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Attorneys for Plaintiff ERIK C. MCLAREN
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF STANISLAUS

ERIK C. MCLAREN, an individual, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

TOTAL PCS SOLUTIONS, INC., a California
corporation; and DOES 1 through 20, inclusive,

Defendant.

Case No. CV-22-004069

Assigned for All Purposes To:
Honorable Sonny S. Sandhu
Department: 24

**DECLARATION OF ENOCH J. KIM IN
SUPPORT OF MOTION FOR
APPROVAL OF PAGA SETTLEMENT
AGREEMENT**

Hearing Date: June 6, 2025
Time: 8:30 a.m.
Department: 24

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1. I am an attorney licensed and admitted to practice before all courts of the State of California and the United States District Court for the Central, Southern, Eastern, and Northern Districts of California.

3. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true. I submit this Declaration in support of Plaintiff's Motion for Approval of the Parties' PAGA Settlement Agreement under California Labor Code 2698 *et seq.* The Parties' PAGA Settlement Agreement is attached hereto as **Exhibit 1**.

4. On September 9, 2022, Plaintiff Eric C. McLaren filed a claim online with the California Labor & Workforce Development Agency (LWDA Case No. LWDA-CM-906881-22) (the “LWDA”) pursuant to Labor Code § 2699.3(a)(1) and gave notice to Defendant (“PAGA Notice”). The PAGA Notice is attached hereto as **Exhibit 2**. The PAGA Notice sought civil penalties and alleged claims against Defendant for failing to pay minimum wages, failing to pay wages and overtime, failing to provide meal and rest breaks, unlawfully collecting or receiving wages in violation of Labor Code § 221, failing to issue accurate wage statements, failing to issue semimonthly payments in violation of Labor Code § 204, failing to keep records in accordance with Labor Code §1174, failing to pay waiting time penalties, failing to provide paid sick days, failing to reimburse business expenses Labor Code § 2802, and requiring unlawful and unenforceable releases from Aggrieved Employees under Labor Code §§ 206.5, 432.5. The LWDA did not respond to the PAGA Notice and did not notify Plaintiff that it intended to

1 investigate Plaintiff's allegations.

2 5. Plaintiff simultaneously filed a Class Action Complaint against Defendant in Stanislaus
3 Superior Court on September 9, 2022 asserting the following causes of action: (1) Failure to Pay
4 Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal
5 Period Liability Labor Code § 226.7; (4) Rest-Break Liability Labor Code § 226.7; (5) Violation
6 of Labor Code § 226; (6) Violation of Labor Code § 204; (7) Violation of Labor Code § 203; (8)
7 Violation of Labor Code §§ 432.5, 206.5; (9) Violation of Labor Code § 2802; and (10) Violation
8 of Business & Professions Code § 17200 *et seq.* ("Action"). On November 14, 2022, 65 days after
9 Plaintiff's submission of the PAGA Notice, Plaintiff amended the complaint to allege an additional
10 cause of action for civil penalties under PAGA ("Operative Complaint").

11 6. Before filing the lawsuit, PAGA Counsel investigated and researched the facts and
12 circumstances underlying the pertinent issues and the law applicable thereto. This required
13 thorough discussions and interviews between PAGA Counsel and Plaintiff, as well as preliminary
14 research into the various legal issues involved in the case. After conducting the initial investigation
15 and reviewing the alleged arbitration agreement signed by Plaintiff, PAGA Counsel determined
16 that Plaintiff's claims were well-suited for representative action adjudication owing to what
17 appeared to be a common course of conduct affecting a similarly situated group of employees.

18 7. After initiating the Action, the Parties met and conferred about the claims and issues in
19 this case, including the existence of an arbitration agreement between the Parties, and agreed to
20 explore resolution of this case through mediation with a highly respected mediator. Prior to
21 mediation, Plaintiff conducted comprehensive informal discovery and Defendant provided data,
22 numbers, and documents, including an Aggrieved Employee List (by employee ID number), an
23 employee handbook, and a 25% sampling of Aggrieved Employees' timekeeping and payroll data.
24 Defendant also provided information relating to the number of Aggrieved Employees and pay
25 periods.

26 8. The information and data exchanged by Plaintiff and Defendant prior to and during
27 mediation and settlement negotiations were sufficient to reliably assess the merits of the Parties'
28 respective positions, to compromise the issues on a fair and equitable basis, and to devise a formula

1 for distribution of civil penalties among the Aggrieved Employees that took into consideration the
2 strength of the PAGA claims.

3 **SETTLEMENT NEGOTIATIONS AND TERMS**

4 9. On September 12, 2024, the Parties attended an all-day mediation with Judge Thierry
5 Patrick Colaw (Ret.). During mediation, the Parties exchanged further information and discussed
6 all aspects of the case, including Plaintiff's claims, Defendant's defenses, procedural challenges
7 in the case, and the prospects of further litigation. The Parties recognized that the issues presented
8 in the Action are likely only to be resolved with extensive and costly pretrial and trial proceedings
9 and that further litigation would lead to inconvenience, distraction, disruption, delay, and expense
10 disproportionate to the potential benefits of litigation. The Parties took into account the risk and
11 uncertainty of the outcome inherent in representative actions such as this one.

12 10. With the assistance of a highly respected wage and hour mediator, the Parties agreed to
13 the general terms for settling this Action and finalized the long-form PAGA Settlement
14 Agreement. Plaintiff also provided a general release and waiver of rights under California Civil
15 Code Section 1542 to Defendant in a separate settlement agreement.

16 11. The Parties believe and agree that the PAGA Settlement provides for a fair, adequate,
17 and reasonable resolution of the Action and have arrived at the Settlement after extensive, arm's
18 length negotiations, considering all relevant factors, present and potential. PAGA Counsel believes
19 that the Settlement confers real benefits upon the State and Aggrieved Employees and that an
20 independent review of the Settlement by the Court in the approval process will confirm this
21 conclusion.

22 12. For purposes of the Settlement, "Aggrieved Employees" are defined as all current and
23 former non-exempt employees of Defendant in California who worked during the PAGA Period,
24 which is the period from September 9, 2021, through September 12, 2024. (Exhibit 1, ¶ 3.2.2.)
25 Based on its records, Defendant represents that there are approximately 700 Aggrieved Employees
26 who collectively worked a total of approximately 12,000 PAGA Pay Periods. (Exhibit 1, ¶ 8.). In
27 the event that the total PAGA Pay Periods increases by more than 10% such that the total PAGA
28 Pay Periods is more than 13,200, either the Gross Settlement Amount will increase proportionately

1 according to the percentage increase in PAGA Pay Periods above 10% (calculated by dividing the
2 Gross Settlement Amount by 13,200) or Defendant may elect to change the last day of the PAGA
3 Period to the date on which the total PAGA Period Pay Periods is 13,200 or less. (Exhibit 1, ¶ 4.1.)

4 13. The Settlement Agreement requires Defendant to pay the total sum of \$325,000.00
5 (“Gross Settlement Amount”). The Gross Settlement Amount will be allocated as follows, pending
6 Court approval: (1) Attorneys’ fees in the amount of \$108,333.00 (“PAGA Counsel Fees
7 Payment”); (2) litigation costs in the amount of \$17,429.12 (“PAGA Counsel Litigation Expenses
8 Payment”); and (3) Administration costs of no more than \$7,000.00 to be paid to the Settlement
9 Administrator, Apex Class Action LLC (“Apex”), for sending notices and for calculating
10 settlement shares and preparing all checks and mailings (“Administration Expenses Payment”).
11 Plaintiff will receive a separate payment of \$10,000.00 from Defendant in exchange for providing
12 a general release of claims and waiver of rights under California Civil Code Section 1542 to
13 Defendant in a separate settlement agreement signed by the Parties. The remainder of the Gross
14 Settlement Amount after deducting the above costs (“Net Settlement Amount”) is approximately
15 \$182,187.88 and shall be designated as PAGA Penalties to be allocated between the LWDA and
16 the Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% (\$136,640.91) being
17 paid to the LWDA (“LWDA PAGA Payment”) and 25% (\$45,546.97) being paid to the Aggrieved
18 Employees on a pro-rata basis (“Individual PAGA Payment”). The Individual PAGA Payments
19 will be calculated based on the number of PAGA Pay Periods each Aggrieved Employee worked
20 during the PAGA Period to ensure an equitable distribution among Aggrieved Employees.

