

LAW OFFICE OF SCOTT ERNEST WHEELER

Scott Ernest Wheeler (SBN 187998)
Justin A. Wheeler (SBN 342226)
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com
jaw@scottwheelerlawoffice.com

THE WAND LAW FIRM, P.C.

Aubry Wand (SBN 281207)
100 Oceangate, Suite 1200
Long Beach, CA 90802
Telephone: (310) 590-4503
Facsimile: (310) 590-4596
Email: awand@wandlawfirm.com

Attorney for Plaintiffs and the Putative Class

[Additional counsel listed on following page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO JUSTICE CENTER**

JOSEPH B. CERVANTES, individually,
and on behalf of all others similarly
situated,

PLAINTIFFS,

v.

I-10 TOWING AND RECOVERY, INC., a
corporation; and DOES 1 through 50,
inclusive,

DEFENDANTS.

CASE NO.: CIVSB2226791

[Hon. Joseph Ortiz, Dept. S-17]

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE**

Action Filed: November 17, 2022

Trial Date: None Set

1 **TUMER & SHARIF**

2 Omar Sharif (SBN 296712)

3 17875 Von Karman Ave., Suite 150

4 Irvine, California 92614

Telephone: (949) 287-6901

E-mail: law@tumersharif.com

5 *Attorneys for Defendant, I-10 Towing and Recovery, Inc.*
6 *and Golden Bear Towing, Inc.*

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1 This Class Action and PAGA Settlement and Release ("Settlement Agreement") is entered
2 into by and between Plaintiffs Joseph B. Cervantes ("Cervantes") and Ruben N. Lopez ("Lopez")
3 (collectively referred to herein as "Plaintiffs"), on behalf of themselves and the Class, on the one hand,
4 and Defendants I-10 Towing and Recovery, Inc. ("I-10") and Golden Bear Towing, Inc. ("Golden
5 Bear"), and the Released Parties (collectively referred to herein as "Defendants"), on the other hand.
6 Plaintiffs and Defendants are collectively referred to herein as "Parties" and individually referred to
7 herein as "Party."

8 In consideration of the mutual covenants, promises, and agreements set forth herein, the Parties
9 agree that, pursuant to the terms and conditions set forth herein, which are subject to approval of the
10 Court, this Action and the Released Claims shall be settled and compromised as between Plaintiffs
11 and the Class on the one hand and Defendants on the other hand.

12 **DEFINITIONS**

13 1. "Actions" mean *Cervantes v. I-10 Towing and Recovery, Inc.*, Superior Court of the
14 State of California for the County of San Bernardino, Case No. CIVSB2226791 and *Lopez v. Golden*
15 *Bear Towing, Inc.*, Superior Court of the State of California for the County of San Bernardino, Case
16 No. CIVSB2226930.

17 2. "Class" means: All non-exempt employees who were employed by Defendants, in the
18 State of California, at any time from November 17, 2018 through February 1, 2024.

19 3. "Class Counsel" means the Law Office of Scott Ernest Wheeler and The Wand Law
20 Firm, APC.

21 4. "Class Counsel Award" means attorneys' fees for Class Counsel's litigation and
22 resolution of this Action and Class Counsel's expenses and costs incurred in connection with this
23 Action.

24 5. "Class Information" means information regarding Class Members that Defendants will
25 in good faith compile from its records and provide to the Settlement Administrator. It shall be
26 formatted as a Microsoft Excel spreadsheet or Microsoft Word Document and shall include: each
27 Class Member's full name; social security number; last known address; last known telephone number;
28 and number of Compensable Work Weeks and Compensable PAGA Work Weeks.

1 6. “Class Member” means each person who is a member of the Class defined above and
2 who is eligible to participate in this Settlement.

3 7. “Class Period” means the time period from November 17, 2018 through February 1,
4 2024.

5 8. “Class Representative Service Awards” means the amount that the Court authorizes to
6 be paid individually to each Plaintiff in recognition of, *inter alia*, each Plaintiffs’ efforts and risks in
7 assisting with the prosecution of the Action and in return for executing a general release with
8 Defendants.

9 9. “Compensable Work Week” or “Compensable Work Weeks” means a reasonable
10 estimate of weeks worked by each Class Member as a non-exempt employee in California for
11 Defendants individually and collectively by all Class Members during the Class Period based on
12 Defendants’ records and used as a value to calculate Individual Settlement Payments. The number
13 of Compensable Work Weeks for each Class Member will be determined by adding all the calendar
14 days within the inclusive dates of employment for the employee and dividing that number by seven.
15 Any partial workweek will be expressed as a percentage of a full workweek. If it can be readily
16 determined, workweeks where someone was employed but did not record any hours can be excluded
17 from this calculation.

18 10. “Compensable PAGA Work Week” or “Compensable PAGA Work Weeks” means a
19 reasonable estimate of weeks worked by each PAGA Member, as a nonexempt employee in
20 California for Defendants, individually and collectively by all PAGA Members, during the period
21 from September 1, 2021, through February 1, 2024, based on Defendants’ records and used as a
22 value to calculate PAGA Payments. The number of Compensable PAGA Work Weeks for each
23 PAGA Member, will be determined by adding all the calendar days within the inclusive dates of
24 employment for the employee and dividing that number by seven. Any partial workweek will be
25 expressed as a percentage of a full workweek. If it can be readily determined, workweeks where
26 someone was employed but did not record any hours can be excluded from this calculation.

27 11. “Court” means the Superior Court for the County of San Bernardino, State of
28 California.

12. "Defendants" means Defendants I-10 Towing and Recovery, Inc. ("I-10") and Golden Bear Towing, Inc. ("Golden Bear").

13. "Effective Date" means the date on which the Superior Court's Final Approval Order and Judgment becomes final and Defendants fully fund the settlement. The Superior Court's Final Approval Order and Judgment "becomes final" upon the latter of: (a) if there is no Objection to the Settlement, or if there is an Objection but it is withdrawn, then, the date that the Final Approval Order and Judgment is filed by the Court; (b) if there is an Objection to the Settlement that is not withdrawn, but no appeal is commenced thereafter, then, sixty-five (65) calendar days following the date that the Final Approval Order and Judgment is filed by the Court; or (c) if there is an Objection to the Settlement, that is not withdrawn, and any appeal, writ, or other appellate proceeding opposing the Settlement has been filed within sixty-five (65) calendar days following the date that the Final Approval Order and Judgment is filed by the Court, then, when any such appeal, writ, or other appellate proceeding opposing the validity of the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief.

14. "Final Approval Order and Judgment" means an order and judgment that the Court will file which finally approves this Settlement and enters a judgment in favor of Plaintiffs.

15. "Gross Settlement Amount" means the maximum amount which Defendants are obligated to pay under this Settlement Agreement, which is Two Hundred and Thirty Thousand Dollars (\$230,000.00), subject to increase under the circumstances as set forth in paragraph 58. This is an "all in" non-reversionary Settlement in which Defendants are required to pay the entire Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendants under any circumstances. Payments of any appropriate and lawfully-required employer's share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the Gross Settlement Amount by Defendants at the time the Gross Settlement Amount is funded.

16. "Individual Settlement Payment" means the amount payable from the Net Settlement Amount to each Settlement Class Member.

17. "LWDA" means the California Labor and Workforce Development Agency.

18. "Net Settlement Amount" means the Gross Settlement Amount, less the Class Counsel

1 Award, Class Representative Service Awards, payment to the LWDA and PAGA Members for PAGA
2 penalties, and Settlement Administration Costs.

3 19. "Notice of Class and PAGA Settlement" means the notice, substantially in the form
4 attached hereto as **Exhibit 1**, which the Settlement Administrator will mail to each Class and PAGA
5 Member, and which explains, *inter alia*, the terms of this Settlement Agreement, the settlement
6 process, and each Class Member's estimated Individual Settlement Payment. Notice of Class
7 Settlement will be provided to the Class in English and Spanish.

8 20. "Operative Complaint" means the consolidated Class Action Complaint, in the
9 substantially same form as attached hereto as **Exhibit 2**. On or before the filing of Plaintiffs' Motion
10 for Preliminary Approval, the Parties agree to file a Stipulation for Leave to Amend for Plaintiffs' to
11 file a First Amended Consolidated Class Action and Representative Action pursuant to the Private
12 Attorneys General Act, California Labor Code § 2698 ("PAGA") Complaint, to add the plaintiffs and
13 claims in the *Cervantes* Action and *Lopez* Action, in order to effectuate the terms of the Settlement.

14 21. "Objection" means a letter or other written communication submitted by a Class
15 Member to the Settlement Administrator that contains a clear statement by the Class Member that he
16 or she is objecting to any of the terms of the Settlement.

17 22. "PAGA Member" or "PAGA Members" means any Class Member who was
18 employed or has been employed by Defendants at any time during the time period of September 1,
19 2021, through February 1, 2024.

20 23. "Parties" means Plaintiffs and Defendants, collectively, and "Party" means either
21 Plaintiffs or Defendants, individually.

22 24. "Payment Ratio" means the respective Compensable Work Weeks for each Settlement
23 Class Member divided by the total Compensable Work Weeks for all Settlement Class Members.

24 25. "PAGA Payment Ratio" means the respective Compensable PAGA Work Weeks for
25 each PAGA Member divided by the total Compensable PAGA Work Weeks for all PAGA Members.

26 26. "PAGA Period" means the time period from September 1, 2021, through February 1,
27 2024.

28 27. "Plaintiffs" refers to Joseph B. Cervantes and Ruben N. Lopez.

1 28. “Preliminary Approval Date” means the date upon which the Court files an order
2 substantially in the form attached hereto as **Exhibit 3**, and which grants preliminary approval of the
3 Settlement.

4 29. “Request for Exclusion” means a letter or other written communication submitted by
5 a Class Member to the Settlement Administrator that contains a clear statement by the Class Member
6 that he or she is electing to be excluded from the Settlement.

7 30. “Released Claims by Plaintiffs” is set forth in paragraph 48 below. Plaintiffs release
8 the “Released Claims by Plaintiffs” as of the date Defendants fully fund this Settlement.

9 31. “Released Claims by Settlement Class Members” means: As of the date Defendants
10 fully funds this Settlement, Settlement Class Members shall fully and finally release and discharge
11 Released Parties, from November 17, 2018 through February 1, 2024, from any and all claims, debts,
12 liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of
13 action contingent or accrued for, that are pleaded, or that could have been pleaded, based on the facts
14 and claims alleged in the Operative Complaint, including any claims for: (a) failure to provide required
15 meal periods and pay premium payments, California Labor Code §§ 226.7, 510 and 512; (b) failure
16 to provide required rest periods and pay premium payments, California Labor Code §§ 226.7 and 512;
17 (c) failure to pay overtime wages, California Labor Code §§ 510, 1194 and 1198; (d) failure to pay
18 minimum wages, California Labor Code §§ 1194 and 1197; (e) failure to timely pay all wages during
19 employment and to discharged and quitting employees, California Labor Code §§ 201-204, 210; (f)
20 failure to timely pay wages §§ 204 and 210; (g) failure to maintain required records; (h) failure to
21 furnish accurate, itemized wage statements, California Labor Code §§ 226 and 226.3; (i) failure to
22 indemnify for reasonable and necessary business expenses; and (j) unlawful business practices under
23 California, Business and Professions Code §17200, et seq.; predicated on any of the violations of the
24 California Labor Code and the applicable IWC Wage Order as alleged in the Operative Complaint
25 including but not limited to, claims for restitution and other equitable relief, liquidated damages, or
26 penalties; and any other benefit, wages, penalties, or other amounts claimed on account of the
27 allegations asserted or which could have been asserted in the Operative Complaint and Plaintiffs’
28 LWDA Notice dated August 23, 2022. This release shall apply to any and all claims arising at any

1 point during the Class Period. Upon entry of the Final Approval Order and funding of the total Gross
2 Settlement Amount, all Participating Class Members will forever completely release and discharge
3 the Released Parties from the Released Claims for the Release Period. Plaintiffs and Defendants intend
4 that the Settlement described in this Settlement Agreement will release and preclude any further claim,
5 whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind,
6 by each and all of the Participating Class Members to obtain a recovery to any and all of the Released
7 Claims. This release excludes the release of claims not otherwise permitted by law, i.e. Worker's
8 Compensation and unemployment insurance benefits.

9 32. "Released Parties" collectively mean: (i) Defendants; (ii) Defendants' respective past,
10 present and future heirs, executors, administrators, parents, subsidiaries and affiliates, successors and
11 assigns; and (iii) the past, present and future shareholders, managers, officers, partners, members,
12 agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing.

13 33. "Response Deadline" means forty-five (45) days after the postmark date of the Notice
14 of Class Settlement that the Settlement Administrator shall mail to Class Members, and the last date
15 on which Class Members may: (a) submit a Request for Exclusion; or (b) submit an Objection to the
16 Settlement.

17 34. "Settled PAGA Claims", means penalties only under the Private Attorneys General
18 Act ("PAGA"), based upon the Released Claims by PAGA Members that serves the basis for
19 penalties only pursuant to Labor Code § 2699 *et seq.*, for : (a) failure to provide required meal
20 periods, California Labor Code §§ 226.7, 510 and 512; (b) failure to provide required rest periods,
21 California Labor Code §§ 226.7 and 512; (c) failure to pay overtime wages, California Labor Code
22 §§510, 1194, 1197 and 1198; (d) failure to pay minimum wages, California Labor Code §§ 1194
23 and 1197; (e) failure to timely pay all wages due during employment and to discharged and quitting
24 employees, California Labor Code §§ 201-204, 210; (f) failure to furnish accurate, itemized wage
25 statements, California Labor Code §§ 226 and 226.3; (g) failure to maintain required records,
26 California Labor Code §§ 226, 1174; (h) failure to provide California COVID-19 Supplemental Sick
27 Leave, California Labor Code §§ 248.1, 248.2 and 248.6; (i) failure to provide suitable seating, IWC
28 Wage Order No. 4-2001, § 14; (j) failure to reimburse for necessary business expenses, California

1 Labor Code § 2802; and primary rights alleged in Plaintiffs' Operative Complaint and in Plaintiffs'
2 PAGA Notice dated August 23, 2022.

