

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Brandy Hale (“Plaintiff”) on behalf of herself, similarly situated non-exempt employees, and the State of California Labor and Workforce Development Agency (“LWDA”) on the one hand, and, on the other hand, defendant PaleoWest, LLC (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as the “Parties,” or individually as “Party.”

1. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- 1.1. “Action” collectively means the Plaintiff’s class action and representative PAGA lawsuits alleging wage and hour violations against Defendant captioned: (1) *Brandy Hale v. PaleoWest, LLC*, Case No. MCV088135, initiated on December 1, 2022 and pending in Superior Court of the State of California, County of Madera; and (2) *Brandy Hale v. PaleoWest, LLC*, Case No. MCV088302, initiated on December 23, 2022 and pending in Superior Court of the State of California, County of Madera.
- 1.2. “Administrator” means Apex Class Action Administration, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval.
- 1.4. “Aggrieved Employees” means all individuals who were employed by Defendant in California and classified as a non-exempt employee at any time during the PAGA Period.
- 1.5. “Class” means all individuals who were employed by Defendant in California and classified as a non-exempt employee at any time during the Class Period.
- 1.6. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, Sergio J. Puche, and Trevor G. Moran of Blumenthal Nordrehaug Bhowmik De Blouw LLP.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.

- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Administrator).
- 1.13. “Class Period” means the period of time from December 1, 2018 to the earlier of preliminary approval or November 23, 2023.
- 1.14. “Class Representative” means Brandy Hale, the named Plaintiff in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.15. “Class Representative Service Payment” means the service payment made to the Plaintiff as Class Representative in order to compensate for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses, and for the general release of all claims by the Plaintiff.
- 1.16. “Court” means the Superior Court of California, County of Madera.
- 1.17. “Defendant” means PaleoWest, LLC.
- 1.18. “Defense Counsel means George S. Howard, Jr., and Matthew N. Mushamel of Quarles & Brady LLP.
- 1.19. “Effective Date” means the date by when both of the following have occurred the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a)

the time period to appeal the Judgment has been exhausted without any appeals having been filed; and (b) to the extent a timely appeal was filed, all such appeals have been voluntarily or involuntarily dismissed, or the appropriate appellate court or the appellate courts have entered a final judgment affirming the Judgment without material modification and the final judgment of such appellate court or courts is no longer subject to any further appellate challenge or procedure.

- 1.20. “Final Approval” means the Court’s order granting final approval of the Settlement substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- 1.22. “Gross Settlement Amount” means Eight Hundred Thousand Dollars (\$800,000) which is the total amount to be paid by Defendant as provided by this Agreement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administration Expenses Payment. This Gross Settlement Amount is an all-in amount without any reversion to Defendant, and excludes any employer payroll taxes, if any, due on the portion of the Individual Class Payments allocated to wages which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendant. The Parties agree that, subject to this paragraph and Paragraph 9 below, under no circumstances shall Defendant be obligated to pay any amount over the Gross Settlement Amount under the terms of this Agreement.
- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon Final Approval substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency under Labor Code section 2699, subd. (i).
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

- 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means a Class Member who opts out of the Class Settlement by submitting a valid and timely Request for Exclusion to the Administrator.
- 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31. “PAGA Period” means the period of time from June 30, 2021 to the earlier of preliminary approval or November 23, 2023.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. “PAGA Notice” means the Plaintiff’s June 30, 2022 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000) and the 75% to LWDA (\$15,000) in settlement of PAGA claims.
- 1.35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion.
- 1.36. “Plaintiff” means Brandy Hale, the named plaintiff in the Action.
- 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement, substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- 1.38. “Released Class Claims” means all claims debts, liabilities, demands, actions or causes of action that were alleged, or reasonably could have been alleged, based facts stated in the Operative Complaint which occurred during the Class Period, including all claims for restitution and other equitable relief, claims for unpaid minimum and overtime wages, timeliness of earned wages, liquidated damages, failure to provide meal and/or rest periods or to pay meal and rest period premiums, waiting time penalties, unfair business practices, expense reimbursement, proper calculation of the regular rate of pay, unpaid sick pay, unpaid hours worked, and failure to provide accurate wage statements. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security,

workers' compensation, or Class claims based on facts occurring outside the Class Period.

- 1.39. "Released PAGA Claims" means all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, which occurred during the PAGA Period. The Released PAGA Claims do not include other PAGA claims, underlying wage and hour claims, claims for vested benefits, wrongful termination, discrimination, unemployment insurance, disability, social security, worker's compensation, and PAGA claims outside of the PAGA Period.
- 1.40. "Released Parties" means: Defendant and its former and present employees, directors, shareholders, officers, owners, attorneys, agents, insurers, agents, successors, assigns, parents, subsidiaries, affiliates, joint venturers, or legal representatives and any individual or entity which could be jointly liable with Defendant and all persons or entities acting by, through, under, or in concert with any of them.
- 1.41. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.42. "Response Deadline" means sixty (60) calendar days after the Administrator mails Class Notice Packet to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) submit Requests for Exclusion from the Settlement, or (b) submit his or her Objection to the Settlement. Class Members to whom Class Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.43. "Settlement" means the disposition of the Action and all related claims effectuated by this Agreement and the Judgment.
- 1.44. "Workweek" means any week during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day. Workweeks shall include only those weeks where a Class Member rendered actual services to Defendant in a covered position (i.e., excludes any workweeks where a Class Member was on leave, or workweeks where a Class Member was not a non-exempt California employee of Defendant).

2. RECITALS

The Class Action

- 2.1. On December 1, 2022, Plaintiff commenced this Action by filing a Complaint against Defendant in the Superior Court of the State of California, County of Madera (the "Class Action"). Plaintiff's Complaint asserted claims that Defendant:
- (a) Violated California Business and Professions Code §§ 17200 *et seq.*;
 - (b) Failed to pay minimum wages in violation of Labor Code §§ 1194, 1197 & 1197.1;

- (c) Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*;
- (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
- (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
- (f) Failed to provide accurate itemized wage statements in violation of California Labor Code § 226;
- (g) Failed to reimburse employees for required expenses in violation of California Labor Code § 2802;
- (h) Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203; and,
- (i) Failed to pay sick pay wages in violation of California Labor Code §§ 201-204, 233, 346.

2.2. On February 17, 2023, Defendant filed an Answer to Plaintiff's Class Action Complaint, asserting nineteen (19) affirmative defenses.

The PAGA Action

2.3. On December 23 2022, Plaintiff filed a separate PAGA Representative Action Complaint against Defendant in the Superior Court of the State of California, County of Madera (the "PAGA Action"), alleging one cause of action for Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the Applicable Wage Orders.

2.4. On March 9, 2023, Defendant filed an Answer to Plaintiff's Class Action Complaint, asserting fifteen (15) affirmative defenses.

Pleading Amendment

2.5. As part of this Settlement Agreement, the Parties agree to stipulate to the filing of a First Amended Class Action and Representative Action Complaint that adds the claims and parties from the PAGA Action and PAGA Notice into the first-filed Class Action. The First Amended Class Action and Representative Action Complaint, which was filed on October 20, 2023, shall be the operative complaint in the Action (the "Operative Complaint"). A copy of the proposed Operative Complaint is attached hereto as Exhibit D and incorporated herein by reference. Within seven court days of the filing of the Operative Complaint, Plaintiff shall file a request for dismissal without prejudice in the PAGA Action.

2.6. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

Mediation and Settlement

- 2.7. On August 24, 2023 the Parties participated in an all-day mediation presided over by Mark Rudy, Esq., a respected mediator of wage and hour representative and class actions. Following the mediation, each side, represented by its respective counsel, agreed to settle the Action based upon a mediator's proposal which was memorialized in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.
- 2.8. Prior to mediation, Plaintiff obtained sufficient documents and information to sufficiently investigate the claims such that Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.9. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class or Aggrieved Employees have merit or that Defendant bears any liability to Plaintiff or the Class or Aggrieved Employees on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.
- 2.10. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims other than the Class Action and PAGA Action described herein that will be extinguished or affected by the Settlement.

3. MONETARY TERMS

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$800,000 and no more as the Gross Settlement Amount. This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages which shall be separately paid by Defendant to the Administrator. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Administrator will make the following payments out of the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval.

- (a) To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$12,500 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
- (b) To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$266,666, and a Class Counsel Litigation Expenses Payment of not more than \$30,000. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments.
- (c) To the Administrator: An Administration Expenses Payment not to exceed \$8,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses Payment is less or the Court approves payment less than \$8,000, the Administrator will retain the remainder in the Net Settlement Amount for distribution to Participating Class Members.
- (d) To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$20,000 to be paid from the Gross Settlement Amount, with 75% (\$15,000) allocated to the LWDA PAGA Payment and 25% (\$5,000) allocated to the Individual PAGA Payments.
- i. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees

during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

- ii. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.
- (e) To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
- i. Tax Allocation of Individual Class Payments. 25% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 75% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wages, expense reimbursement, interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
 - ii. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

4. SETTLEMENT FUNDING

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on its records as of August 24, 2023, Defendant has represented that there were 189 Class Members as of May 13, 2023 who collectively worked a total of approximately 6,270 workweeks in the Class Period through May 13, 2023, and who are estimated to work approximately 8,000 workweeks through the end of the Class Period. Defendant further represents that, based on records available as of August 24, 2023, the PAGA Class Members worked approximately 1985 pay periods through May 13, 2023.

4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if

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

- 4.3. Funding of the Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

5. PAYMENTS FROM THE GROSS SETTLEMENT AMOUNT

- 5.1. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.
- 5.2. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the "void date", which is 180 days after the date of mailing, when the check will be voided. Before checks are mailed, the Administrator shall update address information through the National Change of Address database. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database. If a Participating Class Member's or Aggrieved Employee's check is not cashed within 120 days after its last mailing to the affected individual, the Administrator will also send the individual a notice informing him or her that unless the check is cashed by the void date, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed.
- 5.3. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator

shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

- 5.4. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).
- 5.5. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
6. **RELEASE OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Participating Class Members, Aggrieved Employees and the LWDA release claims against all Released Parties as follows:
- 6.1. Plaintiff's Release. Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences of any nature whatsoever that arose on before the date of preliminary settlement approval, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint, (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, and (c) all claims arising from or relating to Plaintiff's employment or the termination of employment with Defendant ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

Plaintiff hereby represents, covenants, and warrants that she has not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber, to any person or entity, any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged. Plaintiff further agrees that she shall not in any way hereafter commence, join, aid, or assist others in pursuing any claim, charge or action against any of the Released Parties for any acts or omissions released under this Agreement.

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

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

- 6.2. Release by Participating Class Members. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from the Released Class Claims.

- 6.3. Release of PAGA Claims. Class Members have no opt out rights as to the PAGA portion of the settlement of the Action. Accordingly, upon the Effective Date, Plaintiff, on behalf of herself and the State of California Labor and Workforce Development Agency, and all Aggrieved Employees waive, fully release and forever discharge, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.

7. **MOTION FOR PRELIMINARY APPROVAL**. The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's procedures and instructions.

- 7.1. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to the Model

Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement

- 7.2. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 7.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION

- 8.1. Selection of Administrator. The Parties have jointly selected Apex Class Action Administration to serve as the Administrator and verified that, as a condition of appointment, Apex Class Action Administration agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number and email and a fax number to receive communications from Class Members; receiving and reviewing for validity completed Requests for Exclusion; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of Requests for Exclusion, objections and disputes; calculating Individual Class Payments and Individual PAGA Payments; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for the purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.

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

8.4. Notice to Class Members.

- (a) No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
- (b) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- (c) Not later than 7 days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, and so long as the Response Deadline has not yet passed, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- (d) The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the Response Deadline provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- (e) If the Administrator, the Parties, Defense Counsel or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

8.5. Requests for Exclusion (Opt-Outs).

- (a) Class Members who wish to exclude themselves (opt-out) from the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- (b) The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- (c) Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 6.2 of the Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- (d) Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. However, Class Members who submit a valid Request for Exclusion will nevertheless be bound by the settlement and release of PAGA claims in the Settlement to the extent they are an Aggrieved Employee as defined herein and will be mailed a payment for their Individual PAGA Payment in settlement of PAGA claims pursuant to the terms of this Agreement. Because no opt-out rights exist as to the PAGA portion of this Settlement, and the Released PAGA Claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees release the claims identified in Paragraph 6.3 of this Agreement. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted, and the objection will be void.

8.6. Challenges to Calculation of Workweeks. Each Class Member shall have until the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any)

allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination as to the challenges

8.7. Objections to Settlement.

- (a) Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.
- (b) Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, or in addition to a written objection, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice was re-mailed).
- (c) Non-Participating Class Members have no right to object to any of the class action components of the Settlement. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted, and the objection will be void.

8.8. Administrator Duties. The Administrator will be responsible for the administration of the settlement terms set forth herein, and all related matters, and will perform the following duties and other duties as are customarily performed by settlement administrators:.

