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Attorneys for Plaintiff Julian Okiwelu, individually,
and on behalf of all others similarly situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BENITO**

LEO HERNANDEZ SR., LEO HERNANDEZ
JR., CURTIS LUPTON, GILBERTO DEDIOS,
ALEJANDRO GARCIA, JUSTIN
ROBINSON, JOSE GARCIA MARTINEZ,
ERIC VALADEZ, DAVID BERGERON,
JORGE GONZALEZ, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

WGS GROUP, INC., a Nevada corporation,
and DOES 1 through 10, inclusive,

Defendants.

Case No. CU-22-00225

*Assigned to the Honorable Patrick K. Palacios,
Dept. 3*

**DECLARATION OF JOSEPH M. SZILAGYI
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

1 I, Joseph M. Szilagyi, hereby declare as follows:

2 1. I am an attorney at law licensed to practice before all of the courts of the State of
3 California. I am an associate with Aegis Law Firm, PC (“Aegis”), counsel for Plaintiff Julian Okiwelu
4 (“Plaintiff”) and co-counsel for the other named plaintiffs in this matter. I am thoroughly familiar with
5 and have personal knowledge of all of the facts set forth herein.

6 2. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of
7 Class Action Settlement. If called as a witness, I could and would competently testify thereto.

8 **Case History**

9 3. On September 1, 2022, October 6, 2022, and December 15, 2022, notices were provided to
10 the Labor & Workforce Development Agency (“LWDA”) by Plaintiffs Leo Hernandez Sr., Leo Hernandez
11 Jr., Curtis Lupton, Gilberto Dedios, Alejandro Garcia, Justin Robinson, Jose Garcia Martinez, Eric
12 Valadez, David Bergeron, and Jorge Gonzalez outlining the facts and theories underlying their claims
13 against Defendant.

14 4. On November 10, 2022, this action was filed as a representative action pursuant to the
15 Private Attorneys General Act (“PAGA”) based on allegations set forth in letters to the LWDA for (1)
16 failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4)
17 failure to permit rest breaks; (5) failure to reimburse business expenses; (6) failure to provide accurate
18 itemized wage statements; and (7) failure to pay all wages due during and upon separation of employment.

19 5. On September 13, 2022, Plaintiff Okiwelu, through my office, filed a putative class action
20 complaint against Defendant in the Alameda County Superior Court, Case Number 22CV017766, alleging
21 (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods;
22 (4) failure to permit rest breaks; (5) failure to provide accurate itemized wage statements; and (6) failure
23 to pay all wages due during and upon separation of employment.

24 6. On January 13, 2023, Plaintiff Okiwelu’s complaint was amended to additionally allege
25 violations of PAGA.

26 7. Upon discovery of the actions filed against Defendant, the Parties’ counsel met and
27 conferred and agreed to schedule private mediation.

28 8. The Parties agreed to an informal production of records in preparation of mediation,

1 including time-punch records and wage statements for the group of Class Members, and written work
2 policies concerning the wage and hour allegations by plaintiffs. From this data, it is understood that
3 Defendants' records and data show the Class consists of approximately 465 individuals, making joinder
4 of all Class Members impracticable.

5 9. Plaintiffs' allegations presented common legal and factual questions of, *inter alia*, whether
6 Defendant applied the same scheduling, timekeeping, minimum and overtime pay, meal period, rest break,
7 and reimbursement policies to all Class Members; whether these policies and practices resulted in Labor
8 Code violations; whether Defendant's conduct was intentional; and whether Class Members are entitled
9 to penalties. The class is readily ascertainable from Defendants' this data and business records because
10 all Class Members are current or former non-exempt employees of Defendants. These common questions
11 could be resolved using Class Members' schedules, time punches, and payroll records, Defendant's
12 corporate representative's testimony, written communications between Defendants and Class Members,
13 and Class Member declarations

14 10. Following Defendant's production and Plaintiffs' review of the substantive production of
15 evidence for mediation, the Parties attended private mediation with Hon. Steven R. Denton (Ret.) on
16 October 24, 2023. The Parties agreed the mediation would be global and inclusive of both actions brought
17 against Defendant.

18 11. Based on the evidence received through formal discovery, Plaintiffs' expert was able to
19 formulate a damages analysis of all claims.

20 12. A resolution was reached in principle at mediation, and the Parties' settlement was fully
21 executed on or about February 2, 2024. The negotiations were adversarial, conducted at arm's length and
22 tempered by the efforts of both sides to serve the interests of their clients.

23 13. On February 9, 2024, my office submitted a copy of the Settlement to the LWDA pursuant
24 to Lab. Code § 2699(1)(2).

25 14. Through the course of litigating Plaintiff's action, I am unaware of any other putative class
26 member who has shown interest in bearing the expense and burden of litigating their own claims other
27 than named plaintiffs.

28 15. Plaintiffs have demonstrated an ability to advocate for the interests of the Class by

1 litigating actions against Defendant, meeting with their attorneys to discuss the claims and theories of
2 liability at issue, gathering documents and information, assisting their attorneys in preparing for
3 mediation, being available on the day of mediation, reviewing the proposed settlement agreement to
4 understand its legal effect, and obtaining a fair settlement on behalf of Class Members who stand to
5 recover a substantial amount under the Settlement.

6 **Exposure Analysis**

7 16. While Plaintiff and his counsel believed and continue to believe this is a strong case for
8 certification, the significant risks and expenses associated with class certification and liability
9 proceedings must be taken into account. To determine if the amount offered at mediation was reasonable,
10 Plaintiffs' Counsel weighed that figure against many risk factors. If Plaintiffs continued to prosecute their
11 claims rather than accept a settlement, Plaintiffs would have faced deadlines to file a motion for class
12 certification, had to have engaged in formal written discovery and taken depositions, expended time and
13 resources to resolve disputes, prepared and filed potential dispositive motions and/or discovery motions,
14 and engaged in extensive trial preparation. An adverse ruling at any one of these stages could have
15 prevented the Class from obtaining any recovery.

16 17. Plaintiffs' minimum wage and overtime claims were premised on the theory that
17 Defendant failed to compensate class members for all time worked, including not paying for work
18 performed while off-the-clock. Assuming unpaid wages for thirty minutes of time per workweek,
19 Plaintiffs' expert calculated exposure to be approximately \$525,050. However, Plaintiffs considered
20 Defendant's argument that it maintained written policies and practices for paying for all recorded work
21 and that it did not require class members to start work before clocking in or continue working after
22 clocking-out without compensation. Plaintiffs further considered evidentiary hurdles in providing
23 sufficient Class Member testimony describing similar circumstances of being required to work while
24 off-the-clock and regarding the amount of time estimate to be worked off-the-clock, which Defendant
25 may seek to counter with its own testimony from Class Members. Accordingly, Plaintiffs' counsel
26 heavily discounted this claim at a 10% success rate (\$52,505) given the lack of written evidence of the
27 precise amount of worked off-the-clock by Class Members.

1 18. Plaintiffs’ meal period claim was potentially worth approximately \$1.4 million in light
2 of the violations shown in the records and the meal premiums that appear to have been occasionally
3 paid. In analyzing this claim, Plaintiffs considered Defendant’s argument that it maintained compliant
4 written policies and that employees could waive their meal periods. Thus, Plaintiffs discounted this
5 claim for the risk that the damages could at least be reduced, and that the claim would be hard to certify
6 if the Court agreed Defendant maintained a compliant policy. As such, Plaintiffs’ counsel believed there
7 was a 50% chance succeeding at class certification and a 40% chance at trial, resulting in a value of
8 \$280,000.

9 19. Plaintiffs alleged that Defendant failed to authorize timely rest breaks due to the
10 productivity requirements imposed on class members. If Plaintiffs could prove a 100% violation rate
11 for each shift over 3.5 hours, then damages could reach up to approximately \$1.4 million. However, rest
12 breaks were understood to be unrecorded and Defendant argued that it maintained compliant written
13 rest break policies permitting breaks at all required intervals. As such, this claim would have relied on
14 Class Member testimony, making it a riskier claim at class certification and liability stages. Plaintiffs’
15 counsel believed there was a 50% chance succeeding at class certification and a 20% chance at trial,
16 resulting in a value of \$140,000.

17 20. For Plaintiffs’ reimbursement claim, Plaintiffs alleged they and Class Members were not
18 fully reimbursed for the costs incurred, including costs related to work uniforms and to use personal
19 vehicles. Plaintiffs estimated damages could reach about \$23,250, assuming approximately \$50 owed
20 in unpaid reimbursements to each Class Member. However, Plaintiff considered arguments that not all
21 Class Members incurred expenses related to uniforms and using their personal vehicle, and arguments
22 that these costs were actually reimbursed. Supporting this claim would rely on Class Member testimony
23 affirming the amount of costs paid for put-of-pocket and proof of unpaid reimbursements still owed.
24 Accordingly, Plaintiffs’ counsel believed there was a 10% chance succeeding at class certification and
25 a 20% chance at trial, resulting in a value of \$465.

26 21. Plaintiffs’ Counsel considered the arguable presence of various penalties, and weighed the
27 potential recoveries against probable defenses. Specifically, Defendant may argue that Plaintiffs could not
28 prove the “willful” prong needed to obtain waiting time penalties under Labor Code § 203. Moreover,

1 though Plaintiffs allege derivative wage statement penalties, Defendant may argue that Plaintiffs could
2 not show that Class Members suffered an “injury” as a result of wage statement violations, as required by
3 Labor Code § 226, or that the wage statements correctly reflected the wages actually paid. Moreover,
4 Plaintiffs would not recover any derivative penalties if they failed to prove the underlying claims.
5 Although the Class arguably could have seen a payout of approximately \$1.2 million for waiting time
6 penalties and \$346,300 for wage statement penalties, Plaintiffs would not recover any of these derivative
7 penalties if they failed to prove the underlying claims. Thus, Plaintiffs discounted these claims assuming
8 a 30% chance of class certification and 20% chance at the merits for both claims, resulting in a realistic
9 value of \$72,000 for the waiting time claim and \$20,778 for the wage statement claim.

10 22. The PAGA claim presented high hurdles to overcome. Although Plaintiffs’ Counsel
11 found Defendant’s exposure could potentially reach approximately \$1.2 million under Lab. Code §
12 2699(f), assuming the initial penalty rate of \$100 for each pay period, Plaintiffs would have to prove a
13 violation in every pay period. Most importantly, the Court would have discretion to reduce the PAGA
14 award based on whether the amount of the award would be “unjust, arbitrary and oppressive, or
15 confiscatory.” Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so
16 wished. Plaintiffs were doubtful they could recover any PAGA penalties, especially if a large class
17 judgment was entered for the same violations. Accordingly, Plaintiffs could not place a high value on
18 the PAGA penalties, and therefore allocated \$10,000 of the Gross Settlement Amount to settle these
19 claims.

20 23. Plaintiff’s counsel considered the likelihood of Defendant’s inability to pay a substantial
21 judgment or continue to finance the defense of this Action. The settlement’s amount and payment plan
22 are attributed to the concern that Defendant has financial difficulties to navigate.

23 **Service Award**

24 24. Plaintiff had the option to pursue his claims individually, but instead chose to pursue this
25 class action, delaying individual recovery until approval of a class action settlement. Throughout the
26 case, Plaintiffs assisted counsel in gathering the evidence necessary to prosecute their claims, maintained
27 regular contact with counsel, was available on the day of mediation, and reviewed the settlement to
28 make sure it was fair to the Class. No action would likely have been taken by Class Members

1 individually, and no compensation would have been recovered for them, but for Plaintiffs' services on
2 behalf of the Class.

3 25. The amount of Plaintiff's requested Service Award was not negotiated until after the
4 Parties agreed to the Gross Settlement Amount and many other terms.

5 26. At the final approval stage, Plaintiff will further support the request for the Service
6 Awards by a declaration that addresses the factors for the award.

7 **Counsel's Qualifications**

8 27. Aegis Law Firm prosecutes wage and hour cases, including class actions on behalf of
9 employees and others who have had their rights violated. Aegis, either on its own, or with co-counsel is
10 currently serving as plaintiffs' counsel of record in dozens of wage and hour and employment class
11 action cases pending in both state and federal court.

12 28. The attorneys working on this case have been appointed class counsel in many cases,
13 through both contested motions and settlement approval motions.

14 29. Aegis has litigated and successfully resolved many wage and hour class action cases
15 involving failure to pay wages and derivative Labor Code claims and penalties. *See, e.g., Roman, et al.*
16 *v. TRM Manufacturing, Inc.*, Riverside Superior Court, Case No. RIC1706458 (class certification granted
17 on December 17, 2020 for all current and former non-exempt workers' on issues of rounding, meal period,
18 and rest period claims); *Gamboa v. Kamran, et al.*, San Bernardino Superior Court, Case No.
19 CIVDS1605273 (class certification granted on September 16, 2019, for factory workers on issues of
20 rounding, automatic deduction of first meal period, and second meal period); *Romo, et. al, v. GMRI, Inc.*
21 *d/b/a/ Olive Garden*, United States District Court Central District of California, Case No. EDCV-12-
22 0715-JLQ (class certification granted for restaurant workers' rest period claims); *Sawyer v. Retail Data,*
23 *LLC*, Orange County Superior Court, Case No. 30-2014-00753767-CU-OE-CXC (unpaid wage and rest
24 break claims for piece rate workers); *Gonzalez v. SFFI Company, Inc., et. al*, San Bernardino County
25 Superior Court, Case No. CIV DS1504287 (unpaid wages, meal period and rest break claims for non-
26 exempt employees); *Antoine v. Riverstone Residential California, Inc., et. al*, Sacramento County
27 Superior Court, Case No. 34-2013-00155974 (rate of pay, on-call time, unpaid wage, meal period, rest
28 break, and expense reimbursement claims for non-exempt employees); *Nguyen v. Pharmerica*, Orange

County Superior Court, Case No. 30-2014-00716072-CU-OE-CXC (unpaid wages and unreimbursed expenses for pharmacists); *Orellana v. Westlake*, Los Angeles County Superior Court, Case No. BC539614 (unpaid overtime, meal period and rest break claims for call center employees); *Kent v. Mountain View Child Care, Inc.*, Los Angeles County Superior Court, Case No. BC539633 (minimum wage, overtime, meal period, and rest break claims for hospital workers); *Durroh v. East West Bank*, Los Angeles County Superior Court, Case No. BC528860 (overtime claims for failure to include bonuses in regular rate of pay for bank workers); *O'Brien et al. v. Pizza Hut of Southeast Kansas, Inc. et al.*, Riverside County Superior Court, Case No. MCC 1301030 (meal period and expense reimbursement claims for delivery drivers); *Bell v. Prime Healthcare*, Orange County Superior Court, Case No. 30-2011-00475240-CU-OE-CXC (overtime claims for failure to include shift premiums in regular rate of pay and failure to provide meal and rest periods to hospital workers), *Grana v. Toys R US-Delaware, Inc.*, Central District of California, Case No. 2:13-cv-01302-DSF-JCG (bag check claims for unpaid wages and failure to provide meal periods and rest breaks to retail employees); *Mendez v. H.J. Heinz Company, L.P., et. al*, Orange County Superior Court, Case No. 30-2013-00644915-CU-OE-CXC (failure to pay all wages to factory workers due to rounding practice); *Fresh & Easy Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP 4705 (failure to provide meal and rest periods to supermarket workers); *Lunsford v Stater Bros.*, Riverside Superior Court, Case No. RIC 1104475 (failure to provide meal and rest periods to supermarket workers); *Gregg v. Belo*, Riverside Superior Court, Case No. RIC 523697 (unpaid wages and missed meal and rest periods due to misclassification of newspaper delivery employees); *Brown v. Experian Information Solutions, Inc., et. al.*, Orange County Superior Court, Case No. 30-2012-00375163 (misclassification of engineers and similar positions); *Tereth v. Shakey's USA, Inc.*, Los Angeles Superior Court, Case No. BC441359 (failure to provide meal and rest periods to restaurant employees); *Azurin v. Harbor Distributing LLC, et. al.*, Los Angeles Superior Court, Case No. BC421392 (failure to pay overtime wages, provide meal and rest periods, reimburse business expenses to Account Managers); *Caffero v. ABC* (failure to provide meal periods and reimburse expenses of therapists). All cases cited above were successfully resolved for the plaintiff classes.

1 30. Kashif Haque received his J.D. in 2001 from Washington University School of Law.
2 While in law school, Mr. Haque was a member of the Law Review Editorial Board, author of an article
3 published in the Law Review, Executive Board Member of Moot Court, and a member of the Dean's
4 List. He received a Bachelor's of Science in Business Administration from the University of Central
5 Missouri in 1998, where he was a member of the Beta Alpha Psi honors fraternity.

6 31. Since 2004, Mr. Haque has exclusively focused his practice on plaintiff's employment
7 litigation with a specific focus on wage and hour claims. Since then, he has represented over 500,000
8 employees with their employment claims, many of which included wage and hour claims. He has been
9 appointed class counsel in approximately 100 cases and is currently litigating over 150 employment
10 wage and hour class action cases.

11 32. Mr. Haque authored a book on employment litigation strategies with West Publishing
12 and has been invited to speak on class action and wage and hour issues on numerous occasions. He has
13 spoken at seminars by the State Bar of California, California Employment Lawyer's Association
14 (CELA), Orange County Bar Association, and various other CLE providers. Mr. Haque is the former
15 Chair for the Labor and Employment Section of the Orange County Bar Association. He was selected
16 as one of the Top 50 Attorneys in Orange County by Super Lawyers for 2017 and 2019. He has been a
17 Super Lawyer for every year from 2009 to the present. OC Register/Metro has selected him as one of
18 the Top 5 Employment Lawyers in Orange County for every year the list was published, from 2012 to
19 2018.