21 14. From PAGA Counsel’s review of the facts, strengths, and weaknesses of the case, the
22 risks and delays posed by further litigation, and PAGA Counsel’s own prior litigation experience,
23 PAGA Counsel believes that the recovery for each Aggrieved Employee is fair and reasonable
24 taking into consideration the amounts received in other PAGA actions, the risks inherent in
25 litigation of this genre, and the reasonable tailoring of each Aggrieved Employee’s claim to the
26 settlement award he or she will receive. Further, and based on the settlement negotiations, which
27 were extensive and conducted in good faith and at arm’s length between attorneys with substantial
28 experience litigating PAGA actions, the Settlement Agreement was the product of a non-collusive

1 settlement process in which the Parties were forced to make significant compromises in the interest
2 of reaching a full and complete settlement of the lawsuit.

3 **THE STRENGTH OF CASE IN LIGHT OF THE SETTLEMENT AMOUNT**

4 15. Plaintiff alleges that Defendant violated various provisions of California law and seeks
5 civil penalties for the foregoing violations pursuant to Labor Code § 2699 *et seq.* Specifically,
6 Plaintiff alleged that Defendant:

- 7 • Failed to pay Aggrieved Employees minimum wages and overtime for “off-the-clock”
8 work, including by requiring Aggrieved Employees to work prior to their scheduled
9 shift hours and through their meal periods to ensure all work tasks were timely
10 completed, and requiring Aggrieved Employees to perform transition tasks after
11 clocking out for their shifts.
- 12 • Failed to provide Aggrieved Employees with compliant meal periods because their
13 meal periods, when provided, were frequently interrupted by customers and other job
14 requirements and were provided after the fifth hour of their shift. Moreover, in several
15 instances, Defendant failed to provide Aggrieved Employees with a meal period when
16 they worked shifts between 5 to 6 hours.
- 17 • Failed to provide Aggrieved Employees with compliant rest periods as they frequently
18 received interrupted, shortened, or no rest periods at all.
- 19 • Failed to reimburse Aggrieved Employees for business expenses, including use of their
20 cell phones, which was required by Defendant to input time entries in the ADP
21 timekeeping application and communicate with co-workers and supervisors using an
22 application. Aggrieved Employees were also required to purchase and maintain
23 company uniforms without reimbursement.
- 24 • Failed to provide accurate wage statements, including the failure to include all hours
25 worked by Aggrieved Employees.
- 26 • Failed to keep records showing payroll data and the hours worked daily by the
27 Aggrieved Employees.
- 28 • Required Aggrieved Employees to agree to unlawful and unenforceable releases to

representative claims under Labor Code § 2699 *et seq.*

16. Defendant denied and continues to deny all of the claims made by Plaintiff in this Action and contends that they acted at all relevant times in conformance with the law. Defendant contends that Plaintiff and Aggrieved Employees were paid for all hours worked, that Defendant prohibited Plaintiff and Aggrieved Employees from working beyond their scheduled shifts, and that any “off-the-clock” work was performed without Defendant’s knowledge and de minimis; that Plaintiff and Aggrieved Employees were provided with compliant meal periods and rest periods and that any deviations were at the voluntary election of Plaintiff and/or Aggrieved Employees and not at the request of Defendant or due to work requirements; that Defendant paid all wages due on a timely basis and using Labor Code compliant instruments; that Defendant’s wage statements complied with the law; that Defendant maintained records of payroll data and hours worked daily by Plaintiff and the Aggrieved Employees; and that neither Plaintiff nor any Aggrieved Employees incurred reasonable business-related expenses for which they were not reimbursed. As a result, PAGA Counsel had to appropriately discount the amount recoverable from Defendant in a settlement.

PAGA Penalties

17. The Private Attorneys General Act, Labor Code § 2699 *et seq.*, allows Plaintiff to obtain civil penalties on behalf of himself and other aggrieved employees for Defendant’s violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i), seventy-five percent (75%) of the penalties recovered must be allocated to the LWDA, with the remaining twenty-five percent (25%) allocated to the affected employees. However, under *Amaral v. Cintas*, 163 Cal. App. 4th 1157, 1207-09 (2008), the Court held that a lower penalty amount of \$100 per violation applies in the absence of a determination that a violation actually occurred.

18. Plaintiff estimated that the maximum potential exposure on the PAGA claim is

1 \$1,200,000.00, calculated by multiplying the total number of PAGA Pay Periods (12,000) by \$100
2 per violation. Plaintiff's calculation of the total potential exposure on the PAGA claim was based
3 on one PAGA penalty per PAGA Pay Period (i.e., Plaintiff did not stack the PAGA penalties in
4 his damages calculation).

5 19. Case law supports the notion that it is inappropriate to "stack" penalties for multiple
6 violations, particularly when those violations all stem from the same alleged "injury" *Aguirre v.*
7 *Genesis Logistics*, 2015 U.S. Dist. LEXIS 78748 (citing *Villacres v. ABM Indus., Inc.*, 189
8 Cal.App.4th 562, 577 (2010)). ("One injury gives rise to only one claim for relief...The violation
9 of one primary right constitutes a single cause of action."; *Crowley v. Katleman*, 8 Cal. 4th 666,
10 681-82) (1994); *Li v. A Perfect Day Franchise, Inc.*, 2012 WL 2236752, *17 (N.D. Cal.2012)
11 ("There is no authority that "would permit double recovery of essentially the same penalties.")

12 20. PAGA penalties are not mandatory but permissive. Labor Code § 2699(e)(2) states that
13 "a court may award a lesser amount than the maximum civil penalty amount specified by this part
14 if, based on the facts and circumstances of the particular case, to do otherwise would result in an
15 award that is unjust, arbitrary and oppressive, or confiscatory." (See *Thurman v. Bayshore* (2012)
16 203 Cal. App. 4th 1112 (substantially reducing PAGA penalties by 30% under this provision)
17 (emphasis added); see also *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018)
18 (affirming penalty reduction of 90% for practice that resulted in meal periods occasionally starting
19 minutes after the fifth hour of work); *Sanchez v. McDonald's Corp.* (2017), LASC Case No. No.
20 BC 499888 (98% reduction from \$41 million to \$775,000); *Ghrdilyan v. RJ Financial* (2012),
21 LASC Case No. BC430633 (94% reduction from \$5.4 million to \$325,000); *Fleming v. Covidien*,
22 Inc. (2011), USDC Case No. ED CV 10-01487-RGK (OPx) (87% reduction from \$2.8 million to
23 \$375,000).). In departing from the \$100/pay period calculation to arrive at the \$325,000.00 Gross
24 Settlement Amount in this case, Plaintiff considered various reasons why the Court may reduce
25 any eventual recovery at its discretion and considered that PAGA penalties are not mandatory but
26 permissive.

27 21. The Gross Settlement Amount of \$325,000.00 is approximately 27.08% of the
28 maximum potential exposure of \$1,200,000.00. The Gross Settlement Amount, therefore,

1 represents a strong value at approximately \$27.08 per PAGA Pay Period. From PAGA Counsel's
2 review of the facts, strengths, and weaknesses of the case and the risks and delays posed by further
3 litigation, PAGA Counsel believes that the recovery for the State and Aggrieved Employee is fair
4 and reasonable.