- (a) Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information relevant to this Settlement including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

- (b) Request for Exclusion (Opt-Outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 7 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- (c) Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- (d) Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include providing the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- (e) Administrator’s Declaration. Not later than 7 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- (f) Final Report by Administrator. Within 10 days after the Administrator disburses all funds of the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 7 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court. If a second

declaration attesting to the distribution of uncashed checks is required, the Administrator shall provide this second declaration at least 7 days before any deadline for a second declaration and Class Counsel shall be responsible for filing the second declaration with the Court.

- 9. CLASS SIZE MODIFICATION AND ESCALATOR CLAUSE.** Based on its records, Defendant provided figures as to the Class size as set forth in paragraph 4.1 above. Defendant shall verify these figures prior to the filing of the Motion for Preliminary Approval. Should the Workweeks worked by the Class Members during the Class Period identified in paragraph 4.1 above increase by more than 10% of 8,000 (i.e., if the workweeks exceed 8,800), Defendant, at its option, can either choose to: (1) cut off the end date for the Class Period as of the date on which the number of workweeks reaches 8,800, or (2) increase the Gross Settlement Amount on a proportional basis equal to the percentage increase in number of workweeks worked by the Class Members above the 10% (i.e., if there was an 11% increase in the number of Workweeks worked by Class Members during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 1%).
- 10. DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Administration Expenses incurred as of the date Defendant makes this election to withdraw. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Administrator sends the final Exclusion List to Defense Counsel. Invalid Requests for Exclusion will have no effect on this threshold for an election.
- 11. MOTION FOR FINAL APPROVAL.** Unless otherwise ordered by the Court, not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699(l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
- 11.1. Response to Objections.** Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 11.2. Duty to Cooperate.** The Parties agree to fully cooperate with one another to accomplish the terms of this Agreement, including but not limited to, execution of such documents and taking such other action as reasonably may be necessary to implement the terms of this Agreement. The Parties shall use their best efforts, including all efforts contemplated

by this Agreement and any other efforts that may become necessary by order, suggestion, or recommendation of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. The Parties' efforts to continue to cooperate and make all best efforts to obtain approval of this Agreement shall only cease after the Parties have exhausted all opportunities to amend or modify this Agreement, including seeking the assistance of the mediator, and the filing of any motions to obtain approval of this Agreement. The Court's decision to award less than the amounts requested for a Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

11.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement under C.C.P. section 664.6 solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

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

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

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

13. ADDITIONAL PROVISIONS

13.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit or that Plaintiff's claims lack merit. Defendant expressly denies that it has violated any law, breached any agreement or obligation to the Plaintiff or the Class Members, or engaged in any wrongdoing with respect to the Plaintiff or the Class Members. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or Judgment pursuant to this Agreement, the Parties shall be returned to the same positions as existed at the time of this Memorandum of Understanding, and Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

13.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members. Nor does this paragraph restrict Defendant from advising its officers, directors, supervisors, managers and investors, prior to the date of filing of the Motion for Preliminary Approval, of the existence and terms of the Settlement as necessary in the ordinary course of business.

- 13.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees have not and will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 13.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 13.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 13.7. Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 13.8. Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

- 13.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant.
- 13.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 13.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 13.17. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs and the Class:

Norman B. Blumenthal
Kyle R. Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com
kyle@bamlawca.com

To Defendant:

George S. Howard, Jr.
Matthew N. Mushamel
Quarles & Brady LLP
101 West Broadway, Ninth Floor
San Diego, California 92101-8285
Tel.: (619) 237-5200
Fax: (619) 615-0700
E-Mail: george.howard@quarles.com
matthew.mushamel@quarles.com

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

13.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for a period of not less than one (1) year starting from the date of the signing of the Memorandum of Understanding by all parties until the earlier of the Effective Date or the date this Agreement shall no longer be of any force or effect.

13.20. Fair Settlement. The Parties, Class Counsel and Defense Counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, both current and potential.

14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: Oct 30, 2023



Brandy Hale (Oct 30, 2023 13:54 MDT)

Plaintiff Brandy Hale

Dated: _____

Shawn Fehrenbach
Chief Executive Officer
For Defendant PaleoWest, LLC

San Diego, California 92101-8285
Tel.: (619) 237-5200
Fax: (619) 615-0700
E-Mail: george.howard@quarles.com
matthew.mushamel@quarles.com

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

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14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: _____
Plaintiff Brandy Hale

Dated: -10/28/2023 _____
Shawn Fehrenbach
Chief Executive Officer
For Defendant PaleoWest, LLC

Dated: 11/1/23 _____
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP

Attorney for Plaintiff

Dated: Oct 30, 2023

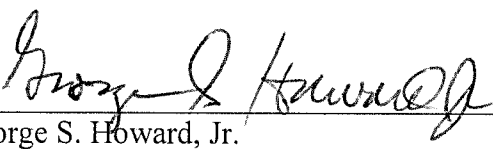

George S. Howard, Jr.
Quarles & Brady LLP
Attorney for Defendant

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR
FINAL COURT APPROVAL]

EXHIBIT “A”

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

***Hale v. PaleoWest, LLC, Superior Court of the State of California,
County of Madera, Case No. MCV088135***

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

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT
ACT. PLEASE READ THIS NOTICE CAREFULLY.**

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Defendant PaleoWest. LLC (“Defendant”) for alleged wage and hour violations. The Action was filed by Plaintiff Brandy Hale (“Plaintiff”) and seeks payment of (1) wages and other relief on behalf of all individuals who were employed by Defendant in California and classified as a non-exempt employee at any time during the Class Period (December 1, 2018 to November 23, 2023) (“Class Members”), and (2) penalties and other relief on behalf of all individuals who were employed by Defendant in California and classified as a non-exempt employee at any time during the PAGA Period (June 30, 2021 through November 23, 2023) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring Defendant to fund the PAGA Penalties to pay penalties to the California Labor and Workforce Development Agency (“LWDA”) and to Aggrieved Employees.

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be <<\$_____>> (less withholding), and your share of the PAGA Penalties is estimated to <<be \$_____>>.** The actual amount you may receive likely will be different and will depend on a number of factors. (If \$0.00 is stated, then according to Defendant’s records you are not eligible for that payment.)

The above estimates are based on Defendant’s records showing that **you worked <<_____>> workweeks** during the Class Period and **you worked <<_____>> pay periods** during the PAGA Period. If you believe that you worked more workweeks and/or pay periods during either period, you can submit a challenge by the deadline date. See Section 5 of this Notice below.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment

that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

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

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment, and/or a share of the PAGA Penalties. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendant as described below in Section 4 below.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment, however you will preserve your right to personally pursue Class Period wage claims against Defendant. If you are an Aggrieved Employee, you remain eligible for a share of the PAGA Penalties. You cannot opt-out of the PAGA portion of the proposed Settlement.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and a share of the PAGA Penalties (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Class Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is ____.	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 7 of this Notice. However, you cannot opt-out of the PAGA portion of the proposed Settlement. If you are also an Aggrieved Employee and exclude yourself, you will still be paid your share of the PAGA Penalties and will remain bound by the release of the Released PAGA Claims regardless of whether you submit a request for exclusion.
Participating Class Members Can Object to the Class Settlement	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel

Written Objections Must be Submitted by the Response Deadline _____	and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 8 of this Notice.
You Can Participate in the _____ Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on _____ at _____ [a.m./p.m.], at the Madera County Superior Court, located at 200 South G Street, Madera, CA 93637, in Department 45 before Judge Brian W. Enos. This hearing may change as explained below in Section 9. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 9 of this Notice
You Can Challenge the Calculation of Your Workweeks / Pay Periods Witten Challenges Must be Submitted by the Response Deadline _____ (_____)	The amount of your Individual Class Payment depends on how many workweeks you worked at least one day during the Class Period. The amount of your share of the PAGA Penalties (if any) depends on how many pay periods you worked at least one day during the PAGA Period. The number of Class Period workweeks and number of PAGA Period pay periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 5 of this Notice

1. What is action about?

Plaintiff Brandy Hale is a former employee of Defendant. The Action accuses Defendant of violating California labor laws by failing to pay minimum wages, failing to pay overtime wages, failing to provide required meal periods and unpaid premiums, failing to provide required rest periods and unpaid premiums, failing to provide accurate itemized wage statements, failing to provide required expense reimbursement, failing to provide wages when due and engaging in unfair competition. Plaintiff also seeks civil penalties under the Private Attorneys General Act ("PAGA").

Defendant denies any wrongdoing or liability whatsoever and denies that wages, damages, or penalties are owed, or that they acted contrary to California law. Defendant believes that it has valid defenses to Plaintiff's claims. By agreeing to settle, Defendant is not admitting liability on any of the factual or legal allegations in the Action, or that the Action can proceed as a class or representative action. Defendant has agreed to settle the Action as a compromise with Plaintiff

and Class Counsel.

2. What does it mean that the action has settled?

So far, the Court has made no determination whether Defendant or Plaintiff are correct on the merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant do not admit any violations or concede the merit of any claims. Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. Do I need to hire an attorney?

You do not need to hire your own attorney. The Court has already preliminarily appointed Class Counsel (see Section 9). However, you may hire your own attorney at your own expense if you choose to do so.

4. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of **Eight Hundred Thousand Dollars (\$800,000) (the “Gross Settlement Amount”)** to fund the settlement of the Action. The Gross Settlement Amount includes all payments of Individual Class Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, the Administration Expenses Payment, and the PAGA Penalties for civil penalties under PAGA. Any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages shall be separately paid by Defendant. Defendant shall fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant’s share of payroll taxes, by transmitting the funds to the Administrator no later than 14 days after the Effective Date. The “Effective Date” means the date the Judgment is no longer subject to appeal. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments to Participating Class Members.

Court Approved Deductions from Gross Settlement Amount. The proposed payments, subject to Court approval, will be deducted from the Gross Settlement Amount before payments of Individual Class Payments are made to Class Members who do not request exclusion (“Participating Class Members”). At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts

of which will be decided by the Court at the Final Approval Hearing:

- Administration Expenses Payment. Payment to the Administrator, estimated not to exceed \$8,000, for expenses, including expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing settlement checks and tax forms.
- Attorneys' Fees and Costs. Payment to Class Counsel of reasonable attorneys' fees not to exceed one-third (1/3) of the Gross Settlement Amount, which presently equals \$266,666, and an additional amount to reimburse actual litigation costs incurred by the Plaintiff not to exceed \$30,000. Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses. The amounts stated are what Class Counsel will be requesting and the final amounts to be paid will be decided at the Final Approval Hearing.
- Class Representative Service Payment. A Class Representative Service Payment in an amount not more than \$12,500 to the Plaintiff as a service award, or such lesser amount as may be approved by the Court, to compensate her for services on behalf of the Class in initiating and prosecuting the Action, and for the risks she undertook. The amount stated is what Plaintiff will be requesting and the final amount to be paid will be decided at the Final Approval Hearing.
- PAGA Penalties. A payment of \$20,000 relating to Plaintiff's claim under PAGA, \$15,000 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA"). The remaining \$5,000 will be distributed to the Aggrieved Employees as Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period, which is June 30, 2021 through November 23, 2023.

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

Calculation of Payments to Class Members. After all of the payments of the court-approved Attorneys' Fees and Costs, the Class Representative Service Payment, the PAGA Penalties, and the Administration Expenses Payment are deducted from the Gross Settlement Amount, the remaining portion, the "Net Settlement Amount", shall be distributed as Individual Class Payments to the Participating Class Members. The Net Settlement Amount is estimated to be at least \$462,834. The Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member. The Individual Class Payment for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period

and (b) multiplying the result by each Participating Class Member's Workweeks. "Workweek" means any week during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day. The number of Workweeks will be based on Defendant's records; however, Class Members may challenge the number of Workweeks as explained below.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Individual Class Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. Twenty-Five Percent (25%) of each Participating Class Member's Individual Class Payment is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2. Seventy-Five Percent (75%) of each Participating Class Member's Individual Class Payment is in settlement of claims for non- non-wages, expense reimbursement, interest and penalties allegedly due to employees (collectively the "Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099. The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members. Neither Class Counsel nor Defendant's Counsel intend anything contained in this Class Notice to constitute advice regarding taxes or taxability. The tax issues for each Participating Class Member are unique to him/her, and each Participating Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement and your receipt of the Individual Class Payment is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

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

Need to Promptly Cash Payment Checks. The front of every check issued will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the individual who failed to cash their check.

Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class

Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments but will preserve their rights to personally pursue wage and hour claims against the Defendant.

Administrator. The Court has appointed a neutral company, _____ (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

5. What Do I Release Under the Settlement?

Released Class Claims. As of the Effective Date and upon full finding of the Gross Settlement Amount and all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from the Released Class Claims. The “Released Class Claims” are all claims debts, liabilities, demands, actions or causes of action that were alleged, or reasonably could have been alleged, based facts stated in the Operative Complaint which occurred during the Class Period, including all claims for restitution and other equitable relief, claims for unpaid minimum and overtime wages, timeliness of earned wages, liquidated damages, failure to provide meal and/or rest periods or to pay meal and rest period premiums, waiting time penalties, unfair business practices, expense reimbursement, proper calculation of the regular rate of pay, unpaid sick pay, unpaid hours worked, and failure to provide accurate wage statements. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or Class claims based on facts occurring outside the Class Period.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and any other Released Party about the Released Class Claims resolved by this Settlement. It also means that all of the Court’s orders in the Action will apply to you and legally bind you.