20 33. Samuel A. Wong is a graduate of University of Pennsylvania Law School, where he
21 received his J.D. in 2001. Mr. Wong received a Bachelors of Arts in Sociology from the University of
22 California at Berkeley in 1997.

23 34. After graduation from law school in 2001, the same year in which Mr. Wong took and
24 successfully passed the California Bar Exam, Mr. Wong moved to back to Los Angeles, California
25 where he was employed at Paul Hastings, Janofsky & Walker, LLP. While working in the employment
26 department at Paul Hastings, he was involved in numerous wage and hour class action lawsuits and
27 other employment related matters.

1 35. Mr. Wong became a founding partner of Aegis Law Firm, PC in 2003, and focused his
2 practice on plaintiff's side employment work. Throughout his years of practice, Mr. Wong represented
3 and obtained successful outcomes for his clients, including awards through arbitration and trial.

4 36. Mr. Wong is a member of the Orange County Bar Association, Orange County Trial
5 Lawyers Association, and California Employment Lawyers Association.

6 37. Mr. Wong was chosen by Law and Politics Magazine as a Super Lawyer Rising Star,
7 representing one of the top 2.5% of lawyers under 40 in Southern California in 2011, 2012, 2013, and
8 2014. He was chosen by Law and Politics Magazine as a Super Lawyer in 2015, 2016, 2017, and 2018.
9 Mr. Wong was also chosen as a Top Attorney in the field of employment law by OC Metro in 2014,
10 2015, and 2018.

11 38. Jessica L. Campbell is a partner at Aegis Law Firm. Ms. Campbell was admitted to the
12 California Bar in December of 2011, and received her J.D. from Santa Clara University School of Law
13 and her B.A. from the University of California, Berkeley. Ms. Campbell has dedicated her career to
14 plaintiffs' side class actions. Ms. Campbell's experience includes successful work on class action
15 appeals, class certification motions, and class settlements. She was chosen by Law and Politics
16 Magazine as a Super Lawyer Rising Star, representing one of the top 2.5% of lawyers under 40 in
17 Southern California in 2018-2021.

18 39. I am an associate at Aegis Law Firm. I was admitted to the California Bar in December of
19 2017. I received my J.D. from Loyola Law School, and B.A. from California State University, Fullerton
20 where I graduated magnum cum laude. I have worked exclusively on wage and hour class and
21 representative action litigation since joining Aegis Law Firm in 2019, including on successful class
22 certification motions, approval of class action and PAGA settlements, and management of cases through
23 the course of litigation and in appeals. Prior to joining Aegis Law Firm, my experience includes defense-
24 side employment law litigation.

25 40. Aegis Law Firm has performed significant work and expended litigation costs in
26 prosecuting the matter with no guarantee of any payment.

27 41. At final approval, Plaintiff's Counsel will fully brief the merits of its request for the award
28 of attorneys' fees and litigation costs.

Exhibits

42. A true and correct copy of the Parties' Class Action and PAGA Settlement Agreement is attached hereto as **Exhibit 1** (with the Class Notice as Exhibit A within the Settlement Agreement).

43. A true and correct copy of the LWDA's confirmation that my office submitted the Parties settlement is attached hereto as **Exhibit 2**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 8, 2024 at Irvine, California.



Joseph M. Szilagyi

EXHIBIT 1

1 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT**
2 **AND CLASS NOTICE**

3 This Class Action and PAGA Settlement Agreement (“Settlement Agreement”,
4 “Agreement”, or “Settlement”) is made by and between Plaintiffs Leo Hernandez Sr., Leo Hernandez
5 Jr., Curtis Lupton, Gilberto Dedios, Alejandro Garcia, Justin Robinson, Jose Garcia Martinez, Eric
6 Valadez, David Bergeron, Jorge Gonzalez, and Julian Okiwelu (“Plaintiffs”) and the Class Members,
7 on the one hand, and Defendant WGS Group, Inc. (“Defendant”), on the other hand. Plaintiffs and
8 Defendant collectively are referred to in this Agreement as “the Parties” or individually as “Party.”

9 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
10 concluded by agreement of Defendant to pay the settlement amount of Three Hundred Thousand
11 Dollars (\$300,000.00) as provided in Section 3.06(a) below (“Gross Settlement Amount”) pursuant
12 to the terms and conditions of this Agreement and for the consideration set forth herein, including
13 but not limited to, a release of all claims by Plaintiffs and the Class Members as set forth herein.

14 **ARTICLE I**

15 **DEFINITIONS**

16 Unless otherwise defined herein, the following terms used in this Agreement shall have the
17 meanings ascribed to them as set forth below:

18 a. “Action” means the collective actions entitled *Leo Hernandez, Sr., et al. v. WGS*
19 *Group, Inc.*, filed in the Superior Court for the County of San Benito (the “*Hernandez Action*”), Case
20 No: CU-22-00225, and *Julian Okiwelu v. WGS Group, Inc.*, filed in the Superior Court for the County
21 of Alameda, Case No. 22CV017766 (the “*Okiwelu Action*”).

22 b. “Administrator” means Phoenix Settlement Administrators (“Phoenix”), the neutral
23 entity the Parties have agreed to appoint to administer the Settlement.

24 c. “Administration Expenses Payment” means the amount the Administrator will be
25 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance
26 with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary
27 Approval of the Settlement.

1 d. "Aggrieved Employees" means all individuals who are or were employed by
2 Defendant in California and classified as a non-exempt employee, hourly employees at any time
3 during the PAGA Period.

4 e. "Class" means all individuals who are or previously were employed by Defendant in
5 California and classified as non-exempt, hourly employees at any time during the Class Period.

6 f. "Class Counsel" means the attorneys for the Class and the Class Members, who are:

7 AEGIS LAW FIRM, PC
8 Kashif Haque
9 Samuel A. Wong
10 Jessica L. Campbell
11 Joseph M. Szilagyi
12 9811 Irvine Center Drive, Suite 100
13 Irvine, California 92618
14 Telephone: (949) 379-6250
15 Facsimile: (949) 379-6251

12 GAINES & GAINES, APLC
13 Daniel F. Gaines
14 Alex P. Katofsky
15 4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: 866-550-0855

16 g. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment"
17 mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by
18 the Court, to compensate Class Counsel for their legal work in connection with the Action, including
19 their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement
20 work, all post-Settlement compliance procedures, and related litigation expenses billed in connection
21 with the Action.

22
23 h. "Class Data" means Class Member identifying information in Defendant's business
24 records that identifies each Class Member's full name, last known home or mailing address, Social
25 Security number or, as applicable, other taxpayer identification number, dates of employment, and
26 the number of Class Period Employment Weeks and PAGA Pay Periods.

- 1 i. "Class Member(s)" means a member of the Class, as either a Participating Class
2 Member or Non-Participating Class Member (including a Non- Participating Class Member who
3 qualifies as an Aggrieved Employee).
- 4 j. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION
5 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class
6 Members in English and Spanish without material variation, attached as **Exhibit A** and incorporated
7 by reference into this Agreement.
- 8 k. "Class Notice Packet" means the Class Notice to be provided to the Class Members
9 by the Administrator in the form set forth as Exhibit A to this Agreement (other than formatting
10 changes to facilitate printing by the Administrator).
- 11 l. "Class Period" means September 13, 2018, through November 15, 2023.
- 12 m. "Class Period Employment Week" means any week during the Class Period a Class
13 Member was employed by Defendant whether or not said Class Member worked for Defendant that
14 week or not.
- 15 n. "'Class Representative" means Plaintiffs Leo Hernandez Sr., Leo Hernandez Jr.,
16 Curtis Lupton, Gilberto Dedios, Alejandro Garcia, Justin Robinson, Jose Garcia Martinez, David
17 Bergeron, Jorge Gonzalez, Eric Valadez, and Julian Okiwelu.
- 18 o. "Class Representative Service Payment" means a monetary amount of up to Five
19 Thousand Dollars (\$5,000.00) for each of the Plaintiffs, subject to Court approval, in recognition of
20 their effort as Class Representative in order to compensate for initiating the Action and performing
21 work in support of the Action.
- 22 p. "Court" means the California Superior Court for the County of San Benito, where the
23 *Hernandez* Action is currently pending. Plaintiffs agree to consolidate the *Hernandez* and *Okiwelu*
24 actions and dismiss the *Okiwelu* Action upon final approval of the Settlement.
- 25 q. "Defendant" means Defendant WGS Group, Inc.
- 26 r. "Defense Counsel" means Paul S. Fleck, David M. Lester and Michele L. Collender
27 of Atkinson, Andelson, Loya, Ruud & Romo.
- 28

1 s. "Disposition" means the method by which the Court approves the terms of the
2 Settlement and retains jurisdiction over its enforcement, implementation, construction,
3 administration, and interpretation.

4 t. "Effective Date" means the later of the following: (1) the date the Final Order is
5 signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no
6 appeal is taken of the Final Order, sixty-five (65) days after the Final Order; or (3) if an appeal or
7 other judicial review is taken from the Court's overruling of objections to the settlement, ten (10)
8 days after the appeal is withdrawn or after an appellate decision affirming the Final Order becomes
9 final.

10 u. "Final Approval" means the determination by the Court that the Settlement is fair,
11 reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

12 v. "Final Approval Hearing" means the Court's hearing on the Motion for Final
13 Approval of the Settlement to determine whether to approve finally and implement the terms of this
14 Agreement and enter the Judgment.

15 w. "Final Order Approving Settlement of Class Action" or "Final Order" means the final
16 formal court order signed by the Court following the Final Fairness and Approval Hearing in
17 accordance with the terms herein, approving this Agreement.

18 x. "Gross Settlement Amount" means Three Hundred Thousand Dollars and Zero Cents
19 (\$300,000.00) which is the total amount to be paid by Defendant as provided by this Agreement
20 except as provided in Paragraph 2.02 and Paragraph 3.04(e)(e) below. The Gross Settlement Amount
21 will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA
22 Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, The Administrator's
23 Expenses Payment, and Class Representative Service Payment. This Gross Settlement Amount is
24 an all-in amount without any reversion to Defendant, and excludes any employer payroll taxes, if
25 any, due on the portion of the Individual Class Payments allocated to wages which shall not be paid
26 from the Gross Settlement Amount and shall be the separate additional obligation of Defendant. The
27 Gross Settlement Amount is subject to a pro rata increase pursuant to Section 3.04(e) below.

1 y. "Individual Class Payment(s)" means each Participating Class Member's *pro rata*
2 share of the Net Settlement Amount calculated according to the number of Class Period Employment
3 Weeks worked during the Class Period.

4 z. "Individual PAGA Payment" means the Aggrieved Employee's *pro rata* share of 25%
5 of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the
6 PAGA Period.

7 aa. "LWDA" means The State of California Labor and Workforce Development Agency.

8 bb. "LWDA PAGA Payment" means 75% of the \$10,000 allocated to the settlement of
9 PAGA claims which, subject to Court approval, will be paid to the LWDA pursuant to Section
10 3.06(e) of this Agreement, as provided for below.

11 cc. "Motion for Final Approval" means Plaintiffs' submission of a written motion,
12 including any evidence as may be required for the Court to conduct an inquiry into the fairness of
13 the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and
14 to enter a Final Order in this Action.

15 dd. "Motion for Preliminary Approval" means Plaintiffs' submission of a written motion,
16 including any evidence as may be required for the Court to grant preliminary approval of the
17 Settlement as required by Rule 3.769 of the California Rules of Court.

18 ee. "Net Settlement Amount" means the Gross Settlement Amount less the following
19 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
20 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
21 Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement
22 Amount is to be paid to Participating Class Members as Individual Class Payments.

23 ff. "Non-Participating Class Member(s)" means a Class Member who opts out of the
24 Class Settlement by submitting a valid and timely Request for Exclusion to the Administrator.

25 gg. "Operative Complaint" means the Third Amended Complaint, attached hereto as
26 **Exhibit B**, and which will be filed in the *Hernandez* Action as part of the settlement approval
27 process. The Operative Complaint adds Plaintiff Julian Okiwelu to the *Hernandez* Action and asserts
28 class and PAGA representative action claims against Defendant for (1) failure to pay minimum

1 wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit
2 rest breaks; (5) failure to reimburse business expenses; (6) failure to provide accurate itemized wage
3 statements; (7) failure to pay wages timely during employment; (8) failure to pay all wages due upon
4 separation of employment; (9) violation of Business and Professions Code §§ 17200 *et seq.*; and (10)
5 enforcement of Labor Code § 2698 *et seq.* The Parties agree that in the event the Court does not grant
6 final approval of the Settlement, the Third Amended Complaint shall be deemed withdrawn. The
7 parties further agree that Defendant does not waive any defense to the Third Amended Complaint
8 and the PAGA claim contained therein. The parties further acknowledge that the filing of the Third
9 Amended Complaint is for settlement purposes only.

10 hh. “PAGA” means the California Private Attorneys General Act of 2004, which is
11 codified in California Labor Code §§ 2698 *et seq.*

12 ii. “PAGA Notice” means Plaintiffs Leo Hernandez Sr.’s, Leo Hernandez Jr.’s, Curtis
13 Lupton’s, Gilberto Dedios’, Alejandro Garcia’s, Justin Robinson’s, Jose Garcia Martinez’, David
14 Bergeron’s, Jorge Gonzalez’, and Eric Valadez’ September 1, 2022, October 6, 2022, and December
15 15, 2022, letters and Plaintiff Julian Okiwelu’s September 13, 2022, letter to Defendant and the
16 LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a).

17 jj. “PAGA Penalties” means the total amount of PAGA civil penalties of Ten Thousand
18 Dollars (\$10,000.00) to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved
19 Employees (\$2,500.00) and the 75% to LWDA PAGA Payment (\$7,500.00) in settlement of PAGA
20 claims.

21 kk. “PAGA Period” means the period of time from September 1, 2021, through
22 November 15, 2023.

23 ll. “Participating Class Member(s)” means a Class Member who does not submit a valid
24 and timely Request for Exclusion.

25 mm. “Pay Period” means any pay period during which an Aggrieved Employee worked
26 for Defendant for at least one day during the PAGA Period.

1 nn. "Plaintiffs" means Leo Hernandez Sr., Leo Hernandez Jr., Curtis Lupton, Gilberto
2 Dedios, Alejandro Garcia, Justin Robinson, Jose Garcia Martinez, David Bergeron, Jorge Gonzalez,
3 Eric Valadez, and Julian Okiwelu.

4 oo. "Preliminary Approval Date" means the date the Court preliminarily approves the
5 Settlement embodied in this Agreement.

6 pp. "Qualified Settlement Fund" or "QSF" means a fund within the meaning of Treasury
7 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
8 Administrator for the benefit of Participating Class Members.

9 qq. "Released Class Claims" means all causes of action and factual or legal theories that
10 were alleged, or reasonably could have been alleged, based on facts stated in the Operative Complaint
11 which occurred during periods of employment in a non-exempt position in California during the
12 Class Period, for violations of the California Labor Code including *inter alia* sections 201, 202, 203,
13 204, 226, 226.7, 510, 512, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802 and Industrial
14 Welfare Commission Wage Orders including *inter alia*, Wage Orders 4-2001, 5-2001, and 10-2001
15 including all of the following claims for relief: (a) failure to pay all overtime wages due; (b) failure
16 to provide proper meal periods, and to properly provide premium pay in lieu thereof; (c) failure to
17 provide proper rest periods, and to properly provide premium pay in lieu thereof; (d) failure to pay
18 all minimum wages due; (e) failure to pay all wages timely during employment; (f) failure to pay all
19 wages timely at the time of termination; (g) failure to provide complete, accurate or properly
20 formatted wage statements; (h) failure to keep complete and accurate payroll records; (i) failure to
21 reimburse business expenses; (j) unfair business practices that could have been premised on the
22 claims, causes of action or legal theories of relief described above or any of the claims, causes of
23 action, or legal theories of relief pleaded in the Operative Complaint; (k) any other claims or penalties
24 under the wage and hour laws pleaded in the Action; and (l) all damages, penalties, interest, and
25 other amounts recoverable under said claims, causes of action or legal theories of relief. Except as
26 expressly set forth in this Agreement, Participating Class Members do not release any other claims,
27 including claims for vested benefits, wrongful termination, violation of the Fair Employment and
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1 Housing Act, unemployment insurance, disability, social security, workers' compensation, or
2 California class claims based on facts occurring outside the Class Period.

3 rr. "Released PAGA Claims" means all causes of action or factual or legal theories for
4 civil penalties under the California Labor Code Private Attorneys General Act of 2004 against any
5 of the Release Parties that were alleged, or reasonably could have been alleged, based on the facts
6 stated in the Operative Complaint and the PAGA Notice, which occurred during periods of
7 employment in a non-exempt position in California during the PAGA Period, for violations of the
8 California Labor Code, including *inter alia* sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
9 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare
10 Commission Wage Orders including *inter alia*, Wage Orders 4-2001, 5-2001, and 10-2001, including
11 all of the following: (a) failure to pay all and overtime wages due; (b) failure to provide proper meal
12 periods, and to properly provide premium pay in lieu thereof; (c) failure to provide proper rest
13 periods, and to properly provide premium pay in lieu thereof; (d) failure to pay all minimum wages
14 due; (e) failure to pay all wages timely during employment; (f) failure to pay all wages timely at the
15 time of termination; (g) failure to provide complete, accurate or properly formatted wage statements;
16 (h) failure to keep complete and accurate payroll records; and (i) failure to reimburse business
17 expenses The Released PAGA Claims do not include other PAGA claims, underlying wage and
18 hour claims, claims for wrongful termination, discrimination, unemployment insurance, disability
19 and worker's compensation, and claims outside of the PAGA Period.