5 **REQUEST FOR ATTORNEYS' FEES AND COSTS**

6 22. PAGA Counsel is requesting a PAGA Counsel Fees Payment in the amount of
7 **\$108,333.00** for attorneys' fees and a PAGA Counsel Litigation Expenses Payment of \$17,429.12
8 for litigation costs incurred. D.Law, Inc.'s cost log for this matter is attached hereto as Exhibit 3.
9 The Parties, in their Settlement Agreement, agreed to an amount of up to \$15,000.00 for PAGA
10 Counsel Litigation Expenses Payment. However, at the time the Parties settled, PAGA Counsel
11 underestimated the expenses incurred. PAGA Counsel is now seeking and requesting a PAGA
12 Counsel Litigation Expenses Payment of \$17,429.12 in reimbursement for actual litigation costs,
13 which Defendant does not oppose. The lion's share of these costs were incurred in connection with
14 mediation, and the others listed were all reasonably incurred and necessary to the prosecution of
15 this Action.

16 23. This request is fair, reasonable, and adequate to compensate PAGA Counsel for the
17 substantial work they have put into this case and the risk they assumed by taking it in the first
18 place. The attorneys' fees award is intended to reimburse PAGA Counsel for all uncompensated
19 work that they have already done and for all the work they will continue to do in carrying out and
20 overseeing the notification to the Aggrieved Employees, communicating with Aggrieved
21 Employees regarding their claims, and assisting in the administration of the Settlement if it is
22 approved.

23 24. Throughout this case, PAGA Counsel have borne, and continue to bear, the entire risk
24 and cost of litigation associated with this Action on a purely contingency basis. As a result, PAGA
25 Counsel have yet to receive any compensation for the amount of time and money invested in the
26 case to date.

27 25. Contingent-fee cases present the very real risk of working hundreds if not thousands of
28 hours that may never be entirely compensated. Moreover, while the case is being litigated, counsel

1 must pay overhead (salaries, rent, etc.), provide for their own expenses, and in most cases pay the
2 out-of-pocket expenses incurred on the plaintiff's behalf. And the prospect of a court-awarded fee
3 does not greatly reduce the risk posed by these cases. In many cases, the prospect is nothing more
4 than a potential that never materializes. First, you must win the case to get a court-awarded fee;
5 even those cases that seem strongest at the onset can be lost and sometimes are lost. Second, there
6 are always pitfalls and unforeseen obstacles that arise along the way, such as settlement offers that
7 the client may accept without ensuring that we receive a reasonable fee or changes in the law that
8 substantially affect the merits of the case, or other uncertainties involving the client. Finally, there
9 is the great risk inherent in advancing tens if not hundreds of thousands of dollars in out-of-pocket
10 expenses. If that money were to be invested in some sort of financial investment, one would expect
11 a reasonable rate of return on that investment. Here, however, the best we can hope to recover is
12 our money, and then only if we are substantially successful; if we are not, all or part of this
13 "investment" can be lost.

14 26. PAGA Counsel is well acquainted with the contingent fee market throughout California,
15 particularly as it pertains to PAGA and class action litigation. PAGA Counsel has negotiated
16 numerous contingency-fee agreements with plaintiffs, both as individuals and as representatives
17 in class-action and PAGA suits. Many of those agreements required that counsel receive a fee
18 under certain scenarios that exceed thirty-five percent of the recovery. PAGA Counsel's recent
19 attorneys' fees awards in similar wage-and-hour class and PAGA actions have been 35% of the
20 recovery.

21 27. PAGA counsel in contingency-fee cases have received attorneys' fees up to or even
22 greater than forty percent of the gross settlement amount. See *Crandall v. U-Haul* (Los Angeles
23 County Super. Ct., Case No. BC178775), the Honorable Steven Czuleger awarded a 40% attorney
24 fee request in an overtime-exemption class action; in *Bushnell v. Cremer, Inc.* (Orange County
25 Super. Ct., Case No. 657778), the Honorable Donald E. Smallwood awarded attorneys' fees in the
26 amount of 38%; in *Abzug v. Kerkorian* CA000981 (Los Angeles County Super. Ct., November
27 1990), the Honorable R. William Schoettler awarded a 45% fee; in *Haitz v. Meyer, et al.*, Alameda
28 County Super. Court, 8-20-1990 No. 572968-3, the court awarded a 40% fee; in *Elliott v.*

Clothestime (Orange County Super. Ct., Case No. 01-CC00333) the Honorable Jonathan Cannon awarded a 40% fee in a wage-and-hour class action which had not yet proceeded to the class certification stage; in both Rippee v. Boston Market Corporation, Case No.: 05 CV 1359 BTM (JMA) and Barile v. Boston Market Corporation, Case No.: 05 CV 1360 BTM (JMA), the Honorable Judge Barry T. Moskowitz awarded a 40% fee to plaintiffs' counsel in wage-and-hour class actions that had not proceeded to the class-certification stage.

28. Moreover, PAGA Counsel spent substantial time on this matter. Aside from drafting the initial complaint, PAGA Counsel conducted informal discovery, reviewed and analyzed time and pay records, employment handbooks, Plaintiff's personnel file, relevant policies, and other documentation, researched the applicable law and potential defenses, constructed damage models based on interpretations of California law, reviewed information provided by Defendant at the mediation, engaged in meet and confer efforts with Defendant, drafted and revised the settlement agreement, and drafted this Motion. PAGA Counsel conservatively estimates that it invested at least 134.90 hours of attorney time in this matter. I have invested at least **21.5** hours for a total of **\$16,125.00** in attorneys' fees (\$750/hr x 12 hours = **\$16,125.00**). Attorney Alvin B. Lindsay invested approximately **27.0** hours for a total of **\$21,600.00** (\$800/hr x 27.0 hours = \$21,600.00). Attorney Melissa Rodriguez invested approximately **19.20** hours for a total of **\$7,680.00** in attorneys' fees (\$400/hr x 19.20 hours = \$7,680.00). Attorney Tania Fonseca invested approximately **53.10** hours for a total of **\$30,798.00** in attorneys' fees (\$580/hr x 53.10 hours = \$30,798.00). Attorney Rose Sorial invested approximately **1.1** hours for a total of **\$605.00** in attorneys' fees (\$550/hr x 1.1 hours = \$605.00). Attorney Jean Power invested approximately **1** hour for a total of **\$550.00** in attorneys' fees (\$550/hr x 1 hour = \$550.00). Attorney David Yeremian invested at least **12.0** hours for a total of **\$10,200.00** (\$850/hr x 12.0 hours = \$10,200.00). PAGA Counsel have collectively incurred at least 134.90 hours and **\$87,458.00** in fees. Thus, consideration of the lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested fee award.

29. The below table summarizes PAGA Counsel's total hours, billables, and costs:

<u>Attorney/Firm</u>	Total	Total Billables	Costs
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	Hours		
Enoch Kim (D.LAW)	21.5	\$16,125.00	\$17,429.12
David Yeremian (DYA)	12.0	\$10,200.00	
Alvin B. Lindsay (D.LAW)	27.0	\$21,600.00	
Tania Fonseca (D.LAW)	53.10	\$30,798.00	
Rose Sorial (D.LAW)	1.1	\$605.00	
Melissa Rodriguez (D.LAW)	19.2	\$7,680.00	s
Jean Power (D.LAW)	1.0	\$550.00	
Total:	134.90	\$80,333.00	\$17,429.12

See Declaration of David Yeremian in Support of Plaintiff's Motion for Approval of PAGA Settlement ("Yeremian Decl., ¶ 12).

30. The contingent nature and complexity of this case as well as the significant benefit that the Settlement confers upon the State and Aggrieved Employees strongly support the application of a modest multiplier of approximately 1.24 to the lodestar amount. As such, PAGA Counsel respectfully request the Court grant their request for \$108,333.00 in fees.

EXPERIENCE AND VIEWS OF COUNSEL

31. D.Law (formerly known as Davtyan Law Firm) prosecutes wage and hour cases, including class actions and PAGA actions on behalf of employees and others who have had their rights violated. D.Law, either on its own or with co-counsel, is currently serving as plaintiffs' counsel of record in numerous wage and hour and employment class action and PAGA action cases pending in both state and federal court.

32. D.Law is well-qualified and has ample experience, knowledge, and resources to act as counsel and represent Plaintiff and the allegedly Aggrieved Employees in this action. Our practice is exclusively focused on employment matters and representing plaintiffs in wage and hour actions with the same or similar causes of actions brought forth in the matter pending before this Court.