Released PAGA Claims. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, on behalf of herself and the State of California Labor and Workforce Development Agency, and all Aggrieved Employees waive, fully release and forever discharge, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims. The “Released PAGA Claims” are all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, which occurred during the PAGA Period. The Released PAGA Claims do not include other PAGA claims, underlying wage and hour claims, claims for vested benefits, wrongful termination, discrimination, unemployment insurance, disability, social security, worker’s compensation, and PAGA claims outside of the PAGA Period.

Released Parties. The Released Parties are: Defendant and its former and present employees, directors, shareholders, officers, owners, attorneys, agents, insurers, agents, successors, assigns, parents, subsidiaries, affiliates, joint venturers, or legal representatives and any individual or entity which could be jointly liable with Defendant and all persons or entities acting by, through, under, or in concert with any of them.

6. How much will my payment be?

Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks:

Individual Class Payments shall be calculated as follows:
$$= (\text{Net Settlement Amount} \div \text{total workweeks of Class Members}) \times \text{the individual Class Member's workweeks.}$$

Each Individual Class Payment will be reduced by any legally mandated deductions (e.g., payroll taxes, etc.).

Defendant's records reflect that you worked <<_____>> Workweeks during the Class Period (December 1, 2018 through November 23, 2023).

Based on this information, your estimated Individual Class Payment from the Net Settlement Amount is <<_____>>.

Defendant's records reflect that you worked <<_____>> PAGA Pay Periods during the during the PAGA Period (June 30, 2021 through November 23, 2023). Based on this information your estimated Individual PAGA Payment is <<_____>>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Administrator at the address provided in this Class Notice no later than the Response Deadline, which is _____ [sixty (60) days after the mailing of the Class Notice or an additional 14 days in the case of re-mailing]. You may also fax the dispute to _____ or email the dispute to _____ by no later than the Response Deadline. Any dispute should include credible written evidence and will be resolved by the Administrator.

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

7. How can I get a payment?

To get money from the Settlement, you do not have to do anything. A check for your Individual Class Payment will be mailed automatically to the same address as this Class Notice.

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

8. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Class portion of the Settlement or "opt out." **If you submit a valid and timely request for exclusion form, you shall be barred from participating in the Settlement. You may not object and will not receive an Individual Class Payment. You will retain all rights you may have against Defendant.** However, Aggrieved Employees who opt out will still be paid their allocation of the PAGA Penalties and will remain bound by the release of the Released PAGA Claims regardless of whether they submit a request for exclusion. The PAGA Penalties amount is \$20,000, of which \$5,000 will be distributed to the Aggrieved Employees to be allocated based on their respective PAGA Pay Periods. Your share of the PAGA Penalties, if any, is set forth in Section 5 above.

To opt out, you must submit to the Administrator a written, signed and dated request to opt-out postmarked no later than the Response Deadline which is _____. You may also fax your request to opt out to _____ or email the dispute to _____ by no later than the Response Deadline. The request to opt-out should state in substance that you wish to be excluded from the class settlement in the *Hale v. PaleoWest* lawsuit. The request to opt-out should state the Class Member's full name, address and email address or telephone number. Please include the name and number of the case, which is *Hale v. PaleoWest*, Case No. MCV088135. The request to opt-out must be completed and signed by you. No other person may opt-out for a living member of the Class.

The address for the Administrator is _____. Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

9. How do I Object to the Settlement?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least sixteen (16) court days before the Final Approval Hearing, scheduled for _____, Class Counsel and Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is below) will send you copies of these documents at no cost to you. You can also view them on Class Counsel's website at www.bamlawca.com under "Class Notices" for

Hale v. PaleoWest or on the Court's website (<https://madera-prod-portal.ecourt.com/public-portal/>) and entering the Case No. MCV088135.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The Response Deadline for sending written objections to the Administrator is _____** [sixty (60) days after the date of the Notice or an additional 14 days after the Notice in the case of re-mailing]. You may also fax the dispute to _____ or email the dispute to _____ by no later than this Response Deadline. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Hale v. PaleoWest*, Case No. MCV088135, and include your name, current address, email or telephone number, and approximate dates of employment for Defendant and sign the objection. The Administrator's contact information is as follows:

Administrator:

Name of Company: _____

Email Address: _____

Mailing Address: _____

Telephone Number: _____

Fax Number: _____

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. You also have the option to appear at the hearing remotely. Instructions on how to do so are available on the Court's website at <https://www.madera.courts.ca.gov/general-information/covid-19-information/remote-video-appearances>. Check the Court's website for the most current information. See Section 9 of this Notice (immediately below) for specifics regarding the Final Approval Hearing

The addresses for Parties' counsel are as follows:

CLASS COUNSEL:

Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik DeBlouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: kyle@bamlawca.com

COUNSEL FOR DEFENDANTS:

George S. Howard, Jr.
Matthew N. Mushamel

Quarles & Brady LLP
101 West Broadway, Ninth Floor
San Diego, California 92101-8285

10. Can I Attend the Final Approval Hearing?

You can, but don't have to, attend the Final Approval Hearing at _____ (Pacific Standard Time) on _____, in Department 45 of the Superior Court of California, County of Madera, 200 South G Street, Madera, California 93637, before Judge Brian W. Enos. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as a service payment to Plaintiff. If there are objections, the Court will consider them. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing remotely or in person. Check the Court's website for the most current information concerning appearances and procedures at the Court - <https://www.madera.courts.ca.gov/general-information/covid-19-information/remote-video-appearances>. For assistance in making an appearance at the Final Approval Hearing, please contact Class Counsel below.

It's possible the Court will reschedule the Final Approval Hearing. If the hearing is continued, notice will be posted on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Hale v. PaleoWest*. In addition, hearing dates are posted on the Internet via the Case Search page for the California Superior Court for the County of Madera (<https://madera-prod-portal.ecourt.com/public-portal/>) and entering the Case No. MCV088135.

11. How Can I Get More Information?

You may call the Administrator at _____ or write to *Hale v. PaleoWest* Administrator, c/o _____.

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Judgment, the motion for attorneys' fees, costs and service award, the motion for final approval or other Settlement documents by going to Class Counsel's website at www.bamlawca.com under "Class Notices" for *Hale v. PaleoWest*. You may get more details by examining the Court's file on the Internet via the Case Search page for the California Superior Court for the County of Madera (<https://madera-prod-portal.ecourt.com/public-portal/>) and entering the Case No. MCV088135. If you wish to view the Court files in person, you must make an appointment with the Clerk's Office at the Madera Courthouse, 200 South G Street, Madera, CA 93637.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- **What if Your Address Changes** - To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

- **What if You Fail to Cash a Check** - Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date is printed on the check. In such events, the Administrator shall direct all unclaimed funds to be paid to the California Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not cash their check. The funds may be claimed at https://www.sco.ca.gov/upd_msg.html.
- **What if You Lose Your Check** - If your check is lost or misplaced, you should contact the Administrator immediately to request a replacement.

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL]

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MADERA

BRANDY HALE, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiff,

vs.

PALEOWEST, LLC, a Limited Liability
Company; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: MCV088135

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Brian W. Enos
Dept: 45

Date Filed: December 1, 2022
Trial Date: Not set

This matter came before the Honorable Brian W. Enos of the Superior Court of the State of California, in and for the County Madera, on _____[DATE], for hearing on the unopposed motion by Plaintiff Brandy Hale ("Plaintiff") for preliminary approval of the Settlement with Defendant PaleoWest, LLC ("Defendant"). The Court, having considered the briefs, argument of

PRELIMINARY APPROVAL ORDER

1 counsel and all matters presented to the Court and good cause appearing, hereby GRANTS
2 Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

3
4 **IT IS HEREBY ORDERED:**

5 1. The Court preliminarily approves the Class Action and PAGA Settlement
6 Agreement ("Agreement") attached as Exhibit ____ to the Declaration of Kyle Nordrehaug in
7 Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement. This is based
8 on the Court's determination that the Settlement set forth in the Agreement is within the range of
9 possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil
10 Procedure and California Rules of Court, rule 3.769.

11 2. This Order incorporates by reference the definitions in the Agreement, and all
12 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

13 3. The Gross Settlement Amount that Defendant shall pay is Eight Hundred Thousand
14 Dollars (\$800,000). It appears to the Court on a preliminary basis that the settlement amount and
15 terms are fair, adequate and reasonable as to all potential Class Members when balanced against
16 the probable outcome of further litigation and the significant risks relating to certification, liability
17 and damages issues. It further appears that investigation and research have been conducted such
18 that counsel for the Parties are able to reasonably evaluate their respective positions. It further
19 appears to the Court that the Settlement will avoid substantial additional costs by all Parties, as
20 well as avoid the delay and risks that would be presented by the further prosecution of the Action.
21 It further appears that the Settlement has been reached as the result of serious and non-collusive,
22 arm's-length negotiations.

23 4. The Court preliminarily finds that the Settlement appears to be within the range of
24 reasonableness of a settlement that could ultimately be given final approval by this Court. The
25 Court has reviewed the monetary recovery that is being granted as part of the Settlement and
26 preliminarily finds that the monetary settlement made available to the Class is fair, adequate, and
27
28

1 reasonable when balanced against the probable outcome of further litigation and the significant
2 risks relating to certification, liability, and damages issues.

3 5. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
4 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$30,000, and
5 proposed Class Representative Service Payment to the Plaintiff in an amount not to exceed
6 \$12,500. The Court will not approve the amount of attorneys' fees and costs, nor the amount of
7 any service award, until the Final Approval Hearing. Plaintiff will be required to present evidence
8 supporting these requests, including lodestar, prior to final approval.

9 6. The Court recognizes that Plaintiff and Defendant stipulate and agree to
10 representative treatment and certification of a class for settlement purposes only. This stipulation
11 will not be deemed admissible in this or any other proceeding should this Settlement not become
12 final. For settlement purposes only, the Court conditionally certifies the Class which consists of
13 "all individuals who were employed by Defendant in California and classified as a non-exempt
14 employee at any time during the Class Period." The "Class Period" is December 1, 2018 to
15 November 23, 2023.

16 7. The Court concludes that, for settlement purposes only, the Class meets the
17 requirements for certification under section 382 of the California Code of Civil Procedure in that:
18 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
19 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
20 community of interest amongst the members of the Class with respect to the subject matter of the
21 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class; (d)
22 the Plaintiff will fairly and adequately protect the interests of the members of the Class; (e) a class
23 action is superior to other available methods for the efficient adjudication of this controversy; and
24 (f) counsel for the Class is qualified to act as counsel for the Class and the Plaintiff is an adequate
25 representative of the Class.

26 8. The Court provisionally appoints Plaintiff as the representatives of the Class. The
27 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik,
28

1 Nicholas J. De Blouw, Jeffrey S. Herman, and Sergio J. Puche of Blumenthal Nordrehaug
2 Bhowmik De Blouw LLP as Class Counsel for the Class.

3 9. The Agreement provides for a PAGA Penalties out of the Gross Settlement
4 Amount of \$20,000, which shall be allocated \$15,000 to the Labor & Workforce Development
5 Agency (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this
6 Agreement pursuant to the PAGA and \$5,000 to the Aggrieved Employees. “Aggrieved
7 Employees” are all individuals who were employed by Defendant in California and classified as a
8 non-exempt employee at any time during the PAGA Period (June 30, 2021 through November 23,
9 2023). Pursuant to Labor Code section 2699, subdivision (l)(2), the LWDA will be provided
10 notice of the Agreement and these settlement terms. The Court finds the PAGA Penalties to be
11 reasonable.

12 10. The Court hereby approves, as to form and content, the Class Notice attached to the
13 Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and accurately
14 inform the Class of all material elements of the proposed Settlement, of the Class Members’ right
15 to be excluded from the Class by submitting a written opt-out request, and of each member’s right
16 and opportunity to object to the Settlement. The Court further finds that the distribution of the
17 Class Notice substantially in the manner and form set forth in the Agreement and this Order meets
18 the requirements of due process, is the best notice practicable under the circumstances, and shall
19 constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of
20 the Class Notice by first class mail pursuant to the terms set forth in the Agreement. If a Class
21 Notice Packet is returned because of an incorrect address, the Administrator will promptly search
22 for a more current address for the Class Member and re-mail the Class Notice Packet to any new
23 address for the Class Member no later than seven (7) days after the receipt of the undelivered
24 Class Notice.

25 11. The Court hereby appoints Apex Class Action Administration as the Administrator.
26 No later than fifteen (15) days after this Order, Defendants will provide the Class Data to the
27 Administrator. The Administrator will perform address updates and verifications as necessary
28

1 prior to the first mailing. Using best efforts to mail it as soon as possible, and in no event later
2 than fourteen (14) days after receiving the Class Data, the Administrator will mail the Class Notice
3 Packet to all Class Members via first-class regular U.S. Mail to their last known address.