20 ss. "Released Parties" means Defendant and Defendant's owners, officers, directors,
21 managers, board members, shareholders, owners, members, employees, agents, representatives,
22 subsidiaries, parents, affiliates, predecessors, successors, joint venturers, attorneys, insurers, and
23 reinsurers.

24 tt. "Request for Exclusion" means a Class Member's submission of a written request to
25 be excluded from the Class Settlement signed by the Class Member.

26 uu. "Response Deadline" means the deadline by which Class Members must postmark or
27 fax to the Settlement Administrator Requests for Exclusion or written notices of objection. The
28 Response Deadline will be sixty (60) calendar days after the initial mailing of the Notice Packet by

1 the Settlement Administrator, unless the sixtieth (60th) calendar day falls on a Sunday or federal
2 holiday, in which case the Response Deadline will be extended to the next day on which the U.S.
3 Postal Service is open. The Response Deadline will be extended as set forth herein if there is a re-
4 mailing.

5 vv. “Workweeks” means the number of weeks that Class Members worked for Defendant
6 as non-exempt employees during the Class Period.

7 **ARTICLE II**

8 **CONTINGENT NATURE OF THE AGREEMENT**

9 **Section 2.01: Stipulation of Class Certification for Settlement Purposes**

10 Because the Parties have stipulated to the certification of the Class with respect to all causes
11 of action alleged in the Action for settlement purposes only, this Agreement requires preliminary and
12 final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis.
13 This Agreement is contingent upon the approval and certification by the Court. If the Effective Date
14 does not occur, the fact that the Parties were willing to stipulate for the purposes of this Agreement
15 to a Class shall have no bearing on, nor be admissible in connection with, the issue of certification
16 of the Class with respect to all causes of action alleged in the Action. Defendant does not consent to
17 certification of the Class for any purpose other than to effectuate settlement of the Action. If the
18 Effective Date does not occur, or if Disposition of this Action is not effectuated, any certification of
19 the Class as to Defendant will be vacated and Plaintiffs, Defendant, and the Class will be returned to
20 their positions with respect to the Action as if the Agreement had not been entered into. In the event
21 that the Effective Date does not occur: (a) any Court orders preliminarily or finally approving
22 certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall
23 not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in
24 this Agreement, the fact that Defendant did not oppose the certification of a Class under this
25 Agreement, or that the Court preliminarily approved the certification of the Class, shall not be used
26 or cited thereafter by any person or entity, including in any manner whatsoever, including without
27 limitation any contested proceeding relating to the certification of any class. If the Effective Date
28 does not occur, this Agreement shall be deemed null and void, shall be of no force or effect

1 whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendant expressly
2 reserves the right to challenge the propriety of class certification in the Action for any purpose if the
3 Effective Date does not occur.

4 The Parties and their respective counsel shall take all steps that may be requested by the Court
5 relating to the approval and implementation of this Agreement and shall otherwise use their
6 respective best efforts to obtain Court approval and implement this Agreement. If the Court does not
7 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree
8 to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
9 resolution, the Parties agree to seek the assistance of mediator Hon. Steven R. Denton (Ret.) to
10 resolve the dispute.

11 **Section 2.02: Defendant's Right To Withdraw**

12 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10%
13 of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the
14 Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void *ab initio*,
15 have no force or effect whatsoever, and that neither Party will have any further obligation to perform
16 under this Agreement; provided, however, Defendant will remain responsible for paying all
17 Settlement Administration Expenses incurred as of the date Defendant makes this election to
18 withdraw. Defendant must notify Class Counsel and the Court of its election to withdraw not later
19 than 7 calendar days after the Administrator sends the final Exclusion List to Defense Counsel.
20 Invalid Requests for Exclusion will have no effect on this threshold for an election.

21 **ARTICLE III**

22 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT**

23 The procedure for obtaining Court approval of and implementing this Agreement shall be as
24 follows:

25 **Section 3.01: Motion for Conditional Class Certification and Preliminary Approval**

26 Plaintiffs will bring a motion before the Court that complies with the Court's procedures and
27 instructions for an order conditionally certifying the Class to include all claims pled in the Action
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1 based on the preliminary approval of this Agreement. The date that the Court grants preliminary
2 approval of this Agreement will be the “Preliminary Approval Date.”

3 a. Plaintiffs’ Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all
4 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the
5 notice, and memorandum in support, of the Motion for Preliminary Approval that
6 includes a request for approval of the PAGA Settlement under Labor Code Section
7 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval of the
8 Class Action and PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed
9 declaration from the Administrator attaching its “not to exceed” bid for administering
10 the Settlement and attesting to its willingness to serve; competency; operative
11 procedures for protecting the security of Class Data; amounts of insurance coverage
12 for any data breach, defalcation of funds or other misfeasance; all facts relevant to
13 any actual or potential conflicts of interest with Class Members; and the nature and
14 extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel;
15 (v) a signed declaration from Plaintiffs confirming willingness and competency to
16 serve and disclosing all facts relevant to any actual or potential conflicts of interest
17 with Class Members, and/or the Administrator; (v) a signed declaration from each
18 Class Counsel firm attesting to its competency to represent the Class Members; its
19 timely transmission to the LWDA of all necessary PAGA documents (initial notice of
20 violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code
21 section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2));
22 and (vi) all facts relevant to any actual or potential conflict of interest with Class
23 Members and/or the Administrator, if any exist.

24 b. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
25 responsible for expeditiously finalizing and filing the Motion for Preliminary
26 Approval; obtaining a prompt hearing date for the Motion for Preliminary Approval;
27 and for appearing in Court to advocate in favor of the Motion for Preliminary
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1 Approval. Class Counsel is responsible for delivering the Court's Preliminary
2 Approval to the Administrator.

- 3 c. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
4 Preliminary Approval and/or the supporting declarations and documents, Class
5 Counsel and Defense Counsel will expeditiously work together on behalf of the
6 Parties by meeting in person or by telephone, and in good faith, to resolve the
7 disagreement. If the Court does not grant Preliminary Approval or conditions
8 Preliminary Approval on any non-material change to this Agreement, Class Counsel
9 and Defense Counsel will expeditiously work together on behalf of the Parties by
10 meeting in person or by telephone, and in good faith, to modify the Agreement and
11 otherwise satisfy the Court's concerns. The Parties are not obligated to agree to a
12 material change to this Agreement if the Court conditions approval on a material
13 change to this Agreement, and in the event the Parties do not agree to a material
14 change to obtain approval, this Agreement shall be deemed void *ab initio*. The Court's
15 decision to award less than the amounts requested for the Class Representative
16 Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses
17 Payment and/or Administrator Expenses Payment or the Court's decision to reallocate
18 the distribution funds between the Class Members and Aggrieved Employees shall
19 not constitute a material change to the Agreement within the meaning of this
20 paragraph.

1 **Section 3.02: The Settlement Administrator**

- 2 a. The Parties have jointly chosen Phoenix Settlement Administrators to administer this
3 Settlement and verified that, as a condition of appointment, Phoenix agrees to be bound
4 by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement
5 in exchange for payment of Administration Expenses. The Administrator's duties ,
6 include but are not limited to preparing, printing, and mailing the Class Notice Packet to
7 all Class Members in both English and Spanish; conducting a National Change of Address
8 search to update Class Member addresses before mailing the Class Notice Packets; re-
9 mailing Class Notice Packets that are returned to the Class Member's new address; setting
10 up a toll-free telephone number and a fax number to receive communications from Class
11 Members; receiving and reviewing for validity completed Requests for Exclusion;
12 providing the Parties with weekly status reports about the delivery of Class Notice Packets
13 and receipt of Requests for Exclusion, objections and disputes; calculating Individual
14 Class Payments and Individual PAGA Payments; issuing the checks to effectuate the
15 payments due under the Settlement; issuing the tax reports required under this Settlement;
16 and otherwise administering the Settlement pursuant to this Agreement. The Parties and
17 their Counsel represent that they have no interest or relationship, financial or otherwise,
18 with the Administrator other than a professional relationship arising out of prior
19 experiences administering settlements.
- 20 b. The Administrator will establish and maintain and use an internet website to post
21 information of interest to Class Members including the date, time and location for the
22 Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary
23 Approval, the Preliminary Approval Order, the Class Notice, the Motion for Final
24 Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation
25 Expenses Payment and Class Representative Service Payment, the Final Approval Order
26 and Judgment. The Administrator will also maintain and monitor a toll-free telephone
27 number to receive Class Member calls and faxes.

- 1 c. The Administrator will promptly review on a rolling basis Requests for Exclusion to
2 ascertain their validity. Not later than 7 calendar days after the expiration of the deadline
3 for submitting Requests for Exclusion, the Administrator shall email a list to Class
4 Counsel and Defense Counsel containing (a) the names and other identifying information
5 of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion
6 List”); (b) the names and other identifying information of Class Members who have
7 submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from
8 Settlement submitted (whether valid or invalid).
- 9 d. The Administrator must, on a weekly basis, provide written reports to Class Counsel and
10 Defense Counsel that, among other things, tally the number of: Class Notices mailed or
11 re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or
12 invalid) received, objections received, challenges to Class Period Employment Weeks
13 and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual
14 Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly
15 Reports must include the Administrator’s assessment of the validity of Requests for
16 Exclusion and attach copies of all Requests for Exclusion and objections received.
- 17 e. Not later than five days before the date by which Plaintiffs are required to file the Motion
18 for Final Approval of the Settlement, the Administrator will provide to Class Counsel and
19 Defense Counsel, a signed declaration suitable for filing in Court attesting to its due
20 diligence and compliance with all of its obligations under this Agreement, including, but
21 not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the
22 re-mailing of Class Notices, attempts to locate Class Members, the total number of
23 Requests for Exclusion from Settlement it received (both valid or invalid), the number of
24 written objections and attach the Exclusion List. The Administrator will supplement its
25 declaration as needed or requested by the Parties and/or the Court. Class Counsel is
26 responsible for filing the Administrator’s declaration(s) in Court.
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- 1 f. The Administrator shall have and use its own Employer Identification Number for
2 purposes of calculating payroll tax withholdings and providing reports to state and federal
3 tax authorities.
- 4 g. The Administrator shall establish a settlement fund that meets the requirements of a
5 Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 6 h. All costs of administering the Settlement, including but not limited to all costs and fees
7 associated with preparing, issuing and mailing any and all notices to Class Members
8 and/or Participating Class Members, all costs and fees associated with computing,
9 processing, reviewing, and mailing the Individual Settlement Payments, all costs and fees
10 associated with preparing any tax returns and any other filings required by any
11 governmental taxing authority or agency, all costs and fees associated with preparing any
12 other checks, notices, reports, or filings to be prepared in the course of administering
13 disbursements from the Net Settlement Amount, and any other costs and fees incurred
14 and/or charged by the Administrator in connection with the execution of its duties under
15 this Agreement (“Administration Expenses Payment”), shall be paid to the Administrator
16 from the Gross Settlement Amount.
- 17 i. Within seven (7) calendar days after the Administrator disburses all funds of the Gross
18 Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel
19 with a final report detailing its disbursements by employee identification number only of
20 all payments made under this Agreement. At least 15 days before any deadline set by the
21 Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel,
22 a signed declaration suitable for filing in Court attesting to its disbursement of all
23 payments required under this Agreement. Class Counsel is responsible for filing the
24 Administrator's declaration in Court. If any further declaration(s) attesting to the
25 distribution of uncashed checks is required, the Administrator shall provide a declaration
26 at least 7 days before any deadline for a further declaration(s) and Class Counsel shall be
27 responsible for filing the declaration with the Court.
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1 **Section 3.03: Notice to Class Members**

- 2 a. No later than fifteen (15) calendar days after the Preliminary Approval Date, Defendant
- 3 will provide the Administrator with “Class Data” in electronic format based on its
- 4 business records, identifying the names of the Class Members, their last known home
- 5 addresses, Social Security numbers or, as applicable, other taxpayer identification
- 6 number, their dates of employment and weeks worked during the Class Period.
- 7 b. No later than three (3) business days after receipt of the Class Data, the Administrator
- 8 shall notify Class Counsel that the list has been received and state the number of Class
- 9 Members, PAGA Members, Work Weeks, and PAGA Pay Periods in the Class Data. To
- 10 protect Class Members’ privacy rights, the Administrator must maintain the Class Data
- 11 in confidence, use the Class Data only for purposes of this Settlement and for no other
- 12 purpose, and restrict access to the Class Data to Administrator employees who need
- 13 access to the Class Data to effect and perform under this Agreement. Defendant has a
- 14 continuing duty to immediately notify Class Counsel if it discovers that the Class Data
- 15 omitted Class Member identifying information and to provide corrected or updated Class
- 16 Data as soon as reasonably feasible. Without any extension of the deadline by which
- 17 Defendant must send the Class Data to the Administrator, the Parties and their counsel
- 18 will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any
- 19 issues related to missing or omitted Class Data.
- 20 c. Using best efforts to perform as soon as possible, and in no event later than 14 calendar
- 21 days after receiving the Class Data, the Administrator will send to all Class Members
- 22 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,
- 23 the Class Notice substantially in the form attached to this Agreement as **Exhibit A**. The
- 24 first page of the Class Notice shall prominently estimate the dollar amounts of any
- 25 Individual Class Payment and/or Individual PAGA Payment payable to the Class
- 26 Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to
- 27 calculate these amounts. Before mailing Class Notices, the Administrator shall update
- 28 Class Member addresses using the National Change of Address database.

- 1 d. Not later than 7 calendar days after the Administrator's receipt of any Class Notice
2 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
3 using any forwarding address provided by the USPS. If the USPS does not provide a
4 forwarding address, the Administrator shall conduct a Class Member Address Search
5 ("skip trace"), and re-mail the Class Notice to the most current address obtained. The
6 Administrator has no obligation to make further attempts to locate or send Class Notice
7 to Class Members whose Class Notice is returned by the USPS a second time.
- 8 e. In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar
9 days after the Notice Packet was initially mailed, the Administrator will not mail the Class
10 Member's Individual Settlement Payment. The Administrator will hold the Class
11 Member's Individual Settlement Payment during the check cashing period on behalf of
12 the Class Member. If at the conclusion of the check cashing period the Class Member's
13 Notice Packet and Individual Settlement Payment remain undeliverable and/or unclaimed
14 and uncashed, the Administrator will distribute the funds from unclaimed/uncashed
15 checks in accordance with the procedures set forth in Section 3.06(f) below.
- 16 f. The deadlines for Class Members' written objections, dispute to Workweeks and/or
17 PAGA Pay Periods, and Requests for Exclusion will be extended an additional 14
18 calendar days beyond the Response Deadline provided in the Class Notice for all Class
19 Members whose notice is re-mailed. The Administrator will inform the Class Member of
20 the extended deadline with the re-mailed Class Notice. If the Notice Packet is re-mailed,
21 the Settlement Administrator will note for its own records and notify Class Counsel and
22 Defense Counsel of the date of each such re-mailing as part of a weekly status report
23 provided to the Parties.
- 24 g. If the Administrator, the Parties, Defense Counsel or Class Counsel is contacted by or
25 otherwise discovers any persons who believe they should have been included in the Class
26 Data and should have received Class Notice, the Parties will expeditiously meet and
27 confer in person or by telephone, and in good faith in an effort to agree on whether to
28 include them as Class Members. If the Parties agree, such persons will be Class Members

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

5 h. No later than five days prior to the Final Fairness and Approval Hearing, the
6 Administrator shall provide Defense Counsel and Class Counsel with a declaration
7 attesting to completion of the notice process, including any attempts to obtain valid
8 mailing addresses for and re-sending of any returned Notice Packets, as well as the
9 number of valid requests for exclusion and objections that the Settlement Administrator
10 received.

11 i. Class Members shall not be required to submit claim forms in order to receive a
12 proportional share of the Net Settlement Amount.
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Section 3.04: Responses to Notice

a. Class Member Disputes

If any Class Member or Aggrieved Employee disagrees with Defendant's records as to his or her Workweeks and/or the number of pay periods worked during the PAGA Period as reflected in the Notice Packet, each Class Member or Aggrieved Employee shall have until the Response Deadline (plus an additional 14 calendar days for Class Members whose Class Notice is re-mailed) to dispute the number of Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may dispute the allocation by communicating with the Administrator via fax or mail. The Administrator must encourage the disputing Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Class Period Employment Weeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Class Period Employment Weeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all disputes to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination as to the challenges.