33. D.Law has litigated and successfully resolved many wage and hour class action cases involving failure to pay wages and derivative Labor Code claims and penalties. See e.g. De La

1 Rosa v. The Coca Cola Company et al. (Superior Court of California in Napa, 17CV000787),
2 Harvey v. Bed Bath & Beyond of California Limited Liability Company (Superior Court of
3 California in Alameda, RG17885153), Paredes v. Bottling Group LLC et. al. (Superior Court of
4 California in Kern), Ramirez v. Harris Ranch Beef Company (Superior Court of California in
5 Fresno, 16CECG04103), Gates v. Gate Gourmet, Inc. et. al. (Southern District of California, 16-
6 cv-01084-L-AGS), Hargrave v. Antelope Valley Hospital (Superior Court of California in Los
7 Angeles, BC663252), Ramirez v. Milton Roy et. al. (Superior Court of California in Los Angeles,
8 BC 632 276), Hawkins v. AvalonBay Communities (Superior Court of California in Santa Clara,
9 17CV316492), Jones Tharpe et al. v. Sprint Corporation et al. (Superior Court of California in Los
10 Angeles, BC644645), Ortega et al. v. Nestle Waters North America, Inc. et al. (Superior Court of
11 California in Los Angeles, BC623610), Schultz v. Jimbo's Natural Family, Inc. (Superior Court
12 of California in San Diego, 37-2017-00022348-CUE-OE-CTL), Ambrose v. Victor Valley Global
13 et al. (Superior Court of California in San Bernardino, CIVDS1709289), Puerta-Gildardo v. Real
14 Time Staffing Services LLC et. al. (Superior Court of California in Los Angeles, BC565445),
15 Vargo v. Pregis Innovative Packaging LLC (Superior Court of California in Tulare, 270836),
16 Conlin v. Aegis Senior Communities LLC (Northern District of California, 17-cv-05534-LHK),
17 Galarza v. Kloeckner Metals Corporation (Central District of California, 2:17-cv-04910-FMO),
18 Estes v. L3 Technologies, Inc. et al. (Southern District of California, 3:17-cv-02356-H-JMA),
19 Rowser v. Trunk Club, Inc. (Central District of California, 2:17-cv-05064-DSF-RAO), Leach v.
20 The Claremont Colleges, Inc. (Superior Court of California in Los Angeles, BC686451), Vaesau
21 v. PCT Enterprises, Inc. dba Precision Cabinets (Superior Court of California, County of Contra
22 Costa MSC18-02404), Terry v. TF Louderback, Inc. dba Bay Area Beverage Company (Superior
23 Court of the State of California, County of Contra Costa, MSC18-00859), Roach v. Westcare
24 California, Inc. (Superior Court of California in Kern County, BCV-17-102367-SDS), Patton v.
25 Church & Dwight Co., Inc. (Central District of California, EDCV 18-903-MWF (KKx)), Juarez
26 v. ISL Employees, Inc. (Superior Court of California in Madera, MCV074787), Ferraro v. USC
27 Verdugo Hill s Hospital, et al. (Superior Court of California in Los Angeles, 18STCV09463), Ford
28 v. Account Control Technology, Inc., et al. (Superior Court of California in Los Angeles,

1 19STCV09369), Ornelas v. iStorage, et al. (Superior Court of California in San Francisco, CGC-
2 18-571421), Martinez v. Ronpak, Inc. (Superior Court of California in Riverside, RIC1901307),
3 Barrera et al. v. Exclusive Wireless, Inc. (Superior Court of California in Stanislaus, 9000687),
4 Barajas v. Mancha Development Company LLC (Superior Court of California in Orange County,
5 30-2018-00974707-CU-OE-CXC), Prado v. IMAX Corporation dba IMAC Worldwide Home
6 (Superior Court of California in San Bernardino, CIVDS1820265), Rodriguez v. ND Industries,
7 Inc. (Superior Court of California in Los Angeles, 19STCV38096), Singletary v. Motel 6
8 Operating LP, et al. (Southern District of California, 3:20-cv-0270-LAB-AHG), Quizon v. CF
9 Watsonville East, LLC, et al. (Superior Court of California in Santa Cruz, 20CV01868),
10 Stephenson v. Bakersfield Dodge, Inc. (Superior Court of California in Kern, BCV-20-102693),
11 Bacerra v. Hugo Boss Retail, Inc. (Superior Court of California in San Diego, 37-2021-00002933-
12 CU-OE-CTL), Walker v. Ariat International, Inc. (Superior Court of California in Alameda,
13 HG19026439), Orr v. Petvet Care Centers (California) Inc. (Superior Court of California in Santa
14 Clara, 19CV354063), Jimenez v. OEC Distribution Services, Inc. (Superior Court of California in
15 San Bernardino, CIVDS1915743), Viridi v. Absolute Security International (Superior Court of
16 California in San Bernardino, CIVDS 1909589), Raj v. First Transit, Inc (Superior Court of
17 California in Sacramento, 34-2021-00295895-CU-OE-GDS), Marchbanks v. Torrid
18 Administration, Inc. (Superior Court of California in San Diego, 37-2020-00008179-CU-OE-NC),
19 among others.

20 34. I am Senior Counsel at D.Law, where I manage the class action and PAGA settlement
21 department. I was admitted to the California Bar in December 2008. I received my J.D. from
22 Pepperdine University School of Law and B.S. from University of Southern California. Since
23 graduating from law school, I have dedicated virtually my entire career on the practice of
24 employment law. I have practiced employment law from the plaintiff's side, defense side, and
25 from an in-house position. I have significant experience specifically working on wage and hour
26 class actions from the plaintiff's side as well as the defense side, with the majority of my
27 experience coming from the plaintiff's side.

28 35. Attorney Alvin B. Lindsay received his Juris Doctorate from Whittier Law School.

1 Upon graduating from law school, he has exclusively focused his practice on representing
2 employees including in wage-and-hour class actions. During his career, he has represented
3 employees in over 100 wage-and-hour class action lawsuits as lead or co-lead counsel (including
4 in the Central, Southern, Eastern, and Northern Districts of California), and he has obtained six
5 and seven-figure settlements against a range of defendants, including Fortune 500 companies.
6 These cases have involved the gamut of wage-and-hour claims, including claims for failure to pay
7 minimum wages, unpaid wages and overtime, inaccurate pay statements, and failure to pay timely
8 wages - similar to claims at issue in the present matter.

9 36. The collective experience of the D.Law attorneys in litigating employment wage and
10 hour matters has been integral in identifying legal issues, evaluating the strengths and weaknesses
11 of a case, and generally negotiating fair and reasonable class and representative action settlements.
12 This experience is helpful in assessing the reasonableness of settlements such as the one at issue
13 here.

14 37. In sum, PAGA Counsel are experienced in employment class action and PAGA
15 litigation and are adequate to represent the Aggrieved Employees in the instant action.

16 **SETTLEMENT ADMINISTRATION AND NOTICE**

17 38. The Parties agreed to use Apex Class Action LLC (“Apex”) as the third-party settlement
18 administrator in this case. Apex will be responsible for updating Aggrieved Employees’ addresses,
19 mailing a notice of Settlement, and calculating and distributing the settlement checks, among other
20 duties. Apex capped its fees at \$7,000.00 for administering the Settlement, and based on PAGA
21 Counsel’s experience in other class and PAGA settlements, Apex’s costs for administering this
22 Settlement are fair and reasonable.

23 39. The Settlement Administrator will mail the Individual PAGA Payment along with a
24 letter providing notice of the Settlement and release of claims to Aggrieved Employees (“Notice
25 of PAGA Settlement and Release of Claims”). The Notice of PAGA Settlement and Release of
26 Claims includes, among other things, an explanation of PAGA, a description of the allegations in
27 the Action and the scope of released claims, and a statement of the Gross Settlement Amount and
28 payment allocations from the Gross Settlement Amount. The Notice of PAGA Settlement and

1 Release of Claims, which will also be translated into Spanish, is attached hereto as **Exhibit 4**.

2 40. On April 7, 2025, my office submitted the proposed Settlement and the Motion to the
3 LWDA. Attached hereto as **Exhibit 5** is a true and correct copy of the confirmatory email my
4 office received from the LWDA after the submission of the Settlement Agreement.