4 12. The Court hereby preliminarily approves the proposed procedure for exclusion
5 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
6 from the Class as provided in the Class Notice by following the instructions for requesting
7 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
8 postmarked or received no later than sixty (60) calendar days after the date of the mailing of the
9 Class Notice (“Response Deadline”). If a Class Notice Packet is re-mailed, the Response Deadline
10 for requests for exclusion will be extended an additional fourteen (14) days. A Request for
11 Exclusion may also be faxed or emailed to the Administrator as indicated in the Class Notice.
12 Any such person who chooses to opt out of and be excluded from the Class will not be entitled to
13 any recovery under the Class Settlement and will not be bound by the Class Settlement or have
14 any right to object, appeal or comment thereon. Class Members who have not requested exclusion
15 shall be bound by all determinations of the Court, the Agreement and the Judgment. A request for
16 exclusion may only opt out that particular individual, and any attempt to effect an opt-out of a
17 group, class, or subclass of individuals is not permitted and will be deemed invalid.

18 13. Any Class Member who has not opted out may appear at the final approval hearing
19 and may object or express the Member’s views regarding the Settlement and may present evidence
20 and file briefs or other papers that may be proper and relevant to the issues to be heard and
21 determined by the Court as provided in the Class Notice. Class Members will have until the
22 Response Deadline to submit their written objections to the Administrator. Written objections
23 may also be faxed or emailed to the Administrator as indicated in the Class Notice. If a Class
24 Notice Packet is re-mailed, the Response Deadline for written objections will be extended an
25 additional fourteen (14) days. Alternatively, Class Members may appear at the Final Approval
26 Hearing to make an oral objection.

1 14. A final approval hearing shall be held before this Court on _____
2 _____ at _____ in Department 45 at the Madera County Superior Court to hear the
3 motion for final approval and the motion for attorneys' fees and costs, and to determine all
4 necessary matters concerning the Settlement, including: whether the proposed settlement of the
5 Action on the terms and conditions provided for in the Agreement is fair, adequate and reasonable
6 and should be finally approved by the Court; whether the Final Approval Order and Judgment
7 should be entered herein; whether the plan of allocation contained in the Agreement should be
8 approved as fair, adequate and reasonable to the Class Members; and to finally approve attorneys'
9 fees and costs, service award, and the fees and expenses of the Administrator. All papers in
10 support of the motion for final approval and the motion for attorneys' fees, costs and service
11 award shall be filed with the Court and served on all counsel no later than sixteen (16) court days
12 before the hearing and both motions shall be heard at this final approval hearing.

13 15. Pending the Fairness Hearing, all proceedings in this action, other than proceedings
14 necessary to carry out or enforce the terms and conditions of the Settlement Agreement and this
15 Order, are stayed.

16 16. Neither the Settlement nor any exhibit, document, or instrument delivered
17 thereunder shall be construed as a concession or admission by Defendant in any way that the
18 claims asserted have any merit or that this Action was properly brought as a class or representative
19 action, and shall not be used as evidence of, or used against Defendant as, an admission or
20 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
21 omission by Defendant or with respect to the truth of any allegation asserted by any person.
22 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
23 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
24 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
25 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
26 evidence of a presumption, concession, indication or admission by Defendant of any liability,
27 fault, wrongdoing, omission, concession or damage.

17. In the event the Settlement does not become effective in accordance with the terms of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Agreement, and expressly reserve their respective rights regarding the prosecution and defense of this Action, including all available defenses and affirmative defenses, and arguments that any claim in the Action could not be certified as a class action and/or managed as a representative action . In such an event, the Court's orders regarding the Settlement, including this Order, shall not be used or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of the Agreement with respect to the effect of the Agreement if it is not approved.

18. The Court reserves the right to adjourn or continue the date of the final approval hearing and all dates provided for in the Agreement without further notice to Class Members and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

IT IS SO ORDERED.

Dated: _____

HON. BRIAN W. ENOS
JUDGE OF THE SUPERIOR COURT OF CALIFORNIA

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

EXHIBIT "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MADERA

BRANDY HALE, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiff,

vs.

PALEOWEST, LLC, a Limited Liability
Company; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: MCV088135

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Brian W. Enos
Dept: 45

Date Filed: December 1, 2022
Trial Date: Not set

FINAL APPROVAL ORDER AND JUDGMENT

1 The unopposed motion of Plaintiff Brandy Hale (“Plaintiff”) for an order finally approving
2 the Class Action and PAGA Settlement Agreement (“Agreement”) with Defendant PaleoWest,
3 LLC (“Defendant”), attorneys’ fees and costs, service payment, and the expenses of the
4 Administrator duly came on for hearing on _____ before the Honorable Brian W.
5 Enos.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

- 10 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the Superior Court for the State of California, in and for the County of Madera, and over all
13 Parties to this litigation, including the Class.
- 14 3. Based on a review of the papers submitted by Plaintiff and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of Eight Hundred Thousand
16 Dollars (\$800,000) and the terms set forth in the Agreement are fair, reasonable, and adequate.
- 17 4. The Court further finds that the Settlement was the result of arm’s length
18 negotiations conducted after Class Counsel had adequately investigated the claims and became
19 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
20 Settlement, and the assistance of an experienced mediator in the settlement process, among other
21 factors, support the Court’s conclusion that the Settlement is fair, reasonable, and adequate.

22 **Preliminary Approval of the Settlement**

- 23 5. On _____, the Court granted preliminary approval of the Settlement. At
24 this same time, the Court approved conditional certification of the Class for settlement purposes
25 only.
- 26
- 27
- 28

1 **Notice to the Class**

2 6. In compliance with the Preliminary Approval Order, the Court-approved Class
3 Notice was mailed by first class mail to members of the Class at their last-known addresses on or
4 about _____. Mailing of the Class Notice to their last-known addresses was the best
5 notice practicable under the circumstances and was reasonably calculated to communicate actual
6 notice of the litigation and the proposed settlement to the Class. The Class Notice given to the
7 Class Members fully and accurately informed the Class Members of all material elements of the
8 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion
9 from the Settlement; was valid, due, and sufficient notice to all Class Members; and complied
10 fully with the laws of the State of California, the United States Constitution, due process and other
11 applicable law. The Class Notice fairly and adequately described the Settlement and provided
12 Class Members adequate instructions and a variety of means to obtain additional information.

13 7. The Response Deadline for opting out or submitting written objections to the
14 Settlement was _____, which for re-mailings was extended by fourteen (14) days. There
15 was an adequate interval between notice and the deadline to permit Class Members to choose what
16 to do and to act on their decision. A full and fair opportunity has been afforded to the Class
17 Members to participate in this hearing, and all Class Members and other persons wishing to be
18 heard have had a full and fair opportunity to be heard. Class Members also have had a full and
19 fair opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the
20 Court determines that all Class Members who did not timely and properly submit a request for
21 exclusion are bound by the Settlement and this Final Approval Order and Judgment.

22 **Fairness of the Settlement**

23 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
24 48 Cal.App.4th 1794, 1801 (1996).

25 a. The settlement was reached through arm's-length bargaining between the
26 Parties during an all-day mediation before Mark Rudy, an experienced mediator of wage and hour
27 class actions. There has been no collusion between the Parties in reaching the Settlement.

1 b. Plaintiff and Class Counsel’s investigation and discovery have been
2 sufficient to allow the Court and counsel to act intelligently.

3 c. Counsel for all Parties are experienced in similar employment class action
4 litigation. Class Counsel recommended approval of the Agreement.

5 d. The percentage of objectors and requests for exclusion is small. ____
6 objections were received. _____ requests for exclusion were received.

7 e. The participation rate was high. _____ Class Members will be mailed a
8 settlement payment, representing ____% of the overall Class.

9 9. The consideration to be given to the Class Members under the terms of the
10 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
11 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
12 Members’ claims, given the uncertainties and significant risks of the litigation and the delays
13 which would ensue from continued prosecution of the action.

14 10. The Agreement is approved as fair, adequate and reasonable and in the best
15 interests of the Class Members.

16 **Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment**

17 11. An award of \$_____ for attorneys’ fees, representing one-third of the
18 Gross Settlement Amount, and \$_____ for litigation costs and expenses, is reasonable,
19 in light of the contingent nature of Class Counsel’s fee, the hours worked by Class Counsel, and
20 the results achieved by Class Counsel. The requested award has been supported by Class
21 Counsel’s lodestar and billing statement.

22 **Class Representative Service Payment**

23 12. The Agreement provides for a Class Representative Service Payment of not more
24 than \$12,500 to the Plaintiff, subject to the Court’s approval. The Court finds that Class
25 Representative Service Payment in the amount of \$_____ to the Plaintiff is reasonable in
26 light of the risks and burdens undertaken by the Plaintiff in this litigation and for his time and
27 effort in bringing and prosecuting this matter on behalf of the Class.

1 **Administration Expenses Payment**

2 13. The Administrator shall calculate and administer the payment to be made to the
3 Class Members, transmit payment for attorneys’ fees and costs to Class Counsel, transmit the
4 Class Representative Service Payment to the Plaintiff, issue all required tax reporting forms,
5 calculate withholdings and perform the other remaining duties set forth in the Agreement. The
6 Administrator has documented \$ _____ in fees and expenses, and this amount is reasonable
7 considering the work performed by the Administrator.

8 **PAGA Penalties**

9 14. The Agreement provides for a PAGA Penalties out of the Gross Settlement
10 Amount of \$20,000, which shall be allocated \$15,000 to the Labor & Workforce Development
11 Agency (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this
12 Agreement pursuant to the PAGA and \$5,000 to be distributed to the Aggrieved Employees and
13 allocated by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties
14 (\$5,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during
15 the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Pay
16 Periods. “Aggrieved Employees” are all individuals who were employed by Defendant in
17 California and classified as a non-exempt employee at any time during the PAGA Period (June 30,
18 2021 through November 23, 2023). Pursuant to Labor Code section 2699, subdivision (l)(2), the
19 LWDA was provided notice of the Agreement and these settlement terms and has not indicated
20 any objection thereto. The Court finds the PAGA Penalties to be reasonable.

21 **II.**

22 **ORDERS**

23 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

24 15. The Class is certified for the purposes of settlement only. The Class is defined as
25 follows:

26 All individuals who were employed by Defendant in California and classified as a
27 non-exempt employee at any time during the Class Period (December 1, 2018 to
28 November 23, 2023).

1 16. All persons who meet the foregoing definition are members of the Class, except for
2 those individuals who filed a valid request for exclusion (“opt out”) from the Class. [INSERT
3 REFERENCE TO IDENTIFY ANY OPT OUTS].

4 17. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
5 best interest of the Class. Defendant shall fully fund the Gross Settlement Amount, and also fund
6 the amounts necessary to fully pay Defendant’s share of payroll taxes in accordance with the
7 Agreement, by transmitting the funds to the Administrator no later than 14 days after the Effective
8 Date.

9 18. Class Counsel are awarded attorneys’ fees in the amount of \$_____ and
10 costs in the amount of \$_____. Class Counsel shall not seek or obtain any other
11 compensation or reimbursement from Defendant, Plaintiff or members of the Class.

12 19. The payment of Class Representative Service Payment in the amount of \$_____
13 to the Plaintiff is approved.

14 20. The payment of \$_____ to the Administrator for its fees and expenses is
15 approved.

16 21. The PAGA Penalties amount of \$20,000 is approved and is to be distributed in
17 accordance with the Agreement.

18 22. Pursuant to Labor Code section 2699, subdivision (l)(2), Class Counsel shall
19 submit a copy of this Final Approval Order and Judgment to the LWDA within 10 days after its
20 entry.

21 23. Neither the Agreement nor this Settlement is an admission by Defendants, nor is
22 this Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of
23 any wrongdoing by Defendant or that this Action is appropriate for class or representative
24 treatment (other than for settlement purposes). Neither this Final Approval Order and Judgment,
25 the Agreement, nor any document referred to herein, nor any action taken to carry out the
26 Agreement is, may be construed as, or may be used as an admission by or against Defendants of
27 any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement,
28

1 and any negotiations or proceedings related thereto, shall not in any event be construed as, or
2 deemed to be evidence of, an admission or concession with regard to the denials or defenses by
3 Defendant. Notwithstanding these restrictions, Defendants may file in the Action or in any other
4 proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and
5 records on file in the Action as evidence of the Settlement to support a defense of *res judicata*,
6 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the
7 Released Class Claims and/or Released PAGA Claims.

8 24. Notice of entry of this Final Approval Order and Judgment shall be given to all
9 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval Order
10 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
11 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
12 to individual Class Members.

13 25. If the Agreement does not become final and effective in accordance with the terms
14 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
15 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
16 revert to their respective positions as of before entering into the Agreement, and expressly reserve
17 their respective rights regarding the prosecution and defense of this Action, including all available
18 defenses and affirmative defenses, and arguments that any claim in the Action could not be
19 certified as a class action and/or managed as a representative action.