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1 **b. Requests for Exclusion from Class (Opt-Outs)**

- 2 1. Class members who wish to exclude themselves (opt-out of) the Class Settlement
3 must send the Administrator, by fax or mail, a signed written Request for Exclusion
4 not later than the Response Deadline (plus an additional 15 calendar days for Class
5 Members whose Class Notice is re-mailed). The Notice Packet shall contain
6 instructions on how to validly exclude oneself from the Class and this Settlement (*i.e.*,
7 opt out), including the language to be used in a request for exclusion. A Request for
8 Exclusion is a letter from a Class Member or his/her representative that reasonably
9 communicates the Class Member's election to be excluded from the Settlement and
10 includes the Class Member's name and address. To be valid, a Request for Exclusion
11 must be timely faxed or postmarked by the Response Deadline. The date of the initial
12 mailing of the Notice Packet, and the date the signed request for exclusion was
13 postmarked, shall be conclusively determined according to the records of the
14 Administrator.
- 15 2. The Administrator may not reject a Request for Exclusion as invalid because it fails
16 to contain all the information specified in the Class Notice. The Administrator shall
17 accept any Request for Exclusion as valid if the Administrator can reasonably
18 ascertain the identity of the person as a Class Member and the Class Member's desire
19 to be excluded. The Administrator's determination shall be final and not appealable
20 or otherwise susceptible to challenge. If the Administrator has reason to question the
21 authenticity of a Request for Exclusion, the Administrator may demand additional
22 proof of the Class Member's identity. The Administrator's determination of
23 authenticity shall be final and not appealable or otherwise susceptible to challenge.
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1 3. Every Class Member who does not submit a timely and valid Request for Exclusion
2 is deemed to be a Participating Class Member under this Agreement, entitled to all
3 benefits and bound by all terms and conditions of the Settlement, including the release
4 of Released Class Claims under Paragraph 5.1 of the Agreement, regardless whether
5 the Participating Class Member actually receives the Class Notice or objects to the
6 Settlement.

7 4. Every Class Member who submits a valid and timely Request for Exclusion is a Non-
8 Participating Class Member and shall not receive an Individual Class Payment or have
9 the right to object to the class action components of the Settlement. Because future
10 PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
11 Participating Class Members who are Aggrieved Employees are eligible for an
12 Individual PAGA Payment. If a Class Member submits both a Request for Exclusion
13 and an objection, only the Request for Exclusion will be accepted and the objection
14 will be void.

15 c. **Objections to Settlement**

16 1. Only Participating Class Members may object to the class action components of the
17 Settlement and/or this Agreement, including contesting the fairness of the Settlement,
18 and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
19 Litigation Expenses Payment and/or Class Representative Service Payment.
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1 2. For any Class Member to object to this Agreement, or any term of it, the person
2 making the objection must not submit a request for exclusion (*i.e.*, must not opt out),
3 and should send to the Settlement Administrator, postmarked or faxed no later than
4 the Response Deadline (or fifteen (15) days after the Settlement Administrator re-
5 mails the Notice to the Class Member, whichever is later), a written statement of the
6 grounds of objection, signed by the objecting Class Member or his or her attorney,
7 along with all supporting papers. The date of the initial mailing of the Notice Packet,
8 and the date the signed objection was postmarked, shall be conclusively determined
9 according to the records of the Settlement Administrator. The Settlement
10 Administrator shall send any objections it receives to Defense Counsel and Class
11 Counsel within three (3) business days of receipt. Class Members may also appear at
12 the final approval hearing to object. The Court retains final authority with respect to
13 the consideration and admissibility of any Class Member objections.

14
15 d. **Encouragement of Class Members**

16 The Parties to this Agreement and the counsel representing such Parties shall not, directly or
17 indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from
18 this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from
19 Class Members.

20 e. **Right of Plaintiff to Adjust Gross Settlement Amount**

21 Defendant has estimated the number of Qualifying Workweeks is 13,876. If the number of
22 Qualifying Workweeks increases by more than 10% (which is more than 15,264 Qualifying
23 Workweeks) as of the end of the Class Period, then, the Gross Settlement Amount will be increased
24 on a pro rata basis per additional pay period that exceeds 10%.

25 **Section 3.05: Final Fairness and Approval Hearing**

26 Unless otherwise ordered by the Court, not later than 10 calendar days before the calendared
27 Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement
28 that includes a request for approval of the PAGA settlement under Labor Code section 2699(l), a

1 Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final
2 Approval”). Plaintiffs shall provide drafts of these documents to Defense Counsel prior to filing the
3 Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer
4 and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

5 a. Each Party retains the right to respond to any objection raised by a Participating Class
6 Member, including the right to file responsive documents in Court no later than 5 court days prior to
7 the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

8 b. If the Court does not enter an Order Granting Final Approval Order and Judgment or
9 conditions Final Approval on any material change to the Settlement (including, but not limited to,
10 the scope of release to be granted by Class Members), the Parties will expeditiously work together
11 in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain an
12 Order Granting Final Approval Order and Judgment. The Parties are not obligated to agree to a
13 material change to this Agreement if the Court conditions approval on a material change to this
14 Agreement, and in the event the Parties do not agree to a material change to obtain approval, this
15 Agreement shall be deemed void *ab initio*. The Court’s decision to award less than the amounts
16 requested for a Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
17 Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material
18 modification to the Agreement within the meaning of this paragraph.

19 c. The Parties agree that, after entry of the Final Approval Order and Judgment, the
20 Court will retain jurisdiction over the Parties, Action, and the Settlement under C.C.P. section 664.6
21 and as otherwise allowed by law solely for purposes of (i) enforcing this Agreement and/or Final
22 Approval Order and Judgment, (ii) addressing settlement administration matters, and (iii) addressing
23 such post-Judgment matters as are permitted by law.

24 d. Provided the Final Approval Order and Judgment is consistent with the terms and
25 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
26 Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
27 respective counsel, and all Participating Class Members who did not object to the Settlement as
28 provided in this Agreement, waive all rights to appeal from the Final Approval Order and Judgment,

1 including all rights to post-judgment and appellate proceedings, the right to file motions to vacate
2 judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not
3 include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the
4 Final Approval Order and Judgment, the Parties' obligations to perform under this Agreement will
5 be suspended until such time as the appeal is finally resolved and the Final Approval Order and
6 Judgment becomes final. However, should the Court approve less than the requested Class Counsel
7 Fees Payment or Class Representative Service Payment, Class Representative and Class Counsel
8 retain the right to appeal that ruling, but in no event shall such reduction void the Settlement.

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

18 **Section 3.06: Settlement Payment Procedures**

19 **a. Settlement Amount**

20 In exchange for the Released Claims set forth in this Agreement, Defendant agrees to pay the
21 Gross Settlement Amount in the amount of Three Hundred Thousand Dollars and Zero Cents
22 (\$300,000.00) and no more, subject to a pro rata increase under the condition set forth in Section
23 3.04(e), and to separately pay any and all employer payroll taxes owed on the Wage Portions of the
24 Individual Class Payments to the Administrator. The Gross Settlement Amount includes all
25 Individual Settlement Amounts to Participating Class Members, all administration costs, Class
26 Counsels' attorney's fees and costs, PAGA Settlement Amount, and the Class Representative Service
27 Payments. The Administrator will disburse the entire Gross Settlement Amount without asking or
28

1 requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition
2 of payment. None of the Gross Settlement Amount will revert to Defendant.

3 Within fourteen (14) calendar days after the Court signs the Final Order, Defendant shall
4 transfer \$100,000.00 from the Gross Settlement Amount, plus Defendant's share of employer-side
5 payroll taxes, as set forth herein, into a QSF established by the Settlement Administrator either
6 directly or by sending the funds to the Settlement Administer to be deposited and distributed, and
7 shall transfer the remaining \$200,000.00 no later than one year after the Final Order. The Settlement
8 Administrator will use these funds to fund payment of the Individual Settlement Payments to
9 Participating Class Members, Class Counsel's attorneys' fees and costs, the Class Representative
10 Service Payments , the LWDA Payment, and the Settlement Administration Costs.

11 The Settlement Administrator will issue pro rata payments for the obligations due for
12 Participating Class Members' Individual Payment Amounts, Class Counsel Fees Payment, Class
13 Counsel Litigation Expenses Payment, LWDA PAGA Payment, the Class Representative Service
14 Payments, Administrative Expenses Payment, and the employer and employee tax withholdings
15 applicable to the Net Settlement Amount allocated to wages promptly after each installment payment
16 by Defendant. Prior to this distribution, the Settlement Administrator will perform a search based on
17 the National Change of Address Database to update and correct for any known or identifiable address
18 changes. Disbursement of the Administration Expenses Payment, the LWDA PAGA Payment, Class
19 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative
20 Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA
21 Payments.

22 **b. Payment of Attorneys' Fees and Costs**

23 Class Counsel shall file a motion for approval of Class Counsel Fees Payment and Class
24 Litigation Expenses Payment no later than 10 ten calendar days prior to the Final Approval Hearing
25 for an award of attorneys' fees of up to thirty-five percent of the Gross Settlement Amount, which,
26 based on the current Gross Settlement Amount, is One Hundred Five Thousand Dollars and Zero
27 Cents (\$105,000.00), and for an award of costs not to exceed Thirty Thousand Dollars (\$30,000.00).
28 Such application for attorneys' fees and costs shall be heard by the Court at the Final Fairness and

1 Approval Hearing. Defendant shall not object to or oppose any such application in these amounts
2 provided that they do not exceed these amounts. Class Counsel shall serve Defendant with copies of
3 all documents submitted in support of their application for an award of attorneys' fees and costs.

4 Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the
5 Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys'
6 fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs,
7 and expenses related to the investigation, prosecution, and settlement of the Action incurred through
8 the Effective Date . To the extent that the Court approves less than the amount of attorney's fees
9 and/or costs that Class Counsel requests, the difference between the requested and awarded amounts
10 will be reallocated to the Net Settlement Amount. Released Parties shall have no liability to Class
11 Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel
12 Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the
13 Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099
14 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel
15 Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless,
16 and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any
17 of these payments. With respect to the Attorneys' Fees and Costs to Class Counsel, the Settlement
18 Administrator may purchase an annuity to utilize United States Treasuries and bonds or utilize other
19 attorney fee deferral vehicles, for Class Counsel and any additional expenses for doing so shall be
20 paid separately by Class Counsel and shall not be included within the Settlement Administration
21 Costs. Defendants and Defendants' Counsel shall not be liable for any expenses associated with the
22 purchase or use of any attorney fee deferral vehicles for Class Counsel by the Settlement
23 Administrator.

24 **c. Payment of Settlement Administration Costs**

25 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
26 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed
27 Twenty Thousand Dollars (\$20,000.00). To the extent the Administration Expenses Payment is less
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1 or the Court approves payment less than twenty thousand dollars \$20,000.00, the Administrator will
2 retain the remainder in the Net Settlement Amount for distribution to Participating Class Members.

3 **d. Payment of Class Representative Service Payment to Plaintiffs**

4 Subject to Court approval, the Plaintiffs shall each receive a Class Representative Service
5 Payment of up to Five Thousand Dollars (\$5,000.00) (in addition to any Individual Class Payment
6 and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating
7 Class Member). Defendant will not object to or oppose the Class Representative Service Payments.
8 The Class Representative Service Payments shall be paid out of the Gross Settlement Amount and
9 shall not constitute payment to any Participating Class Member(s) other than Plaintiffs. To the extent
10 that the Court approves less than the amount of incentive award that Class Counsel request, the
11 difference between the requested and awarded amounts will be reallocated to the Net Settlement
12 Amount.

13 Because it is the intent of the Parties that the Class Representative Service Payments represent
14 payment to Plaintiffs for their service to the Class Members, and not wages, the Settlement
15 Administrator will not withhold any taxes from the Class Representative Service Payments . The
16 Class Representative Service Payments will be reported on a Form 1099, which the Settlement
17 Administrator will provide to Plaintiffs and to the pertinent taxing authorities as required by law.
18 Plaintiffs assume full responsibility and liability for employee taxes owed on the Class
19 Representative Service Payments.

20 **e. Payment to the Labor and Workforce Development Agency and Aggrieved**
21 **Employees**

22 In consideration of claims made under PAGA, Class Counsel will request that the Court
23 approve allocation of Ten Thousand Dollars (\$10,000) of the Gross Settlement Amount to these
24 claims. Seventy-five percent (75%) of this payment will be paid to the California Labor and
25 Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%) will be paid
26 to the Aggrieved Employees. The Administrator will calculate each Individual PAGA Payment by
27 (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$2,500.00) by
28 the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA

1 Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.
2 Defendant will not oppose this request. The entire PAGA Settlement Amount will be paid out of the
3 Gross Settlement Amount. The Court's adjustment, if any, of the amount allocated to Plaintiffs'
4 PAGA claim in the Action, will not invalidate this Agreement. If the Court approves PAGA Penalties
5 of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement
6 Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.
7 Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual
8 PAGA Payment.

9 **f. Payment of Individual Settlement Payments to Participating Class Members**

10 The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement
11 Payments. The Parties agree that the Net Settlement Amount shall be divided between all
12 Participating Class Members in proportion to the number of individual Workweeks for each Class
13 Member. To calculate the minimum amount each Class Member will receive based on their
14 individual Workweeks, the Net Settlement Amount will be divided by the total number of
15 Workweeks by all Class Members during the Class Period and then allocated on a pro rata basis.
16 Workweeks will be rounded up to the next whole integer. Each Class Member's approximate
17 Individual Settlement Payment amount will be included in his or her Notice Packet. After final
18 approval by the Court, the Net Settlement Amount will be dispersed to Participating Class Members
19 (those who did not exclude themselves) on a pro rata basis based on the individual Workweeks
20 worked during the Class Period by each Participating Class Member.

21 The PAGA Settlement Amount to be distributed to Aggrieved Employees shall be divided
22 between all Aggrieved Employees in proportion to the number of pay periods that each Aggrieved
23 Employee worked during the PAGA Period. To calculate the minimum amount each Aggrieved
24 Employee will receive based on their individual pay periods, 25% of the PAGA Settlement Amount
25 (or \$2,500) will be divided by the total number of pay periods by all Aggrieved Employees during
26 the PAGA Period and then allocated on a pro rata basis. Pay periods will be rounded up to the next
27 whole integer. Each Aggrieved Employee's approximate Individual PAGA Settlement Payment will
28 be included in his or her Notice Packet. After final approval by the Court, the PAGA Settlement

1 Amount will be dispersed to all Aggrieved Employees on a pro rata basis based on the number of
2 pay periods worked during the PAGA Period by each Aggrieved Employee.

3 Each Individual Settlement Payment will represent wages and penalties allocated using the
4 following formula: 10% allocated to wages; 90% allocated to interest and penalties. Payments for
5 the PAGA Settlement Amount will be allocated as 100% penalties. The amounts paid as wages shall
6 be subject to all tax withholdings customarily made from an employee's wages and all other
7 authorized and required withholdings and shall be reported by W-2 forms. The employer-side taxes
8 will be paid separate from and in addition to the Gross Settlement Amount. The amounts paid as
9 penalties and interest shall be subject to all authorized and required withholdings other than the tax
10 withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.
11 Class Members assume full responsibility and liability for any employee taxes owed on their
12 Individual Class Payment. The Settlement Administrator will withhold the employee's share of taxes
13 and withholdings with respect to the wages portion of the Individual Settlement Payments, and issue
14 checks to Settlement Class Members for their Individual Settlement Payments (i.e., payment of their
15 Individual Settlement Payment net of these taxes and withholdings).

16 No later than fourteen (14) business days after receiving the Gross Settlement Amount from
17 Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual
18 Settlement Payments to Participating Class Members. The checks will be sent via First Class U.S.
19 Mail, postage prepaid. The face of each check shall prominently state the "void date", which is 180
20 days after the date of mailing, when the check will be voided. Before checks are mailed, the
21 Administrator shall update address information through the National Change of Address database.
22 The Administrator will cancel all checks not cashed by the void date. Individual Settlement
23 Payments paid from the Net Settlement Amount allocated to wages will be reduced by applicable
24 employer and employee tax withholdings, and the Settlement Administrator will issue a Form W-2
25 for the wage portion of the Individual Settlement Payments. The Settlement Administrator will issue
26 a Form 1099 to the extent required by law for the interest and penalty portions of the Individual
27 Settlement Payments. Participating Class Members shall have 180 days from the date their
28 Individual Settlement Payment checks and Individual PAGA Settlement Payment checks are dated

1 to cash their Settlement checks. Any checks that are not cashed upon the expiration of that 180-day
2 time period will be void, and the uncashed funds shall be paid to the State Controller Unclaimed
3 Property Fund in the name of the Class Member for whom the funds are designated.

4 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
5 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
6 a mass search on LexisNexis or a comparable databases based on set criteria and, if another address
7 is identified, the Settlement Administrator shall mail the check to the newly identified address within
8 7 days of receiving a returned check. If the Settlement Administrator is unable to obtain a valid
9 mailing address through this process, the Settlement Administrator will tender the funds from the
10 undeliverable checks to the State Controller Unclaimed Property Fund in the name of the Class
11 Member for whom the funds are designated thereby leaving no "unpaid residue" subject to the
12 requirements of California Code of Civil Procedure Section 384, subd. (b). Each Individual
13 Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one
14 hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be
15 cancelled. All funds remaining in the Qualified Settlement Fund in connection with cancelled checks
16 shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed
17 Property Law, California Civil Code § 1500 *et seq.*, for the benefit of those Settlement Class
18 Members who did not cash, deposit, or otherwise negotiate their checks until such time that they
19 claim their property. The Settling Parties agree that this disposition results in no "unpaid residue"
20 under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out
21 to Settlement Class Members, whether or not they all cash their Settlement Checks. Therefore,
22 Defendants will not be required to pay any interest on said amounts. The Settlement Administrator
23 shall undertake amended and/or supplemental tax filings and reporting, required under applicable
24 local, state, and federal tax laws, that are necessitated due to the cancellation of any Individual
25 Settlement Payment or Individual PAGA Payment checks. Settlement Class Members whose
26 Individual Settlement Payment checks are cancelled, shall, nevertheless, be bound by this Settlement
27 Agreement and the Final Approval Order and Judgment will have claim preclusive impact with
28 respect to them and all Settlement Class Members with respect to the Released Class Claims. The

1 Final Approval Order and Judgment will have claim preclusive impact on the PAGA Employees with
2 respect to the Released PAGA Claims irrespective of whether their Individual PAGA Payment
3 checks are cancelled. The payment of Individual Class Payments and Individual PAGA Payments
4 shall not obligate Defendant to confer any additional benefits or make any additional payments to
5 Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

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

8 **g. Default on Payment.**

9 Time is of the essence with respect to all provisions of this Agreement. In the event Defendant
10 makes a late payment or does not pay any portion of the Gross Settlement Amount, it shall be
11 considered a default. In the event Defendant fails to make any payment on the date it is due, under
12 Section 3.06(a), the Settlement Administrator will provide notice to Class Counsel and Defendant's
13 counsel within three (3) business days of the missed payment. Thereafter, Defendant will have fifteen
14 (15) business days to cure the default and tender payment to the Settlement Administrator. In the
15 event of an uncured default, all unpaid amounts shall be accelerated and be all due and payable
16 together with interest at the legal rate from the date of default.