3 35. "Settlement" means the disposition of the Action pursuant to this Agreement.

4 36. "Settlement Administration Costs" means the amount to be paid to the Settlement
5 Administrator from the Gross Settlement Amount for administration of this Settlement.

6 37. "Settlement Administrator" means Phoenix Settlement Administrators ("Phoenix"),
7 the Settlement Administrator shall be responsible for, *inter alia*: (a) performing Spanish translations
8 of the Notice of Class Settlement; printing and mailing the Notice of Class Settlement to the Class in
9 English and Spanish; (b) receiving and reporting the Requests for Exclusion and Objections submitted
10 by Class Members; (c) providing declaration(s) as necessary in support of preliminary and/or final
11 approval of this Settlement; (d) processing and mailing payments to Plaintiffs, Class Counsel, the
12 LWDA, and Settlement Class Members; and (e) any other tasks as the Parties mutually agree or the
13 Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the
14 Parties timely apprised of the performance of all Settlement Administrator responsibilities. The Parties
15 agree that they have no financial interest or other relationship with Phoenix that could create a conflict
16 of interest. Should a conflict of interest or other issue lead to the disqualification of the selected
17 Settlement Administrator, the Parties will meet and confer as to a suitable replacement.

18 38. "Settlement Class" or "Settlement Class Members" means all Class Members who
19 have not opted out of the Class by submitting a valid and timely Request for Exclusion.

20 RECITALS

21 39. Procedural History. On November 17, 2022, Cervantes filed a complaint against
22 Defendant I-10 in San Bernardino Superior Court, Case No. CIVSB2226791, and Lopez filed a
23 complaint against Golden Bear in San Bernardino Superior Court, Case No. CIVSB2226930.
24 Defendant I-10 and Golden Bear have filed answers to Plaintiffs' separate complaints.

25 40. Investigation and Discovery. The Parties have conducted significant investigation of
26 the facts and law during the prosecution of this Action and before this Settlement was reached. Such
27 discovery and investigation included, *inter alia*, the exchange of information and extensive documents
28 pertaining to Plaintiffs and the Class, and numerous meetings and informal conferences wherein the

1 Parties exchanged information, class data, and theories of the case. Plaintiffs have also investigated
2 the law as applied to the facts of Plaintiffs' claims and Defendants' potential defenses thereto.

3 41. Mediation. The Parties initially participated in a mediation session with the highly
4 experienced mediator, Hon. Linda Quinn, Jud. Ret., on February 12, 2024. After a full day of
5 mediation, the Parties were able to reach a proposed settlement regarding the material terms for a
6 proposed class action and PAGA settlement that would fully resolve this matter.

7 42. Benefits of Settlement to Class Members. Plaintiffs and Class Counsel recognize the
8 expense and length of continued proceedings necessary to litigate Plaintiffs' claims through trial and
9 any possible appeals. Plaintiffs have also taken into account the uncertainty and risk of the outcome
10 of further litigation, and the difficulties and delays inherent in such litigation. Plaintiffs and Class
11 Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted
12 in the Action, both generally and in response to Defendants' defenses thereto, and the difficulties in
13 establishing damages for the Class. Plaintiffs and Class Counsel have also taken into account
14 Defendants' agreement to enter into a settlement that confers substantial relief upon the members of
15 the Class. Based on the foregoing, Plaintiffs and Class Counsel have determined that the Settlement
16 set forth in this Settlement Agreement is a fair, adequate, and a reasonable settlement, and is in the
17 best interests of the Class.

18 43. Defendants' Reasons for Settlement. Defendants have concluded that any further
19 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of
20 Defendants' time, energy, and resources have been and, unless this Settlement is completed, will
21 continue to be devoted to the defense of the claims asserted by Plaintiffs. Defendants have also taken
22 into account the risks of further litigation in reaching its decision to enter into this Settlement. Even
23 though Defendants continue to contend that they are not liable for any of the claims alleged by
24 Plaintiffs in this Action, Defendants have agreed, nonetheless, to settle in the manner and upon the
25 terms set forth in this Settlement Agreement to put to rest the claims in this Action.

26 **STIPULATION AND AGREEMENT**

27 44. NOW THEREFORE, in consideration of the mutual covenants, promises, and
28 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

1 45. It is agreed by and among Plaintiffs and Defendants that this Settlement shall bind the
2 Plaintiffs, Settlement Class Members, and Defendants, subject to the terms and conditions hereof.

3 46. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
4 the “acknowledging party” and each Party to this Agreement other than the acknowledging party, an
5 “other party”) acknowledges and agrees that (1) no provision of this Agreement, and no written
6 communication or disclosure between or among the Parties or their attorneys and other advisers, is or
7 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
8 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31
9 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its
10 own, independent legal and tax counsel for advice (including tax advice) in connection with this
11 Agreement, (b) has not entered into this Agreement based upon the recommendation of any other
12 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
13 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty
14 that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party
15 has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
16 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
17 acknowledging party of the tax treatment or tax structure of any transaction, including any transaction
18 contemplated by this Agreement.

19 47. Released Claims by Plaintiffs. As of the date Defendants fully fund the Settlement,
20 Plaintiffs agree to the Release of Claims by Settlement Class Members, which is set forth in paragraph
21 31 above. In addition to Release of Claims by Settlement Class Members and as a material
22 inducement to Defendants to enter into this Settlement Agreement, Plaintiffs do hereby, for
23 themselves and for their spouses, heirs, successors, beneficiaries, devisees, legatees, executors,
24 administrators, trustees, conservators, guardians, personal representatives, and assign, forever and
25 completely release and discharge the Released Parties from any and all charges, complaints, claims,
26 liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits,
27 rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties, civil
28 penalties, liquidated damages, exemplary damages, interest, attorneys’ fees, and costs) of any nature

1 whatsoever, from the beginning of time through the execution of this Settlement Agreement, whether
2 known or unknown, suspected or unsuspected, including but not limited to all claims arising out of,
3 based upon, or relating to Plaintiffs' employment with or work for Defendants or the remuneration
4 for or termination of such employment.

5 Without limiting the generality of the foregoing, Plaintiffs expressly release all claims arising
6 under the California Labor Code (including, but not limited to, sections 201, 201.3, 202, 203, 204,
7 210, 216, 218.6, 221, 224, 225, 225.5, 226.7, 227.3, 510, 511, 512, 558, 1174, 1174.5, 1194, 1197,
8 1197.1, 1197.2, 1198, and 2698 et seq.); the Wage Orders of the California Industrial Welfare
9 Commission; the California Private Attorneys General Act of 2004 ("PAGA"); California Business
10 and Professions Code section 17200 et seq.; the California Civil Code, to include, but not limited to,
11 section 3336 and 3294; the California common law of contract; the Fair Labor Standards Act, 29
12 U.S.C. § 201 et seq.; federal common law; and the Employee Retirement Income Security Act, 29
13 U.S.C. § 1001, et seq. Plaintiffs' Released Claims also include all claims for lost wages and benefits,
14 emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under federal,
15 state, or local laws for discrimination, harassment, and wrongful termination such as by way of
16 example only, (as amended) 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the
17 Americans with Disabilities Act, the Age Discrimination in Employment Act, and the California Fair
18 Employment and Housing Act; and the law of contract and tort. This release excludes the release of
19 claims not permitted by law. As to the Plaintiffs' Released Claims only, Plaintiffs expressly waive
20 all rights and benefits under the terms of section 1542 of the California Civil Code. Section 1542
21 reads as follows:

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

25 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and
26 complete release and discharge of all parties, Plaintiffs and Class Counsel expressly acknowledge that
27 this Settlement Agreement is intended to include in its effect, without limitation, all claims that
28 Plaintiffs knew of, as well as all claims that they do not know or suspect to exist in their favor against

1 the Released Parties, or any of them, for the time period from the beginning of time to the execution
2 of this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment
3 of any such claims. Plaintiffs and Plaintiffs' Counsel do not currently intend to pursue any claims
4 against Defendants, including, but not limited to, any and all claims relating to or arising from
5 Plaintiffs' employment with Defendants, and that Plaintiffs' Counsel is not currently aware of any
6 facts or legal theories upon which any claims or causes of action could be brought against
7 Defendants, excepting those facts or legal theories alleged in the Operative Complaint in this
8 Action. This release does not include claims which cannot be released such as unemployment or
9 Worker's Compensation benefits.

10 48. Class Certification. For settlement purposes only, Defendants will stipulate that the
11 Settlement Class Members described herein who do not request exclusion from the Settlement Class
12 may be conditionally certified as a settlement class. This stipulation to certification is in no way an
13 admission that class action certification is proper and shall not be admissible in this or in any other
14 action except for the sole purposes of enforcing this Agreement. Should the Court fail to issue Final
15 Approval for any reason, the Parties' stipulation to class certification as part of the Settlement
16 Agreement shall become null and void *ab initio* and shall have no bearing on but remains protected
17 by California Evidence Code Section 1152 and shall not be admissible in connection with, the issue
18 of whether or not certification would be appropriate in a non-settlement context. Defendants expressly
19 reserve their rights and declare that Defendants will continue to oppose class certification and contest
20 the substantive merits of the case should the Court fail to issue Final Approval. Plaintiffs expressly
21 reserve their rights and declare that they will continue to pursue class certification and a trial should
22 the Court fail to grant Final Approval.

23 49. Approval of Settlement. Plaintiffs will move the Court to grant preliminary and final
24 approval of this class action Settlement. The Parties agree to work diligently and cooperatively to
25 have this matter presented to the Court for preliminary and final approval.

26 50. Release of Claims by Settlement Class Members. Settlement Class Members release
27 the "Released Claims by Settlement Class Members," as defined, as of the date Defendants fully funds
28 the Settlement.

1 51. Release of Settled PAGA Claims. PAGA Members release the “Settled PAGA
2 Claims,” as defined, as of the date Defendants fully funds the Settlement.

3 51. Settlement Administration. Within ten (10) calendar days after the Preliminary
4 Approval Date, Defendants shall provide the Settlement Administrator with the Class Information.

5 53. Notice to the Class. Upon receipt of the Class Information, the Settlement
6 Administrator will perform a search based on the National Change of Address Database to update and
7 correct any known or identifiable address changes. Within ten (10) calendar days after receiving the
8 Class Information, the Settlement Administrator shall mail copies of the Notice of Class Settlement
9 to all Class Members via regular First Class U.S. Mail. The Settlement Administrator shall exercise
10 its best judgment to determine the current mailing address for each Class Member. The address
11 identified by the Settlement Administrator as the current mailing address shall be presumed to be the
12 best mailing address for each Class Member.

13 a. Undeliverable Notices. Any Notice of Class Settlement returned to the
14 Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to
15 the forwarding address affixed thereto within ten (10) calendar days. For any undeliverable Notice of
16 Class Settlement returned for which no forwarding address is affixed, the Settlement Administrator
17 will conduct its investigation for an updated address of the Class Member and re-mail the Notice of
18 Class Action Settlement. If an updated address is found, the Settlement Administrator shall have
19 seven (7) days to re-mail the Notice of Class Action Settlement from receipt of the undelivered
20 envelope. The Settlement Administrator will provide a cover letter notifying the Class Member of the
21 extended Response Deadline. Any Class Member who receives a re-mailed Notice of Class Settlement
22 shall have forty-five (45) days after the postmark date of the re-mailed Notice of Class Settlement to:
23 (a) submit a Request for Exclusion; or (b) submit an Objection to the Settlement.

24 (1) Verification of Class Member Employment Status. If Notice of Class
25 Action Settlement sent to a Class Member is determined to be
26 undeliverable, the Settlement Administrator shall verify the
27 employment status of the Class Member with Defendants within five
28 (5) days of receipt of the undeliverable Notice of Class Action

1 Settlement. If the Class Member is a current employee of Defendants,
2 Defendants shall take all reasonable efforts to obtain the current
3 address from the Class Member and shall provide the same with seven
4 (7) days of notice from the Settlement Administrator.

5 b. Disputes Regarding Individual Settlement Payments. Class Members will have
6 the opportunity, should they disagree with Defendants' records regarding the dates of employment
7 stated in the Notice of Class Settlement, to provide documentation and/or an explanation to show
8 contrary information by the Response Deadline. The dispute form must: (a) contain the full name,
9 address, and telephone number of the Class Member, and the last four digits of the Class Member's
10 social security number or full employee ID number; (b) contain the case name and case number; (c) a
11 clear statement by the Class Member that he or she is disputing the number of Compensable
12 Workweeks and the basis for the dispute; (d) any documentation demonstrating that the number of
13 Compensable Workweeks listed in the Notice of Class Settlement is incorrect; (e) be signed by the
14 Class Member; and (f) be postmarked by the Response Deadline. The date of the postmark on the
15 return mailing envelope on the dispute form shall be the exclusive means used to determine whether
16 it has been timely submitted. If there is a dispute, the Settlement Administrator will consult with the
17 Parties to determine whether an adjustment is warranted. In addition to U.S. Mail, a Class Member
18 may also submit a dispute form by facsimile or email to the Settlement Administrator within the
19 Response Deadline. The Settlement Administrator shall then determine the eligibility for, and the
20 amounts of, any Individual Settlement Payments under the terms of this Agreement. In the absence of
21 circumstances indicating fraud, manipulation or destruction, Defendants' records shall be given a
22 rebuttable presumption of accuracy.