20 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

21 26. Except as set forth in the Agreement and this Final Approval Order and Judgment,
22 Plaintiffs, and all members of the Class, shall take nothing in the Action.

23 27. All Parties shall bear their own attorneys' fees and costs, except as otherwise
24 provided in the Agreement and in this Final Approval Order and Judgment.

25 28. Effective on the date when Defendant fully funds the entire Gross Settlement
26 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
27
28

1 Payments, Plaintiff, Participating Class Members, Aggrieved Employees and the LWDA will
2 release claims against all Released Parties as follows:

3 (a) All Participating Class Members, on behalf of themselves and their
4 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
5 and assigns, release Released Parties from the Released Class Claims. The “Released Class
6 Claims” are all claims debts, liabilities, demands, actions or causes of action that were alleged, or
7 reasonably could have been alleged, based facts stated in the Operative Complaint which occurred
8 during the Class Period, including all claims for restitution and other equitable relief, claims for
9 unpaid minimum and overtime wages, timeliness of earned wages, liquidated damages, failure to
10 provide meal and/or rest periods or to pay meal and rest period premiums, waiting time penalties,
11 unfair business practices, expense reimbursement, proper calculation of the regular rate of pay,
12 unpaid sick pay, unpaid hours worked, and failure to provide accurate wage statements.
13 Participating Class Members do not release any other claims, including claims for vested benefits,
14 wrongful termination, violation of the Fair Employment and Housing Act, unemployment
15 insurance, disability, social security, workers’ compensation, or Class claims based on facts
16 occurring outside the Class Period.

17 (b) All Plaintiff, on behalf of herself and the State of California Labor and
18 Workforce Development Agency, and all Aggrieved Employees waive, fully release and forever
19 discharge, on behalf of themselves and their respective former and present representatives, agents,
20 attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released
21 PAGA Claims. The “Released PAGA Claims” are all claims for PAGA penalties that were
22 alleged, or reasonably could have been alleged, based on the facts stated in the Operative
23 Complaint and the PAGA Notice, which occurred during the PAGA Period. The Released PAGA
24 Claims do not include other PAGA claims, underlying wage and hour claims, claims for vested
25 benefits, wrongful termination, discrimination, unemployment insurance, disability, social
26 security, worker’s compensation, and PAGA claims outside of the PAGA Period.

1 (c) Plaintiff and her respective former and present spouses, representatives,
2 agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge
3 Released Parties from all claims, transactions, or occurrences of any nature whatsoever that arose
4 on before the date of preliminary settlement approval, as fully set forth in the Agreement.

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

10 30. The Court hereby enters judgment in the entire Action as of the filing date of this
11 Order and Judgment, pursuant to the terms set forth in the Settlement. Without affecting the
12 finality of this Order and Judgment in any way, the Court hereby retains continuing jurisdiction
13 over the interpretation, implementation, and enforcement of the Settlement and all orders entered
14 in connection therewith pursuant to California Code of Civil Procedure section 664.6.

15 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

16
17 Dated: _____

18 _____
19 HON. BRIAN W. ENOS
20 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA
21
22
23
24
25
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27
28

EXHIBIT D

[FIRST AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT]

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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Kyle R. Nordrehaug (State Bar #205975)

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MADERA

BRANDY HALE, an individual, on behalf of herself and
on behalf of all persons similarly situated,

Plaintiff,

vs.

PALEOWEST, LLC, a Limited Liability Company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. MCV088135

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

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246; and
10. CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699, *et seq.* FOR VIOLATIONS OF LABOR CODES §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 11040, SUBDIVISION 5(A)-(B), AND THE APPLICABLE WAGE ORDER(S).

DEMAND FOR A JURY TRIAL

1
2 Plaintiff Brandy Hale (“PLAINTIFF”), an individual, on behalf of herself and all other similarly situated
3 current and former employees alleges on information and belief, except for her own acts and knowledge
4 which are based on personal knowledge, the following.

5
6 **THE PARTIES**

7 1. Defendant PaleoWest, LLC., (“DEFENDANT”) is a limited liability company that at all
8 relevant times mentioned herein conducted and continues to conduct substantial business in the state of
9 California.

10 2. DEFENDANT offers cultural, prehistoric, architectural, ethnographic heritage and
11 paleontological resource management services.

12 3. PLAINTIFF was employed by DEFENDANT in California from January of 2018 to May
13 of 2022. PLAINTIFF was at all times classified by DEFENDANT as a non-exempt employee, paid on an
14 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and
15 overtime wages due for all time worked.

16 4. PLAINTIFF brings this Class Action on behalf of herself and a California class, defined as
17 all individuals who are or previously were employed by DEFENDANT PaleoWest, LLC, in the State of
18 California on a non-exempt basis (the “CALIFORNIA CLASS”) from December 1, 2018 to the earlier of
19 preliminary approval or November 23, 2023 (the “CALIFORNIA CLASS PERIOD”). The amount in
20 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
21 (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA CLASS
23 in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
24 CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which failed to
25 lawfully compensate these employees. DEFENDANT’s policy and practice alleged herein was an
26 unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to
27 retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and
28 the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by

1 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the
2 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current
3 unlawful conduct, and all other appropriate legal and equitable relief.

4 6. The true names and capacities, whether individual, corporate, subsidiary, partnership,
5 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to
6 PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc.
7 Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and
8 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and
9 believes, and based upon that information and belief alleges, that the Defendants named in this
10 Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of
11 the events and happenings that proximately caused the injuries and damages hereinafter alleged.

12 7. The agents, servants and/or employees of the Defendants and each of them acting on
13 behalf of the Defendants acted within the course and scope of his, her or its authority as the agent,
14 servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on
15 behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each
16 Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally
17 liable to PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss sustained as a
18 proximate result of the conduct of the Defendants' agents, servants and/or employees.

19 20 **THE CONDUCT**

21 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
22 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning
23 the time during which an employee is subject to the control of an employer, including all the time the
24 employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and CALIFORNIA
25 CLASS Members to work without paying them for all the time they are under DEFENDANT's control.
26 Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is
27 supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
28 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.

1 DEFENDANT, as a matter of established company policy and procedure, administers a uniform
2 practice of rounding the actual time worked and recorded by PLAINTIFF and CALIFORNIA CLASS
3 Members, always to the benefit of DEFENDANT, so that during the course of their employment,
4 PLAINTIFF and CALIFORNIA CLASS Members are paid less than they would have been paid had
5 they been paid for actual recorded time rather than “rounded” time. Additionally, DEFENDANT
6 engages in the practice of requiring PLAINTIFF and CALIFORNIA CLASS Members to perform work
7 off the clocking that DEFENDANT, as a condition of employment, required these employees to submit
8 to mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to
9 clocking into DEFENDANT’s timekeeping system for the workday. As a result, PLAINTIFF and other
10 CALIFORNIA CLASS Members forfeit minimum wage, overtime wage compensation, and off-duty
11 meal breaks by working without their time being correctly recorded and without compensation at the
12 applicable rates. DEFENDANT’s policy and practice not to pay PLAINTIFF and other CALIFORNIA
13 CLASS Members for all time worked, is evidenced by DEFENDANT’s business records.

14 9. State and federal law provides that employees must be paid overtime and meal and rest
15 break premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and other
16 CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive pay that is tied to
17 specific elements of an employee’s performance.

18 10. The second component of PLAINTIFF’s and other CALIFORNIA CLASS Members’
19 compensation is DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF and other
20 CALIFORNIA CLASS Members incentive wages based on their performance for DEFENDANT. The
21 non-discretionary incentive program provided all employees paid on an hourly basis with incentive
22 compensation when the employees met the various performance goals set by DEFENDANT. However,
23 when calculating the regular rate of pay in order to pay overtime and meal and rest break premiums to
24 PLAINTIFF and other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive
25 compensation as part of the employees’ “regular rate of pay” for purposes of calculating overtime pay
26 and meal and rest break premium pay. Management and supervisors described the incentive program to
27 potential and new employees as part of the compensation package. As a matter of law, the incentive
28 compensation received by PLAINTIFF and other CALIFORNIA CLASS Members must be included in

1 the “regular rate of pay.” The failure to do so has resulted in a underpayment of overtime compensation
2 and meal and rest break premiums to PLAINTIFF and other CALIFORNIA CLASS Members by
3 DEFENDANT.

4 11. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
5 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks and
6 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS
7 Members were required from time to time to perform work as ordered by DEFENDANT for more than
8 five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time to
9 time failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal
10 period for some workdays in which these employees were required by DEFENDANT to work ten (10)
11 hours of work. DEFENDANT also engaged in the practice of rounding the meal period times to avoid
12 paying penalties to PLAINTIFF and other CALIFORNIA CLASS Members. PLAINTIFF and other
13 members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation
14 and in accordance with DEFENDANT’s corporate policy and practice.

15 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA
16 CLASS Members were also required from time to time to work in excess of four (4) hours without
17 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
18 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time
19 to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six
20 (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10)
21 minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
22 CALIFORNIA CLASS Members were also not provided with one hour wages in lieu thereof.
23 Additionally, the applicable California Wage Order requires employers to provide employees with off-
24 duty rest periods, which the California Supreme Court defined as time during which an employee is
25 relieved from all work related duties and free from employer control. In so doing, the Court held that
26 the requirement under California law that employers authorize and permit all employees to take rest
27 period means that employers must relieve employees of all duties and relinquish control over how
28 employees spend their time which includes control over the locations where employees may take their

1 rest period. Employers cannot impose controls that prohibit an employee from taking a brief walk - five
2 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
3 CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's
4 rule which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work
5 premises during their rest period.

6 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record
7 and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these
8 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
9 required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, meaning
10 the time during which an employee was subject to the control of an employer, including all the time the
11 employee was permitted or suffered to permit this work. DEFENDANT required these employees to
12 work off the clock without paying them for all the time they were under DEFENDANT's control. As
13 such, DEFENDANT knew or should have known that PLAINTIFF and the other members of the
14 CALIFORNIA CLASS were under compensated for all time worked. As a result, PLAINTIFF and
15 other CALIFORNIA CLASS Members forfeited time worked by working without their time being
16 accurately recorded and without compensation at the applicable minimum wage and overtime wage
17 rates. To the extent that the time worked off the clock does not qualify for overtime premium payment,
18 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab.
19 Code §§ 1194, 1197, and 1197.1.

20 14. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other
21 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to
22 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
23 every employer shall furnish each of his or her employees with an accurate itemized wage statement in
24 writing showing, among other things, gross wages earned and all applicable hourly rates in effect during
25 the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFF and
26 CALIFORNIA CLASS Members were paid on an hourly basis. As such, the wage statements should
27 reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable
28 pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The

1 wage statements DEFENDANT provided to PLAINTIFF and other CALIFORNIA CLASS Members
2 failed to identify such information. More specifically, the wage statements failed to identify the accurate
3 total hours worked each pay period. When the hours shown on the wage statements were added up,
4 they did not equal the actual total hours worked during the pay period in violation of Cal. Lab. Code
5 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
6 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226
7 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of the
8 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

9 15. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed
10 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid
11 not more than seven (7) calendar days following the close of the payroll period. Cal. Lab. Code § 210
12 provides:

13 [I]n addition to, and entirely independent and apart from, any other penalty provided in this
14 article, every person who fails to pay the wages of each employee as provided in Sections. . .
15 .204. . .shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred
16 dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any
17 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
18 employee, plus 25 percent of the amount unlawfully withheld.

19 16. DEFENDANT from time to time failed to pay PLAINTIFF and members of the
20 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll period
21 in accordance with Cal. Lab. Code § 204(d), including but not limited to for the “Hourly” regular wage
22 payments.

23 17. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA
24 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code
25 Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-discretionary
26 remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to
27 PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of pay.

28 18. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
employees be calculated by dividing the employee’s total wages, not including overtime premium pay,
by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.

1 19. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the
2 regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned non-
3 discretionary incentive wages which increased their regular rate of pay. However, when sick pay was
4 paid, it was paid at the base rate of pay for PLAINTIFF and members of the CALIFORNIA CLASS, as
5 opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

6 20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and other
7 members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting time penalties
8 pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes and based
9 thereon alleges that such failure to pay sick pay at regular rate was willful, such that PLAINTIFF and
10 members of the CALIFORNIA CLASS whose employment has separated are entitled to waiting time
11 penalties pursuant to Cal. Lab. Code Sections 201-203.

12 21. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to collect
13 or receive from an employee any part of wages theretofore paid by said employer to said employee."
14 DEFENDANT failed to pay all compensation due to PLAINTIFF and other CALIFORNIA LABOR
15 SUB-CLASS Members, made unlawful deductions from compensation payable to PLAINTIFF and
16 CALIFORNIA LABOR SUB-CLASS Members, failed to disclose all aspects of the deductions from
17 compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members, and thereby
18 failed to pay these employees all wages due at each applicable pay period and upon termination.
19 PLAINTIFF and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal
20 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

21 22. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
22 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses incurred by
23 the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging their
24 duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required
25 to indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
26 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all
27 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his
28

1 or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless
2 the employee, at the time of obeying the directions, believed them to be unlawful."