17 **h. No Credit Toward Benefit Plans.**

18 The Individual Settlement Payments made to Participating Class Members under this
19 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to
20 calculate any additional benefits under any benefit plans to which any Class Members may be
21 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase
22 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
23 intention that this Agreement will not affect any rights, contributions, or amounts to which any Class
24 Members may be entitled under any benefit plans.

1 **ARTICLE IV**

2 **LIMITATIONS ON USE OF THIS SETTLEMENT**

3 **Section 4.01: No Admission**

4 This Agreement represents a compromise and settlement of highly disputed claims. Nothing
5 in this Agreement is intended or should be construed as an admission by Defendant that any of the
6 allegations in the Operative Complaint have merit or that Defendant has any liability for any claims
7 asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses
8 in the Action have merit. The Parties agree that class certification and representative treatment is for
9 purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval,
10 Final Approval or Judgment pursuant to this Agreement, Defendant reserves the right to contest
11 certification of any class for any reasons, and Defendant reserves all available defenses to the claims
12 in the Action, and Plaintiff reserves the right to move for class certification on any grounds available
13 and to contest Defendant's defenses. The Settlement and Parties' willingness to settle the Action will
14 have no bearing on, and will not be admissible in connection with, any litigation (except for
15 proceedings to enforce or effectuate the Settlement and this Agreement).

16 **Section 4.02: Non-Evidentiary Use**

17 Whether or not the Effective Date occurs, neither this Agreement, nor any of its terms, nor
18 the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or
19 deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties,
20 including but not limited to, evidence of a presumption, concession, indication, or admission by any
21 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or
22 (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further
23 proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this
24 Agreement or for Defendant to establish that a Class Member has resolved any of his or her claims
25 released through this Agreement.

26 **Section 4.03: Nullification**

27 The Parties have agreed to the certification of the Class encompassing all claims alleged in
28 the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason

1 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
2 Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order
3 is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the
4 Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this
5 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
6 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
7 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
8 stipulate to class certification of all causes of action pled in the Action as part of the Settlement will
9 have no bearing on, and will not be admissible in connection with, the issue of whether the Class
10 should be certified by the Court in a non-settlement context in this Action or any other action, and in
11 any of those events, Defendant expressly reserves the right to oppose certification of the Class.

12 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
13 Gross Settlement Amount shall not be distributed pending the completion of the appeal.

14 **ARTICLE V**

15 **RELEASES**

16 **Section 5.01: Released Claims by Class Members**

17 Upon the date Defendant transfers the Gross Settlement Amount, Plaintiffs and Participating
18 Class Members who do not opt out of the Settlement, release the Released Parties from all causes of
19 action and factual or legal theories that were alleged, or reasonably could have been alleged, based
20 on facts stated in the Operative Complaint which occurred during periods of employment in a non-
21 exempt position in California during the Class Period, for violations of the California Labor Code
22 including *inter alia* sections 201, 202, 203, 204, 226, 226.7, 510, 512, 512(a), 1174(d), 1194, 1197,
23 1197.1, 1198, 2800, 2802 and Industrial Welfare Commission Wage Orders including *inter alia*,
24 Wage Orders 4-2001, 5-2001, and 10-2001 including all of the following claims for relief: (a) failure
25 to pay all overtime wages due; (b) failure to provide proper meal periods, and to properly provide
26 premium pay in lieu thereof; (c) failure to provide proper rest periods, and to properly provide
27 premium pay in lieu thereof; (d) failure to pay all minimum wages due; (e) failure to pay all wages
28 timely during employment; (f) failure to pay all wages timely at the time of termination; (g) failure

1 to provide complete, accurate or properly formatted wage statements; (h) failure to keep complete
2 and accurate payroll records; (i) failure to reimburse business expenses; (j) unfair business practices
3 that could have been premised on the claims, causes of action or legal theories of relief described
4 above or any of the claims, causes of action, or legal theories of relief pleaded in the Operative
5 Complaint; (k) any other claims or penalties under the wage and hour laws pleaded in the Action;
6 and (l) all damages, penalties, interest, and other amounts recoverable under said claims, causes of
7 action or legal theories of relief . Except as expressly set forth in this Agreement, Participating Class
8 Members do not release any other claims, including claims for vested benefits, wrongful termination,
9 violation of the Fair Employment and Housing Act, unemployment insurance, disability, social
10 security, workers' compensation, or California class claims based on facts occurring outside the Class
11 Period.

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1 **Section 5.02: Released Claims by Aggrieved Employees**

2 Upon the date of funding the Gross Settlement Amount, the State of California and Aggrieved
3 Employees release the Released Parties from all causes of action or factual or legal theories for civil
4 penalties under the California Labor Code Private Attorneys General Act of 2004 against any of the
5 Release Parties that were alleged, or reasonably could have been alleged, based on the facts stated in
6 the Operative Complaint and the PAGA Notice, which occurred during periods of employment in a
7 non-exempt position in California during the PAGA Period, for violations of the California Labor
8 Code, including *inter alia* sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558,
9 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage
10 Orders including *inter alia*, Wage Orders 4-2001, 5-2001, and 10-2001, including all of the
11 following: (a) failure to pay all and overtime wages due; (b) failure to provide proper meal periods,
12 and to properly provide premium pay in lieu thereof; (c) failure to provide proper rest periods, and
13 to properly provide premium pay in lieu thereof; (d) failure to pay all minimum wages due; (e) failure
14 to pay all wages timely during employment; (f) failure to pay all wages timely at the time of
15 termination; (g) failure to provide complete, accurate or properly formatted wage statements; (h)
16 failure to keep complete and accurate payroll records; and (i) failure to reimburse business expenses
17 The Released PAGA Claims do not include other PAGA claims, underlying wage and hour claims,
18 claims for wrongful termination, discrimination, unemployment insurance, disability and worker's
19 compensation, and claims outside of the PAGA Period, regardless of whether Aggrieved Employees
20 opt out of the Class Settlement.

21 **Section 5.03: Plaintiffs' Release of Unknown Claims**

22 Upon the date of funding the Gross Settlement Amount, Plaintiffs waive, release, acquit, and
23 forever discharge the Released Parties from any and all claims, actions, charges, complaints,
24 grievances, and causes of action, of any nature arising from Plaintiffs' employment with Defendant,
25 and any acts that have or could have been asserted in any legal action or proceeding against
26 Defendant, whether known or unknown, which exist or may exist as of the Parties' execution of this
27 Agreement. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the
28 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

Plaintiffs' general release provided herein is made with an express waiver and relinquishment of any claim, right, or benefit under California Civil Code § 1542.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.01: Amended Judgment

If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment. Prior to the filing of the motion for preliminary approval of the Settlement, the Parties may not amend or modify any provision of this Settlement Agreement except by written agreement signed by counsel for all of the Parties. After the filing of the motion for preliminary approval of the Settlement, the Parties may not amend or modify any provision of this Settlement Agreement except by written agreement signed by counsel for all of the Parties and subject to Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

Section 6.02: Assignment

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

Section 6.03: Governing Law

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, without regard to conflicts of laws.

1 **Section 6.04: Entire Agreement**

2 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,
3 contains the entire understanding of the Parties with respect to the subject matter contained herein.
4 In case of any conflict between text contained in Articles I through VI of this Agreement and text
5 contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be
6 controlling, unless the Exhibits are changed by or in response to a Court order. There are no
7 restrictions, promises, inducements, representations, warranties, covenants, or undertakings
8 governing the subject matter of this Agreement other than those expressly set forth or referred to
9 herein. This Agreement supersedes all prior agreements and understandings among the Parties with
10 respect to the settlement of the Action, including correspondence between Class Counsel and Defense
11 Counsel and drafts of prior agreements or proposals.

12 **Section 6.05: Waiver of Compliance**

13 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
14 obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived
15 in writing, to the extent permitted under applicable law, by the Party or Parties and their respective
16 counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
17 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
18 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

19 **Section 6.06: Counterparts and Fax/PDF Signatures**

20 This Agreement, and any amendments hereto, may be executed in any number of counterparts
21 and any Party and/or their respective counsel may execute any such counterpart, each of which when
22 executed and delivered shall be deemed to be an original. All counterparts taken together shall
23 constitute one instrument. A fax, electronic (*i.e.* DocuSign) or PDF signature on this Agreement shall
24 be as valid as an original signature.

25 **Section 6.07: Meet and Confer Regarding Disputes**

26 Should any dispute arise among the Parties or their respective counsel regarding the
27 implementation or interpretation of this Agreement, a representative of Class Counsel and a
28

1 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
2 to submitting such disputes to the Court.

3 **Section 6.08: Agreement Binding on Successors**

4 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
5 of each of the Parties.

6 **Section 6.09: Cooperation in Drafting**

7 The Parties have cooperated in the negotiation and preparation of this Agreement. This
8 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,
9 was the drafter or participated in the drafting of this Agreement.

10 **Section 6.10: Fair and Reasonable Settlement**

11 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of
12 the Action and have arrived at this Agreement through arm's-length negotiation and in the context
13 of adversarial litigation, taking into account all relevant factors, current and potential. The Parties
14 further believe that the Settlement is and is consistent with public policy, and fully complies with
15 applicable law.

16 **Section 6.11: Headings**

17 The descriptive heading of any section or paragraph of this Agreement is inserted for
18 convenience of reference only and does not constitute a part of this Agreement and shall not be
19 considered in interpreting this Agreement.

20 **Section 6.12: Notice**

21 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
22 communications under this Agreement must be in writing and deemed to have been duly given as of
23 the third business day after mailing by United States mail, or the day sent by messenger, addressed
24 as follows:

25 *To Plaintiffs and the Class:*

26 AEGIS LAW FIRM, PC
27 Kashif Haque
28 Samuel A. Wong
Jessica L. Campbell
Joseph M. Szilagyi

1 9811 Irvine Center Drive, Suite 100
2 Irvine, California 92618
3 Telephone: (949) 379-6250
4 Facsimile: (949) 379-6251

5 GAINES & GAINES, APLC
6 Daniel F. Gaines
7 Alex P. Katofsky
8 4550 East Thousand Oaks Boulevard, Suite 100
9 Westlake Village, CA 91362
10 Telephone: 866-550-0855

11 And

12 *To Defendant:*

13 Paul S. Fleck
14 David M. Lester
15 Michele L. Collender
16 Atkinson, Adelson, Loya, Ruud & Romo
17 12800 Center Court Drive, Suite 300
18 Cerritos, California 90703
19 Tel.: (562) 653-3200
20 Fax: (562) 653-3333
21 E-Mail: pfleck@aalrr.com
22 david.lester@aalrr.com
23 Michele.collender@aalrr.com

24 **Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction**

25 To the extent consistent with class action procedure, this Agreement shall be enforceable by
26 the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court
27 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the
28 liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the
terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall
retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest
extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more
of the Parties institutes any legal action or other proceeding against any other Party or Parties to
enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover
from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness
fees incurred in connection with any enforcement actions.

1 **Section 6.14: Mutual Full Cooperation**

2 The Parties agree to fully cooperate with each other to accomplish the terms of this
3 Agreement, including but not limited to the execution of such documents, and the taking of such
4 other action, as may reasonably be necessary to implement the terms of this Agreement. The Parties
5 to this Agreement shall use their best efforts, to effectuate and implement this Agreement and its
6 terms. In the event the Parties are unable to reach agreement on the form or content of any document
7 needed to implement the Settlement, or on any supplemental provisions that may become necessary
8 to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

9 **Section 6.15: Authorization to Act**

10 Class Counsel warrants and represents that they are authorized by Plaintiffs, and Defense
11 Counsel warrants that they are authorized by Defendant, to take all appropriate action required to
12 effectuate the terms of this Agreement, except for signing documents, including but not limited to
13 this Agreement, that are required to be signed by the Parties themselves. Defendant represents and
14 warrants that the individual executing this Agreement on its behalf has the full right, power, and
15 authority to enter into this Agreement and to carry out the transactions contemplated herein.

16 **Section 6.16: No Reliance on Representations**

17 The Parties have made such investigation of the facts and the law pertaining to the matters
18 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,
19 on any statement, promise, or representation of fact or law, made by any of the other parties, or any
20 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
21 rights, or with regard to the advisability of entering into and executing this Agreement, or with respect
22 to any other matters. No representations, warranties, or inducements, except as expressly set forth
23 herein, have been made to any party concerning this Agreement.

24 **Section 6.17: Confidentiality Prior to Preliminary Approval**

25 Plaintiffs, Class Counsel, Defendant, and Defense Counsel separately agree that, until the
26 Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose,
27 disseminate and/or publicize or cause or permit another person to or indirectly, specifically or
28 generally, to any person, corporation, association, government agency, or other entity except: (1) to

1 the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement
2 confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to
3 appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an
4 inquiry or subpoena issued by a state or federal government agency. Each Party agrees to
5 immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking
6 such information. Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree not to,
7 directly or indirectly, initiate any conversation or other communication, before the filing of the
8 Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving
9 rise to this Agreement except to respond only that "the matter was resolved," or words to that effect.
10 This paragraph does not restrict Class Counsel's communications with Class Members in accordance
11 with Class Counsel's ethical obligations owed to Class Members. Nothing herein will restrict Class
12 Counsel from including publicly available information regarding this Settlement in future judicial
13 submissions regarding Class Counsel's qualifications and experience. Furthermore, Plaintiffs and
14 Class Counsel will undertake any and all disclosures required to be made to the LWDA in
15 conformity with PAGA.

16 **Section 6.18: No Publicity, Marketing, or Advertising**

17 The Parties agree that there will be no publicity, marketing, or advertising of the terms of this
18 Settlement. Required filings with the courts or public agencies are acceptable.

19 **Section 6.19: No Solicitation**

20 The Parties separately agree that they and their respective counsel and employees have not
21 and will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the
22 Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to
23 communicate with Class Members in accordance with Class Counsel's ethical obligations owed to
24 Class Members.

25 **Section 6.20: Circular 230 Disclaimer**

26 EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR PURPOSES OF THIS
27 SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS SETTLEMENT
28 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY")

1 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT
2 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
3 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
4 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
5 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
6 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART
7 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY
8 UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE
9 (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT,
10 (B) HAS NOT ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE
11 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
12 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
13 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER
14 PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
15 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
16 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
17 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
18 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
19 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
20 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
21 SETTLEMENT AGREEMENT.

22 **Section 6.21: Modification of Agreement**

23 This Agreement, and all parts of it, may be amended, modified, changed, or waived only by
24 an express written instrument signed by all Parties or their representatives, and approved by the
25 Court.

26 **Section 6.22: Use and Return of Class Data**

27 Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and
28 summaries of the Class Data provided to Class Counsel by Defendant in connection with the

1 mediation, other settlement negotiations, or in connection with the Settlement, may be used only with
2 respect to this Settlement, and no other purpose, and may not be used in any way that violates any
3 existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when
4 the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay
5 out of all Settlement funds, Plaintiffs shall destroy, all paper and electronic versions of Class Data
6 received from Defendant.

7 **Section 6.23: Calendar Days**

8 Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days.
9 In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal
10 holiday, such date or deadline shall be on the first business day thereafter.

11 **Section 6.24: Stay of Litigation**

12 The Parties agree that upon the execution of this Agreement the litigation shall be stayed,
13 except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of
14 this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under
15 CCP section 583.310 from the date of signing until the earlier of the Effective Date or the date this
16 Agreement shall no longer be of any force or effect.

17 **Section 6.25: Representation By Counsel**

18 The Parties acknowledge that they have been represented by counsel throughout all
19 negotiations that preceded the execution of this Settlement Agreement, and that this Settlement
20 Agreement has been executed with the consent and advice of counsel, and reviewed in full.

21 **Section 6.26: All Terms Subject to Court Approval**

22 All amounts and procedures described in this Settlement Agreement herein will be subject
23 to Court approval.

24 **EXECUTION BY PARTIES AND COUNSEL**

25 The Parties and their counsel hereby execute this Agreement.
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Dated: 01 / 24 / 2024

PLAINTIFF LEONEL HERNANDEZ, SR.


Leo Hernandez, Sr.

PLAINTIFF LEONEL HERNANDEZ, JR.

Dated: _____
Leo Hernandez, Jr.

PLAINTIFF ALEJANDRO GARCIA

Dated: _____
Alejandro Garcia

PLAINTIFF GILBERTO DEDIOS

Dated: _____
Gilberto Dedios

PLAINTIFF CHRIS LUPTON

Dated: _____
Chris Lupton

PLAINTIFF JUSTIN ROBINSON

Dated: _____
Justin Robinson

PLAINTIFF JOSE GARCIA MARTINEZ

Dated: _____
Jose Garcia Martinez

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PLAINTIFF LEONEL HERNANDEZ, SR.