23 c. Request for Exclusion. Class Members who wish to exclude themselves from
24 the Settlement must submit to the Settlement Administrator a Request for Exclusion by the Response
25 Deadline. The Request for Exclusion must: (a) contain the full name, address, and telephone number
26 of the Class Member, and the last four digits of the Class Member's social security number or full
27 employee ID number; (b) contain the case name and case number; (c) a clear statement by the Class
28 Member that he or she is electing to be excluded from the Settlement; (d) be signed by the Class

1 Member; and (e) be postmarked by the Response Deadline if submitted by U.S. Mail. The date of the
2 postmark on the return mailing envelope on the Request for Exclusion submitted by U.S. Mail shall
3 be the exclusive means used to determine whether it has been timely submitted. In addition to U.S.
4 Mail, a Class Member may also submit a Request for Exclusion by facsimile or email to the Settlement
5 Administrator within the Response Deadline. A Request for Exclusion shall not be presumptively
6 invalid if it does not contain the requirements of (a) through (d) if the Settlement Administrator can
7 ascertain the identity of the Class Member who wants to exclude themselves from the Settlement. Any
8 Class Member who requests to be excluded from the Settlement Class shall not be entitled to any
9 recovery under the Settlement and shall not be bound by the terms of the Settlement or have any right
10 to object, appeal or comment thereon except as to any distribution based upon PAGA penalties.
11 PAGA Members will receive their share of the PAGA Payment and the Settled PAGA Claims will be
12 released even if the Class Member submits a timely Request for Exclusion. Class Members who fail
13 to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound
14 by all terms of the Settlement and any Final Approval Order and Judgment entered in this Action.

15 d. Objections. Class Members who wish to object to the Settlement can either
16 mail or send by facsimile or email to the Settlement Administrator a written Objection by the
17 Response Deadline. The Objection should: (a) contain the full name, address, and telephone number
18 of the Class Member, and the last four digits of the Class Member's social security number; (b)
19 contain the case name and case number; (c) the dates of employment of the Class Member; (d) be
20 signed by the Class Member; (e) state the basis for the Objection, including any legal briefs, papers
21 or memoranda in support of the Objection; and (f) be postmarked by the Response Deadline. The
22 date of the postmark on the return mailing envelope on the Objection shall be the exclusive means
23 used to determine whether the Objection has been timely submitted. Class Members who submit a
24 timely Objection will have a right to appear at the final approval hearing in order to have their
25 Objection heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or
26 otherwise encourage Class Members to submit Objections to the Settlement or appeal from the Final
27 Approval Order and Judgment. Class Counsel shall not represent any Class Members with respect to
28 any such Objections. The Settlement Administrator will provide the Parties with any Objection

1 within five (5) calendar days of receipt of the Objection. Plaintiffs will file any and all Objections
2 with the Court in advance of the Final Approval Hearing. Oral or written Objections may also be
3 made at the Final Approval hearing without a written objection being submitted, but only with the
4 Court's express permission. If the Court rejects the objection, the individual will be bound by the
5 terms of the Settlement.

6 e. If greater than fifteen (15) percent of the Class Members opt out or object to
7 this Settlement Agreement or a number of Class Members whose share of the Net Settlement Amount
8 is 15% or more, Defendants will have the right to rescind and terminate the Settlement without
9 prejudice to its pre-settlement positions and defenses in the litigation. In such a case, the Parties and
10 any funds to be awarded shall be returned to their respective statuses as of the date and time
11 immediately prior to the execution of this Agreement.

12 f. Except for those Settlement Class Members who exclude themselves in
13 compliance with the Request for Exclusion procedures set forth above, all Settlement Class Members
14 will: (i) be deemed to be Participating Class Members for all purposes under this Settlement
15 Agreement; (ii) will be bound by the terms and conditions of this Settlement Agreement, the
16 Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, will be
17 deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy
18 of the Settlement.

19 54. Funding Gross Settlement Amount. After Final Approval by the Court, Defendants
20 agree to pay a sum equal to \$230,000 ("the "Gross Settlement Amount") to fund the settlement of this
21 action. The Settlement is "all-in", non-reversionary and no funds will return to Defendants. Payments
22 of any appropriate and lawfully-required employer share of the payroll taxes on the taxable portion of
23 the settlement payments shall be paid by Defendants separately from and in addition to the Gross
24 Settlement Amount. Defendants shall be jointly and several liable for paying the entire Gross
25 Settlement Amount. Defendants shall pay the Gross Settlement Amount in equal installment payments
26 on the first of each month over twenty-four (24) months, beginning on the date thirty (30) calendar
27 days after the long form settlement agreement is fully executed by the Parties. The final installment
28 payment shall also include the employer's share of payroll taxes. Each payment shall be paid to an

1 account held in trust by the agreed-upon Settlement Administrator. The Settlement Administrator will
2 hold all payments in an interest-bearing account until the full Gross Settlement Amount is received.
3 Any interest earned will go to the Net Settlement Amount.

4 a. Default in the Event of Breach of Payment. If an Installment Payment is not
5 received within three (3) calendar days of the first of the month or there are any other issues with the
6 Installment, the Settlement Administrator shall immediately provide written notice to Counsel for
7 Plaintiffs and Defendants. Defendants shall have seven (7) calendar days from the date written notice
8 is sent to cure any defect in payment. Should Defendants fail to cure any defect in payment within
9 this timeframe, Defendants shall be considered in default ("Default") and in express breach of the
10 terms of this Settlement Agreement. In the event of default, Plaintiffs shall be immediately entitled to
11 a judgment in the amount of \$230,000.00, less any amounts already paid by Defendants pursuant to
12 the Settlement Agreement ("Default Award") plus a payment in the amount of \$9,583 (approximately
13 one installment payment) per breach, which the Parties stipulate is reasonable based on the breach and
14 delay caused by the breach.

15 55. Allocation of Settlement. Individual Settlement Payments will be paid from the Net
16 Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual
17 Settlement Payments shall be mailed by regular First Class U.S. Mail to Settlement Class Members'
18 last known mailing address.

19 a. The Settlement Administrator shall calculate the total Compensable Work
20 Weeks and Compensable PAGA Work Weeks for all Settlement Class Members based on the Class
21 Information provided by Defendants. The respective Compensable Work Weeks for each Settlement
22 Class Member will be divided by the total Compensable Work Weeks for all Settlement Class
23 Members, resulting in the Payment Ratio for each Settlement Class Member; a similar calculation will
24 apply to determining the Payment Ratio for Compensable PAGA Work Weeks. Each Settlement Class
25 Member's Payment Ratio will then be multiplied by the Net Settlement Amount to determine his or
26 her Individual Settlement Payment.

27 b. Individual Settlement Payments due to each Settlement Class Member shall be
28 designated as follows:

1 1. Thirty-Three percent (33%) of the Individual Settlement Payment
2 shall represent payment for alleged unpaid wages. This payment shall be subject to the withholding
3 of all applicable local, state, and federal taxes. Applicable payroll taxes and/or contributions will be
4 deducted from the amount paid to Settlement Class Members. The Settlement Administrator will
5 issue a W-2 Form to each Settlement Class Member in relation to this payment.

6 2. Thirty-three percent (33%) of the Individual Settlement Payment shall
7 represent payment of all penalties. These payments will not be subject to withholding of local, state,
8 and federal taxes. The Settlement Administrator will issue an IRS Form 1099 to each Settlement
9 Class Member in relation to these payments.

10 3. Thirty-three percent (33%) of the Individual Settlement Payment shall
11 represent payment of all interest. These payments will not be subject to withholding of local, state,
12 and federal taxes. The Settlement Administrator will issue an IRS Form 1099 to each Settlement
13 Class Member in relation to these payments.

14 (a). Class Members With Missing/Unverifiable Social Security
15 Numbers and Withholdings of Taxes and Applicable Penalties. In the event that an Individual
16 Settlement Payment exceeds the threshold amount that must be reported to the Internal Revenue
17 Service by means of a Form 1099, Class Counsel, and the Settlement Administrator, will take all
18 necessary and reasonable steps to obtain W-9's from Class Members and to comply with applicable
19 IRS regulations on issuing 1099's without a social security number or tax entity identification number,
20 and shall take all reasonable and necessary steps to avoid imposition of IRS penalties against the Gross
21 Settlement Amount, including, but not limited to limiting payments below the reportable threshold
22 and/or withholding of taxes and any applicable penalties. The Settlement Administrator will contact
23 Class Members who are entitled to payments that exceed the taxable income threshold twice, with at
24 least 30 days between the two contacts.

25 c. Uncashed Settlement Checks. Individual Settlement Payment checks shall
26 remain negotiable for one hundred and eighty (180) days from the postmark date of issuance. If the
27 Settlement Check is not cashed, deposited, or otherwise negotiated within the 180-day deadline, the
28 check will be voided, and the funds associated with any such voided checks shall be distributed to the

1 State of California Controller's Office, Unclaimed Property Division, in the name of the affected Class
2 Member. The Release will be binding upon all Participating Class Members, including those who do
3 not cash their checks within the 180-day period. The Parties agree that this disposition results in no
4 "unpaid cash residue," or "unclaimed or abandoned funds" as the entire Net Settlement Amount will
5 be paid out to the Participating Class Members, whether or not they all cash their payment checks.

6 d. Certification By Settlement Administrator. The Parties have the right to
7 monitor and review administration of the Settlement. Any disputes not resolved by the Settlement
8 Administrator concerning the administration of the Settlement will be resolved by the Court, under
9 the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties
10 will confer in good faith to resolve the disputes without the necessity of involving the Court. Upon
11 completion of administration of the Settlement, the Settlement Administrator shall provide written
12 certification of such completion to counsel for the Parties, and which shall be filed with the Court as
13 necessary.

14 e. Settlement Awards Do Not Trigger Additional Benefits. All monies received
15 by Settlement Class Members shall be deemed to be income to such Settlement Class Members solely
16 in the year in which such awards actually are received by the Settlement Class Members. It is expressly
17 understood and agreed that the receipt of such Individual Settlement Payments will not entitle any
18 Settlement Class Member to additional compensation or benefits under any company compensation
19 or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle
20 any Settlement Class Member to any increased pension and/or retirement, or other deferred
21 compensation benefits. It is the intent of this Settlement that any Individual Settlement Payments
22 provided for in this Agreement are the sole payments to be made by Defendants to the Settlement
23 Class Members in connection with this Settlement, and that the Settlement Class Members are not
24 entitled to any new or additional compensation or benefits as a result of having received the Individual
25 Settlement Payments (notwithstanding any contrary language or agreement in any benefit or
26 compensation plan document that might have been in effect during the period covered by this
27 Settlement).

1 f. Class Representative Service Awards. Defendants agree not to oppose or
2 object to Class Representative Service Awards to Plaintiffs of up to Sixteen Thousand Dollars
3 (\$16,000.00), combined between both Class Representatives, subject to Court approval. The
4 Settlement Administrator shall issue an IRS Form 1099 – MISC to Plaintiffs in connection with the
5 Class Representative Service Awards payment. Plaintiffs shall be solely and legally responsible to
6 pay any and all applicable taxes on their Class Representative Service Awards and shall hold harmless
7 Defendants and Class Counsel from any claim or liability for taxes, penalties, or interest arising as a
8 result of the Class Representative Service Awards payment. The Class Representative Service Awards
9 shall be in addition to Plaintiffs' Individual Settlement Payments. This Settlement is not contingent
10 upon the Court awarding Plaintiffs a Class Representative Service Awards in any amount, and any
11 amount requested by Plaintiffs for the Class Representative Service Awards that is not granted by the
12 Court shall return to the Net Settlement Amount and be distributed to Settlement Class Members as
13 provided in this Amended Agreement.

14 g. Class Counsel Award. Defendants agree not to oppose or object to any
15 application or motion by Class Counsel for attorneys' fees not to exceed one-third from the Gross
16 Settlement Amount, or Seventy-Seven Thousand Dollars and Zero cents (\$77,000). Defendants
17 further agree not to oppose any application or motion by Class Counsel for the reimbursement of any
18 costs or expenses associated with Class Counsel's prosecution of this matter from the Gross
19 Settlement Amount not to exceed Sixteen Thousand Dollars (\$16,000). Class Counsel shall be solely
20 and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph.
21 The Settlement Administrator shall issue an IRS Form 1099 – MISC to Class Counsel for the
22 payments made pursuant to this paragraph. This Settlement is not contingent upon the Court awarding
23 Class Counsel any particular amount in attorneys' fees and costs. Any amount requested by Class
24 Counsel for the Class Counsel Award and costs that are not granted by the Court shall return to the
25 Net Settlement Amount and be distributed to Settlement Class Members as provided in this
26 Agreement.

27 h. Settlement Administration Costs. The Settlement Administrator shall be paid
28 for the costs of administration of the Settlement from the Gross Settlement Amount. The costs of

1 notice and administration for the disbursement of the Gross Settlement Amount shall not exceed
2 Twelve Thousand Dollars (\$12,000.00). Prior to the filing of a motion for final approval of this
3 Settlement, the Settlement Administrator shall provide the Parties with a statement detailing the costs
4 of administration. Any amount requested by the Settlement Administrator for administration costs that
5 is not granted by the Court shall return to the Net Settlement Amount and be distributed to Settlement
6 Class members as provided in this Settlement Agreement. Defendants will pay any fees incurred by
7 the Settlement Administrator if the settlement is not approved.