3 23. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
4 Members as a business expense, were required by DEFENDANT to use their own personal cellular
5 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but are not
6 reimbursed or indemnified by DEFENDANT for the cost associated with the use of their personal
7 cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFF and other CALIFORNIA
8 CLASS Members were required by DEFENDANT to use their personal cellular phones. As a result, in
9 the course of their employment with DEFENDANT, PLAINTIFF and other members of the
10 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not limited
11 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit of
12 DEFENDANT.

13 24. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally required
14 off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order and Labor Code
15 and failed to pay PLAINTIFF all minimum and overtime wages due to PLAINTIFF. DEFENDANT did
16 not have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and
17 also failed to compensate PLAINTIFF for PLAINTIFF's missed meal and rest breaks. The nature of the
18 work performed by the PLAINTIFF did not prevent PLAINTIFF from being relieved of all of
19 PLAINTIFF's duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure
20 to provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business
21 records. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
22 \$75,000.

23 **JURISDICTION AND VENUE**

24 25. This Court has jurisdiction over this Action pursuant to California Code of Civil
25 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is
26 brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANT
27 pursuant to Cal. Code of Civ. Proc. § 382.
28

1 26. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
2 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and DEFENDANT (i)
3 currently maintains and at all relevant times maintained offices and facilities in this County and/or
4 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in
5 this County against members of the CALIFORNIA CLASS.

6
7 **THE CALIFORNIA CLASS**

8 27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
9 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
10 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who
11 are or previously were employed by DEFENDANT PaleoWest, LLC, in the State of California on a
12 non-exempt basis (the "CALIFORNIA CLASS") from December 1, 2018 to the earlier of preliminary
13 approval or November 23, 2023 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
14 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
15 (\$5,000,000.00).

16 28. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
17 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

18 29. DEFENDANT, as a matter of company policy, practice and procedure, and in violation
19 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and
20 the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice
21 whereby DEFENDANT failed to record all meal and rest breaks missed by PLAINTIFF and other
22 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work,
23 required employees to perform this work and permits or suffers to permit this work.

24 30. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
25 CLASS Member was paid accurately for all meal and rest breaks missed as required by California
26 laws. The DEFENDANT, however, as a matter of policy and procedure failed to have in place during
27 the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that
28 each and every CALIFORNIA CLASS Member is paid as required by law. This common business

1 practice is applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
2 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et*
3 *seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

4 31. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS
5 Members is impracticable.

6 32. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law
7 by:

- 8 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof. Code
9 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
10 in place company policies, practices and procedures that failed to record and pay
11 PLAINTIFF and the other members of the CALIFORNIA CLASS for all time
12 worked, including minimum wages owed and overtime wages owed for work
13 performed by these employees; and,
14 (b) Committing an act of unfair competition in violation of the UCL, by failing to
15 provide the PLAINTIFF and the other members of the CALIFORNIA CLASS
16 with the legally required meal and rest periods.

17 33. This Class Action meets the statutory prerequisites for the maintenance of a Class
18 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 19 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the
20 joinder of all such persons is impracticable and the disposition of their claims as
21 a class will benefit the parties and the Court;
22 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
23 are raised in this Complaint are common to the CALIFORNIA CLASS will
24 apply to every member of the CALIFORNIA CLASS;
25 (c) The claims of the representative PLAINTIFF are typical of the claims of each
26 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
27 of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on
28 an hourly basis who was subjected to the DEFENDANT's deceptive practice

1 and policy which failed to provide the legally required meal and rest periods to
2 the CALIFORNIA CLASS and thereby underpaid compensation to PLAINTIFF
3 and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result
4 of DEFENDANT's employment practices. PLAINTIFF and the members of the
5 CALIFORNIA CLASS were and are similarly or identically harmed by the same
6 unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,

- 7 (d) The representative PLAINTIFF will fairly and adequately represent and protect
8 the interest of the CALIFORNIA CLASS, and has retained counsel who are
9 competent and experienced in Class Action litigation. There are no material
10 conflicts between the claims of the representative PLAINTIFF and the members
11 of the CALIFORNIA CLASS that would make class certification inappropriate.
12 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
13 CALIFORNIA CLASS Members.

14 34. In addition to meeting the statutory prerequisites to a Class Action, this action is
15 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 16 (a) Without class certification and determination of declaratory, injunctive,
17 statutory and other legal questions within the class format, prosecution of
18 separate actions by individual members of the CALIFORNIA CLASS will
19 create the risk of:
- 20 1) Inconsistent or varying adjudications with respect to individual members
21 of the CALIFORNIA CLASS which would establish incompatible
22 standards of conduct for the parties opposing the CALIFORNIA
23 CLASS; and/or,
- 24 2) Adjudication with respect to individual members of the CALIFORNIA
25 CLASS which would as a practical matter be dispositive of interests of
26 the other members not party to the adjudication or substantially impair
27 or impede their ability to protect their interests.
- 28

1 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on
2 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
3 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
4 DEFENDANT failed to pay all wages due to members of the CALIFORNIA
5 CLASS as required by law;

6 1) With respect to the First Cause of Action, the final relief on behalf of the
7 CALIFORNIA CLASS sought does not relate exclusively to restitution
8 because through this claim PLAINTIFF seeks declaratory relief holding
9 that the DEFENDANT's policy and practices constitute unfair
10 competition, along with declaratory relief, injunctive relief, and
11 incidental equitable relief as may be necessary to prevent and remedy
12 the conduct declared to constitute unfair competition;

13 (c) Common questions of law and fact exist as to the members of the
14 CALIFORNIA CLASS, with respect to the practices and violations of California
15 law as listed above, and predominate over any question affecting only individual
16 CALIFORNIA CLASS Members, and a Class Action is superior to other
17 available methods for the fair and efficient adjudication of the controversy,
18 including consideration of:

19 1) The interests of the members of the CALIFORNIA CLASS in
20 individually controlling the prosecution or defense of separate actions in
21 that the substantial expense of individual actions will be avoided to
22 recover the relatively small amount of economic losses sustained by the
23 individual CALIFORNIA CLASS Members when compared to the
24 substantial expense and burden of individual prosecution of this
25 litigation;

26 2) Class certification will obviate the need for unduly duplicative litigation
27 that would create the risk of:
28

- 1 A. Inconsistent or varying adjudications with respect to individual
2 members of the CALIFORNIA CLASS, which would establish
3 incompatible standards of conduct for the DEFENDANT;
4 and/or,
5 B. Adjudications with respect to individual members of the
6 CALIFORNIA CLASS would as a practical matter be
7 dispositive of the interests of the other members not parties to
8 the adjudication or substantially impair or impede their ability to
9 protect their interests;
- 10 3) In the context of wage litigation because a substantial number of
11 individual CALIFORNIA CLASS Members will avoid asserting their
12 legal rights out of fear of retaliation by DEFENDANT, which may
13 adversely affect an individual's job with DEFENDANT or with a
14 subsequent employer, the Class Action is the only means to assert their
15 claims through a representative; and,
16 4) A class action is superior to other available methods for the fair and
17 efficient adjudication of this litigation because class treatment will
18 obviate the need for unduly and unnecessary duplicative litigation that is
19 likely to result in the absence of certification of this action pursuant to
20 Cal. Code of Civ. Proc. § 382.

21 35. This Court should permit this action to be maintained as a Class Action pursuant to Cal.
22 Code of Civ. Proc. § 382 because:

- 23 (a) The questions of law and fact common to the CALIFORNIA CLASS
24 predominate over any question affecting only individual CALIFORNIA CLASS
25 Members because the DEFENDANT's employment practices are applied with
26 respect to the CALIFORNIA CLASS;
27 (b) A Class Action is superior to any other available method for the fair and
28 efficient adjudication of the claims of the members of the CALIFORNIA

1 CLASS because in the context of employment litigation a substantial number of
2 individual CALIFORNIA CLASS Members will avoid asserting their rights
3 individually out of fear of retaliation or adverse impact on their employment;

4 (c) The members of the CALIFORNIA CLASS are so numerous that it is
5 impractical to bring all members of the CALIFORNIA CLASS before the Court;

6 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
7 obtain effective and economic legal redress unless the action is maintained as a
8 Class Action;

9 (e) There is a community of interest in obtaining appropriate legal and equitable
10 relief for the acts of unfair competition, statutory violations and other
11 improprieties, and in obtaining adequate compensation for the damages and
12 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
13 CLASS;

14 (f) There is a community of interest in ensuring that the combined assets of
15 DEFENDANT are sufficient to adequately compensate the members of the
16 CALIFORNIA CLASS for the injuries sustained;

17 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
18 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
19 respect to the CALIFORNIA CLASS as a whole;

20 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the
21 business records of DEFENDANT; and,

22 (i) Class treatment provides manageable judicial treatment calculated to bring a
23 efficient and rapid conclusion to all litigation of all wage and hour related
24 claims arising out of the conduct of DEFENDANT as to the members of the
25 CALIFORNIA CLASS.

26 36. DEFENDANT maintains records from which the Court can ascertain and identify by job
27 title each of DEFENDANT's employees who have been intentionally subjected to DEFENDANT's
28 company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the

1 Complaint to include any additional job titles of similarly situated employees when they have been
2 identified.

3
4 **THE CALIFORNIA LABOR SUB-CLASS**

5 37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
6 Ninth causes Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
7 CLASS who are or previously were employed by DEFENDANT in California, including any
8 employees staffed with DEFENDANT by a third party, and classified as non exempt employees (the
9 “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior to the filing
10 of the complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR
11 SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
12 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
13 (\$5,000,000.00).

14 38. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
15 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law,
16 intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to correctly
17 calculate compensation for the time worked by PLAINTIFF and the other members of the
18 CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees, even though
19 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted
20 or suffered to permit this work. DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS
21 Members wages to which these employees are entitled in order to unfairly cheat the competition and
22 unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
23 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be
24 adjusted accordingly.

25 39. DEFENDANT maintains records from which the Court can ascertain and
26 identify by name and job title, each of DEFENDANT’s employees who have been intentionally
27 subjected to DEFENDANT’s company policy, practices and procedures as herein alleged. PLAINTIFF
28

1 will seek leave to amend the complaint to include any additional job titles of similarly situated
2 employees when they have been identified.

3 40. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
4 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

5 41. Common questions of law and fact exist as to members of the CALIFORNIA LABOR
6 SUB-CLASS, including, but not limited, to the following:

- 7 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
8 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
9 missed meal and rest breaks in violation of the California Labor Code and
10 California regulations and the applicable California Wage Order;
11 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized
13 wage statements;
14 (c) Whether DEFENDANT has engaged in unfair competition by the above-listed
15 conduct;
16 (d) The proper measure of damages and penalties owed to the members of the
17 CALIFORNIA LABOR SUB-CLASS; and,
18 (e) Whether DEFENDANT's conduct was willful.

19 42. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
20 California law by:

- 21 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFF and
22 the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
23 overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code
24 § 1194;
25 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
26 accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR
27 SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable
28 pursuant to Cal. Lab. Code §§ 1194 and 1197;

- 1 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
2 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
3 statement in writing showing the corresponding correct amount of wages earned
4 by the employee;
- 5 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
6 and the other members of the CALIFORNIA LABOR SUB-CLASS with all
7 legally required off-duty, uninterrupted thirty (30) minute meal breaks and the
8 legally required off-duty rest breaks;
- 9 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
10 employee is discharged or quits from employment, the employer must pay the
11 employee all wages due without abatement, by failing to tender full payment
12 and/or restitution of wages owed or in the manner required by California law to
13 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
14 their employment; and,
- 15 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
16 CALIFORNIA LABOR SUB-CLASS members with necessary expenses
17 incurred in the discharge of their job duties.

18 43. This Class Action meets the statutory prerequisites for the maintenance of a Class
19 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 20 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
21 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
22 is impracticable and the disposition of their claims as a class will benefit the
23 parties and the Court;
- 24 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
25 are raised in this Complaint are common to the CALIFORNIA LABOR SUB-
26 CLASS and will apply to every member of the CALIFORNIA LABOR SUB-
27 CLASS;
- 28

1 (c) The claims of the representative PLAINTIFF are typical of the claims of each
2 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
3 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
4 employee paid on an hourly basis who was subjected to the DEFENDANT's
5 practice and policy which failed to pay the correct amount of wages due to the
6 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury
7 as a result of DEFENDANT's employment practices. PLAINTIFF and the
8 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
9 identically harmed by the same unlawful, deceptive, and unfair misconduct
10 engaged in by DEFENDANT; and,

11 (d) The representative PLAINTIFF will fairly and adequately represent and protect
12 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained
13 counsel who are competent and experienced in Class Action litigation. There
14 are no material conflicts between the claims of the representative PLAINTIFF
15 and the members of the CALIFORNIA LABOR SUB-CLASS that would make
16 class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-
17 CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-
18 CLASS Members.