Dated: _____

Leo Hernandez, Sr.

PLAINTIFF LEONEL HERNANDEZ, JR.

Dated: 01 / 24 / 2024

Leonel Hernandez Jr.

Leo Hernandez, Jr.

PLAINTIFF ALEJANDRO GARCIA

Dated: _____

Alejandro Garcia

PLAINTIFF GILBERTO DEDIOS

Dated: _____

Gilberto Dedios

PLAINTIFF CHRIS LUPTON

Dated: _____

Chris Lupton

PLAINTIFF JUSTIN ROBINSON

Dated: _____

Justin Robinson

PLAINTIFF JOSE GARCIA MARTINEZ

Dated: _____

Jose Garcia Martinez

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PLAINTIFF LEONEL HERNANDEZ, SR.

Dated: _____

Leo Hernandez, Sr.

PLAINTIFF LEONEL HERNANDEZ, JR.

Dated: _____

Leo Hernandez, Jr.

PLAINTIFF ALEJANDRO GARCIA

Dated: 01 / 29 / 2024

Alejandro Garcia

Alejandro Garcia

PLAINTIFF GILBERTO DEDIOS

Dated: _____

Gilberto Dedios

PLAINTIFF CHRIS LUPTON

Dated: _____

Chris Lupton

PLAINTIFF JUSTIN ROBINSON

Dated: _____

Justin Robinson

PLAINTIFF JOSE GARCIA MARTINEZ

Dated: _____

Jose Garcia Martinez

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PLAINTIFF LEONEL HERNANDEZ, SR.

Dated: _____

Leo Hernandez, Sr.

PLAINTIFF LEONEL HERNANDEZ, JR.

Dated: _____

Leo Hernandez, Jr.

PLAINTIFF ALEJANDRO GARCIA

Dated: _____

Alejandro Garcia

PLAINTIFF GILBERTO DEDIOS

Dated: 01 / 31 / 2024



Gilberto Dedios

PLAINTIFF CHRIS LUPTON

Dated: _____

Chris Lupton

PLAINTIFF JUSTIN ROBINSON

Dated: _____

Justin Robinson

PLAINTIFF JOSE GARCIA MARTINEZ

Dated: _____

Jose Garcia Martinez

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PLAINTIFF LEONEL HERNANDEZ, SR.

Dated: _____

Leo Hernandez, Sr.

PLAINTIFF LEONEL HERNANDEZ, JR.

Dated: _____

Leo Hernandez, Jr.

PLAINTIFF ALEJANDRO GARCIA

Dated: _____

Alejandro Garcia

PLAINTIFF GILBERTO DEDIOS

Dated: _____

Gilberto Dedios

PLAINTIFF CHRIS LUPTON

Dated: 01 / 24 / 2024



Chris Lupton

PLAINTIFF JUSTIN ROBINSON

Dated: _____

Justin Robinson

PLAINTIFF JOSE GARCIA MARTINEZ

Dated: _____

Jose Garcia Martinez

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PLAINTIFF LEONEL HERNANDEZ, SR.

Dated: _____

Leo Hernandez, Sr.

PLAINTIFF LEONEL HERNANDEZ, JR.

Dated: _____

Leo Hernandez, Jr.

PLAINTIFF ALEJANDRO GARCIA

Dated: _____

Alejandro Garcia

PLAINTIFF GILBERTO DEDIOS

Dated: _____

Gilberto Dedios

PLAINTIFF CHRIS LUPTON

Dated: _____

Chris Lupton

PLAINTIFF JUSTIN ROBINSON

Dated: 02 / 01 / 2024



Justin Robinson

PLAINTIFF JOSE GARCIA MARTINEZ

Dated: _____

Jose Garcia Martinez

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PLAINTIFF LEONEL HERNANDEZ, SR.

Dated: _____

Leo Hernandez, Sr.

PLAINTIFF LEONEL HERNANDEZ, JR.

Dated: _____

Leo Hernandez, Jr.

PLAINTIFF ALEJANDRO GARCIA

Dated: _____

Alejandro Garcia

PLAINTIFF GILBERTO DEDIOS

Dated: _____

Gilberto Dedios

PLAINTIFF CHRIS LUPTON

Dated: _____

Chris Lupton

PLAINTIFF JUSTIN ROBINSON

Dated: _____

Justin Robinson

PLAINTIFF JOSE GARCIA MARTINEZ

Dated: 01 / 25 / 2024



Jose Garcia Martinez

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PLAINTIFF ERIC VALDEZ

Dated: 01 / 24 / 2024


Eric Valdez

PLAINTIFF DAVID BERGERON

Dated: _____

David Bergeron

PLAINTIFF JORGE GONZALEZ

Dated: _____

Jorge Gonzalez

PLAINTIFF JULIAN OKIWELU

Dated: _____

Julian Okiwelu

DEFENDANT WGS GROUP, INC.

Dated: _____

By: Marcus Skeen, President

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PLAINTIFF ERIC VALDEZ

Dated: _____

Eric Valdez

PLAINTIFF DAVID BERGERON

Dated: 01 / 27 / 2024

David Bergeron

David Bergeron

PLAINTIFF JORGE GONZALEZ

Dated: _____

Jorge Gonzalez

PLAINTIFF JULIAN OKIWELU

Dated: _____

Julian Okiwelu

DEFENDANT WGS GROUP, INC.

Dated: _____

By: Marcus Skeen, President

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PLAINTIFF ERIC VALDEZ

Dated: _____

Eric Valdez

PLAINTIFF DAVID BERGERON

Dated: _____

David Bergeron

PLAINTIFF JORGE GONZALEZ

Dated: 01 / 27 / 2024


Jorge Gonzalez

PLAINTIFF JULIAN OKIWELU

Dated: _____

Julian Okiwelu

DEFENDANT WGS GROUP, INC.

Dated: _____

By: Marcus Skeen, President

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PLAINTIFF ERIC VALDEZ

Dated: _____

Eric Valdez

PLAINTIFF DAVID BERGERON

Dated: _____

David Bergeron

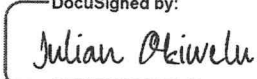
PLAINTIFF JORGE GONZALEZ

Dated: _____

Jorge Gonzalez

PLAINTIFF JULIAN OKIWELU

Dated: 2/1/2024

DocuSigned by:


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Julian Okiwelu

DEFENDANT WGS GROUP, INC.

Dated: 01/25/2024



By: Marcus Skeen, President

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PLAINTIFF ERIC VALDEZ

Dated: _____

Eric Valdez

PLAINTIFF DAVID BERGERON

Dated: _____

David Bergeron

PLAINTIFF JORGE GONZALEZ

Dated: _____

Jorge Gonzalez

PLAINTIFF JULIAN OKIWELU

Dated: _____

Julian Okiwelu

DEFENDANT WGS GROUP, INC.

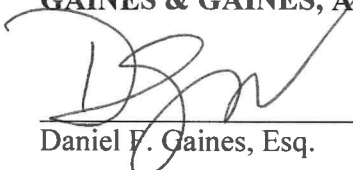
Dated: 01/25/2024

Marcus Skeen
By: Marcus Skeen, President

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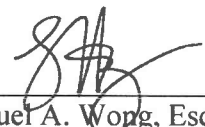
APPROVED AS TO FORM ONLY:

Dated: 2/2/2024

GAINES & GAINES, APLC

Daniel F. Gaines, Esq.

Alex P. Katofsky, Esq.
Attorneys for Plaintiffs Leonel Hernandez, Sr.,
Leonel Hernandez, Jr., Alejandro Garcia,
Gilberto Dedios, Chris Lupton, Justin
Robinson, Jose Garcia Martinez, Eric Valdez,
David Bergeron, and Jose Gonzalez

Dated: 2/1/2024

AEGIS LAW FIRM, PC

Samuel A. Wong, Esq.
Kashif Haque, Esq.
Joseph M. Szilagyi
Attorneys for Plaintiff Julian Okiwelu

Dated: _____

**ATKINSON, ANDELSON, LOYA, RUUD
& ROMO**

Paul S. Fleck, Esq.
David M. Lester, Esq.
Michele L. Collender, Esq.
Attorneys for Defendant WGS Group, Inc.

1 **APPROVED AS TO FORM ONLY:**

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GAINES & GAINES, APLC

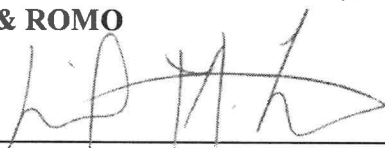
Daniel F. Gaines, Esq.

Alex P. Katofsky, Esq.
Attorneys for Plaintiffs Leonel Hernandez, Sr.,
Leonel Hernandez, Jr., Alejandro Garcia,
Gilberto Dedios, Chris Lupton, Justin
Robinson, Jose Garcia Martinez, Eric Valdez,
David Bergeron, and Jose Gonzalez

AEGIS LAW FIRM, PC

Samuel A. Wong, Esq.
Kashif Haque, Esq.
Joseph M. Szilagyi
Attorneys for Plaintiff Julian Okiwelu

**ATKINSON, ANDELSON, LOYA, RUUD
& ROMO**



Paul S. Fleck, Esq.
David M. Lester, Esq.
Michele L. Collender, Esq.
Attorneys for Defendant WGS Group, Inc.

EXHIBIT A

THIS IS AN IMPORTANT COURT APPROVED NOTICE. READ CAREFULLY.

Leo Hernandez, Sr., et al. v. WGS Group, Inc.
San Benito County Superior Court, Case No. CU-22-00225

If you worked for WGS Group, Inc. (“WGS”) as a non-exempt, hourly employee in California at any time from September 13, 2018 through November 15, 2023, the settlement of this class action lawsuit may affect your rights.

This is a court-authorized notice. Read it carefully! It is not junk mail, spam, an advertisement, or a solicitation from a lawyer. You are not being sued.

- A proposed settlement (the “Settlement”) has been reached in a class and Private Attorneys General Act of 2004 (“PAGA”) action lawsuit entitled *Leo Hernandez, Sr., et al. v. WGS Group, Inc.*, Case No. CU-22-00225 (San Benito County Superior Court) (the “Lawsuit”). The purpose of this Notice of Class Action Settlement (“Notice”) is to briefly describe the Lawsuit, and to inform you of your rights and options in connection with the Lawsuit and the Settlement.
- The Court has preliminarily approved a class and PAGA action settlement with Defendant WGS Group, Inc. (“Defendant”), which will affect all non-exempt, hourly employees who worked for WGS Group, Inc. in California at any time from September 13, 2018 through November 15, 2023 (“Class Members”) and all non-exempt, hourly employees who worked for WGS Group, Inc. in California at any time from September 1, 2021 through November 15, 2023 (“Aggrieved Employees”).
- If the Court grants final approval of the Settlement, there may be money available to you.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
PARTICIPATE IN THE SETTLEMENT – <u>NO ACTION REQUIRED</u>	Stay in this Lawsuit. Receive a payment. Give up certain rights. By doing nothing, you become a Participating Class Member and will be entitled to a settlement award as detailed below. But, you will not be able to bring your own lawsuit against WGS Group, Inc. for violations that relate to the claims brought in this Lawsuit.
PARTICIPATING CLASS MEMBERS CAN OBJECT TO THE CLASS SETTLEMENT BUT NOT THE PAGA SETTLEMENT WRITTEN OBJECTIONS MUST BE SUBMITTED BY << _____ >>	Stay in this Lawsuit. Object. Receive a payment. Give up certain rights. All Class Members who do not ask to be excluded (“Participating Class Members”) can object to any aspect of the proposed settlement, and you will remain a member of the Class. If the Court approves the settlement, you will be entitled to collect a settlement award and be bound by the terms of the settlement in the same way as Class Members who do not object.

ASK TO BE EXCLUDED FROM CLASS SETTLEMENT BUT NOT THE PAGA SETTLEMENT The Deadline for Asking to be Excludes is <<_____>>	Get out of this Lawsuit. Receive no payment from the class settlement. Keep your rights. If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will not receive any payment from the settlement award. But, you keep your right to sue WGS Group, Inc. separately for the legal claims raised in this Lawsuit. However, even if you exclude yourself, you will still be an Aggrieved Employee subject to the PAGA settlement.
YOU CAN PARTICIPATE IN THE <<_____>>FINAL APPROVAL HEARING	The Court's Final Approval Hearing is scheduled to take place on <<_____>>. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing.
YOU CAN CHALLENGE THE CALCULATION OF YOUR WORKWEEKS/PAY PERIODS WRITTEN CHALLENGES MUST BE SUBMITTED BY <<_____>>	The amount of your Individual Class Payment and PAGA Payment (if any) depends on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and number of PAGA Period Pay Periods you worked according to WGS's records is stated in Section 9 of this Notice. If you disagree with either of these numbers, you must challenge it by <<_____>>.

- **Regardless of the option you choose, WGS will not be retaliate against you.**
- Your options are explained in this notice. To object to the settlement or to ask to be excluded, you must act before _____.
- **Any questions?** Read on or contact Class Counsel or the Settlement Administrator listed below.

BASIC INFORMATION

1. Why did I get this notice?

WGS Group, Inc.'s records show that you worked for WGS Group, Inc. as a non-exempt, hourly employee in California at some point between September 13, 2018 through November 15, 2023 (the "Class Period") or September 1, 2021 through November 15, 2023 (the "PAGA Period").

The Court has determined only that there is sufficient evidence to suggest that the proposed Settlement may be fair, adequate, and reasonable. Any final determination of those issues will be made at the final hearing. You have legal rights and options that you may exercise as part of this Settlement. Judge

Patrick K. Palacios of the Superior Court of the State of California, County of San Benito, is overseeing this lawsuit.

2. What is this lawsuit about?

In this Lawsuit, Plaintiffs Leo Hernandez Sr., Leo Hernandez Jr., Curtis Lupton, Gilberto Dedios, Alejandro Garcia, Justin Robinson, Jose Garcia Martinez, Eric Valadez, David Bergeron, Jorge Gonzalez, and Julian Okiwelu ("Plaintiffs") claim that WGS Group, Inc.: (1) failed to pay minimum wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to permit rest breaks; (5) failed to reimburse necessary business expenses; (6) failed to provide accurate itemized wage statements; (7) failed to pay wages due during employment; (8) failed to pay all wages due upon separation of employment and within the required time; (9) violated California's Unfair Competition laws; and (10) that these violations entitle Plaintiffs to recover civil penalties on behalf of the State of California under Labor Code § 2698 et. seq ("PAGA").

Throughout the litigation, WGS Group, Inc. has denied—and continues to deny—the factual and legal allegations in the Lawsuit. WGS Group, Inc. denies any wrongdoing and asserts that its conduct at all times complied with the law. However, WGS Group, Inc. has voluntarily agreed to the terms of a negotiated settlement in order to avoid the burden and expense of continued litigation.

3. What is a class action and who is involved?

In a class action lawsuit such as this, a person called the "Class Representative" sues on behalf of other people who may have similar claims. The people together are referred to as a "Class" or "Class Members." The person who is the Class Representative is also called the plaintiff. The company being sued is called the defendant. In class action litigation, a Court resolves the issues for everyone in the Class in one lawsuit, except for those people who choose to exclude themselves from the Class.

This class action also includes a "Private Attorneys General Act" ("PAGA") claim, where the Plaintiffs are attempting to recover civil penalties on behalf of the State of California. In a PAGA action, the State receives 75% of any recovered civil penalties, and the employees receive 25%. This Settlement will resolve all claims by the State for civil penalties arising from the claims made by Plaintiff in the Lawsuit during the period of September 1, 2021 through November 15, 2023 ("PAGA Period").

4. Why is this Lawsuit a class action?

For settlement purposes, Plaintiffs and WGS Group, Inc. agreed that this case can proceed as a class action and have agreed to ask the Court to approve the class action Settlement. The Court has not ruled on the merits of the claims in the Lawsuit.

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

So far, the Court has made no determination whether WGS or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and WGS hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and WGS have negotiated a proposed

Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, WGS does not admit any violations or concede the merit of any claims. Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) WGS has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

6. What are the terms of the proposed Settlement?

The major terms of the settlement are as follows:

1. Defendant has agreed to pay \$300,000.00 to settle the claims in this Lawsuit. This amount is also known as the "Gross Settlement Amount." WGS has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payments, Class Counsel's attorneys' fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA").
2. Plaintiffs have agreed to release all of their claims in this this Lawsuit against Defendant.
3. Plaintiffs seek the following deductions from the \$300,000.00 Gross Settlement Amount:
 - a. Up to thirty-five percent of the Gross Settlement Amount (which is currently equal to \$105,000.00) for Class Counsel's attorneys' fees.
 - b. Up to \$30,000.00 for reimbursement of Class Counsel's litigation costs.
 - c. A Class Representative Service Payment of up to \$5,000.00 to each Plaintiff for filing the Lawsuit, performing work in connection with the Lawsuit, and the risks associated with filing the Lawsuit.
 - d. Up to \$20,000.00 to cover the costs of the Settlement Administrator.
 - e. A PAGA Payment of up to \$10,000.00 for the release of PAGA claims. The PAGA Settlement Amount shall be allocated 75% (\$7,500.00) to the California Labor and Workforce Development Agency and 25% (\$2,500.00) to the non-exempt, hourly employees that worked for Defendant in California at any time during the PAGA Period.
 - f. Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.
4. After making the above requested deductions from the Gross Settlement Amount, the remaining funds will be referred to as the "Net Settlement Amount." The Net Settlement Amount will be distributed to Class Members who do not opt-out according to the number of weeks they worked for Defendant in California during the Class Period.