8 i. PAGA Payment. Twenty Thousand dollars (\$20,000) from the Gross
9 Settlement Amount will be allocated to penalties under the Private Attorneys General Act of 2004.
10 Seventy-five percent (75%) of that amount, or \$15,000, will be paid to the LWDA and twenty-five
11 (25%) of that amount, or \$5,000, will be paid to the PAGA Members based upon Compensable PAGA
12 Work Weeks as determined by the PAGA Payment Ratio as set forth in Paragraph 25. This PAGA
13 Payment is made pursuant to California Labor Code § 2699(i).

14 56. Tax Liability: Class Counsel and Defendants make no representation as to the tax
15 treatment or legal effect of payments called for hereunder, and Plaintiffs and the Settlement Class
16 Members are not relying on any statement or representation by Class Counsel or Defendants in this
17 regard. Plaintiffs and Participating Class Members understand and agree that they will be solely
18 responsible for the payment of any taxes and penalties assessed on their respective payments described
19 herein. The amount of federal income tax withholding will be based upon a flat withholding rate for
20 supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or
21 supplemented. Income tax withholding will also be made pursuant to applicable state and/or local
22 withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in
23 the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this
24 Settlement Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax
25 law, is changed after the date of this Settlement Agreement, the processes set forth in this Section may
26 be modified in a manner to bring Defendants into compliance with any such changes.

27 57. Distribution of Settlement Payments. Individual Settlement Payments to Settlement
28 Class Members, the Class Representative Service Awards, the Class Counsel Award, Settlement

Administration Costs, Defendants' share of employer payroll taxes and PAGA Payment, shall all be distributed by the Settlement Administrator within thirty (30) calendar days of receipt of the full Gross Settlement Amount from Defendants. Prior to distribution of Individual Settlement Payments to the Settlement Class Members and PAGA Members, the Settlement Administrator shall update the Class and PAGA Members addresses using the National Change of Address Database.

58. Additional Class Members. It is currently estimated that there are 229 Class Members. Defendants shall provide Plaintiff with a current list of the number of Class Members at the time that Plaintiff will file a Motion for Preliminary Approval. If more than 11 (5%) Class Members are identified up to the date that Plaintiff files a Motion for Preliminary Approval, the Gross Settlement Amount will be increased on a pro rata basis according to the number of additional compensable workweeks/pay periods worked by all Class Members in excess of 11 (5%) with respect to the total number of workweeks/pay periods worked by the entire Class.

59. Final Settlement Approval Hearing and Entry of Final Judgment. Upon expiration of the Response Deadline, a final approval hearing shall be conducted to determine, *inter alia*, final approval of the Settlement and amounts properly payable for: (a) Individual Settlement Payments; (b) the Class Counsel Awards; (c) the Class Representative Service Awards; (d) PAGA Payment; and (e) the Settlement Administration Costs.

60. Nullification of Settlement Agreement. In the event: (a) the Court does not enter the Order for preliminary approval of the Settlement; (b) the Court does not finally approve the Settlement; (c) the Court does not enter a Final Approval Order and Judgment as provided herein; (d) the Settlement does not become final for any other reason; or (e) the Court fails or refuses to approve any material condition of this Settlement Agreement which effects a fundamental change of the Settlement Agreement, this entire Settlement Agreement shall be null and void and unenforceable as to all Parties herein at the option of any Party but remains protected by California Evidence Code Section 1152, and any order or judgment entered by the Court in furtherance of this Settlement shall be treated as void from the beginning. In such cases, the Parties and any funds to be awarded under this Settlement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as

1 if this Agreement had not been executed, except that any fees already incurred by the Settlement
2 Administrator shall be paid by Defendants. Further, if the Settlement Agreement is voided or fails
3 for any reason, Plaintiffs and Defendants will have no further obligations under the Settlement
4 Agreement, including any obligation by Defendants to pay the Settlement Amount, or any amounts
5 that otherwise would have been owed under this Settlement Agreement. In the event an appeal is
6 filed from the Court's Final Approval Order and Judgment, or any other appellate review is sought,
7 administration of the Settlement shall be stayed pending final resolution of the appeal or other
8 appellate review, and any fees incurred by the Settlement Administrator prior to it being notified of
9 the filing of an appeal from the Court's Final Approval Order and Judgment, or any other appellate
10 review, shall be paid to the Settlement Administrator by the party or person that filed the appeal,
11 within thirty (30) calendar days of said notification.

12 61. No Effect on Employee Benefits. Amounts paid to Plaintiffs or other Settlement Class
13 Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not
14 have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations,
15 holiday pay, retirement plans, etc.) of Plaintiffs or Settlement Class Members.

16 62. No Admission by Defendants. Defendants deny any and all claims alleged in this
17 Action and deny all wrongdoing whatsoever. This Settlement Agreement is not a concession or
18 admission and shall not be used against Defendants as an admission or indication with respect to any
19 claim of any fault, concession, or omission by Defendants. Nonetheless, Defendants desire to settle
20 and compromise the matters at issue in the Action to avoid further substantial expense and the
21 inconvenience and distraction of protracted and burdensome litigation. Defendants also have taken
22 into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in
23 the defenses that they have asserted or could assert against Plaintiffs and/or any Settlement Class
24 Member, have determined that it is desirable and beneficial that the claims of Plaintiffs and the
25 Settlement Class be settled in the manner and upon the terms and conditions set forth in this Settlement
26 Agreement.

27 63. Mutual Non-Disparagement. The Parties mutually agree that they shall not publicly
28 assert, declare, avow, lay claim to, or in any other manner represent that any of them engaged in

1 actions or conduct with the purpose of attempting to harass, embarrass, ridicule, demean, demote,
2 defame, or otherwise denigrate each other, and any of them, their good name(s), personal and/or
3 professional reputations, and/or community standing. In the event of an employment inquiry regarding
4 the Plaintiffs, Defendants shall only provide dates of employment and last position held. The Parties
5 and their counsel agree not to issue any press releases, initiate contact with press, or respond to press
6 inquiry regarding the Settlement.

7 64. No Publicity. Plaintiffs and Plaintiffs' Counsel agree not to disclose or publicize
8 the settlement, including the Memorandum of Understanding, the fact of the Settlement, its
9 terms or contents, and the negotiations underlying the Settlement, in any manner or form,
10 directly or indirectly, to any person or entity, except potential class members and as shall be
11 contractually required to effectuate the terms of the Settlement as set forth herein. For the
12 avoidance of doubt, this section means Plaintiffs and Class Counsel will not to issue press
13 releases, communicate with, or respond to any media or publication entities, publish information
14 in manner or form, whether printed or electronic, on any medium or otherwise communicate,
15 whether by print, video, recording or any other medium, with any person or entity concerning
16 the Settlement, including the fact of the Settlement, its terms or contents and the negotiations
17 underlying the Settlement, except as shall be contractually required to effectuate the terms of the
18 Settlement as set forth herein. However, for the limited purpose of allowing Class Counsel to
19 prove adequacy as class counsel in other actions, Class Counsel may disclose the name of the
20 Parties in this action and the venue/case number of this action (but not any other settlement
21 details) for such purposes.

22 65. Exhibits and Headings. The terms of this Settlement Agreement include the terms set
23 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein.
24 Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any
25 paragraphs or sections of this Agreement are inserted for convenience of reference only and do not
26 constitute a part of this Agreement.

1 66. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
2 except such proceedings necessary to implement and complete the Settlement, holding the Action in
3 abeyance pending the final approval hearing to be conducted by the Court.

4 67. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning the
5 interpretation, calculation or payment of Settlement claims, or other disputes regarding compliance
6 with this Agreement shall be resolved as follows:

7 a. If Plaintiffs or Class Counsel, on behalf of Plaintiffs or any Settlement Class
8 Member, or Defendants' Counsel, on behalf of Defendants, at any time believe that the other Party
9 has breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of
10 the alleged violation.

11 b. Upon receiving notice of the alleged violation or dispute, the responding Party
12 shall have ten (10) calendar days to correct the alleged violation and/or respond to the initiating Party
13 with the reasons why the Party disputes all or part of the allegation.

14 c. If the response does not address the alleged violation to the initiating Party's
15 satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days to resolve their
16 differences.

17 d. If Class Counsel and Defendants' Counsel are unable to resolve their
18 differences after twenty (20) calendar days, either Party shall first contact the mediator (Hon. Linda
19 Quinn, Judge Ret.) to try to resolve the dispute. If that proves unsuccessful, the party may file an
20 appropriate motion for enforcement with the Court. The briefing of such motion should be in letter
21 brief form and shall not exceed five (5) single-spaced pages (excluding exhibits).

22 e. Reasonable attorneys' fees and costs for work done in resolving a dispute under
23 this Section may be recovered by any Party that prevails under the standards set forth within the
24 meaning of applicable law.

25 68. Notice. Unless otherwise specifically provided herein, all notices, demands or other
26 communications given hereunder shall be in writing and shall be deemed to have been duly given as
27 of the third business day after (i) emailing and (ii) mailing by United States registered or certified
28 mail, return receipt requested, addressed:

To the Settlement Class:

LAW OFFICE OF SCOTT ERNEST WHEELER
Scott Ernest Wheeler
Justin A. Wheeler
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com
jaw@scottwheelerlawoffice.com

THE WAND LAW FIRM, P.C.
Aubry Wand
100 Oceangate, Suite 1200
Long Beach, CA 90802
Telephone: (310) 590-4503
Facsimile: (310) 590-4596
Email: awand@wandlawfirm.com

To Defendants:

TUMER & SHARIF
Omar Sharif
17875 Von Karman Ave., Suite 150
Irvine, California 92614
Telephone: (949) 287-6901
E-mail: law@tumersharif.com

69. Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties and approved by the Court.

70. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entire Agreement among these Parties, and no oral or written representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in the Agreement and its Exhibits.

71. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other

1 and use their best efforts to affect the implementation of the Settlement. In the event the Parties are
2 unable to reach agreement on the form or content of any document needed to implement the
3 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of
4 this Settlement, the Parties may seek the assistance of the Court or the mediator to resolve such
5 disagreement. The persons signing this Agreement on behalf of Defendants represent and warrant that
6 they are authorized to sign this Agreement on behalf of Defendants. Plaintiffs represent and warrant
7 that they are authorized to sign this Agreement and that they have not assigned any claim, or part of
8 a claim, covered by this Settlement to a third-party.

9 72. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
10 to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

11 73. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they
12 have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
13 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action
14 or rights released and discharged by this Settlement Agreement.

15 74. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
16 Order and Judgment, nothing contained herein, nor the consummation of this Settlement Agreement,
17 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the
18 part of Defendants or any of the other Released Parties. Each of the Parties hereto has entered into
19 this Settlement Agreement with the intention of avoiding further disputes and litigation with the
20 attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it,
21 along with all related documents such as the notices, and motions for preliminary and final approval,
22 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
23 inadmissible as evidence in any proceeding, except an action or proceeding to approve the Settlement,
24 and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part
25 of this Settlement Agreement is for settlement purposes only and if for any reason the Settlement is
26 not approved, the stipulation will be of no force or effect.

27 75. California Law Governs. All terms of this Settlement Agreement and the Exhibits
28 hereto shall be governed by and interpreted according to the laws of the State of California.

1 76. Counterparts. This Settlement Agreement may be executed in one or more
2 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
3 instrument.

4 77. This Settlement is Fair, Adequate and Reasonable. The Parties believe this Settlement
5 is a fair, adequate, and reasonable settlement of this Action and have arrived at this Settlement after
6 extensive arms-length negotiations, taking into account all relevant factors, present and potential.

7 78. Jurisdiction of the Court. Pursuant to California Code of Civil Procedure section 664.6,
8 the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement
9 of the terms of this Settlement Agreement and all orders and judgments entered in connection
10 therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes
11 of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders
12 and judgments entered in connection therewith. All terms of this Settlement Agreement are subject to
13 approval by the Court.

14 79. Construction. The Parties hereto agree that the terms and conditions of this Settlement
15 Agreement are the result of lengthy, intensive arms'-length negotiations among the Parties and that
16 this Settlement Agreement shall not be construed in favor of or against any Party based on the extent
17 to which any Party or their counsel participated in the drafting of this Settlement Agreement. Plaintiffs
18 and Defendants expressly waive the common-law and statutory rule of construction that ambiguities
19 should be construed against the drafter of an agreement and further agree, covenant, and represent that
20 the language in all parts of this Settlement Agreement shall be in all cases construed as a whole,
21 according to its fair meaning.

22 80. Captions and Interpretations. Paragraph titles or captions contained herein are inserted
23 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope
24 of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is
25 contractual and not merely a recital.

26 81. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to
27 the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
28 successors and assigns.

1 82. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
2 because the members of the Settlement Class are numerous, it is impossible or impractical to have
3 each Settlement Class Member execute this Settlement Agreement. The Notice will advise all
4 Settlement Class Members of the binding nature of the release provided herein and such Release
5 shall have the same force and effect as if this Settlement Agreement were executed by each
6 Settlement Class Member.

7 83. Voluntary Agreement. The Parties acknowledge that they have entered into this
8 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion, duress,
9 or undue influence of any Party, and not in reliance on any promises, representations, or statements
10 made by the other Parties other than those contained in this Settlement Agreement. Each of the
11 Parties hereto expressly waives any right they might ever have to claim that this Settlement
12 Agreement was in any way induced by fraud.

13 84. Opportunity to Consult with Counsel. Prior to execution of this Settlement
14 Agreement, each Party has read this entire Settlement Agreement and has been given the
15 opportunity to consult with independent counsel of their choosing and to have such independent
16 counsel advise as to the meaning of this Settlement Agreement and its legal effect.

17 85. Counterparts. This Settlement Agreement may be executed in counterparts, and when
18 each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed
19 an original, and, when taken together with other signed counterparts, shall constitute one fully-signed
20 Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic
21 signatures shall have the same force and effect as an original.