19 44. In addition to meeting the statutory prerequisites to a Class Action, this action is
20 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

21 (a) Without class certification and determination of declaratory, injunctive,
22 statutory and other legal questions within the class format, prosecution of
23 separate actions by individual members of the CALIFORNIA LABOR SUB-
24 CLASS will create the risk of:

25 1) Inconsistent or varying adjudications with respect to individual members
26 of the CALIFORNIA LABOR SUB-CLASS which would establish
27 incompatible standards of conduct for the parties opposing the
28 CALIFORNIA LABOR SUB-CLASS; or,

1 2) Adjudication with respect to individual members of the CALIFORNIA
2 LABOR SUB-CLASS which would as a practical matter be dispositive
3 of interests of the other members not party to the adjudication or
4 substantially impair or impede their ability to protect their interests.

5 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
6 refused to act on grounds generally applicable to the CALIFORNIA LABOR
7 SUB-CLASS, making appropriate class-wide relief with respect to the
8 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT fails to
9 pay all wages due. Including the correct wages for all time worked by the
10 members of the CALIFORNIA LABOR SUB-CLASS as required by law;

11 (c) Common questions of law and fact predominate as to the members of the
12 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
13 violations of California Law as listed above, and predominate over any question
14 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
15 Class Action is superior to other available methods for the fair and efficient
16 adjudication of the controversy, including consideration of:

17 1) The interests of the members of the CALIFORNIA LABOR SUB-
18 CLASS in individually controlling the prosecution or defense of separate
19 actions in that the substantial expense of individual actions will be
20 avoided to recover the relatively small amount of economic losses
21 sustained by the individual CALIFORNIA LABOR SUB-CLASS
22 Members when compared to the substantial expense and burden of
23 individual prosecution of this litigation;

24 2) Class certification will obviate the need for unduly duplicative litigation
25 that would create the risk of:

26 A. Inconsistent or varying adjudications with respect to individual
27 members of the CALIFORNIA LABOR SUB-CLASS, which
28

1 would establish incompatible standards of conduct for the
2 DEFENDANT; and/or,

3 B. Adjudications with respect to individual members of the
4 CALIFORNIA LABOR SUB-CLASS would as a practical
5 matter be dispositive of the interests of the other members not
6 parties to the adjudication or substantially impair or impede their
7 ability to protect their interests;

8 3) In the context of wage litigation because a substantial number of
9 individual CALIFORNIA LABOR SUB-CLASS Members will avoid
10 asserting their legal rights out of fear of retaliation by DEFENDANT,
11 which may adversely affect an individual's job with DEFENDANT or
12 with a subsequent employer, the Class Action is the only means to assert
13 their claims through a representative; and,

14 4) A class action is superior to other available methods for the fair and
15 efficient adjudication of this litigation because class treatment will
16 obviate the need for unduly and unnecessary duplicative litigation that is
17 likely to result in the absence of certification of this action pursuant to
18 Cal. Code of Civ. Proc. § 382.

19 45. This Court should permit this action to be maintained as a Class Action pursuant to Cal.
20 Code of Civ. Proc. § 382 because:

21 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-
22 CLASS predominate over any question affecting only individual CALIFORNIA
23 LABOR SUB-CLASS Members;

24 (b) A Class Action is superior to any other available method for the fair and
25 efficient adjudication of the claims of the members of the CALIFORNIA
26 LABOR SUB-CLASS because in the context of employment litigation a
27 substantial number of individual CALIFORNIA LABOR SUB-CLASS
28

1 Members will avoid asserting their rights individually out of fear of retaliation
2 or adverse impact on their employment;

3 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
4 it is impractical to bring all members of the CALIFORNIA LABOR SUB-
5 CLASS before the Court;

6 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
7 not be able to obtain effective and economic legal redress unless the action is
8 maintained as a Class Action;

9 (e) There is a community of interest in obtaining appropriate legal and equitable
10 relief for the acts of unfair competition, statutory violations and other
11 improprieties, and in obtaining adequate compensation for the damages and
12 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
13 LABOR SUB-CLASS;

14 (f) There is a community of interest in ensuring that the combined assets of
15 DEFENDANT are sufficient to adequately compensate the members of the
16 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

17 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
18 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
19 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a
20 whole;

21 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
22 ascertainable from the business records of DEFENDANT. The CALIFORNIA
23 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who
24 worked for DEFENDANT in California at any time during the CALIFORNIA
25 LABOR SUB-CLASS PERIOD; and,

26 (i) Class treatment provides manageable judicial treatment calculated to bring a
27 efficient and rapid conclusion to all litigation of all wage and hour related
28

claims arising out of the conduct of DEFENDANT as to the members of the
CALIFORNIA LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)

46. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

47. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code § 17021.

48. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

Cal. Bus. & Prof. Code § 17203.

49. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder, for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

50. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or

1 substantially injurious to employees, and were without valid justification or utility for which this Court
2 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
3 Professions Code, including restitution of wages wrongfully withheld.

4 51. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent
5 in that DEFENDANT's policy and practice failed to provide the legally mandated meal and rest
6 periods, the required amount of compensation for missed meal and rest periods and overtime and
7 minimum wages owed, failed to timely pay wages, and failed to reimburse all necessary business
8 expenses incurred, and failed to provide Fair Labor Standards Act overtime wages due for overtime
9 worked as a result of failing to include non-discretionary incentive compensation into their regular rates
10 of pay for purposes of computing the proper overtime pay due to a business practice that cannot be
11 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
12 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and
13 equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
14 withheld.

15 52. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
16 deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other members of
17 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

18 53. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
19 deceptive in that DEFENDANT's policies, practices and procedures failed to provide all legally
20 required meal breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as required
21 by Cal. Lab. Code §§ 226.7 and 512.

22 54. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
23 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal
24 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each
25 workday in which a second off-duty meal period was not timely provided for each ten (10) hours of
26 work.
27
28

1 55. PLAINTIFF further demands on behalf of herself and each member of the
2 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty paid
3 rest period was not timely provided as required by law.

4 56. By and through the unlawful and unfair business practices described herein,
5 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the other
6 members of the CALIFORNIA CLASS, including earned wages for all time worked, and has deprived
7 them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
8 employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete
9 against competitors who comply with the law.

10 57. All the acts described herein as violations of, among other things, the Industrial Welfare
11 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were
12 unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were
13 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.
14 Bus. & Prof. Code §§ 17200, *et seq.*

15 58. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and
16 do, seek such relief as may be necessary to restore to them the money and property which
17 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
18 CLASS have been deprived, by means of the above described unlawful and unfair business practices,
19 including earned but unpaid wages for all time worked.

20 59. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
21 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and
22 that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and
23 unfair business practices in the future.

24 60. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
25 and/or adequate remedy at law that will end the unlawful and unfair business practices of
26 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result
27 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of
28 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic

1 harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair
2 business practices.

3
4 **SECOND CAUSE OF ACTION**

5 **For Failure To Pay Minimum Wages**

6 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

7 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

8 **and Against All Defendants)**

9 61. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB- CLASS,
10 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
11 Complaint.

12 62. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a
13 claim for DEFENDANT's willful and intentional violations of the California Labor Code and the
14 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and
15 pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

16 63. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
17 policy, an employer must timely pay its employees for all hours worked.

18 64. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
19 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
20 minimum so fixed is unlawful.

21 65. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
22 including minimum wage compensation and interest thereon, together with the costs of suit.

23 66. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they
25 work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally
26 deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA
27 LABOR SUB-CLASS.

1 67. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
2 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy
3 and practice that denies accurate compensation to PLAINTIFF and the other members of the
4 CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

5 68. In committing these violations of the California Labor Code, DEFENDANT
6 inaccurately calculated the correct time worked and consequently underpaid the actual time worked by
7 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in
8 an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
9 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
10 regulations.

11 69. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
12 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive the
13 correct minimum wage compensation for their time worked for DEFENDANT.

14 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required,
15 permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members to work without
16 paying them for all the time they were under DEFENDANT's control. During the CALIFORNIA
17 LABOR SUB-CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA LABOR
18 SUB-CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all
19 earned wages.

20 71. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation
21 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for the true time
22 they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS have
23 suffered and will continue to suffer an economic injury in amounts which are presently unknown to
24 them and which will be ascertained according to proof at trial.

25 72. DEFENDANT knew or should have known that PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time worked.
27 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
28 employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT

1 perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA
2 LABOR SUB-CLASS the correct minimum wages for their time worked.

3 73. In performing the acts and practices herein alleged in violation of California labor laws,
4 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time
5 worked and provide them with the requisite compensation, DEFENDANT acted and continues to act
6 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
7 CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or the
8 consequences to them, and with the despicable intent of depriving them of their property and legal
9 rights, and otherwise causing them injury in order to increase company profits at the expense of these
10 employees.

11 74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
12 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as
13 the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
14 Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined
15 to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their
16 employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
17 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties
18 are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
19 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
20 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

21
22 **THIRD CAUSE OF ACTION**

23 **For Failure To Pay Overtime Compensation**

24 **[Cal. Lab. Code § 510]**

25 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

26 75. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
27 reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs of this
28 Complaint.

1 76. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a
2 claim for DEFENDANT's willful and intentional violations of the California Labor Code and the
3 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees for all
4 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve
5 (12) hours in a workday, and/or forty (40) hours in any workweek.

6 77. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
7 public policy, an employer must timely pay its employees for all hours worked.

8 78. Cal. Lab. Code § 510 further provides that employees in California shall not be
9 employed more than eight (8) hours per workday and more than forty (40) hours per workweek unless
10 they receive additional compensation beyond their regular wages in amounts specified by law.

11 79. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
12 including minimum wage and overtime compensation and interest thereon, together with the costs of
13 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than
14 those fixed by the Industrial Welfare Commission is unlawful.

15 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
16 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by DEFENDANT
17 to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

18 81. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
19 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy
20 and practice that failed to accurately record overtime worked by PLAINTIFF and other CALIFORNIA
21 LABOR SUB-CLASS Members and denied accurate compensation to PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the overtime
23 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday,
24 and/or forty (40) hours in any workweek.

25 82. In committing these violations of the California Labor Code, DEFENDANT
26 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
27 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in an
28 illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the

1 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
2 regulations. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the
3 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive full
4 compensation for overtime worked.

5 83. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
6 from the overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFF
7 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFF and the other
8 members of the CALIFORNIA LABOR SUB-CLASS were not subject to a valid collective bargaining
9 agreement that would preclude the causes of action contained herein this Complaint. Rather,
10 PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA LABOR SUB-CLASS based
11 on DEFENDANT's violations of non-negotiable, non-waiveable rights provided by the State of
12 California.

13 84. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
14 members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime worked that
15 they are entitled to, constituting a failure to pay all earned wages.

16 85. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of the
17 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in excess of
18 the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
19 though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were required
20 to work, and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay
21 as evidenced by DEFENDANT's business records and witnessed by employees.

22 86. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation
23 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for the true amount
24 of time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
25 have suffered and will continue to suffer an economic injury in amounts which are presently unknown
26 to them and which will be ascertained according to proof at trial.

27 87. DEFENDANT knew or should have known that PLAINTIFF and the other members of
28 the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime worked.

1 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
2 employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT
3 perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA
4 LABOR SUB-CLASS for overtime worked.

5 88. In performing the acts and practices herein alleged in violation of California labor laws,
6 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime
7 worked and provide them with the requisite overtime compensation, DEFENDANT acted and continues
8 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
9 CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for their legal rights, or
10 the consequences to them, and with the despicable intent of depriving them of their property and legal
11 rights, and otherwise causing them injury in order to increase company profits at the expense of these
12 employees.

13 89. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
14 therefore request recovery of all overtime wages, according to proof, interest, statutory costs, as well as
15 the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
16 Labor Code and/or other applicable statutes. To the extent minimum and/or overtime compensation is
17 determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated
18 their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore
19 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
20 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members.
21 DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further,
22 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
23 statutory costs.

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1 **FOURTH CAUSE OF ACTION**

2 **For Failure to Provide Required Meal Periods**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

5 90. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
6 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 91. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to
9 provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA
10 LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
11 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not
12 prevent these employees from being relieved of all of their duties for the legally required off-duty meal
13 periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR
14 SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their
15 meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
16 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work
17 is evidenced by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
18 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some
19 workdays in which these employees were required by DEFENDANT to work ten (10) hours of work
20 from time to time. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-
21 CLASS therefore forfeited meal breaks without additional compensation and in accordance with
22 DEFENDANT's strict corporate policy and practice.

23 92. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC
24 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members
25 who were not provided a meal period, in accordance with the applicable Wage Order, one additional
26 hour of compensation at each employee's regular rate of pay for each workday that a meal period was
27 not provided.
28

1 93. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA
2 LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek
3 all wages earned and due, interest, penalties, expenses and costs of suit.

4
5 **FIFTH CAUSE OF ACTION**

6 **For Failure to Provide Required Rest Periods**

7 **[Cal. Lab. Code §§ 226.7 & 512]**

8 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

9 94. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
10 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
11 Complaint.

12 95. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time
13 to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
14 Further, these employees from time to time were denied their first rest periods of at least ten (10)
15 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
16 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
17 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
18 time to time. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
19 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
20 and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
21 periods by DEFENDANT and DEFENDANT's managers.