5. **Individual PAGA Payments.** 25% of the PAGA Payment (\$2,500.00) (“Individual PAGA Payment”) will be paid to Aggrieved Employees based on the number of pay periods they worked for Defendant as a non-exempt, hourly employee in California during the PAGA Period. If you are an Aggrieved Employee, you will receive a pro rata share of the Individual PAGA Payment regardless of whether you opt-out of the class settlement.
6. Plaintiffs and WGS are asking the Court to approve an allocation of 10% of each Individual Class Payment to taxable wages (“Wage Portion”) and 90% to penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. WGS will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as 100% penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms. Although Plaintiffs and WGS have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.
7. **Check Cashing Period.** If a settlement check remains uncashed after 180 days from the date it is issued, the check will become void and the amount of the uncashed check will be sent to the California State Controller’s Unclaimed Property Fund, to be held in your name.
8. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and WGS have agreed that, in either case, the Settlement will be void: WGS will not pay any money and Class Members will not release any claims against WGS.
9. The Court has appointed a neutral company, Phoenix Settlement Administrators (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement.

WHO IS IN THE CLASS?

7. Am I part of this Class? Am I an Aggrieved Employee?

The “Class” includes: All non-exempt, hourly employees who are or were employed by WGS Group, Inc. in California at any time from September 13, 2018 through November 15, 2023 (the “Class Period”).

The “Aggrieved Employees” includes: All non-exempt, hourly employees who are or were employed by WGS Group, Inc. in California at any time from September 1, 2021 through November 15, 2023 (the “PAGA Period”).

8. I'm still not sure if I am included.

If you still are not sure whether you are included in the Class, you can get free help by contacting Phoenix Settlement Administrators, the "Settlement Administrator", at the designated phone number for this matter at _____ or by calling or writing the lawyers representing the Class in this case ("Class Counsel"), at the phone number or address listed in Sections 14 and 17.

9. What is my approximate Individual Settlement Payment?

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

The Administrator will calculate Individual PAGA Payments by (a) dividing the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.

According to payroll records maintained by WGS Group, Inc., the total number of weeks you worked in California for WGS Group, Inc. as a non-exempt, hourly employee during the Class Period is _____. The total number of pay periods you worked in California for WGS Group, Inc. as a non-exempt, hourly employee during the PAGA Period is _____.

Based on information provided above, anticipated court-approved deductions, and preliminary calculations Qualified Workweeks, it is estimated your share of the settlement will be \$_____, less applicable taxes and withholdings. This amount includes your share of the Individual PAGA Payment, which is estimated to be \$_____.

You do not need to do anything further to receive your Individual Settlement Payment, other than to ensure that the Settlement Administrator has an accurate mailing address for you. It is important that you contact and inform the Settlement Administrator listed in Section 17, below, of any changes to your mailing address for timely payment.

Disputing Your Payment Amounts

If you believe your total weeks worked during the Class Period and/or pay periods worked during the PAGA Period shown above are not correct, you may contact the Settlement Administrator by signing and sending a letter indicating what you believe is correct no later than [_____]. You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept WGS's calculation of Workweeks and/or Pay Periods based on WGS's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and WGS's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

10. What rights am I releasing if I participate in the Settlement?

Upon the date Defendant transfers the Gross Settlement Amount, Plaintiffs and Participating Class Members who do not opt out of the Settlement, release the Defendant and Defendant's owners, officers,

directors, managers, board members, shareholders, owners, members, employees, agents, representatives, subsidiaries, parents, affiliates, predecessors, successors, joint venturers, attorneys, insurers, and reinsurers (the “Released Parties”) from all causes of action and factual or legal theories that were alleged, or reasonably could have been alleged, based on facts stated in the Operative Complaint which occurred during periods of employment in a non-exempt position in California during the Class Period, for violations of the California Labor Code including *inter alia* sections 201, 202, 203, 204, 226, 226.7, 510, 512, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802 and Industrial Welfare Commission Wage Orders including *inter alia*, Wage Orders 4-2001, 5-2001, and 10-2001 including all of the following claims for relief: (a) failure to pay all overtime wages due; (b) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (c) failure to provide proper rest periods, and to properly provide premium pay in lieu thereof; (d) failure to pay all minimum wages due; (e) failure to pay all wages timely during employment; (f) failure to pay all wages timely at the time of termination; (g) failure to provide complete, accurate or properly formatted wage statements; (h) failure to keep complete and accurate payroll records; (i) failure to reimburse business expenses; (j) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action, or legal theories of relief pleaded in the Operative Complaint; (k) any other claims or penalties under the wage and hour laws pleaded in the Action; and (l) all damages, penalties, interest, and other amounts recoverable under said claims, causes of action or legal theories of relief. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or California class claims based on facts occurring outside the Class Period (the “Released Class Claims”).

Upon the date of funding the Gross Settlement Amount, the State of California and Aggrieved Employees release the Released Parties from all causes of action or factual or legal theories for civil penalties under the California Labor Code Private Attorneys General Act of 2004 against any of the Release Parties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, which occurred during periods of employment in a non-exempt position in California during the PAGA Period, for violations of the California Labor Code, including *inter alia* sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders including *inter alia*, Wage Orders 4-2001, 5-2001, and 10-2001, including all of the following: (a) failure to pay all and overtime wages due; (b) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (c) failure to provide proper rest periods, and to properly provide premium pay in lieu thereof; (d) failure to pay all minimum wages due; (e) failure to pay all wages timely during employment; (f) failure to pay all wages timely at the time of termination; (g) failure to provide complete, accurate or properly formatted wage statements; (h) failure to keep complete and accurate payroll records; and (i) failure to reimburse business expenses. The Released PAGA Claims do not include other PAGA claims, underlying wage and hour claims, claims for wrongful termination, discrimination, unemployment insurance, disability and worker’s compensation, and claims outside of the PAGA Period, regardless of whether Aggrieved Employees opt out of the Class Settlement (the “Released PAGA Claims”).

11. How do I object to the Settlement?

If you are a Class Member and would like to object to the Settlement, you must not submit a request for exclusion (*i.e.*, you must not opt-out). To object, you may mail a written objection to the Settlement

Administrator at the address in Section 17 below. Your written objection must set forth the grounds for your objection and be signed and dated, along with any supporting documents. Any written objection must be mailed to the Settlement Administrator no later than _____. You can also object (or personally retain a lawyer to object at your own cost) by appearing at the final approval hearing. The information for the hearing is included in Section 18 of this notice.

12. Why would I ask to be excluded?

You have the right to exclude yourself from the Class (and the class settlement). If you exclude yourself from the Class—sometimes called "opting-out" of the Class – you will not receive any money or benefits from the class settlement. However, if you opt out, you may then be able to sue or continue to sue WGS Group, Inc. for your own claims if permitted by law. If you exclude yourself, you will not be legally bound by the Court's ruling in this Lawsuit except for the release by Aggrieved Employees. Whether or not you submit a Request for Exclusion, if you are an Aggrieved Employee, you will still be entitled to your portion of the Individual PAGA Payment.

13. How do I ask to be excluded from the Class?

If you are a Class Member and would like to exclude yourself from the Class ("opt-out"), you, or your authorized representative, need to submit a written statement requesting exclusion from the Class to the Settlement Administrator at the address in Section 17 below. The statement must contain your name, address, telephone number, and your signature or the signature of your legally authorized representative and must be postmarked on or before _____. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any class member who fails to submit a valid and timely request for exclusion will be bound by all terms of the settlement and any final disposition entered in this Class Action if the Settlement is approved by the Court.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

Class Counsel:

Kashif Haque
Samuel A. Wong
Jessica L. Campbell
Joseph M. Szilagyi
AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251
jszilagyi@aegislawfirm.com

GAINES & GAINES, APLC
Daniel F. Gaines
Alex P. Katofsky
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362

Telephone: (818) 703-8985

Facsimile: (818) 703-8984

The Court has preliminarily decided that Aegis Law Firm, PC and Gaines & Gaines, APLC are qualified to represent you and all Class Members. The law firms' attorneys are experienced in handling similar cases against other employers. More information about this law firm, their practice, and their lawyers' experience is available at www.aegislawfirm.com and www.gaineslawfirm.com.

15. How will the lawyers be paid?

As part of the Settlement, Class Counsel has requested one-third of the Gross Settlement Amount (currently equal to \$105,000.00) in attorneys' fees, plus costs not to exceed \$30,000.00, to be paid from the Gross Settlement Amount to compensate Class Counsel for their work on this matter. You will not have to pay Class Counsel's fees and costs from your Individual Settlement Payment.

16. How will the Plaintiffs be paid?

As part of the Settlement, Class Counsel has requested a Class Representative Service Award of up to \$5,000 to be paid to each of the Plaintiffs for their efforts in this matter, while serving as Class Representative and taking on the burden and risks of litigation.

THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESS

17. Who is handling the Settlement Administration process?

Phoenix Settlement Administrators

[address]

[address]

[Telephone]

18. When is the Final Fairness and Approval Hearing and do I have to attend?

The Final Fairness and Approval Hearing has been set for _____, at _____, in Department 3 of the Superior Court of California, County of San Benito, located at 450 Fourth Street, Hollister, CA 95023. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs and the Administrator. The Court will permit comment from objectors, Class Counsel and Defense Counsel before making a decision. You do not need to attend the hearing to be a part of the Settlement. However, if you wish to object to the Settlement, you may appear at the hearing. Please note that the hearing may be continued without further notice to the Class. You should check the Court's website as set forth in Section 20 beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

19. When will I get money after the hearing?

The Court will hold a hearing on _____, at _____, to decide whether to approve the settlement. If the Court approves the settlement, then there may be appeals if anyone objects. It is always

uncertain when these objections and appeals can be resolved, and resolving them can take time. If the Court approves the settlement and if you do not opt out, your individual payment set forth in Section 9 above will be received in two installments, which are expected to take place in _____ [approximately 45 days after Final Approval Hearing] and _____ [approximately 395 days after Final Approval Hearing].

Your checks will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 17 of this Notice has the Administrator's contact information.

To check on the progress of the settlement, contact the Settlement Administrator or Class Counsel at the phone number or address listed in Sections 14 and 17.

GETTING MORE INFORMATION

20. Are more details available?

For more information, the pleadings and other records in this litigation, including copies of the Settlement Agreement, may be examined at any time during regular business hours at the office of the Clerk of the Superior Court of the State of California, for San Benito, at the San Benito County Superior Court, located at 450 Fourth Street, Hollister, CA 95023. You can also view the case records online at the court's website: <https://www.sanbenito.courts.ca.gov/home-public-portal>. After registering, you may perform a "Case Search" and case information may be reviewed by searching by the case number (CU-22-00225).

Any questions regarding this Class Notice or the Lawsuit may be directed to the Settlement Administrator at the address and/or telephone number listed in section 14 of this Notice. Alternatively, you may contact your own attorney, at your own expense, to advise you, or you may contact Class Counsel at the address, telephone number or email address set forth above. If your address changes, or is different from the address on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.

PLEASE DO NOT CALL OR WRITE TO THE COURT, OR TO ANY OF DEFENDANT'S MANAGERS, SUPERVISORS, OR DEFENDANT'S ATTORNEYS WITH QUESTIONS ABOUT THIS NOTICE.

EXHIBIT B

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
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Facsimile: (818) 703-8984

Attorneys for Plaintiffs Leo Hernandez Sr., Leo Hernandez Jr., Curtis
Lupton, Gilberto Dedios, Alejandro Garcia, Justin Robinson, Jose
Garcia Martinez, Eric Valadez, David Bergeron, and Jorge Gonzalez on
behalf of themselves and all employees similarly situated.

(Additional counsel on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BENITO

LEO HERNANDEZ SR., LEO
HERNANDEZ JR., CURTIS LUPTON,
GILBERTO DEDIOS, ALEJANDRO
GARCIA, JUSTIN ROBINSON, JOSE
GARCIA MARTINEZ, ERIC VALADEZ,
DAVID BERGERON, JORGE
GONZALEZ, JULIAN J OKIWELU, on
behalf of themselves and all employees
similarly situated,

Plaintiffs,

v.

WGS GROUP, INC., a Nevada
corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No. CU-22-00225

*Assigned to the Honorable Patrick K. Palacios,
Dept. 3*

**THIRD AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Reimburse Business Expenses;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Pay Wages Timely During Employment;
8. Failure to Pay All Wages Due Upon Separation of Employment;
9. Violation of Business and Professions Code §§ 17200, *et seq.*; and
10. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

AEGIS LAW FIRM, PC

SAMUEL A. WONG, State Bar No. 217104

KASHIF HAQUE, State Bar No. 218672

JESSICA L. CAMPBELL, State Bar No. 280626

JOSEPH M. SZILAGYI, State Bar No. 317450

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Email: jcampbell@aegislawfirm.com

Email: jszilagyi@aegislawfirm.com

Attorneys for Plaintiff Julian J Okiwelu, individually,
and on behalf of all others similarly situated.

1 Plaintiffs LEO HERNANDEZ SR., LEO HERNANDEZ JR., CURTIS LUPTON,
2 GILBERTO DEDIOS, ALEJANDRO GARCIA, JUSTIN ROBINSON, JOSE GARCIA
3 MARTINEZ, ERIC VALADEZ, DAVID BERGERON, JORGE GONZALEZ, and JULIAN J
4 OKIWELU ("Plaintiffs") individually and on behalf of all others similarly situated, allege as
5 follows:

6 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

7 1. Plaintiffs bring this putative class action against and representative action pursuant
8 to the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*, defendants WGS
9 Group, Inc., and DOES 1 through 10, inclusive (collectively, "Defendants"), on Plaintiffs' own
10 behalf and on behalf of California citizens who are and were employed by Defendants as non-
11 exempt employees throughout California.

12 2. Defendants provide services or goods throughout California.

13 3. Through this action, Plaintiffs allege that Defendants engaged in a systematic
14 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
15 Commission ("IWC") Wage Orders, all of which contribute to Defendants' deliberate unfair
16 competition.

17 4. Plaintiffs are informed and believe, and thereon allege, that Defendants have
18 increased their profits by violating state wage and hour laws by, among other things:

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

27 5. Plaintiffs seek monetary relief against Defendants on behalf of themselves and all
28 others similarly situated in California to recover, among other things, unpaid wages, un-reimbursed

1 business expenses, benefits, interest, attorneys' fees, costs and expenses, and penalties pursuant to
2 Labor Code §§ 201, 201.3, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,
3 1182.12, 1194, 1194.2, 1197, 1198, 2800, 2802, 2698, *et seq.*, and Code of California Civil
4 Procedure § 1021.5.

5 **JURISDICTION AND VENUE**

6 6. This is a class action pursuant to California Code of Civil Procedure § 382. The
7 monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdictional limits of
8 the Superior Court and will be established according to proof at trial.

9 7. This Court has jurisdiction over this action pursuant to the California Constitution,
10 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
11 given by statutes to other courts. The statutes under which this action is brought do not specify any
12 other basis for jurisdiction.

13 8. This Court has jurisdiction over all Defendants because, upon information and
14 belief, they are citizens of California, have sufficient minimum contacts in California, or otherwise
15 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
16 over them by the California courts consistent with traditional notions of fair play and substantial
17 justice.

18 9. Venue is proper in this Court because, upon information and belief, Defendants
19 reside, transact business, or have offices in this county, and the acts and omissions alleged herein
20 took place in this county.

21 **THE PARTIES**

22 10. Plaintiffs are residents of California and worked for Defendants during the relevant
23 time periods as alleged herein.

24 11. Plaintiff LEO HERNANDEZ SR. was employed by Defendants from June 2019
25 through February 2022 as a non-exempt employee in Oakland, California (Alameda County).

26 12. Plaintiff LEO HERNANDEZ JR. was employed by Defendants from November
27 2020 through May 2022 as a non-exempt employee in Greenfield, California (Monterey County).

1 13. Plaintiff CURTIS LUPTON was employed by Defendants from October 2021
2 through May 2022 as a non-exempt employee in Greenfield, California (Monterey County).

3 14. Plaintiff GILBERTO DEDIOS was employed by Defendants from 2021 through
4 2022 as a non-exempt employee in Oakland, California (Alameda County).

5 15. Plaintiff ALEJANDRO GARCIA was employed by Defendants from July 2021
6 through January 2022 as a non-exempt employee in Oakland, California (Alameda County).

7 16. Plaintiff JUSTIN ROBINSON was employed by Defendants from June 2021
8 through November 2021 as a non-exempt employee in Oakland, California (Alameda County).

9 17. Plaintiff JOSE GARCIA MARTINEZ was employed by Defendants from January
10 2021 through May 2022 as a non-exempt employee in Hollister, California (San Benito County).

11 18. Plaintiff ERIC VALADEZ was employed by Defendants from February 2020
12 through April 2020 as a non-exempt employee in Greenfield, California (Monterey County).

13 19. Plaintiff DAVID BERGERON was employed by Defendants from May 2022
14 through November 2022 as a non-exempt employee in Greenfield, California (Monterey County).

15 20. Plaintiff JORGE GONZALEZ was employed by Defendants from 2018 through
16 October 2021 as a non-exempt employee in Greenfield, California (Monterey County).

17 21. Plaintiff JULIAN J OKIWELU was employed by Defendants from approximately
18 July 2021 through October 2021 as a non-exempt employee in Alameda County.