5 41. The Parties are not aware of any class or other representative action in any other court
6 that asserts claims similar to those alleged in the action being settled.

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

9 Executed this 7th day of April, 2025 at Glendale, California.

10 

11 Enoch J. Kim
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EXHIBIT 1

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 on behalf of himself and all others similarly aggrieved

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 Attorneys for Defendant, TOTAL PCS SOLUTIONS, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF STANISLAUS**

ERIK C. MCLAREN, an individual, on
 behalf of himself and others similarly
 situated,

Plaintiff,

vs.

TOTAL PCS SOLUTIONS, INC., a
 California corporation; and DOES 1 through
 50, inclusive,

Defendants.

Case No.: CV-22-004069

CLASS AND REPRESENTATIVE ACTION

Assigned for All Purposes To:
 Hon. Sonny S. Sandhu
 Dept.: 24

PAGA SETTLEMENT AGREEMENT

1 This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Erik
2 C. McLaren (“Plaintiff”) and defendant Total PCS Solutions, Inc. (“Defendant”). The Agreement
3 refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

4 **1. DEFINITIONS.**

5 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations
6 against Defendant captioned *Erik C. McLaren v. Total PCS Solutions, Inc.*, Stanislaus County
7 Superior Court Case No. CV-22-004069, initiated on September 9, 2022 and pending in Superior
8 Court of the State of California, County of Stanislaus.

9 1.2. “Administrator” means Apex Class Action LLC, the neutral entity the Parties have
10 agreed to appoint to administer the Settlement.

11 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid
12 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance
13 with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of
14 this Settlement.

15 1.4. “Aggrieved Employee” means all current and former non-exempt employees of
16 Defendant in California who worked during the PAGA Period.

17 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in
18 Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address,
19 Social Security number, and number of PAGA Pay Periods.

20 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and
21 search for current Aggrieved Employee mailing addresses using all reasonably available sources,
22 methods and means including, but not limited to, the National Change of Address database, skip
23 traces, and direct contact by the Administrator with Aggrieved Employees.

24 1.7. “Court” means the Superior Court of California, County of Stanislaus.

25 1.8. “Defense Counsel” means Larry Kazanjian and Dayra Juarez of Palmer Kazanjian
26 Wohl Hodson, LLP.

27 1.9. “Effective Date” means the date by when both of the following have occurred: (a) the
28 Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is

final. The Judgment is final as of the later of the following occurrences: (a) the day the Court enters Judgment; and (b) the day the Court enters its Order Granting Approval to this PAGA Settlement.

1.10. "Gross Settlement Amount" means \$325,000.00, which is the total amount Defendant agrees to pay to settle the PAGA Representative Action under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the payment for Plaintiff's general release, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.

1.11. "Individual PAGA Payments" means the Aggrieved Employees' pro rata shares of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.12. "Judgment" means the judgment entered by the Court based upon the Approval Order.

1.13. "LWDA" means the California Labor and Workforce Development Agency, as set forth in Labor Code section 2699, subd. (i).

1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: payment for Plaintiff's general release, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Administration Expenses Payment, and the LWDA PAGA Payment. The resulting Net Settlement Amount is used to pay Individual PAGA Payments to Aggrieved Employees on a *pro rata* basis.

1.16. "PAGA Counsel" means David Yeremian of David Yeremian & Associates, Inc., and Emil Davtyan, Alvin B. Lindsay, Enoch J. Kim, and Rose Sorial of D.Law, Inc., the attorneys representing the Plaintiff in the Action.

1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees

and expenses, respectively, incurred to prosecute the Action.

1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.19. "PAGA Period" means the period from September 9, 2021 through September 12, 2024.

1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*).

1.21. "PAGA Notice" means Plaintiff's PAGA Notice letter to Defendant and the LWDA submitted on September 9, 2022 (LWDA-CM-924212-22) providing notice pursuant to Labor Code section 2699.3, subd. (a).

1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$_____) and 75% to the LWDA (\$_____) in settlement of PAGA claims.

1.23. "Plaintiff" means Erik C. McLaren, the named plaintiff in the Action.

1.24. "Approval Order" means the Court Order Granting Approval of the PAGA Settlement.

1.25. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.

1.26. "Released Parties" means: Defendant and each of its former and present directors, officers, managing agents, shareholders, owners, members, attorneys, employees, managers, insurers, predecessors, successors, assigns, subsidiaries, parent companies, and affiliated entities and individuals.

1.27. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.28. "Defendant" means the named defendant, Total PCS Solutions, Inc.

2. RECITALS.

2.1. On September 9, 2022, Plaintiff commenced this Action by filing a Class Action Complaint alleging causes of action on behalf of all similarly situated employees against Defendant for: (1) Failure to Pay Minimum Wages and for all hours worked; (2) Failure to Pay

1 Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code §
2 226.7; (4) Rest-Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226(a);
3 (6) Violation of Labor Code § 204; (7) Violation of Labor Code § 203; (8) Violation of Labor
4 Code §§ 432.5, 206.5; (9) Violation of Labor Code § 2802; and (10) Violation of Business &
5 Professions Code § 17200 et seq. On November 14, 2022, Plaintiff filed a First Amended Class
6 Action Complaint to add a cause of action under PAGA.

7 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice
8 to Defendant and the LWDA by sending and submitting the PAGA Notice on September 9, 2022
9 (LWDA-CM-924212-22).

10 2.3. On September 12, 2024, the Parties participated in an all-day mediation presided over
11 by the Honorable Thierry Patrick Colaw (Ret.), which led to this Agreement to settle the Action.

12 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, the production of
13 relevant policy, timekeeping, and related documents along with numbers of aggrieved employees
14 and other data to provide the Parties' counsel with sufficient information on their claims and
15 defenses to discuss potential penalty exposure and good faith bases for reduction. In other words,
16 negotiations were at arms' length and facilitated by a respected third-party neutral mediator.

17 2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of
18 any other pending matter or action asserting claims that will be extinguished or affected by the
19 Settlement.

20 **3. MONETARY TERMS.**

21 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
22 Defendant promises to pay \$325,000.00 and no more as the Gross Settlement Amount. Defendant
23 has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1
24 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without
25 asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of
26 the Gross Settlement Amount will revert to Defendant.

1 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
2 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
3 the Court in the Approval Order:

4 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33% of the
5 \$325,000.00 Gross Settlement Amount, which is currently estimated to be \$108,333.00, and a
6 PAGA Counsel Litigation Expenses Payment of not more than \$15,000.00. Defendant will not
7 oppose requests for Court approval of these payments provided that they do not exceed these
8 amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel
9 Fees Payment and PAGA Litigation Expenses Payment in connection with the filing of the Joint
10 Stipulation for Settlement Approval or Motion for PAGA Settlement Approval. If the Court
11 approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment
12 less than the amounts requested, the Administrator will allocate the remainder to the Net
13 Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other
14 Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fees Payment and/or
15 PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel
16 Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA
17 Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees
18 Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and
19 indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any
20 of these Payments.

21 3.2.2. To Plaintiff Erik C. McLaren: Plaintiff will receive a payment of \$10,000 subject to
22 a separate general release of all claims.

23 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$7,000.00
24 except for a showing of good cause and as approved by the Court. To the extent the
25 Administration Expenses are less or the Court approves payment of less than \$5,000.00, the
26 Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$_____ to be paid from the Gross Settlement Amount, with 75% (%_____) allocated to the LWDA PAGA Payment and 25% (\$_____) allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS Forms 1099.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 700 Aggrieved Employees who worked 12,000 pay periods during the PAGA Period. In the event that the total PAGA Period Pay Periods increases by more than 10% such that the total PAGA Period Pay Periods is more than 13,200, either the Gross Settlement Amount will increase proportionately by the Pay Periods worked in excess of 13,200 multiplied by the Pay Period value (calculated by dividing the Gross Settlement Amount by 13,200) or Defendant may elect to change the last day of the PAGA Period to the date on which the total PAGA Period Pay Periods is 13,200 or less.

