties available under the Labor Code.

26 91. In addition to the previously asserted claims, Plaintiffs also allege Defendant
27 violated California Labor Code Section 226.3 based on the previously alleged violation of Labor
28 Code section 226(a), as described in the fifth cause of action.

92. By reason of the above and pursuant to Labor Code § 2699, Plaintiffs Delamora and

1 Cardenas on behalf of themselves, and all other members of the Class and/or behalf of all
2 aggrieved employees, as well as the general public, are entitled to payment of a penalty of \$100 per
3 pay period for each employee for the initial violation, and \$200 per pay day period for each
4 employee for each subsequent violation, plus interest.

5 93. In addition, Plaintiffs Delamora and Cardenas, on behalf of themselves, and all
6 other members of the Class and/or behalf of all aggrieved employees, as well as the general public,
7 seek and are entitled to have 75% of all recovered penalties and interest allocated to the LWDA
8 and 25% to the Plaintiffs and aggrieved employees. Further, Plaintiffs are entitled to seek and
9 recover reasonable attorneys' fees, expenses and costs pursuant to Labor Code §2699, and any
10 other applicable statutes.

11 94. Plaintiffs complied with the notice requirements of Labor Code §2699.3(a)(1) prior
12 to commencing this action. A copy of the letters sent to the California LWDA on May 2, 2022, and
13 July 22, 2022, via certified mail, and copied to Defendant's Agent for Service of Process in
14 California on the same dates, via certified mail, in accordance with §2699.3(a)(1), are attached
15 hereto, as **Exhibit 1** and **Exhibit 2**, respectively, and by reference incorporated herein. Plaintiffs
16 supplemented their PAGA notice by a supplemental/amended PAGA letter dated March 17, 2023.
17 A true and correct copy of Plaintiffs amended letter is attached hereto as **Exhibit 3**.

18 95. As of today's date, the LWDA has not responded to Plaintiffs' notices.

19 96. Plaintiffs and the Plaintiff Class are also entitled to reasonable attorneys' fees and
20 costs, pursuant to California Labor Code §2699.3(g)(1).

21 **PRAYER**

22 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray
23 for judgment against Defendant as to the appropriate causes of action as follows:

24 **ON THE FIRST CAUSE OF ACTION**

- 25 1. For all overtime compensation owed to Plaintiffs and each Class Member for all hours
26 worked according to proof;
- 27 2. For interest on any compensatory damages;
- 28 3. For attorneys' fees, expenses, and costs pursuant to Labor Code §1194(a), and Civil Code

1 §§3287(b) and 3289;

- 2 4. For any statutory penalties against Defendant, in a sum as provided by the Labor Code, the
3 applicable Wage Order, and/or other statutes.

4 **ON THE SECOND CAUSE OF ACTION**

- 5 1. For one hour of wages due to Plaintiffs and each Class member for each work period of
6 more than five (5) hours when they did not receive an uninterrupted thirty (30) minute meal
7 period;
8 2. For waiting time penalties according to proof;
9 3. For statutory costs according to proof; and
10 4. For statutory interest according to proof.

11 **ON THE THIRD CAUSE OF ACTION**

- 12 1. For one hour of wages due to Plaintiffs and each Class member for each work period of
13 more than three and one-half (3 ½) hours when they did not receive an uninterrupted ten
14 (10) minute rest period for each four (4) hours or major fraction thereof worked;
15 2. For waiting penalties according to proof;
16 3. For statutory costs according to proof; and
17 4. For statutory interest according to proof.

18 **ON THE FOURTH CAUSE OF ACTION**

- 19 1. For statutory compensation for any harm caused;
20 2. For compensatory damages and interest thereon for actual harm caused; and
21 3. For statutory penalties under Labor Code § 226(e), interest and attorneys' fees and
22 costs.

23 **ON THE FIFTH CAUSE OF ACTION**

- 24 1. For statutory penalties pursuant to Labor Code § 1174.5;
25 2. For statutory interest according to proof; and
26 3. For reasonable attorney's fees and costs pursuant to the Labor Code.

27 **ON THE SIXTH CAUSE OF ACTION**

- 28 1. For statutory penalties, including thirty (30) days' wages at the correct hourly rate for

- 1 all wages not timely paid upon termination;
- 2 2. For penalty enhancement for willful conduct;
- 3 3. For statutory interest according to proof; and
- 4 4. For reasonable attorney's fees and costs pursuant to the Labor Code.

5 **ON THE SEVENTH CAUSE OF ACTION**

- 6 1. For reimbursement of incurred necessary business expenses under Labor Code § 2802;
- 7 2. For statutory interest according to proof; and
- 8 3. For reasonable attorney's fees and costs pursuant to the Labor Code.

9 **ON THE EIGHTH CAUSE OF ACTION**

- 10 1. For the equitable, injunctive and declaratory relief;
- 11 2. For liquidated damages pursuant to Labor Code § 1194.1; and
- 12 3. For restitutionary disgorgement pursuant to the UCL.

13 **ON THE NINTH CAUSE OF ACTION**

- 14 1. For penalties for each violation of the Private Attorneys General Act ("PAGA");
- 15 2. For interest on statutory penalties from the date of violation until paid in full; and
- 16 3. For reasonable attorneys' fees, expenses, and costs pursuant to the Labor Code.