22 86. Invalidity of Any Provision. Before declaring any provision of this Settlement
23 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent
24 possible consistent with applicable precedents so as to define all provisions of this Agreement valid
25 and enforceable.

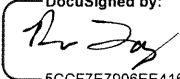
26 Dated: 3/5/2024
27 _____

By: _____
Joseph B. Cervantes

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Joseph Cervantes
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Dated: 3/5/2024

DocuSigned by:

5CCF7E7906EE416...
By: Ruben N. Lopez

Dated: _____

By: _____
Title: _____
I-10 Towing And Recovery, Inc.

Dated: _____

By: _____
Title: _____
Golden Bear Towing, Inc.

APPROVED AS TO FORM:

DATED: February ____, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER

By: _____
Scott Ernest Wheeler
Justin A. Wheeler

DATED: February ____, 2024

THE WAND LAW FIRM, APC

By: _____
Aubry Wand

Attorneys for Plaintiff and the Putative Class

DATED: February ____, 2024

TUMER & SHARIF

By: _____
Omar Sharif

*Attorneys for Defendant, I-10 Towing and Recovery,
Inc. and Golden Bear Towing, Inc.*

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By: _____
Ruben N. Lopez

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4 03 / 15 / 2024
5 Dated: _____

By:  _____
Title: Ceo

I-10 Towing And Recovery, Inc.

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9 Dated: 03 / 13 / 2024

By:  _____
Title: CEO

Golden Bear Towing, Inc.

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15 DATED: February _____, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER

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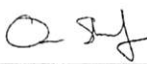
THE WAND LAW FIRM, APC

By:  _____
Aubry Wand

Attorneys for Plaintiff and the Putative Class

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03 / 13 / 2024
DATED: February _____, 2024

TUMER & SHARIF

By:  _____
Omar Sharif

*Attorneys for Defendant, I-10 Towing and Recovery,
Inc. and Golden Bear Towing, Inc.*

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Dated: _____

By: _____
Ruben N. Lopez

03 / 15 / 2024
Dated: _____

By:  _____

Title: Ceo

I-10 Towing And Recovery, Inc.

03 / 13 / 2024
Dated: _____

By:  _____

Title: CEO

Golden Bear Towing, Inc.

APPROVED AS TO FORM:


DATED: February 15, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER



Scott Ernest Wheeler
Justin A. Wheeler

DATED: February ____, 2024

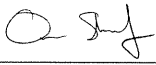
THE WAND LAW FIRM, APC

By: _____
Aubry Wand

Attorneys for Plaintiff and the Putative Class

03 / 13 / 2024
DATED: February ____, 2024

TUMER & SHARIF

By:  _____
Omar Sharif

*Attorneys for Defendant, I-10 Towing and Recovery,
Inc. and Golden Bear Towing, Inc.*

EXHIBIT 1

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT**JOSEPH B. CERVANTES V. I-10 TOWING AND RECOVERY, INC. AND
RUBEN N. LOPEZ V. GOLDEN BEAR TOWING, INC. – CONSOLIDATED ACTIONS****SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN BERNARDINO
CASE NO. CIVSB2226791 CONSOLIDATED WITH CASE NO. CIVSB2226930****PLEASE READ THIS NOTICE**

A class and representative action under the Private Attorneys General Act, California Labor Code sections 2699-2699.5. (“PAGA”) against Defendants I-10 Towing and Recovery, Inc. (“I-10”) and Golden Bear Towing, Inc. (“Golden Bear”) (collectively referred to herein as “Defendants”) has been preliminarily approved for settlement. In the lawsuit, Plaintiffs, Joseph B. Cervantes (“Mr. Cervantes”) and Ruben N. Lopez (“Mr. Lopez”) (collectively referred to herein as “Plaintiffs”) alleged that Defendants failed to properly compensate Class Members for all hours worked, failed to provide Class Members with compliant meal and/or rest periods or compensation in lieu thereof, failed to pay overtime wages, failed to pay minimum wages, failed to timely pay all wages, failed to pay all wages due to quitting and discharged employees at the time of separation, failed to maintain accurate payroll records, failed to provide accurate wage statements, failed to reimburse for necessary business expenses, and penalties predicated on the Labor Code violations pursuant to Labor Code sections 2699-2699.5 (“PAGA”). Defendants deny Plaintiffs’ allegations and contend that they complied with applicable law.

Class Member(s) are defined as: All non-exempt employees who were employed by Defendants in the State of California, at any time from November 17, 2018, through February 1, 2024. (“Class Period” and collectively, the Class Members are referred to as the “Class”).

The PAGA period is September 1, 2021, through February 1, 2024.

You have been identified by Defendants’ records as a Class Member in the above-entitled action, and as such, you are subject to the terms of the Class Action and PAGA Settlement Agreement And Release (“Settlement”), preliminarily approved by the Court. Please read this notice carefully. It may affect your legal rights. Defendants will not retaliate against you for any actions you take with respect to the settlement.

YOUR LEGAL RIGHTS AND OPTIONS WITH RESPECT TO THE SETTLEMENT	
Participate in the Settlement	If you want to remain in the Class, be bound by the Settlement and receive your Individual Settlement Payment, and if eligible, PAGA Payment , then you need not do anything.
Exclude Yourself From the Settlement	If you do not want to be bound by the Settlement, you must follow the instructions in Section 6 to exclude yourself. If you exclude yourself, you will not receive your Individual Settlement Payment, and you will not release the Settled Claims against Released Parties defined in Section 4 below. If this Settlement is approved by the Court, and you are a PAGA Member, you will receive your PAGA payment and the Settled PAGA Claims will be released even if you exclude yourself from the Settlement.
Object to the Settlement	If you want to object to the Settlement, you must follow the instructions in Section 7. If you object, you will still be bound by the terms of the Settlement, if approved by the Court.

1. WHY DID I GET THIS NOTICE?

You have received this Notice because Defendants’ records reflect that you are a Class Member as defined above. This Notice provides you with information about (1) the terms of the Settlement, including the claims that are being released, (2) the total monetary amount of the Settlement, (3) your estimated Individual Settlement Payment provided you remain a Settlement Class Member, and (4) where to find additional information regarding the case and the Settlement.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you do nothing, then you will be automatically included in the Settlement and do not need to take any further action to receive a payment.

2. WHAT IS THIS CASE ABOUT?

A Class Action Complaint for Damages was filed by Cervantes on November 17, 2022, in the Superior Court of California, County of San Bernardino, commencing the lawsuit entitled *Joseph B. Cervantes v. I-10 Towing And Recovery, Inc.*, Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2226791. Plaintiff Cervantes alleged on behalf of himself and the Class the following claims against Defendants: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to pay timely wages; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to maintain records; (8) failure to furnish accurate, itemized wage statements; (9) unfair business competition; (10) failure to reimburse for necessary business expenses; and (11) and violation of PAGA, predicated on the violations of the California Labor Code and applicable IWC Wage Order.

A Class Action Complaint for Damages was filed by Lopez on November 17, 2022, in the Superior Court of California, County of San Bernardino, commencing the lawsuit entitled *Ruben N. Lopez v. Golden Bear Towing, Inc.*, Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2226930. Plaintiff alleged on behalf of himself and the Class the following claims against Defendants: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to pay timely wages; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to maintain records; (8) failure to furnish accurate, itemized wage statements; (9) unfair business competition; (10) failure to reimburse for necessary business expenses; and (11) and violation of PAGA, predicated on the violations of the California Labor Code and applicable IWC Wage Order.

On _____, 2024, a consolidated Class Action Complaint for Damages was filed by Plaintiffs, in the Superior Court of California, County of San Bernardino, commencing the lawsuit entitled *Joseph B. Cervantes, Ruben N. Lopez, et al. v. I-10 Towing And Recovery, Inc., Golden Bear Towing, Inc., et al.*, Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2226930. Plaintiff alleged on behalf of himself and the Class the following claims against Defendants: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to pay timely wages; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to maintain records; (8) failure to furnish accurate, itemized wage statements; (9) unfair business competition; (10) failure to reimburse for necessary business expenses; and (11) and violation of PAGA, predicated on the violations of the California Labor Code and applicable IWC Wage Order as alleged in the Operative Complaint.

The resolution of the PAGA claim ("PAGA Settlement") includes any Class Members who are employed or have been employed by Defendants in the State of California during the time period from November 17, 2018, through February 1, 2024 ("PAGA Members").

Defendants deny any liability or wrongdoing of any kind. Defendants contends, among other things, that they complied at all times with the California Labor Code and the Business and Professions Code, and that employees were correctly and timely paid all wages, and that meal periods and rest breaks are provided as required by applicable law.

The Court has not ruled on the merits of Plaintiffs' claims. By preliminarily approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case on the merits. Rather, the Court has determined only that there is sufficient evidence to determine on a preliminary basis that the proposed Settlement is fair, adequate, and reasonable and any final determination of those issues will be made at the final approval hearing.

3. THE SETTLEMENT TERMS AND CALCULATION OF INDIVIDUAL SETTLEMENT PAYMENTS AND PAGA PAYMENTS.

Without admitting any wrongdoing, and to avoid the business disruptions caused by litigating these claims, Defendants have agreed to pay a Gross Settlement Amount of Two Hundred and Thirty Thousand Dollars (\$230,000.00) to settle the Action if approved by the Court.

The following amounts will be paid from the Maximum Settlement Amount:

- Service Payment to Plaintiffs for their service as Class Representatives in the amount of up to Sixteen Thousand Dollars and Zero Cents (\$16,000.00) combined;
- Attorneys' Fees not to exceed Seventy-Seven Thousand Dollars and Zero Cents (\$77,000.00) (i.e., 1/3 of the Gross Settlement Amount) to Class Counsel and up to Sixteen Thousand Dollars and Zero Cents (\$16,000.00) for reimbursement of litigation costs and expenses ("Attorneys' Costs");
- The amount of Twenty Thousand Dollars and Zero Cents (\$20,000.00) allocated to the payment of civil penalties under PAGA (the "PAGA Allocation");
- The costs associated with administration of the Settlement, estimated not to exceed Twelve Thousand Dollars and Zero Cents (\$12,000.00) ("Settlement Administration Costs").

Individual Settlement Payment: The amount remaining from the Gross Settlement Amount after the above deductions is called the "Net Settlement Amount". The Net Settlement Amount will be allocated to all Class Members who do not request to be excluded from the Settlement ("Settlement Class Members") on a *pro rata* basis, based on their number of Compensable Work Weeks. Each payment is called an "Individual Settlement Payment" and will be calculated as follows:

1. The Settlement Administrator will determine the number of work weeks worked by Class Members in California as a non-exempt employee during the Class Period ("Compensable Work Weeks");
2. The Settlement Administrator will determine the value of a single Compensable Work Week by dividing the Net Settlement Amount by the total number of Compensable Work Weeks for each Settlement Class Member resulting in a payment ratio; and
3. Each Settlement Class Member shall receive a gross Individual Settlement Payment equal to his or her Compensable Work Week payment ratio multiplied by the Net Settlement Amount.

Based on your Compensable Work Weeks, your individual settlement payment as a Settlement Class Member is estimated to be \$_____.

PAGA Payment: A total of Twenty Thousand Dollars and Zero Cents (\$20,000.00) of the Gross Settlement Amount has been allocated to PAGA Settlement. Of this amount, 75% or Seventy-Five Thousand Dollars (i.e., \$15,000.00) will be paid to California's Labor & Workforce Development Agency, and 25% or Twenty-Five Thousand Dollars (i.e., \$5,000.00) (the "Net PAGA Distribution Amount") will be paid on a *pro-rata* basis to PAGA Members.

1. The Settlement Administrator will determine the number of weeks worked by PAGA Members as non-exempt employees in California during the period from September 1, 2021, through February 1, 2024 ("Compensable PAGA Work Weeks");
2. The Settlement Administrator will determine the value of a single Compensable PAGA Work Week by dividing the Net PAGA Distribution Fund by the total number Compensable PAGA Work Weeks by all PAGA Members.
3. Each PAGA Member shall receive a PAGA Payment equal to his or her Compensable PAGA Work Weeks multiplied by the value of a single Compensable PAGA Work Week.

Based on these PAGA Compensable Work Weeks, your PAGA Payment is estimated to be \$_____.

If you dispute the above information, you may submit a written dispute to the number of Compensable Work Weeks and/or Compensable PAGA Work Weeks allocated to you ("Dispute") to the Settlement Administrator. Your Dispute must: (1) contain your name, address, and telephone number and the case name and number of this action, *Joseph B. Cervantes, Ruben N. Lopez v. I-10 Towing And Recovery, Inc. and Golden Bear Towing, Inc.*, Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2226791; (2) be signed by you; (3) be postmarked, emailed or fax stamped on or before (INSERT DATE) and returned to the Settlement Administrator at the address, email or fax number listed below; (4) clearly state the number of Compensable Work Weeks and/or Compensable PAGA Work Weeks you believe are correct; and (5) attach any documentary evidence you have to prove the number of contented Compensable Work Weeks and/or Compensable PAGA Work Weeks.

Phoenix Settlement Administrators
Re: *Joseph Cervantes, et al. v. I-10 Towing And Recovery, Inc., et al.*
INSERT ADDRESS
Phone: (800)
Facsimile: (714)
Email: INSERT EMAIL ADDRESS

Thirty-Three percent (33%) of each Individual Settlement Payment will be allocated to wages and subject to all applicable employee state and federal tax withholdings; Thirty-Three percent (33%) of each Individual Settlement Payment will be considered penalties and any other non-wage related amount; and Thirty-Three percent (33%) of each Individual Settlement Payment will be considered interest. The amount allocated as wages will be reported on an IRS form W-2, and the remaining amount allocated as penalties, liquidated damages, interest and other non-wage payments will be reported on an IRS form 1099. One hundred percent (100%) of each PAGA Payment will be allocated as penalties and be reported on an IRS form 1099.