22 96. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC
23 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members
24 who were not provided a rest period, in accordance with the applicable Wage Order, one additional
25 hour of compensation at each employee's regular rate of pay for each workday that rest period was not
26 provided.

97. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

98. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

99. Cal. Labor Code § 226 provides that an employer must furnish employees with an “accurate itemized” statement in writing showing:

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) the name and address of the legal entity that is the employer, and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

100. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As

1 such, the wage statements should reflect all applicable hourly rates during the pay period and the total
2 hours worked, and the applicable pay period in which the wages were earned pursuant to California
3 Labor Code Section 226(a). The wage statements DEFENDANT provided to PLAINTIFF and other
4 CALIFORNIA LABOR SUB-CLASS Members failed to identify such information. More specifically,
5 the wage statements failed to identify the accurate total hours worked each pay period. When the hours
6 shown on the wage statements were added up, they did not equal the actual total hours worked during
7 the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this
8 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
9 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time
10 provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with wage
11 statements which violated Cal. Lab. Code § 226.

12 101. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226,
13 causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
14 CLASS. These damages include, but are not limited to, costs expended calculating the correct wages
15 for all missed meal and rest breaks and the amount of employment taxes which were not properly paid
16 to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF
17 and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated
18 damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one
19 hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
20 226, in an amount according to proof at the time of trial (but in no event more than four thousand
21 dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-
22 CLASS herein).

23
24 **SEVENTH CAUSE OF ACTION**

25 **For Failure to Reimburse Employees for Required Expenses**

26 **[Cal. Lab. Code § 2802]**

27 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**
28

1 102. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and
2 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

3
4 103. Cal. Lab. Code § 2802 provides, in relevant part, that:

5 An employer shall indemnify his or her employee for all necessary expenditures or
6 losses incurred by the employee in direct consequence of the discharge of his or her
7 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them to be
unlawful.

8 104. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing
9 to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
10 required expenses incurred in the discharge of their job duties for DEFENDANT's benefit.
11 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
12 for expenses which included, but were not limited to, costs related to using their personal cellular
13 phones on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other
14 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use their personal
15 cellular phones and home offices in order to perform work related job tasks. DEFENDANT's policy
16 and practice was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
17 for expenses resulting from using their personal cellular phones and home offices for DEFENDANT
18 within the course and scope of their employment for DEFENDANT. These expenses were necessary to
19 complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert
20 any waiver of this expectation. Although these expenses were necessary expenses incurred by
21 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to
22 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these
23 expenses as an employer is required to do under the laws and regulations of California.

24 105. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by
25 herself and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties for
26 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate
27 and costs under Cal. Lab. Code § 2802.
28

1 **EIGHTH CAUSE OF ACTION**

2 **For Failure to Pay Wages When Due**

3 **[Cal. Lab. Code §§ 201, 202, 203]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

5 **and Against All Defendants)**

6 106. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
7 reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this
8 Complaint.

9 107. Cal. Lab. Code § 200 provides, in relevant part, that:

10 As used in this article:

11 (a) "Wages" includes all amounts for labor performed by employees of every
12 description, whether the amount is fixed or ascertained by the standard of time,
13 task, piece, Commission basis, or other method of calculation.

14 (b) "Labor" includes labor, work, or service whether rendered or performed under
15 contract, subcontract, partnership, station plan, or other agreement if the labor to be
16 paid for is performed personally by the person demanding payment.

17 108. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges an
18 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

19 109. Cal. Lab. Code § 202 provides, in relevant part, that:

20 If an employee not having a written contract for a definite period quits his or her
21 employment, his or her wages shall become due and payable not later than 72 hours
22 thereafter, unless the employee has given 72 hours previous notice of his or her
23 intention to quit, in which case the employee is entitled to his or her wages at the
24 time of quitting. Notwithstanding any other provision of law, an employee who
25 quits without providing a 72-hour notice shall be entitled to receive payment by
26 mail if he or she so requests and designates a mailing address. The date of the
27 mailing shall constitute the date of payment for purposes of the requirement to
28 provide payment within 72 hours of the notice of quitting.

109. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
CLASS Members' employment contract.

111. Cal. Lab. Code § 203 provides, in relevant part, that:

If an employer willfully fails to pay, without abatement or reduction, in accordance
with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is
discharged or who quits, the wages of the employee shall continue as a penalty
from the due date thereof at the same rate until paid or until an action therefor is
commenced; but the wages shall not continue for more than 30 days.

1 112. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
2 Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by
3 law.

4 113. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
5 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and who have
6 not been fully paid their wages due to them, PLAINTIFF demands thirty days of pay as penalty for not
7 paying all wages due at time of termination for all employees who terminated employment during the
8 CALIFORNIA LABOR SUB-CLASS PERIOD and demands an accounting and payment of all wages
9 due, plus interest and statutory costs as allowed by law.

10
11 **NINTH CAUSE OF ACTION**

12 **For Failure to Pay Sick Pay Wages**

13 **[Cal. Lab. Code §§ 201-204, 210, 233, 246]**

14 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
15 **and Against All Defendants)**

16 114. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
17 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of
18 this Complaint.

19 115. Cal Lab. Code § 233 provides that an employer must permit an employee to
20 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then current rate of
21 entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages for use of
22 accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick leave is used as
23 paid sick time, an employee has a vested right to sick pay wages, which an employer must calculate and
24 compensate based on one of two calculations: (i) "Paid sick time for nonexempt employees shall be
25 calculated in the same manner as the regular rate of pay for the workweek in which the employee uses
26 paid sick time, whether or not the employee actually works overtime in that workweek," or (ii) "Paid
27 sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not
28 including overtime premium pay, by the employee's total hours worked in the full pay periods of the

1 prior 90 days of employment.” Under Cal Lab. Code §§ 218 and 233, employees may sue to recover
2 underpaid sick pay wages as damages.

3 116. As a matter of policy and practice, DEFENDANT pays sick pay wages to
4 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS at the incorrect rate of
5 pay. PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS regularly use
6 accrued sick leave in the workweeks in which they also earn non-hourly remuneration. As a matter of
7 policy and practice, DEFENDANT pays sick pay wages to PLAINTIFF and the other members of the
8 CALIFORNIA LABOR-SUB-CLASS at the base hourly pay, as opposed to the regular rate of pay,
9 which would consider all non-hourly remuneration in addition to base hourly wages, or the rate
10 resulting from dividing the employee’s total wages, not including overtime premium pay, by the
11 employee’s total hours worked in the full pay periods of the prior 90 days of employment. As a result,
12 DEFENDANT underpaid sick pay wages to PLAINTIFF and the other members of the CALIFORNIA
13 LABOR-SUB-CLASS.

14 117. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
15 during each calendar month and are to be paid no later than the payday for the next regular payroll
16 period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically requires that, upon use
17 of accrued sick leave, vested sick pay wages are due and to be paid no later than the payday for the next
18 regular payroll period after accrued sick leave is used as paid sick time. Similarly, Cal. Lab. Code §
19 201 provides that if an employer discharges an employee, wages earned and unpaid at the time of
20 discharge are due and payable immediately. Cal. Lab. Code § 202 provides that an employee is entitled
21 to receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless
22 the employee has given 72-hour notice of his or her intention to quit, in which case the employee is
23 entitled to his or her wages at the time of quitting. The Labor Code penalizes untimely payments. For
24 example, Cal. Lab. Code § 203 provides that if an employer willfully fails to pay wages owed in
25 accordance with Cal. Lab. Code §§ 201-202, then the wages of the employee shall continue as a penalty
26 from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty
27 (30) days. Likewise, Cal. Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and
28

1 untimely payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may
2 sue to recover applicable penalties.

3 118. As alleged herein and as a matter of policy and practice, DEFENDANT
4 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other members of
5 the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay wages. As a result,
6 DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246, among other Labor Code
7 provisions. PLAINTIFF is informed and believes that DEFENDANT was advised by skilled lawyers
8 and knew, or should have known, of the mandates of the Labor Code as it relates to PLAINTIFF's
9 allegations, especially since the California Supreme Court has explained that "[c]ourts have recognized
10 that 'wages' also include those benefits to which an employee is entitled as a part of his or her
11 compensation, including money, room, board, clothing, vacation pay, *and sick pay.*" *Murphy v. Kenneth*
12 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT willfully
13 fails to timely pay PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS all
14 sick pay wages due, DEFENDANT is subject to applicable penalties.

15 119. Such a pattern, practice, and uniform administration of corporate policy is
16 unlawful and entitles PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS
17 to underpaid sick pay wages, including interest thereon, applicable penalties, attorney's fees, and costs
18 of suit.

19
20 **TENTH CAUSE OF ACTION**

21 **For Violation of the Private Attorneys General Act**

22 **[Cal. Lab. Code §§ 2698, *et seq.*]**

23 **(By PLAINTIFF and Against All Defendants)**

24 120. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein,
25 the prior paragraphs of this Complaint.

26 121. PAGA is a mechanism by which the State of California itself can enforce state labor laws
27 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
28 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law

1 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
2 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private
3 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that
4 "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover
5 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot
6 be subject to arbitration.

7 122. PLAINTIFF, and such persons that may be added from time to time who satisfy the
8 requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this
9 Representative Action on behalf of the State of California with respect to herself and all individuals who
10 were employed by DEFENDANT in California, and classified as a non-exempt employees ("AGGRIEVED
11 EMPLOYEES") at any time during the time period of June 30, 2021 to the earlier of preliminary approval
12 or November 23, 2023 (the "PAGA PERIOD").

13 123. On June 30, 2022, PLAINTIFF gave written notice by electronic mail to the Labor and
14 Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific
15 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. The statutory
16 waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant
17 to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA pursuant to
18 Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as
19 herein defined.

20 124. The policies, acts and practices herein described were and are an unlawful business act or
21 practice because DEFENDANT unlawfully failed to record and pay Plaintiff and other Aggrieved
22 Employees for, including but not limited to, all of their time worked, including minimum and overtime
23 wages, for all of their missed meal and rest breaks at the correct regular rate, and for all of their time spent
24 working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report
25 for work, but "furnished less than half said employee's usual or scheduled day's work," Defendant violated
26 Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least
27 two (2) hours' worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and
28 Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for

1 work in a single workday, and Defendant failed to pay these employees reporting time pay as required by
2 Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other
3 Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest
4 periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant
5 to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees
6 with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to
7 her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally,
8 Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant
9 failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff
10 and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere
11 with their performance of any of their tasks that may require them to stand. Defendant failed to provide
12 Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as
13 well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et*
14 *seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
15 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of
16 Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial
17 Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section
18 2699.3, and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
19 conduct. PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private
20 Attorney General Act of 2004 as the representative of the State of California for the illegal conduct
21 perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.

22 125. All of the conduct and violations alleged herein occurred during the PAGA PERIOD. To
23 the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA
24 PERIOD, PLAINTIFF seeks penalties for those violations that affected the AGGRIEVED EMPLOYEES
25 pursuant to *Carrington v. Starbucks Corp.* 30 Cal.App.5th 504 (2018).

26 **PRAYER FOR RELIEF**

27 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as
28 follows:

- 1 1. On behalf of the CALIFORNIA CLASS:
- 2 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as
- 3 a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 4 B) An order temporarily, preliminarily and permanently enjoining and restraining
- 5 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 6 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from
- 7 compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS;
- 8 and,
- 9 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for
- 10 restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to
- 11 the other members of the CALIFORNIA CLASS.
- 12 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 13 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth
- 14 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
- 15 pursuant to Cal. Code of Civ. Proc. § 382;
- 16 B) Compensatory damages, according to proof at trial, including compensatory damages for
- 17 minimum and overtime compensation due PLAINTIFF and the other members of the
- 18 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
- 19 CLASS PERIOD plus interest thereon at the statutory rate;
- 20 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
- 21 a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA
- 22 LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an
- 23 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of
- 24 Cal. Lab. Code § 226;
- 25 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the
- 26 applicable IWC Wage Order;
- 27 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
- 28

- 1 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR
2 SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.; and,
3 G) The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a
4 penalty from the due date thereof at the same rate until paid or until an action therefore is
5 commenced, in accordance with Cal. Lab. Code § 203.

6 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

7 A) Recovery of civil penalties as prescribed by the Labor Code Private
8 Attorneys General Act of 2004; and,

9 B) An award of attorneys' fees and cost of suit, as allowable under the
10 law, including, but not limited to, pursuant to Labor Code §2699.

11 4. On all claims:

12 A) An award of interest, including prejudgment interest at the legal rate;

13 B) Such other and further relief as the Court deems just and equitable; and,

14 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
15 including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

16
17 Dated: September __, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

18
19
20 By: _____

21 Norman B. Blumenthal
22 Kyle R. Nordrehaug
23 Nicholas J. De Blouw

24 *Attorneys for Plaintiff*
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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: September __, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Kyle R. Nordrehaug
Nicholas J. De Blouw

Attorneys for Plaintiff