17 **ON ALL CAUSES OF ACTION**

- 18 1. An order that this action may proceed and be maintained as a class action;
- 19 2. Reasonable attorney's fees;
- 20 3. General, special and consequential damages, to the extent allowed by law;
- 21 4. Costs of suit;
- 22 5. For attorneys' fees pursuant to Code of Civil Procedure § 1021.5;
- 23 6. Prejudgment interest at the maximum legal rate; and
- 24 7. Such other relief as the Court may deem just and proper.

25 DATED:

THE MARKHAM LAW FIRM

26 By: 
27 David R. Markham
28 Maggie Realin
Lisa Brevard

KING & SIEGEL LLP

Julian Burns King
Elliot J. Siegel
Zachary Tucker

BARAHMAND LAW GROUP

Navid Barahmand

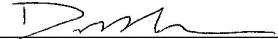
*Attorneys for Plaintiffs and all others
similarly situated*

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury for themselves and the Class members on all claims so triable.

DATED:

THE MARKHAM LAW FIRM

By: 

David R. Markham
Maggie Realin
Lisa Brevard

KING & SIEGEL LLP

Julian Burns King
Elliot J. Siegel
Zachary Tucker

BARAHMAND LAW GROUP

Navid Barahmand

*Attorneys for Plaintiffs
and all others similarly situated*

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Thorpe Design Inc.
Attn: Legal Department
410 Beatrice Ct, Suite A
Brentwood, CA 94513



9590 9402 4285 8190 1686 28

2. Article Number (Transfer from service label)

7018 1130 0001 7573 2060

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Sean McNamara*

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

Sean McNamara

C. Date of Delivery

3-21-23

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

Restricted Delivery

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OFFICIAL USE

Certified Mail Fee

- Extra Services & Fees (check box, add fee as appropriate)
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- ☐ Certified Mail Restricted Delivery \$ _____
- ☐ Adult Signature Required \$ _____
- ☐ Adult Signature Restricted Delivery \$ _____

Postage

\$ _____

Total Postage

\$ _____

Sent To

Thorpe Design Inc.

Street and Apt.

Attn: Legal Department

City, State, Z

410 Beatrice Ct, Suite A

Brentwood, CA 94513

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
Here

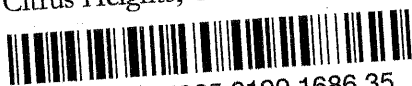
SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Capitol Services, Inc., Agent for
Service of Process for Thorpe Design,
Inc.

7011 Sylvan Rd #D
Citrus Heights, CA 95610



9590 9402 4285 8190 1686 35

2. Article Number (Transfer from service label)

7018 1130 0001 7573 2053

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Patience Bossant*

- ☒ Agent
☐ Addressee

B. Received by (Printed Name)

Patience Bossant

C. Date of Delivery

3/20/23

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
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☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail

Restricted Delivery

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OFFICIAL USE

Certified Mail Fee

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- ☐ Return Receipt (hardcopy) \$ _____
- ☐ Return Receipt (electronic) \$ _____
- ☐ Certified Mail Restricted Delivery \$ _____
- ☐ Adult Signature Required \$ _____
- ☐ Adult Signature Restricted Delivery \$ _____

Postage

\$ _____

Total Postage

\$ _____

Sent To

Capitol Services, Inc., Agent for

Street and Apt.

Service of Process for Thorpe Design,

City, State, Z

Inc.

7011 Sylvan Rd #D

Citrus Heights, CA 95610

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
Here

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Thorpe Design Inc.
Attn: Legal Department
410 Beatrice Ct, Suite A
Brentwood, CA 94513



9590 9402 4285 8190 1686 28

2. Article Number (Transfer from service label)

7018 1130 0001 7573 2060

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Sean McNamara*

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

Sean McNamara

C. Date of Delivery

3-21-23

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

Restricted Delivery

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

- Extra Services & Fees (check box, add fee as appropriate)
- | | |
|--|----|
| ☐ Return Receipt (hardcopy) | \$ |
| ☐ Return Receipt (electronic) | \$ |
| ☐ Certified Mail Restricted Delivery | \$ |
| ☐ Adult Signature Required | \$ |
| ☐ Adult Signature Restricted Delivery | \$ |

Postage

\$

Total Postage

\$

Sent To

Thorpe Design Inc.

Street and Apt

Attn: Legal Department

City, State, Z

410 Beatrice Ct, Suite A
Brentwood, CA 94513

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
Here

7018 1130 0001 7573 2060

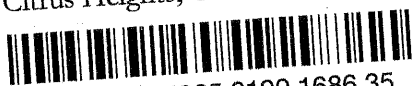
SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Capitol Services, Inc., Agent for
Service of Process for Thorpe Design,
Inc.

7011 Sylvan Rd #D
Citrus Heights, CA 95610



9590 9402 4285 8190 1686 35

2. Article Number (Transfer from service label)

7018 1130 0001 7573 2053

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Patience Bossant*

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

Patience Bossant

C. Date of Delivery

3/20/23

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted
☐ Insured Mail

Restricted Delivery

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

- Extra Services & Fees (check box, add fee as appropriate)
- | | |
|--|----|
| ☐ Return Receipt (hardcopy) | \$ |
| ☐ Return Receipt (electronic) | \$ |
| ☐ Certified Mail Restricted Delivery | \$ |
| ☐ Adult Signature Required | \$ |
| ☐ Adult Signature Restricted Delivery | \$ |

Postage

\$

Total Postage

\$

Sent To

Capitol Services, Inc., Agent for

Street and Apt

Service of Process for Thorpe Design,
Inc.

City, State, Z

7011 Sylvan Rd #D
Citrus Heights, CA 95610

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
Here

7018 1130 0001 7573 2053

Exhibit 2