In addition to the Gross Settlement Amount, Defendants will pay all employer-payroll taxes and contributions in connection with the portion of the Settlement allocated towards wages at the time the Gross Settlement Amount is funded.

Class Members are responsible for paying taxes on any amounts received. This Notice is not tax advice and you should consult your tax advisor. Checks will be valid and negotiable for one-hundred and eighty (180) days; after that checks will become void and a stop

payment will be placed on the uncashed checks. Settlement checks that are not cashed within one-hundred and eighty (180) days of mailing, or are returned to the Settlement Administrator, will be cancelled and the Settlement Administrator shall send the funds associated with uncashed checks to the State of California Controller's Office, Unclaimed Property Division, in the name of the affected Class Member. **Class Members will be bound by the Settlement even if they do not cash their settlement checks.**

4. WHAT AM I RELEASING AS A CLASS MEMBER UNDER THE SETTLEMENT?

If you do nothing, you will receive your Individual Settlement Payment.

If and when the Court grants final approval of the Settlement, as of the Effective Date, all Class Members who do not opt out of the Settlement ("Settlement Class Members") hereby do and shall fully and finally release and discharge Released Parties, from November 17, 2018, through February 1, 2024, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, or causes of action contingent or accrued for, that are pleaded, or that could have been pleaded, based on the facts and claims alleged in the Operative Complaint, including any claims for: (a) failure to provide required meal periods and pay premium payments, California Labor Code §§ 226.7, 510 and 512; (b) failure to provide required rest periods and pay premium payments, California Labor Code §§ 226.7 and 512; (c) failure to pay overtime wages, California Labor Code §§ 510, 1194 and 1198; (d) failure to pay minimum wages, California Labor Code §§ 1194 and 1197; (e) failure to timely pay wages §§ 204 and 210; (f) failure to timely pay all wages during employment and to discharged and quitting employees, California Labor Code §§ 201-204, 210; (g) failure to furnish accurate, itemized wage statements, California Labor Code §§ 226 and 226.3; (h) failure to reimburse for necessary business expenses; and (i) unlawful business practices under California, Business and Professions Code §17200, et seq.; predicated on any of the violations of the California Labor Code and the applicable IWC Wage Order as alleged in the Operative Complaint including but not limited to, claims for restitution and other equitable relief, liquidated damages, or penalties; and any other benefit, wages, penalties, or other amounts claimed on account of the allegations asserted or which could have been asserted in the Operative Complaint and Plaintiffs' LWDA Notice dated November 15, 2022. This release shall apply to any and all claims arising at any point during the Class Period. Upon entry of the Final Approval Order and funding of the total Gross Settlement Amount, all Participating Class Members will forever completely release and discharge the Released Parties from the Released Claims for the Release Period. Plaintiffs and Defendants intend that the Settlement described in this Settlement Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery to any and all of the Released Claims. This release excludes the release of claims not otherwise permitted by law, i.e. Worker's Compensation and unemployment insurance benefits.

"Released Parties" collectively mean: (i) Defendants; (ii) Defendants' respective past, present and future heirs, executors, administrators, parents, subsidiaries and affiliates, successors and assigns; and (iii) the past, present and future shareholders, managers, officers, partners, members, agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing.

5. WHAT AM I RELEASING AS A PAGA MEMBER UNDER THE SETTLEMENT?

As of the Effective Date, all PAGA Members, hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties of and from any and all Settled PAGA Claims.

"Settled PAGA Claims" means penalties under PAGA only, and not for underlying wage and hour claims which the claims for penalties are based upon, as alleged in the Operative Complaint and the PAGA Notice filed by Plaintiffs, and as described in section 4, above.

Released Parties is defined in section 4 of this Notice above.

PAGA MEMBERS CANNOT OPT-OUT OR EXCLUDE THEMSELVES FROM THE PAGA SETTLEMENT OR RELEASE OF SETTLED PAGA CLAIMS AND WILL RECEIVE A PAGA PAYMENT EVEN IF THEY OPT-OUT OF THE CLASS SETTLEMENT.

6. WHAT IF I DON'T WANT TO PARTICIPATE IN THE CLASS SETTLEMENT?

You have the right to request exclusion from the Settlement as a Class Member and with regards to the settlement of Settled Claims, but you are not able to exclude yourself as a PAGA Member. To exclude yourself as a Settlement Class Member, you must submit a written Request for Exclusion to the Settlement Administrator ("Opt-Out Request") at the address, email or fax number listed in section 3 of this Notice above.

A valid and complete Opt-Out Request must (1) contain the name, address, and telephone number of the Class Member requesting exclusion and the case name and number of the *Cervantes* Action (i.e., *Joseph B. Cervantes, Ruben N. Lopez, et al. v. I-10 Towing And Recovery, Inc., et al.* Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2226930); (2) be signed by the Class Member; (3) be postmarked, emailed or fax stamped on or before [INSERT DATE] and returned to the Settlement

Administrator at the specified address, email address or fax number listed in section 3 of this Notice above; and (4) contain a statement something substantially similar to:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT OF CLASS CLAIMS IN THE JOSEPH B. CERVANTES, RUBEN N. LOPEZ, ET AL. V. I-10 TOWING AND RECOVERY, INC., ET AL. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT FROM THE SETTLEMENT OF THE LAWSUIT. I UNDERSTAND THAT THE PAGA CLAIM WILL STILL BE RELEASED AND SETTLED.”

It is your responsibility to ensure that the Settlement Administrator timely receives your request to be excluded from the Settlement. Unless you timely request to be excluded from the Settlement, you will be bound by the judgment upon final approval of the Settlement.

Class Members who request to be excluded from the Settlement will NOT receive their Individual Settlement Payment and will not release any of the Settled Claims. However, Class Members who are also PAGA Members will receive their PAGA Payment and release the Settled PAGA Claims regardless of whether they submit an Opt-Out Request.

7. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any Settlement Class Member may object to the Settlement or to any settlement term. If the Court denies approval, no payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

If you wish to object, you must submit the written objection to the Settlement Administrator (“Objection”) to the following address or fax number listed in section 3 of this Notice above. A valid and timely Objection must (1) contain the name, address, and telephone number of the Settlement Class Member objecting and the case name and number of the *Cervantes* Action (i.e., *Joseph B. Cervantes, Ruben N. Lopez, et al. v. I-10 Towing And Recovery, Inc., et al.* Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2226930; (2) be signed by the Settlement Class Member; (3) give the legal and factual basis for their objection; and (4) be postmarked, emailed or fax stamped on or before [INSERT DATE] and returned to the Settlement Administrator at the specified address, email address or fax number in section 3 of the Notice above. Any written objection will not be presumptively invalidated if the objections do not comply with requirements (1), (2) and (3) as long as the written objection is timely received pursuant to requirement (4).

The submission of an objection will **not** exclude you from the Settlement. If the Court grants final approval of the Settlement, you will still receive an Individual Settlement Payment and will be barred from pursuing the Settled Claims. **Do not file both an Objection and Opt-Out Request.** If you file both an Objection and an Opt-Out Request, you will be excluded from the Settlement and the Objection will not be considered.

8. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Final Approval Hearing is scheduled to take place on [INSERT DATE AND TIME] in Department S-17 of the Superior Court of the State of California, San Bernardino Superior Court – Civil Justice Center, located at 247 West 3rd Street, San Bernardino, California 92415. The final approval hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing in order to receive payment under the Settlement.

9. WHO ARE THE ATTORNEYS?

Attorneys for Plaintiffs and the Class are:

LAW OFFICE OF SCOTT ERNEST
WHEELER
Scott Ernest Wheeler
Justin A. Wheeler
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622

THE WAND LAW FIRM, P.C.
Aubry Wand
100 OceanGate, Suite 1200
Long Beach, CA 90802
Telephone: (310) 590-4503
Facsimile: (310) 590-4596

Attorneys for Defendants are:

TUMER & SHARIF
Omar Sharif
17875 Von Karman Ave., Suite 150
Irvine, California 92614
Telephone: (949) 287-6901
E-mail: law@tumersharif.com

Email: awand@wandlawfirm.com

The Court has decided that the Attorneys for Plaintiffs and the Class are qualified to represent the Settlement Class Members. Other than the Attorneys' Fees and Attorneys' Costs approved by the Court, which will be paid out of the Gross Settlement Amount, you will not be charged for their services.

10. SHOULD I GET MY OWN LAWYER?

You do not need to get your own lawyer. If you want your own lawyer to speak for you or appear in Court, you have the right to hire one, but you will have to pay for that lawyer yourself.

11. FURTHER INFORMATION.

This Notice summarizes the Action and the basic terms of the Settlement. For more complete information, the pleadings and other records in this litigation may be examined during regular court hours at the Superior Court of the State of California, San Bernardino Superior Court – Civil Justice Center, located at 247 West 3rd Street, San Bernardino, California 92415 or at the Court's website at: <https://www.SB-court.org>. Documents regarding this Settlement may also be found on the Internet at: <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

EXHIBIT 2

LAW OFFICE OF SCOTT ERNEST WHEELER
Scott Ernest Wheeler (SBN 187998)
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com

THE WAND LAW FIRM, P.C.
Aubry Wand (SBN 281207)
100 Oceangate, Suite 1200
Long Beach, California 90802
Telephone: (310) 590-4503
Email: awand@wandlawfirm.com

Attorneys for Plaintiffs and the Putative Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

JOSEPH CERVANTES, RUBEN N. LOPEZ,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

I-10 TOWING AND RECOVERY, INC., a
California corporation; GOLDEN BEAR
TOWING, INC., a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: CIVSB2226679 (Consolidated
with CASE NO.: CIVSB2226930)

**FIRST AMENDED CLASS ACTION
COMPLAINT:**

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay All Wages Due to Discharged and Quitting Employees
6. Failure to Pay Timely Wages
7. Failure to Maintain Required Records
8. Failure to Furnish Accurate Itemized Statements
9. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
10. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

11. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

INTRODUCTION

This is a class action brought by Joseph Cervantes and Ruben N. Lopez (“Plaintiffs”), on behalf of themselves and all other similarly situated individuals, against I-10 Towing and Recovery Towing Inc. (“I-10 Towing”) and Golden Bear Towing, Inc. (“Golden Bear” or collectively referred to as “Defendants”), in order to hold Defendants accountable for their wage theft and other violations of California wage and hour laws. Plaintiffs make the following allegations on information and belief, except as to allegations pertaining to Plaintiffs individually, which are based on their respective personal knowledge.

1. I-10 Towing is a professional towing and vehicle asset recovery company located in Montclair, California.

2. Golden Bear is also a professional towing and vehicle asset recovery company located in Chino, California.

3. In order to minimize labor costs and thereby maximize profits, Defendants have implemented unlawful policies with respect to meal and rest breaks. Defendants also require their non-exempt lot employees, who are informed that customer service is always the top priority, to work through meal and rest breaks, and to remain on call during such breaks. Tow truck drivers are unable to take meal and rest breaks based upon the scheduling and demands of the position as drivers are required to always be driving, on-call and/or servicing customers. As a result, Plaintiffs and other non-exempt employees have been denied the ability to take the meal and rest breaks that they were and are legally entitled to take.

4. Defendants have implemented an unlawful rounding practice, which in conjunction with its strict attendance policy, results in the systematic underpayment of both regular and overtime wages to Plaintiffs and other non-exempt employees.

5. Moreover, Defendants have uniformly failed to pay Plaintiffs and other non-exempt employees proper overtime wages due the fact that it willfully turns a blind eye to off-the-clock work that Plaintiffs and other non-exempt employees perform as a direct consequence of Defendants understaffing and imposition of an unreasonable workload.

JURISDICTION AND VENUE

9. Venue is proper in this judicial district and the County of San Bernardino because Plaintiffs, and other persons similarly situated, performed work for Defendants in the County of San Bernardino, Defendants run their businesses through their corporate office and their towing facilities are located in the County of San Bernardino, and Defendants' illegal payroll policies and practices, which are the subject of this action were applied to Plaintiffs, and other persons similarly situated, in the County of San Bernardino.

10. Plaintiff Cervantes is a resident of the State of California and a former employee of I-10 Towing. At all relevant times herein, Plaintiff Cervantes was employed by I-10 Towing as a lot supervisor, a non-exempt position, working at I-10 Towing's lot located in Montclair, California, during the statute of limitations period.

-3-

1 truck driver, a non-exempt position, working at Golden Bear's headquarters located in Chino,
2 California, during the statute of limitations period.

3 12. Plaintiffs, on behalf of themselves and all other similarly situated individuals, bring
4 this class action to recover, among other things, wages and penalties from unpaid wages earned
5 and due, including but not limited to, Defendants failure to provide legally compliant meal and
6 rest breaks and failure to provide proper compensation for missed and otherwise unlawful meal
7 and rest breaks, unpaid and illegally calculated regular and overtime compensation, failure to pay
8 minimum wages, failure to pay all wages due to discharged or quitting non-exempt employees,
9 and failure to maintain required records, failure to provide accurate itemized wage statements, and
10 failure to reimburse for reasonable business expenses.

11 13. During the statute of limitations period, I-10 Towing has been a corporation
12 existing under the laws of the State of California and it has conducted business in the State of
13 California.

14 14. I-10 Towing conducts business as I-10 Towing and employs individuals who work
15 as tow truck drivers, lot hands and office positions.

16 15. During the statute of limitations period, Golden Bear has been a corporation
17 existing under the laws of the State of California and it has conducted business in the State of
18 California.

19 16. Golden Bear conducts business as Golden Bear and employs individuals who work
20 as tow truck drivers, lot hands and office positions.