4.2. Aggrieved Employee Data. Within 30 days of executing this agreement, Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it

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

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

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

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. After 180 days from the date of mailing, the uncashed checks will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

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

4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and canceled after the void date, the Administrator shall transmit the funds to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

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

5. RELEASES OF CLAIMS.

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff on behalf of the State and the Aggrieved Employees will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, irrevocably release and discharge Released Parties from all claims, damages, penalties, liabilities, fees (including attorney's fees), costs, transactions, or occurrences that occurred at any time up through the date of this Agreement, including, but not limited to: all claims that were, or reasonably could have been, alleged, based on the facts contained in the Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to: (1) any claims or actions to enforce this Agreement, (2) any individual non-wage and hour claims that Plaintiff may have, (3) any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or (4) any claims based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542.

For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads: "A general release does not extend to claims that the creditor or releasing party does not know or

suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.”

5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Complaint and the PAGA Notice.

5.3 Release by PAGA Counsel:

PAGA Counsel releases on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Complaint and the PAGA Period facts stated in the Complaint and the PAGA Notice.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.

The Parties agree that Plaintiff will prepare and file an application or motion or stipulation for approval of this Settlement.

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,

subd. (l)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declaration, PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel is responsible for finalizing and filing the application or motion or stipulation for approval of this Settlement after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's approval documents to the Administrator.

6.3 Duty to Cooperate. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

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

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.

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

1 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to
2 be performed or observed by the Administrator contained in this Agreement or otherwise.

3 **8. AGGRIEVED EMPLOYEE SIZE ESTIMATES**

4 Based on its records, Defendant estimates that, as of the date of this Settlement, there are
5 700 Aggrieved Employees who worked 12,000 Pay Periods during the PAGA Period.

6 **9. CONTINUING JURISDICTION OF THE COURT.**

7 The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the
8 Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or
9 Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-
10 Judgment matters as are permitted by law.

11 9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
12 conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA
13 Counsel Litigation Expenses Payment, the Parties and PAGA Counsel waive all rights to appeal
14 from the Judgment, including all rights to post-judgment and appellate proceedings, the right to
15 file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The
16 waiver of appeal does not include any waiver of the right to oppose such motions, writs, or
17 appeals. If another party appeals the Judgment, the Parties' obligations to perform under this
18 Agreement will be suspended until such time as the appeal is finally resolved and the Judgment
19 becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

20 **10. ADDITIONAL PROVISIONS.**

21 10.1 No Admission of Liability or Representative Manageability for Other Purposes. This
22 Agreement represents a compromise and settlement of highly disputed claims. Nothing in this
23 Agreement is intended or should be construed as an admission by Defendant that any of the
24 allegations in the Operative Complaint have merit or that Defendant has any liability for any
25 claims asserted; nor should it be intended or construed as an admission by Plaintiff that
26 Defendant's defenses in the Action have merit. The Parties agree that representative treatment is
27 for purposes of this Settlement only. If, for any reason, the Court does not approve this Settlement,
28 Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the

1 right to contest Defendant's defenses. The Settlement, this Agreement, and the Parties' willingness
2 to settle the Action will have no bearing on, and will not be admissible in connection with, any
3 litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

4 10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this
5 Agreement together with its attached exhibits shall constitute the entire agreement between the
6 Parties relating to the Settlement, superseding any and all oral representations, warranties,
7 covenants, or inducements made to or by any Party. Provided, however, that this Agreement does
8 not supersede or replace the Separate Individual Settlement Agreement.

9 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel warrant and represent
10 that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action
11 required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its
12 terms, and to execute any other documents reasonably required to effectuate the terms of this
13 Agreement including any amendments to this Agreement.

14 10.4 Cooperation. The Parties and their counsel will cooperate with each other and use
15 their best efforts, in good faith, to implement the Settlement by, among other things, modifying the
16 Settlement Agreement, submitting supplemental evidence and supplementing points and
17 authorities as requested by the Court. In the event the Parties are unable to agree upon the form or
18 content of any document necessary to implement the Settlement, or on any modification of the
19 Agreement that may become necessary to implement the Settlement, the Parties will seek the
20 assistance of a mediator and/or the Court for resolution.

21 10.5 No Prior Assignments. The Parties separately represent and warrant that they have not
22 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
23 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
24 action, or right released and discharged by the Party in this Settlement.

25 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel
26 are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be
27 relied upon as such within the meaning of United States Treasury Department Circular 230 (31
28 CFR Part 10, as amended) or otherwise.

1 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended,
2 modified, changed, or waived only by an express written instrument signed by all Parties or their
3 representatives, and approved by the Court.

4 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure
5 to the benefit of, the successors of each of the Parties.

6 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be
7 governed by and interpreted according to the internal laws of the state of California, without
8 regard to conflict of law principles.

9 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation
10 of this Agreement. This Agreement will not be construed against any Party on the basis that the
11 Party was the drafter or participated in the drafting.

12 10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders
13 entered during the Action and in this Agreement relating to the confidentiality of information shall
14 survive the execution of this Agreement.

15 10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA
16 Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data
17 provided to PAGA Counsel by Defendant or Defense Counsel in connection with the mediation,
18 other settlement negotiations, or in connection with the Settlement, may be used only with respect
19 to this Settlement, and no other purpose, and may not be used in any way that violates any existing
20 contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator
21 discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and
22 electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the
23 Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA
24 Counsel for the return, rather than the destruction, of Aggrieved Employee Data.

25 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is
26 inserted for convenience of reference only and does not constitute a part of this Agreement.

27 10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
28 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a

weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

10.15 Notice. All notices, demands, or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

D.LAW, INC.
Emil Davtyan
Emil@d.law
Alvin B. Lindsay
a.lindsay@d.law
Enoch J. Kim
e.kim@d.law
Rose Sorial
r.sorial@d.law
450 N Brand Blvd., Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian
david@yeremianlaw.com
450 N Brand Blvd., Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

To Defendant:

PALMER KAZANJIAN WOHL HODSON, LLP
Larry Kazanjian
Dayra Juarez
LKazanjian@pkwhlaw.com
djuarez@pkwhlaw.com
2277 Fair Oaks Blvd., Ste. 455
Sacramento, CA 95825
Telephone: (916) 442-3552
Facsimile: (916) 640-1521

10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (e.g., DocuSign or Adobe Sign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of

1 them will be deemed to be one and the same instrument if counsel for the Parties will exchange
 2 between themselves signed counterparts. Any executed counterpart will be admissible in evidence
 3 to prove the existence and contents of this Agreement.

4 10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the
 5 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
 6 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
 7 date to bring a case to trial under CCP section 583.310 for the period from which this Agreement
 8 is fully executed through the date upon which one Party, including through its counsel, delivers
 9 written notice to the other Party, including to its counsel, that it will no longer proceed with the
 10 settlement process.

11
 12 IT IS SO AGREED.

13 Signed by:

89ECC3178640489... Date: 12/18/2024

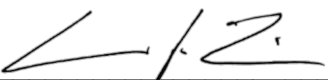
14 Plaintiff Erik C. McLaren

15
 16
 17 _____ Date: _____

18 Defendant Total PCS Solutions, Inc.

19 By: _____
 20 Its: _____

21 D.LAW, INC.
 22 DAVID YEREMIAN & ASSOCIATES, INC.

23 By  Date: 1/7/2025

24 Emil Davtyan
 25 David Yeremian _____
 26 Alvin B. Lindsay
 27 Enoch J. Kim
 28 Rose Sorial
 Attorneys for Plaintiff

PALMER KAZANJIAN WOHL HODSON, LLP

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By 

Date: January 6, 2025

Larry Kazanjian
Dayra Juarez
Attorneys for Defendant

1 them will be deemed to be one and the same instrument if counsel for the Parties will exchange
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7 date to bring a case to trial under CCP section 583.310 for the period from which this Agreement
8 is fully executed through the date upon which one Party, including through its counsel, delivers
9 written notice to the other Party, including to its counsel, that it will no longer proceed with the
10 settlement process.