19 22. Plaintiffs are informed and believes, and thereon alleges that at all times hereinafter
20 mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as
21 employers, whose employees were and are engaged throughout this county and the State of
22 California.

23 23. Plaintiffs are unaware of the true names or capacities of the defendants sued herein
24 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend this
25 Complaint and serve such fictitiously named defendants once their names and capacities become
26 known.

1 24. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10 are
2 or were the partners, agents, owners, shareholders, managers, or employees of Defendants at all
3 relevant times.

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

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

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

18 28. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants
19 is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
20 occurrences, and transactions alleged herein.

21 **CLASS ACTION ALLEGATIONS**

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

25 30. All claims alleged herein arise under California law for which Plaintiffs seek relief
26 authorized by California law.

27 ///

28 ///

1 31. Plaintiffs' proposed class consists of and is defined as follows:

2 Class

3 All California citizens currently or formerly employed by Defendants as non-
4 exempt employees in the State of California at any time between September 13,
5 2018 and the date of class certification ("Class").

6 32. Plaintiffs also seek to certify the following subclasses of employees:

7 Waiting Time Subclass

8 All members of the Class who separated their employment with Defendant at any
9 time between September 13, 2019 and the date of class certification ("Waiting Time
10 Subclass").

11 33. Plaintiffs reserve the right to modify or re-define the Class, establish additional
12 subclasses, or modify or re-define any class or subclass definition as appropriate based on
13 investigation, discovery, and specific theories of liability.

14 34. Members of the Class and the Waiting Time Subclass described above will be
15 collectively referred to as "Class Members."

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

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

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

26 (c) Whether Defendants deprived Plaintiff and Class Members of timely meal
27 periods or required Plaintiff and Class Members to work through meal
28 periods without legal compensation.

- 1 (d) Whether Defendants deprived Plaintiff and Class Members of rest breaks or
2 required Plaintiff and Class Members to work through rest breaks.
- 3 (e) Whether Defendants failed to reimburse Plaintiff and Class Members for
4 necessary business-related costs expended for the benefit of Defendants.
- 5 (f) Whether Defendants failed to provide Plaintiff and Class Members accurate
6 itemized wage statements.
- 7 (g) Whether Defendants failed to pay wages timely to Plaintiff and Class
8 Members;
- 9 (h) Whether Defendants failed to timely pay the Waiting Time Subclass all
10 wages due upon termination or within seventy-two (72) hours of
11 resignation.
- 12 (i) Whether Defendants' conduct was willful or reckless.
- 13 (j) Whether Defendants engaged in unfair business practices in violation of
14 Business and Professions Code §§ 17200, *et seq.*

15 36. There is a well-defined community of interest in this litigation and the proposed
16 Class and subclasses are readily ascertainable:

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

22 (b) Typicality: Plaintiffs' claims (or defenses, if any) are typical of the claims
23 (or defenses, if any) of the Class Members because Defendants' failure to comply with the
24 provisions of California's wage and hour laws entitled each Class Member to similar pay, benefits,
25 and other relief. The injuries sustained by Plaintiffs are also typical of the injuries sustained by the
26 Class Members, because they arise out of and are caused by Defendants' common course of
27 conduct as alleged herein.

28

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

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

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

22 GENERAL ALLEGATIONS

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

26 38. Defendants continue to employ non-exempt employees within California.

27 39. Plaintiffs are informed and believe, and thereon allege, that at all times herein
28 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who

1 were knowledgeable about California's wage and hour laws, employment and personnel practices,
2 and the requirements of California law.

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

9 41. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
10 should have known that Plaintiffs and Class Members were entitled to receive all required meal
11 periods or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate
12 of pay when they did not receive a timely, uninterrupted meal period. In violation of the Labor
13 Code and IWC Wage Orders, Plaintiffs and Class Members did not receive all meal periods or
14 payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of pay
15 when they did not receive a timely, uninterrupted meal period.

16 42. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that Plaintiffs and Class Members were entitled to receive all rest breaks or
18 payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of pay
19 when a rest break was late, missed, or interrupted. In violation of the Labor Code and IWC Wage
20 Orders, Plaintiffs and Class Members did not receive all rest breaks or payment of one (1)
21 additional hour of pay at Plaintiffs' and Class Members' regular rate of pay when a rest break was
22 missed, late, or interrupted.

23 43. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
24 should have known that Plaintiff and Class Members were entitled to reimbursement and/or
25 indemnification for all necessary business expenditures or losses as a direct consequence of the
26 discharge of their duties, or of their obedience to the directions of Defendants. In violation of the
27 Labor Code and IWC Wage Orders, Plaintiffs and Class Members incurred necessary business
28 expenses or losses, but were not reimbursed nor indemnified of such expenses or losses that were

1 incurred as a direct consequence of the discharge of their duties, or of their obedience to the
2 directions of Defendants.

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

16 45. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that the Waiting Time Subclass was entitled to timely payment of wages due
18 upon separation of employment. In violation of the Labor Code, the Waiting Time Subclass did
19 not receive payment of all wages within the permissible time periods.

20 46. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
21 should have known they had a duty to compensate Plaintiffs and Class Members, and Defendants
22 had the financial ability to pay such compensation but willfully, knowingly, and intentionally
23 failed to do so in order to increase Defendants' profits.

24 47. Therefore, Plaintiffs bring this lawsuit seeking monetary and injunctive relief
25 against Defendants on Plaintiffs' own behalf and on behalf of all Class Members to recover, among
26 other things, unpaid wages (including minimum wages and overtime wages), unpaid
27 reimbursements of work expenses, unpaid meal period premium payments, unpaid rest period
28 premium payments, interest, attorneys' fees, penalties, costs, and expenses.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

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

4 48. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein.

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

9 50. Plaintiffs and Class Members were employees entitled to the protections of Labor
10 Code §§ 1194 and 1197.

11 51. During the relevant time period, Defendants failed to pay Plaintiffs and Class
12 Members all wages owed when Defendants did not pay minimum wage for all hours worked.

13 52. During the relevant time period, Defendants failed to pay at least minimum wage
14 to Plaintiffs and Class Members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

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

19 54. Pursuant to Labor Code § 1194.2, Plaintiffs and Class Members are entitled to
20 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
21 interest thereon.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PAY OVERTIME**

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

25 55. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
26 though fully set forth herein.

27 56. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful
28 to employ persons without compensating them at a rate of pay either one and one-half (1½) or

1 two (2) times the person's regular rate of pay, depending on the number of hours worked by the
2 person on a daily or weekly basis.

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

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

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

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

21 61. Plaintiffs and Class Members were employees entitled to the protections of
22 California Labor Code §§ 510 and 1194.

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

26 63. During the relevant time period, Defendants failed to pay Plaintiffs and Class
27 Members overtime wages for all overtime hours worked. To the extent these hours qualify for the
28 payment of overtime wages, Plaintiffs and Class Members were not paid proper overtime wages.

1 64. In violation of California law, Defendants knowingly and willfully refused to
2 perform their obligations and compensate Plaintiffs and Class Members for all wages earned and
3 all hours worked.

4 65. Defendants' failure to pay Plaintiffs and Class Members the unpaid balance of
5 overtime compensation, as required by California law, violates the provisions of Labor Code §§
6 510 and 1198, and is therefore unlawful.

7 66. Pursuant to Labor Code § 1194, Plaintiffs and Class Members are entitled to
8 recover their unpaid overtime and double time compensation as well as interest, costs, and
9 attorneys' fees.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PROVIDE MEAL PERIODS**

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

13 67. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
14 though fully set forth herein..

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

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

21 70. Labor Code § 512(a) provides that an employer may not require, cause, or permit
22 an employee to work for a period of more than five (5) hours per day without providing the
23 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the
24 total work period per day of the employee is not more than six (6) hours, the meal period may be
25 waived by mutual consent of both the employer and the employee.

26 71. Labor Code § 512(a) also provides that an employer may not employ an employee
27 for a work period of more than ten (10) hours per day without providing the employee with a
28 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no

1 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
2 employer and the employee only if the first meal period was not waived.

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

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

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

13 75. As a result of Defendants' failure to pay Plaintiffs and Class Members an additional
14 hour of pay for each day a compliant meal period was not provided, Plaintiffs and Class Members
15 suffered and continue to suffer a loss of wages and compensation.

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PERMIT REST BREAKS**

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

19 76. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
20 though fully set forth herein.

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

23 78. Section 12 of the applicable IWC Wage Order states "[e]very employer shall
24 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
25 middle of each work period[.]" and the "[a]uthorized rest period time shall be based on the total
26 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
27 thereof[.]" unless the total daily work time is less than three and one-half (3½) hours.
28

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

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

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

82. As a result of Defendants' failure to pay Plaintiffs and Class Members an additional hour of pay for each day a compliant rest period was not provided, Plaintiffs and Class Members suffered and continue to suffer a loss of wages and compensation.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(Violation of Labor Code §§ 2800, 2802)

83. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

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

85. Labor Code § 2802(a) states that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer . . .”

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

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

88. During the relevant time period, Plaintiffs and Class Members incurred necessary business-related costs that were not fully reimbursed by Defendants, including, but not limited to, gas, mileage, and insurance.

89. In violation of Labor Code §§ 2800 and 2802, Defendants failed to reimburse or indemnify Plaintiffs and Class Members for their expenses due to Defendants' knowing and intentional failure to reimburse necessary business expenditures in connection with Plaintiffs' and Class Members' work and job duties.

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

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

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

91. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

92. Labor Code § 226(a) requires Defendants to provide each employee with an accurate wage statement in writing showing nine pieces of information, including, the following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address

1 of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly rate by the employee.

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

8 94. As a result of Defendants' knowing and intentional failure to comply with Labor
9 Code § 226(a), Plaintiffs and Class Members have suffered injury and damage to their statutorily-
10 protected rights. Specifically, Plaintiffs and Class Members are deemed to suffer an injury
11 pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor Code §
12 226(a). Plaintiffs and Class Members were denied both their legal right to receive, and their
13 protected interest in receiving, accurate itemized wage statements under Labor Code § 226(a). In
14 addition, because Defendants failed to provide the accurate rates of pay on wage statements,
15 Defendants prevented Plaintiffs and Class Members from determining if all hours worked were
16 paid at the appropriate rate and the extent of the underpayment. Plaintiffs had to file this lawsuit
17 in order to analyze the extent of the underpayment, thereby causing Plaintiffs to incur expenses
18 and lost time. Plaintiffs would not have had to engage in these efforts and incur these costs had
19 Defendants provided the accurate hours worked, wages earned, and rates of pay. This has also
20 delayed Plaintiffs' ability to demand and recover the underpayment of wages from Defendants.

21 95. Plaintiffs and Class Members are entitled to recover from Defendants the greater of
22 all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
23 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
24 (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding
25 four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

26 96. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs and
27 Class Members from knowing, understanding, and disputing the wages paid to them and resulted
28 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and

1 intentional failure to comply with California Labor Code § 226(a), Plaintiffs and Class Members
2 have suffered an injury, in the exact amount of damages and/or penalties to be shown according to
3 proof at trial.

4 **SEVENTH CAUSE OF ACTION**

5 **FAILURE TO PAY TIMELY DURING EMPLOYMENT**

6 (Violation of Labor Code §§ 201.3, 204, 210)

7 97. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
8 though fully set forth herein.

9 98. Pursuant to California Labor Code §§ 201.3 and 204, employees must be paid
10 within a certain number of days of the close of the pay period.

11 99. During the relevant time period, Defendants failed to timely pay Plaintiffs and Class
12 Members wages earned during the pay period.

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

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

20 **EIGHTH CAUSE OF ACTION**

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

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

23 102. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
24 though fully set forth herein.

25 103. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
26 the wages earned and unpaid at the time of discharge are due and payable immediately, and that if
27 an employee voluntarily leaves his or her employment, his or her wages shall become due and
28 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-

1 two (72) hours previous notice of an intention to quit, in which case the employee is entitled to his
2 or her wages at the time of quitting.

3 104. During the relevant time period, Defendants willfully failed to pay the Waiting
4 Time Subclass all their earned wages upon termination, either at the time of discharge or within
5 seventy-two (72) hours of their leaving Defendants' employ.

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

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

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

17 NINTH CAUSE OF ACTION

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

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

20 108. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
21 though fully set forth herein.

22 109. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair
23 competition, which includes any "unlawful, unfair or fraudulent business act or practice..."

24 110. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be
25 predicated on a violation of any state or federal law. In the instant case, Defendants' policies and
26 practices violated state law, causing Plaintiffs and Class Members to suffer and continue to suffer
27 injuries-in-fact.
28

1 111. Defendants' policies and practices violated state law in at least the following
2 respects:

- 3 (a) Failing to pay all wages earned (including minimum wage and overtime
4 wages) to Plaintiffs and Class Members at the proper rate and in a timely
5 manner in violation of Labor Code §§ 201.3, 204, 510, 1194, 1194.2, 1197,
6 1198.
- 7 (b) Failing to provide compliant meal periods without paying Plaintiffs and
8 Class Members premium wages for every day said meal periods were not
9 provided in violation of Labor Code §§ 226.7 and 512.
- 10 (c) Failing to authorize or permit compliant rest breaks without paying
11 Plaintiffs and Class Members premium wages for every day said rest breaks
12 were not authorized or permitted in violation of Labor Code § 226.7.
- 13 (d) Failing to reimburse Plaintiffs and Class Members for necessary business-
14 related expenses in violation of Labor Code §§ 2800 and 2802.
- 15 (e) Failing to provide Plaintiffs and Class Members with accurate itemized
16 wage statements in violation of Labor Code § 226.
- 17 (f) Failing to timely pay all earned wages to the members of the Waiting Time
18 Subclass upon separation of employment in violation of Labor Code §§ 201,
19 202, and 203.

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

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

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

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

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

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

16 **TENTH CAUSE OF ACTION**

17 **ENFORCEMENT OF LABOR CODE §§ 2698 *ET SEQ.* ("PAGA")**

18 118. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs as
19 though fully set forth herein.

20 119. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
21 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
22 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for
23 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
24 an aggrieved employee on behalf of himself or herself and other current or former employees
25 pursuant to the procedures specified in Labor Code § 2699.3.

26 120. For all provisions of the Labor Code except those for which a civil penalty is
27 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
28 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two

1 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
2 period in which Defendants violated these provisions of the Labor Code.

3 121. Defendants' conduct violates numerous Wage Order and Labor Code sections,
4 including, but not limited to, the following:

- 5 a. violation of Labor Code §§ 201, 201.3, 202, 203, 204, 210, 510, 1182.12,
6 1194, 1197, and 1198 for failure to timely pay all earned wages (including
7 minimum wage and overtime wages) owed to Plaintiff and other aggrieved
8 employees during employment and upon separation of employment as
9 herein alleged;
- 10 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
11 periods to Plaintiff and other aggrieved employees and failure to pay
12 premium wages for missed meal periods as herein alleged;
- 13 c. violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff
14 and other aggrieved employees and failure to pay premium wages for
15 missed rest periods as herein alleged;
- 16 d. Violation of Labor Code §§ 2800 and 2802 for failure to reimburse
17 Plaintiff and other aggrieved employees for necessary business-related
18 expenses;
- 19 e. violation of Labor Code § 226 for failure to provide accurate itemized
20 wage statements to Plaintiff and other aggrieved employees as herein
21 alleged;
- 22 f. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
23 accurate and complete records showing, among other things, the hours
24 worked daily by and the wages paid to aggrieved employees.

25 1. Plaintiffs are "aggrieved employees" because they were employed by the alleged
26 violator and had one or more of the violations committed against him, and therefore is properly
27 suited to represent the interests of all other aggrieved employees.

2. Plaintiffs have exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and are therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

3. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

4. For bringing this action, Plaintiffs is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

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

1. For certification under California Code of Civil Procedure § 382 of the proposed Class and any other appropriate subclass;

2. For appointment of Plaintiffs as class representatives;

3. For appointment of Gaines & Gaines, APLC and Aegis Law Firm, PC, as class counsel for all purposes;

4. For compensatory damages in an amount according to proof at trial;

5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, unreimbursed expenses, benefits, and penalties;

6. For economic and/or special damages in an amount according to proof at trial;

7. For liquidated damages pursuant to Labor Code § 1194.2;

8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;

10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair,

1 or fraudulent and, therefore, constituting unfair competition under Business and Professions Code
2 §§ 17200, *et seq.*;

3 12. For pre-judgment interest;

4 13. For civil penalties;

5 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
6 law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§ 226(e)
7 1194, and 2698 *et seq.*; and

8 15. For such other relief as the Court deems just and proper.

9
10 Dated: January 23, 2024

Respectfully submitted,

11 **GAINES & GAINES**
12 **A Professional Law Corporation**

13 By: _____

14 DANIEL F. GAINES

15 Attorneys for Plaintiffs Leo Hernandez Sr., Leo
16 Hernandez Jr., Curtis Lupton, Gilberto Dedios,
Alejandro Garcia, Justin Robinson, Jose Garcia
Martinez, Eric Valadez, David Bergeron, and
Jorge Gonzalez

17 Dated: January 23, 2024

18 **AEGIS LAW FIRM, PC**

19 By: _____

20 JOSEPH M. SZILAGYI

21 JESSICA L. CAMPBELL

22 Attorneys for Plaintiff Julian J Okiwelu
23
24
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EXHIBIT 2

Joseph Szilagyi

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Friday, February 9, 2024 10:34 AM
To: jenciso@aegislawfirm.com
Subject: Thank you for your Proposed Settlement Submission

02/09/2024 10:33:57 AM

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

Item submitted: Proposed Settlement

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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