21 17. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
22 Plaintiffs at this time, and Plaintiffs therefore sue such DOE defendants under fictitious names.
23 Upon information and belief, each Defendant designated as a DOE is in some manner highly
24 responsible for the occurrences alleged herein, and Plaintiffs and Class members' injuries and
25 damages, as alleged herein, were proximately caused by the conduct of such DOE defendants.
26 Plaintiffs will seek leave of the Court to amend this Complaint to allege the true names and
27 capacities of such DOE defendants when ascertained.

1 18. As a direct and proximate result of the unlawful actions of Defendants, Plaintiffs
2 and Class members have suffered, and continue to suffer, from loss of earnings in amounts as yet
3 unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

4 **CLASS ACTION ALLEGATIONS**

5 19. Plaintiffs bring this action on behalf of themselves and the following similarly
6 situated Class of individuals ("Class members"):

7 All non-exempt employees who have performed work for Defendants in the state of
8 California at any time during the relevant statute of limitations period.

9 20. Plaintiffs reserve the right to name additional Class representatives as may be
10 necessary and appropriate. Plaintiffs also reserve the right to modify or amend the definition of
11 the proposed Class and/or add subclasses before the Court determines whether certification is
12 appropriate.

13 21. This action is appropriately suited for a class action because:

14 A. The proposed Class is a significant number. Plaintiffs are informed and believes
15 that the proposed Class consists of at least 100 current and former non-exempt employees. Joinder
16 of all current and former non-exempt employees individually would be impractical.

17 B. This action involves common questions of law and fact to the proposed Class
18 because the action focuses on the Defendants' systematic course of illegal payroll practices and
19 policies, which was applied to all non-exempt employees in uniform violation of the California
20 Labor Code, IWC Wage Orders, and the California Business and Professions Code, which
21 prohibits unfair business practices arising from such violations. Here are a few common questions
22 of law and fact that can be answered on a classwide basis:

- 23 • Whether Defendants failed to provide non-exempt employees with legally
24 compliant meal periods and rest breaks;
- 25 • Whether Defendants failed to pay overtime to non-exempt employees in
26 compliance with California law;
- 27 • Whether Defendants failed to pay minimum wages to non-exempt employees in
28 compliance with California law;

- Whether Defendants failed to timely pay wages to non-exempt employees in compliance with California law;
- Whether Defendants failed to maintain required records and accurate wage statements for non-exempt employees;
- Whether Defendants failed to reimburse employees for business expenses incurred; and
- Whether Defendants engaged in unfair and/or unlawful business practices.

C. Plaintiffs' claims are typical of the proposed Class because Defendants subjected all of their non-exempt employees to the similar and overlapping violations of the California Labor Code, the applicable IWC wage order, and the California Business and Professions Code.

D. Plaintiffs' are able to fairly and adequately protect the interests of all members of the proposed Class because it is in their best interests to prosecute the claims alleged herein to obtain full compensation due to the proposed Class for all services rendered and hours worked. Plaintiffs have also retained counsel that are highly experienced in wage and hour class action litigation.

FIRST CAUSE OF ACTION

Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 9-2001, § 11]

(On Behalf of Plaintiffs and the Class Against all Defendants)

22. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 21.

23. During the statute of limitations period, as part of Defendants unlawful policies and practices to deprive its non-exempt employees of all wages earned and due, Defendants required, permitted or otherwise suffered Plaintiffs and Class members to perform work during their meal periods, to completely skip their meal periods, to take late and short meal periods, and Defendants have otherwise failed to provide the required meal periods to Plaintiffs and Class members as required under California Labor Code §§ 226.7, 512, and § 11 of the applicable IWC Order.

1 24. Plaintiffs have implemented several common policies and practices that have
2 caused Plaintiffs and Class members to systematically miss and otherwise take non-compliant
3 meal periods.

4 25. Defendants grossly understaff their facilities such that Class members regularly
5 miss or take non-compliant meal periods. As a direct consequence of this understaffing, Plaintiffs
6 and Class members have so much work to complete within their scheduled shifts that they are
7 forced to skip their meal periods altogether, to take them after working longer than five (5) hours,
8 to perform work during their meal periods, or return to work after taking less than a thirty (30)
9 minute meal period. Moreover, when Plaintiffs and other Class members worked shifts over ten
10 (10) hours, they were not provided with second meal periods.

11 26. Moreover, Defendants failed to implement adequate policies or procedures to
12 provide meal periods to its non-exempt employees. Among other things, Defendants overworked
13 Plaintiffs and Class members and did not adequately advise them of their rights to take meal
14 periods, and systematically denied them the opportunity to take meal periods, including second
15 meal periods during shifts of ten hours or longer.

16 27. Defendants have also violated California Labor Code §§ 226.7, IWC Wage Order
17 No. 9-2001, § 11, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200
18 *et. seq.*, by failing to compensate Plaintiffs and Class members who were not authorized and
19 permitted to take a complete, timely, uninterrupted meal period, in accordance with the applicable
20 wage order, one additional hour of compensation at the proper regular rate of pay for each
21 workday that such a meal period was not authorized or permitted.

22 28. Defendants further violated California Labor Code sections 226.7, 510, 1194, 1197,
23 and IWC Wage Order No. 9-2001 by failing to compensate Plaintiffs and Class members for all
24 hours worked during their meal periods.

25 29. As a proximate result of the aforementioned violations, Plaintiffs and Class
26 members have been damaged in an amount according to proof at trial, and seek all wages earned
27 and due, interest, penalties, expenses, and costs of suit.

SECOND CAUSE OF ACTION

Failure to Provide Required Rest Breaks

[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 9-2001, § 12]

(On Behalf of Plaintiffs and the Class Against all Defendants)

30. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 29.

31. At all times relevant herein, as part of Defendants illegal policies and practices to deprive its non-exempt employees of all wages earned and due, Defendants failed to permit Plaintiffs and Class members to take rest breaks as required under California Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Wage Order.

32. As with meal periods, Defendants' policies and practices caused Plaintiffs and Class members to miss or otherwise take non-compliant rest periods by, among other things, giving them unreasonable amounts of work that had to be completed within their shift such that rest periods simply could not be taken. This was the result of systematic understaffing. In addition, Defendants did not adequately notify Plaintiffs and Class members of their rights to take rest periods, and systematically denied them the opportunity to take rest periods, including all rest periods required during long shifts, which at times exceeded twelve (12) consecutive hours.

33. Defendants further violated California Labor Code § 226.7, IWC Wage Order No. 9-2001, § 12, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by failing to pay Plaintiffs and Class members who were not provided with a rest break, in accordance with the applicable wage order, one additional hour of compensation at the proper regular rate of pay for each workday that a rest break was not provided.

34. As a proximate result of the aforementioned violations, Plaintiffs and 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.

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THIRD CAUSE OF ACTION

Failure to Pay Overtime Wages

[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 9-2001, § 3]

(On Behalf of Plaintiffs and the Class against all Defendants)

35. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 34.

36. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-2001, § 3, Defendants are required to compensate Plaintiffs and Class members for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

37. Plaintiffs and Class members are current and former non-exempt employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-2001. During the Class period, Defendants failed to compensate Plaintiffs and Class members for all overtime hours worked as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other methods: failing to properly calculate the regular rate of pay for the purposes of calculating overtime pay owed and due; requiring, permitting or suffering Plaintiffs and Class members to work off the clock; requiring tow truck drivers to remain on-call between towing assignments; requiring, suffering, or permitting Plaintiffs and Class members to work through meal and rest periods but not compensating them for this time, failing to include this time in all hours worked; rounding the time worked by Plaintiffs and Class members unfavorably; and other methods to be discovered.

38. In a short-sighted attempt to maximize profits, Defendants have understaffed their facilities and its tow truck drivers are not adequately scheduled. Not only has this practice resulted in widespread missed meal and rest breaks, but it has also caused Plaintiffs and Class members to perform significant amounts of work while off-the-clock. Defendants are aware and

1 know that Plaintiffs and Class members perform this work off-the-clock work because
2 Defendants' owners and operators were aware of them doing this work well before the beginning
3 of the start of their scheduled shifts.

4 39. Plaintiffs and Class members also work perform substantial work off-the-clock as a
5 result of Defendants unlawful rounding practice. Defendants implemented a rounding practice
6 wherein they round the time worked by non-exempt employees to the nearest quarter-hour.
7 Defendants compensate Plaintiffs and Class members based on rounded time. This rounding
8 practice, in conjunction with Defendants strict attendance and mandatory meeting policies, results
9 in systematic off-the-clock work and unpaid overtime.

10 40. Plaintiffs and Class members must get to work by no later than the start of their
11 shifts – and usually earlier. Thus, they are not afforded the benefit of clocking in for work a few
12 minutes late. Likewise, Plaintiffs and Class members are in a rush to complete their mandatory
13 job duties, so they are rarely afforded the benefit of clocking out early at the end of their shifts.
14 This results in the widespread underpayment of time worked, including overtime.

15 41. In violation of California law, Defendants have knowingly and willfully refused to
16 perform their obligations to compensate Plaintiffs and Class members for all wages earned and all
17 hours worked at the legally required rates of pay. As a proximate result, Plaintiffs and Class
18 members have suffered, and continue to suffer, substantial losses related to the use and enjoyment
19 of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
20 Defendants to fully perform their obligations under state law, all to their respective damages in
21 amounts according to proof at time of trial, and within the jurisdiction of this Court.

22 42. Defendants conduct described herein violates California Labor Code §§ 510, 1194,
23 1198 and IWC Wage Order No. 9-2001, § 3. Therefore, pursuant to California Labor Code §§
24 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code
25 and IWC Wage Orders, Plaintiffs and Class members are entitled to recover the unpaid balance of
26 wages owed to them by Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of
27 suit.

28 ///

FOURTH CAUSE OF ACTION

Failure to Pay Minimum Wages

[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 9-2001, § 4]

(On Behalf of Plaintiffs and the Class against all Defendants)

43. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 42.

44. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of IWC Wage Order No. 9, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

45. During the statute of limitations period, the hourly rates for Plaintiffs and Class members were precisely at minimum wage. Based on this common practice, Defendants failed to pay Plaintiffs and Class members minimum wages for all hours worked by requiring, permitting or suffering them to work off-the-clock, such as requiring them to work through meal, rest breaks, but not compensating them for this time, and failing to include this time in all hours worked, and other methods to be discovered.

46. Defendants conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4 of IWC Wage Order No. 9. As a proximate result of the aforementioned violations, Plaintiffs and Class members have been damaged in an amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and any other applicable law, Plaintiffs and Class members are entitled to recover the unpaid balance of wages owed to them by Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

FIFTH CAUSE OF ACTION

Failure to Pay All Wages Due to Discharged and Quitting Employees

[Cal. Lab. Code §§ 201, 202, 203]

(On Behalf of Plaintiffs and the Class against all Defendants)

47. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 46.

1 48. Pursuant to California Labor Code §§ 201, 202, and 203, Defendants are required
2 to pay all earned and unpaid wages to an employee who is discharged. California Labor Code §
3 201 mandates that if an employer discharges an employee, the employee's wages accrued and
4 unpaid at the time of discharge are due and payable immediately.

5 49. Furthermore, pursuant to California Labor Code § 202, Defendants are required to
6 pay all accrued wages due to an employee no later than seventy-two (72) hours after the employee
7 quits his or her employment, unless the employee provided seventy-two (72) hours previous notice
8 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
9 of quitting.

10 50. California Labor Code § 203 provides that if an employer willfully fails to pay, in
11 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
12 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
13 compensation to the employee at the same rate for up to thirty (30) workdays.

14 51. During the statute of limitations period, Defendants have willfully failed to pay
15 accrued wages and other compensation to Plaintiffs and Class members in accordance with
16 California Labor Code §§ 201 and 202. Defendants do not have a sufficient policy to provide
17 Plaintiffs and Class members with their final paychecks within the timeframes required under
18 California law. In addition, because Defendants have failed and continue to fail to properly
19 compensate Plaintiffs and Class members for all hours worked when due, overtime wages,
20 minimum wages, and compensation for non-compliant meal and rest breaks, Defendants have also
21 willfully failed and continues to fail to pay accrued wages and other compensation to Plaintiffs
22 and Class members in accordance with California Labor Code §§ 201 and 202. Moreover,
23 Defendants failed to pay Class members employed on a temporary basis weekly in accordance
24 with Labor Code §201.3.

25 52. As a result, Plaintiffs and Class members are entitled to all available statutory
26 penalties, including the waiting time penalties provided in California Labor Code § 203, together
27 with interest thereon, as well as other available remedies.

53. As a proximate result of Defendants unlawful actions and omissions, Plaintiffs and Class members have been deprived of compensation in an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code § 1194.

SIXTH CAUSE OF ACTION

Failure to Pay Timely Wages

[Cal. Lab. Code §§ 204, 210]

(On Behalf of Plaintiffs and the Class against All Defendants)

54. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 53.

55. California Labor Code § 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and 26th day of the month during which the labor was performed. California Labor Code § 204 further provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code § 204 further provides that all wages eared for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

56. During the statute of limitations period, Defendants, among other things, willfully failed to pay Plaintiffs and Class members all wages earned and due to them, including but not limited to, meal and rest break premiums, overtime and minimum wages, and payment for work performed off-the-clock, within any time period permissible under Labor Code § 204.

57. As a proximate result of Defendants unlawful actions and omissions, Plaintiffs and Class members are entitled to all available statutory penalties, including but not limited to, civil penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and other applicable provisions under the California Labor Code and IWC Wage Orders, and an award of costs, expenses, and reasonable attorneys' fees.

SEVENTH CAUSE OF ACTION

Failure to Maintain Required Records

[Cal. Lab. Code §§ 226, 1174; IWC Wage Order No. 9-2001, § 7]

(On Behalf of Plaintiffs and the Class against all Defendants)

58. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 57.