11
12 IT IS SO AGREED.

13 Signed by:
14 Erik McLaren Date: 12/18/2024
89EGG3178640489...

15 Plaintiff Erik C. McLaren

16
17 Nasser Othman Date: 12-20-24

18 Defendant Total PCS Solutions, Inc.

19 By: Nasser Othman
20 Its: Secretary - Officer

21 D.LAW, INC.
22 DAVID YEREMIAN & ASSOCIATES, INC.

23 By _____ Date: _____

24 Emil Davtyan
25 David Yermian _____
26 Alvin B. Lindsay
27 Enoch J. Kim
28 Rose Sorial
Attorneys for Plaintiff

28 PALMER KAZANJIAN WOHL HODSON, LLP

EXHIBIT 2

**DAVID YEREMIAN
& ASSOCIATES INC**

2540 Foothill Blvd., Suite 201
La Crescenta, California 91214

818 230 8380
818 230 0308 FAX

DAVID@YEREMIANLAW.COM; ALVIN@YEREMIANLAW.COM

September 9, 2022

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128>

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA CERTIFIED MAIL TO:

(by certified mail to Total PCS Solutions, Inc. as follows)

Total PCS Solutions, Inc.
2400 Coffee Road, Suite J2
Modesto, California 95350
Certified Mail Tracking Number: 7019 2970 0000 5059 9418

Hammad Othman, Agent for Service of Process for:
Total PCS Solutions, Inc.
2400 Coffee Road, Suite J2
Modesto, California 95350
Certified Mail Tracking Number: 7019 2970 0000 5059 9418

**Re: Labor Code § 2698, *et seq.* Penalties
PAGA Notice Letter to LWDA
Erik C. McLaren et al. v. Total PCS Solutions, Inc. et al.
Superior Court for the County of Stanislaus**

Gentlepersons:

This office represents Plaintiff Erik C. McLaren (“Plaintiff”) and other similarly aggrieved individuals employed by Defendants as non-exempt, hourly employees, including those serving as mobile experts and salespersons and in related positions and based out of Defendants’ California store locations during the relevant period (collectively “Aggrieved Employees”) for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 206.5, 210, 221, 226, 226.7, 246, 248.1, 248.2, 248.5, 432.5, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, 2698, and 2699, *et seq.*; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). Plaintiff would like to bring a

representative action, pursuant to the Act, on behalf of himself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants Total PCS Solutions, Inc. and Does 1 through 20 inclusive (all defendants are referred to herein collectively as “Defendants”).

Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along with Plaintiff’s Class Action Complaint, which is attached to this Notice letter. The Complaint is being concurrently filed in Stanislaus County Superior Court, and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff and all of their Aggrieved Employees in California. The attached Class Action Complaint provides the details of Plaintiff’s class-wide claims and representative claims under the Act, and the applicable California law governing them. It, along with this Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Plaintiff and the Aggrieved Employees (“Aggrieved Employees”) worked as hourly, non-exempt employees selling cellular phone related products and services for Defendants. Plaintiff, and upon information and belief other similarly situated Employees, were responsible for performing various work tasks in connection with providing product sales and services support for Defendants’ customers. Plaintiff was employed by Defendants throughout his employment based out of Defendants’ store locations in California. He consistently worked at Defendants’ behest without being paid all wages due and provided all required breaks. More specifically, the other Aggrieved Employees were employed by Defendants and shared similar job duties and responsibilities, were subjected to the same policies and practices, and endured similar violations at the hands of Defendants as the other Aggrieved Employees who served in similar and related positions.

Defendants required Plaintiff and the Aggrieved Employees to work off the clock and failed to record accurate time worked by these Employees, failed to pay them at the appropriate rates for all hours worked, failed to pay all wages due and owing at termination or resignation, and provided Aggrieved Employees with inaccurate wage statements that prevented them from learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Aggrieved Employees with lawful meal and rest periods, as Employees were required to remain under Defendants’ control and were not provided with the opportunity to take full uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and the applicable paragraphs of the IWC Wage Orders.

Defendant Total PCS Solutions, Inc. is a California corporation that lists its principal place of business in Modesto, California in Stanislaus County and is a cellular phone related product and services retailer. Upon information and belief, it does business as “Wireless Proz,” and the wage statements issued to Plaintiff, and upon information and belief the other Aggrieved Employees, listed “DBA Wireless Proz” as the employer. The notice under Labor Code § 2810.5 lists Total

PCS Solutions, Inc. as Plaintiff's employer, doing business as Wireless Proz, and both list the Modesto, California address.

During the course of Aggrieved Employees' employment with Defendants, they were not paid all wages they were owed, including for all work performed (resulting in "off the clock" work) and for all their overtime hours worked. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders. Defendants employ other non-exempt, hourly employees in similar positions and related positions at their store locations in California.

Defendants maintain facilities and store locations throughout California, including in Stanislaus County and in Fresno County where Plaintiff was employed. Plaintiff, and upon information and belief the other Aggrieved Employees, worked shifts of five to six hours or for eight hours or more hours, and generally worked at least five or six shifts during a work week.

Plaintiff would report to work early to prepare to begin working at his scheduled shift time, and felt compelled by Defendants to do so in order to complete necessary tasks for starting his work shift. At his scheduled shift time, Plaintiff would then clock into the system using either the ADP application on his personal cellular phone or the ADP on line system available through the store computers. He was required to record time punches for the start and end of his work shifts and for the start and end of his meal period. Similar shift end and transition tasks were also performed by Plaintiff after clocking out from his work shift at the scheduled shift end time.

Defendants sales goals and incentives for the Aggrieved Employees often compelled them to work off the clock, and Plaintiff was trained that he should be ready to work at his shift start time. This caused off the clock work and when considered in connection with other off the clock work endured, resulted in some instances where Aggrieved Employees worked overtime hours. When they worked six work shifts in a week, Aggrieved Employees also worked over 40 hours in a workweek, and Defendants failed to pay overtime premium wages for all overtime hours worked. To the extent Defendants did pay overtime, upon information and belief they did so at a miscalculated overtime rate by failing to include all forms of remuneration in the regular rate used to calculate and pay that overtime.

By requiring off the clock work, and by auto-deducting 30 or 60 minutes for alleged compliant meal periods, Defendants effectively required Aggrieved Employees to work more hours on a work shift than Defendant paid them for. These unpaid hours also resulted in some instances in Aggrieved Employees incurring overtime hours earlier than Defendants started paying them, and Defendants failed to pay all overtime hours worked. Defendants also failed to pay all overtime hours or meal period premiums at the correctly calculated rate by failing to include all non-discretionary bonuses paid to Aggrieved Employees. For example, if they sold a set baseline dollar value, Aggrieved Employees would receive a bonus tied to the number of boxes sold or would receive an incentive for selling certain products on weekends. In some instances, cash awards were given to Employees for selling a certain promoted support plan or related services. Defendants failed to include these forms of remuneration in the regular rate used to calculate and pay any meal period or rest period premiums or overtime wages when they were paid.

Plaintiff was therefore not paid for all his hours worked at the required minimum, overtime and double time wage rates due to Defendants' policy and practice of requiring him to work off the clock and without pay, and failed to pay Plaintiff at the required overtime rates for all hours over eight in a shift, or over forty in a work week. In some instances, unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift, and Employees worked over forty hours in a workweek in some instances when they worked six shifts in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

Defendants thus systematically underpaid Aggrieved Employees by failing to pay them at the required rates for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a day at the required double time rate. Upon information and belief, the Aggrieved Employees were bound by similar scheduling and work policies which Defendants required them to follow, and endured similar violations at Defendants' hands as Plaintiff.