59. During the statute of limitations period, as part of Defendants illegal payroll policies and practices to deprive Plaintiffs and Class members of all wages earned and due, Defendants knowingly and intentionally failed to maintain records as required under California Labor Code §§ 226, 1174, and IWC Wage Order No. 9-2001, § 7, including but not limited to, the following records: total daily hours worked by each non-exempt employee; applicable rates of pay; all deductions; meal periods; time records showing when each non-exempt employee begins and ends each workday; and accurate itemized wage statements.

60. As a proximate result of Defendants unlawful actions and omissions, Plaintiffs and Class members have been damaged in an amount according to proof at trial, and are entitled to all wages earned and due, plus interest thereon. Additionally, Plaintiffs and Class members are entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies.

EIGHTH CAUSE OF ACTION

Failure to Furnish Accurate Itemized Wage Statements

[Cal. Lab. Code §§ 226; IWC Wage Order No. 9-2001, § 7]

(On Behalf of Plaintiffs and the Class against all Defendants)

61. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 60.

62. During the statute of limitations period, Defendants routinely failed to provide Plaintiffs and Class members with timely, accurate, and itemized wage statements in writing

1 showing each employee's gross wages earned, total hours worked, all deductions made, net wages
2 earned, and all applicable hourly rates in effect during each pay period and the corresponding
3 number of hours worked at each hourly rate, in violation of California Labor Code § 226 and IWC
4 Wage Order No. 9-2001, § 7.

5 63. Defendants wage statements violate Labor Code § 226 by, among other things,
6 failing to provide Plaintiffs and Class members with proper meal and rest breaks and not including
7 in their wage statements one (1) additional hour of compensation at their regular rates of pay for
8 each non-compliant meal or rest break. In addition, Defendants required Plaintiffs and Class
9 members to work off-the-clock without compensation and illegally rounded the time that they
10 worked, rendering the wage statements inaccurate.

11 64. Defendants knowingly and intentionally failed to provide Plaintiffs and Class
12 members with timely, accurate, and itemized wage statements in accordance with California Labor
13 Code § 226(a) so as to prevent Plaintiffs and Class members from being able to determine whether
14 they were being paid for, among other things, all of the hours they worked and at the proper rates
15 of pay.

16 65. As a proximate result of Defendants unlawful actions and omissions, Plaintiffs and
17 Class members have been damaged in an amount according to proof at trial, and seek all wages
18 earned and due, plus interest thereon. Additionally, Plaintiffs and Class members are entitled to
19 all available penalties, including but not limited to penalties pursuant to California Labor Code §§
20 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees,
21 including but not limited to those provided in California Labor Code § 226(e), as well as other
22 available remedies.

23 **NINTH CAUSE OF ACTION**

24 **Failure to Indemnify for Necessary Expenditures Incurred in Discharge of Duties**

25 **[Cal. Lab. Code § 2802]**

26 **(On Behalf of Plaintiffs and the Class against All Defendants)**

27 66. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
28 allegations in paragraphs 1 through 65.

67. California Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

68. During the statute of limitations period, Defendants knowingly and willfully failed to indemnify Plaintiffs and Class Members for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Defendants, including but not limited to, cellular phone usage and other employment-related expenses, in violation of California Labor Code § 2802.

69. As a proximate result of Defendants unlawful actions and omissions, Plaintiffs and Class members have been damaged in an amount according to proof at trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor Code § 2802(b). Additionally, Plaintiffs and Class Members are entitled to all available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees, including those provided in California Labor Code § 2802(c), as well as other available remedies.

TENTH CAUSE OF ACTION

Unfair and Unlawful Business Practices

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

(On Behalf of Plaintiffs and the Class against all Defendants)

70. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 69.

71. Each and every one of Defendants acts and omissions in violation of the California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to, Defendants failure to provide required meal and rest breaks, failure to pay proper overtime and minimum wage compensation, unlawful rounding and requiring off-the-clock work, failure to pay all wages due to discharged or quitting employees or to pay timely wages, and failure to furnish accurate itemized wage statements or to maintain required records, constitute an unfair and unlawful business practice under California Business and Professions Code § 17200 *et seq.*

72. Defendants violations of California wage and hour laws constitute a business practice because Defendants aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systematic manner, to the detriment of Plaintiffs and Class members.

73. Among other practices, Defendants have avoided payment of wages, overtime wages, the provision of meal and rest breaks, and other benefits as required by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Order. Further, Defendants have failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations.

74. As a result of these unfair and unlawful business practices, Defendants have reaped unfair and illegal profits during the Class period at the expense of Plaintiffs and Class members, and members of the public. Defendants should be made to disgorge its ill-gotten gains and to restore them to Plaintiffs and Class members.

75. Defendants unfair and unlawful business practices entitle Plaintiffs and Class members to seek preliminary and permanent injunctive relief, including but not limited to orders that Defendants account for, disgorge, and restore to Plaintiffs and Class members the wages and other compensation unlawfully withheld from them. Plaintiffs and Class members are entitled to restitution of all monies to be disgorged from Defendants in an amount according to proof at the time of trial.

ELEVENTH CAUSE OF ACTION

Representative Action for Civil Penalties Pursuant to the Private Attorneys

General Act ("PAGA")

[Cal. Lab. Code §§ 2698- 2699.5]

(On Behalf of Plaintiffs and all Other Aggrieved Employees against all Defendants)

76. Plaintiffs incorporate herein by specific reference as though fully set forth the allegations in paragraphs 1 through 75, with exception of the allegations in Paragraphs 19 through 21 (A) – (D).

1 77. Plaintiffs are “aggrieved employees” within the meaning of California Labor Code
2 § 2699(c), and are proper representatives to bring a civil action on behalf of themselves and other
3 current and former non-exempt employees of Defendants pursuant to the procedures specified in
4 California Labor Code § 2699.3, because Plaintiffs were employed by Defendants and the alleged
5 violations of the California Labor Code were committed against Plaintiffs.

6 78. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”),
7 California Labor Code §§ 2698-2699.5, Plaintiffs seek to recover civil penalties, including but not
8 limited to penalties under California Labor Code §§ 2699, in a representative action for the
9 violations set forth above, including but not limited to violations of California Labor Code §§ 201,
10 202, 203, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802. Plaintiffs are also entitled to
11 an award of reasonable attorneys’ fees and costs pursuant to California Labor Code § 2699(g)(1).

12 75. Pursuant to California Labor Code §§ 2699.3, on August 23, 2022, Plaintiff
13 Cervantes gave written notice by certified mail to the California Labor and Workforce
14 Development Agency (“LWDA”) and Defendant I-10 Towing of the specific provisions of the
15 California Labor Code and IWC Wage Orders alleged to have been violated, including the facts
16 and theories to support the alleged violations.

17 76. Pursuant to California Labor Code §§ 2699.3, on November 15, 2022, Plaintiff
18 Lopez gave written notice by certified mail to the California Labor and Workforce Development
19 Agency (“LWDA”) and Defendant Golden Bear of the specific provisions of the California Labor
20 Code and IWC Wage Orders alleged to have been violated, including the facts and theories to
21 support the alleged violations.

22 77. Within sixty-five (65) calendar of the postmark date of Plaintiffs’ notice letters, the
23 LWDA did not provide notice to Plaintiffs that the LWDA intended to investigate the alleged
24 violations. Therefore, Plaintiffs have complied with all of the requirements set forth in California
25 Labor Code § 2699.3 to commence a representative action under PAGA.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other persons similarly situated, respectfully prays for relief against Defendants and DOES 1 through 50, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to Plaintiffs and Class members, as well as disgorged profits from the unfair and unlawful business practices of Defendants;
3. For meal and rest break compensation pursuant to California Labor Code § 226.7 and IWC Wage Order No. 9-2001;
4. For liquidated damages pursuant to California Labor Code § 1194.2;
5. For preliminary and permanent injunctive relief enjoining Defendants from violating the relevant provisions of the California Labor Code and the IWC Wager Orders, and from engaging in the unlawful business practices complained of herein;
6. For waiting time penalties pursuant to California Labor Code § 203;
7. For statutory and civil penalties according to proof;
8. For interest on the unpaid wages at 10 percent per annum pursuant to California Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
9. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5, 226, 1194, 2802, and 2699, and California Civil Code § 1021.5, and/or any other applicable provisions providing for attorneys' fees and costs;
10. For declaratory relief;
11. For an order requiring and certifying the First through Tenth Causes of Action as a class action;
12. For an order appointing Plaintiffs as Class representative and Plaintiff's counsel as Class counsel; and
13. For such further relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: February , 2024

LAW OFFICE OF SCOTT. E. WHEELER

By: _____
Scott E. Wheeler

The Wand Law Firm, PC
Aubry Wand

Attorneys for Plaintiffs and the Putative Class

EXHIBIT 3

LAW OFFICE OF SCOTT ERNEST WHEELER

Scott Ernest Wheeler (SBN 187998)
Justin A. Wheeler (SBN 342226)
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com
jaw@scottwheelerlawoffice.com

THE WAND LAW FIRM, P.C.

Aubry Wand (SBN 281207)
100 Oceangate, Suite 1200
Long Beach, CA 90802
Telephone: (310) 590-4503
Facsimile: (310) 590-4596
Email: awand@wandlawfirm.com

Attorney for Plaintiffs and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

SAN BERNARDINO JUSTICE CENTER

JOSEPH B. CERVANTES, individually,
and on behalf of all others similarly
situated,

PLAINTIFFS,

v.

I-10 TOWING AND RECOVERY, INC., a
corporation; and DOES 1 through 50,
inclusive,

DEFENDANTS.

CASE NO.: CIVSB2226791

[Hon. Joseph Ortiz, Dept. S-17]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT
AGREEMENT AND RELEASE**

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL

The Court now has before it, Plaintiffs' unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion"). After reviewing the Motion, the Class Action and PAGA Settlement Agreement and Release ("Settlement Agreement") and exhibits attached thereto, and good cause appearing therefore, the Court hereby finds and orders as follows:

1. The Court finds on a preliminary basis that the settlement memorialized in the Settlement Agreement appears to be fair and adequate, and falls within the range of reasonableness, and therefore meets the requirement for preliminary approval.

2. The Court conditionally certifies for settlement purposes the following class (the "Class" or "Settlement Class"):

All non-exempt employees who were employed by Defendants in the State of California, at any time from November 17, 2018, through February 1, 2024.

Class Period means the time period from November 17, 2018 through February 1, 2024.

3. The Court conditionally approves for settlement purposes the PAGA allocation of this settlement to the California Labor and Workforce Development Agency ("LWDA") and PAGA Members.

The PAGA Period is from September 1, 2021, through February 1, 2024.

4. The Court finds, for settlement purposes, that the Class meets the requirements for certification under California Code of Civil Procedure § 382 in that: (1) the Class is so numerous that joinder is impractical; (2) there are questions of law and fact that are common, or of general interest, to the Class, which predominate over any individual issues; (3) Plaintiffs' claims are typical of the claims of the Class; (4) Plaintiffs and Plaintiffs' counsel will fairly and adequately protect the interests of the Class; and (5) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. The Court appoints, for settlement purposes, Plaintiffs Joseph B. Cervantes and Ruben N. Lopez as Representative for the Class.

6. The Court appoints, for settlement purposes, the Law Office of Scott E. Wheeler and The Wand Law Firm, APC, as Counsel for the Class.

7. The Parties are ordered to carry out the Settlement according to the terms of the Settlement Agreement.

8. The Court appoints Phoenix Settlement Administrators ("Phoenix") as the Settlement Administrator and is ordered to carry out the administration of the settlement according to the terms of the Settlement Agreement.

9. The Court approves as to form and content of the Class Action and PAGA Settlement Notice. The Court finds that the dates selected for the mailing and distribution of the Notice Packet meet the requirements of due process, provide the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

10. If any Class Member objects to the Settlement Agreement, the objecting party is not required, either personally or through counsel: 1) to appear at the hearing on the motion for final approval for that party's objection to be considered; or 2) to file or serve, or to state in the objection, a notice of intention to appear at the hearing on the motion for Final Approval of the Class Settlement.

11. Phoenix, the Settlement Administrator, shall provide notice to any objecting party of any continuance of the hearing of Plaintiffs' Motion for Final Approval.

12. The Parties are ordered to carry out the Settlement according to the following implementation schedule:

Event	Date
Last day for Defendants to provide the Settlement Administrator with the Class Information	
Last day for Settlement Administrator, Phoenix to mail Class Notice	
Last day for Class Members to submit a dispute regarding Workweeks, Request for Exclusion, or written Objection	
Last Day for Plaintiffs to file Motion for Final Approval of the Class Settlement, Attorneys' Fees and Costs and Class Representative Service Award	Per Code.
Final Approval Hearing	

1 13. The Court finds that the method of giving notice to the Class constitutes the best means
2 practicable of providing notice under the circumstances. The Court further finds that the Notice Packet
3 and the method of giving notice to the Class meet the requirements of California Code of Civil
4 Procedure § 382, California Rules of Court, Rules 3.766 and 3.769, and due process under the
5 California and United States Constitutions, and other applicable law.

6 14. At the Final Approval Hearing, the Court will consider whether the Settlement should
7 be finally approved as fair, reasonable and adequate, whether a final judgment should be entered, and
8 whether the payments provided for under the Settlement, including attorneys' fees and costs and class
9 representative service award, should be finally approved and granted.

10 15. Pending the Final Approval Hearing, all proceedings in this Action, other than
11 proceedings necessary to implement the Settlement and this Order, are stayed.

12 **IT IS SO ORDERED.**

13
14 DATED: _____

HONORABLE JOSEPH T. ORTIZ
JUDGE OF THE SUPERIOR COURT