Defendants have either failed to maintain timekeeping records for Plaintiff that would permit Plaintiff to discover the nature and extent of the off the clock work Defendants required and the actual hours Plaintiff worked or the breaks he received or have otherwise declined to produce them to Plaintiff in response to a timely and lawful records request. By failing to pay for all hours worked, by failing to record any meal period start or end times, and by under-recording regular hours to the detriment of the Aggrieved Employees, Defendants have committed knowing and intentional ongoing violations of the record keeping requirements under the Labor Code, including section 1174, by either failing to maintain records or retaining inaccurate ones.

The failure to pay for all hours worked and underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants' unlawful compensation policies and practices, which upon information and belief applied uniformly to the Aggrieved Employees working at and based out of Defendants' store locations in California. As a result of the above-described unlawful requirements to work off the clock, the failure to accurately record all hours worked and pay wages at the correct rates, and the other wage violations they endured at Defendants' hands, Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight or ten hours in any given day and/or more than forty hours in any given week.

Therefore, Defendants had a consistent policy or practice of failing to pay Employees for all hours worked and failing to pay minimum wages for all time worked, as required by California law. Also, Defendants had a consistent policy or practice of failing to pay Employees overtime compensation at premium overtime rates for all hours worked in excess of eight or ten hours a day and/or forty hours a week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of Labor Code § 510 and the corresponding sections of IWC Wage Orders.

Defendants also failed to provide Aggrieved Employees with their required first and second meal periods and three ten-minute rest breaks as required for scheduled shifts over ten hours in duration. The above described off the clock work also contributed to Defendants' common policy of failing to provide lawful meal periods to Aggrieved Employees, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s). Defendants similarly failed to

authorize and permit Plaintiff and the Aggrieved Employees to take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

Aggrieved Employees generally worked shifts that entitled them to receive at least one meal period and two rest breaks. However, Defendants failed to provide all required meal periods and rest breaks to them. Defendants' uniformly applied policies allowed for a thirty minute meal period on a shift of five hours and a sixty minute break during eight hour shifts. In some instances, Plaintiff worked shifts between five and six hours without receiving a meal period, and Plaintiff does not recall agreeing to any applicable waivers. If and when Plaintiff received a meal break, it was generally for less than the allotted time, was later than five hours into his shift, and was on-duty as Aggrieved Employees were expected to mind the store and respond as necessary during breaks to customer and other job demands and requirements. Defendants' policies thus called for Employees to remain under the control of Defendant during the breaks they did take. Additionally, Defendants' managers pressured Aggrieved Employees to ensure they clocked out for meal periods before their fifth hour of work, but did not alleviate the requirement to continue working with captive customers. Therefore Plaintiff would clock out on time for a meal period and continue working until he completed his duties, or would otherwise work through meal periods.

Defendants thus failed to provide Aggrieved Employees with timely and compliant meal periods. Defendants did not schedule or otherwise facilitate meal periods in the daily shift scheduling and work assignments. In practice, Aggrieved Employees scheduled their meal periods, if at all, by conferring with their co-workers. Defendants' tight scheduling and job and production requirements compelled Aggrieved Employees to work through shifts without taking timely or otherwise compliant duty-free meal periods.

While Aggrieved Employees generally did not work over ten hours on a shift, on the occasions when they did, Defendants failed to provide them with a second uninterrupted and duty-free thirty minute meal period. Defendants' unlawful timekeeping practices consistently applied to all employees. In reality, meal periods were either untimely or otherwise non-compliant. Defendants thus followed uniformly applied policies of not providing all required meal periods and rest breaks to their Aggrieved Employees. Work and production demands and management pressure required them to work through breaks. However, even when Aggrieved Employees were able to take a meal period, it was often provided after five hours into a work shift or for less than the required 30 minutes or was otherwise interrupted by work duties and the requirement to remain under Defendants' control.

Defendants' systems did not automatically generate a meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours into a work shift or in the event the time punch records reflected a meal period of less than 30 minutes, or none at all. However, upon information and belief, in the event Defendants did pay any meal period premiums, they did so at the employee's customary regular rate of hourly compensation without including all forms of remuneration in that hourly rate calculation, for example by omitting bonuses and the like from the rate at which meal premiums were paid.

Defendants thus followed uniformly applied policies of not providing all required meal periods to their Employees. Meal periods were often not properly provided, as work demands impermissibly shortened their breaks. Even when Aggrieved Employees were able to take a meal period, it was often provided for less than the required 30 minutes or was otherwise interrupted by work duties or was taken after the fifth hour of work. Additionally, as addressed above, Defendants followed a practice of requiring off the clock work in a manner that would impact when Employees were to receive meal periods and rest breaks, thus leading to further violations.

As a result, Defendants' failure to provide Aggrieved Employees with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. As further detailed above, Defendants also failed to pay Employees "premium pay," i.e. one hour of wages at each Employee's effective regular hourly rate of compensation for each meal period or rest break that Defendants failed to provide or deficiently provided.

Defendants also failed to authorize and permit Aggrieved Employees to take duty-free, net ten minute rest breaks for ever four hours of shift work, or major fraction thereof. There were similar issues with the required ten minute rest breaks that Aggrieved Employees were unable to take as with meal periods. If and when Aggrieved Employees were provided with a rest break on a shift, they were often not provided with the required second or third rest period or else they were interrupted or shortened by work demands and were not off-duty.

Defendants did not schedule any required ten minute rest breaks, and Aggrieved Employees were compelled by work requirements and scheduling demands to continue working throughout their shifts without receiving their required first, second, and third rest breaks. Even the rest breaks they were authorized and permitted to take were often interrupted regarding work matters. Therefore, the job requirements and duties required of Aggrieved Employees, and the demands from supervisors, manifested a failure to authorize and permit Aggrieved Employees to take all their required rest breaks. Plaintiff and the other similarly situated Aggrieved Employees were either not authorized and permitted the opportunity to take a rest break, or were required to remain under Defendants' control and respond to job demands and customer requirements. Defendants thus also committed violations by requiring Aggrieved Employees to remain under their control during required off-duty rest breaks.

During rest periods, employers must relieve employees of all duties and relinquish control over how employees spend their time. Aggrieved Employees were and are under Defendants' control when they are working through rest breaks and traveling to break rooms. Defendants have also provided either impermissibly shortened or untimely meal and rest breaks to Aggrieved Employees. Plaintiff and the Aggrieved Employees were thus not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks, and were not provided with one hour's wages in lieu thereof.

Aggrieved Employees were therefore not authorized and permitted to take lawful rest periods, and the ones Defendants attempted to authorize and permit were generally either untimely or shortened and on-duty. Defendants thus required Aggrieved Employees to work or otherwise remain under Defendants' control through or during breaks. Upon information and belief, they

were also not provided with one hour of regular rate compensation for any unprovided or unlawfully provided rest breaks, but to the extent they ever were, Defendants miscalculated the regular rate of compensation and underpaid the premiums as with meal periods.

Defendants also had a common policy and/or practice of unlawfully collecting or deducting wages from Aggrieved Employees. Defendants have thus consistently violated Labor Code § 221 by unlawfully collecting or deducting the Aggrieved Employees' earned wages, including by the above described off the clock work and on-duty work while on unpaid meal breaks. By not compensating Aggrieved Employees for all hours worked, Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

Defendants have also consistently failed to provide Aggrieved Employees with timely, accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws, including by the above-described requirement of off the clock work, failure to pay all overtime and double time wages owed, and failure to pay premium wages for unprovided or otherwise unlawful meal and rest breaks, or by miscalculating any overtime or meal period or rest break premium wages. Defendants have also made it difficult to account with precision for the unlawfully withheld wages and meal and rest period compensation owed to Aggrieved Employees, during the liability period, including to the extent they did pay Employees for all hours worked and did not calculate the regular rate of pay correctly when paying overtime or meal period premiums and because they did not implement and preserve a record-keeping method as required for non-exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon information and belief, time clock punches were not maintained or were not accurately maintained for work shifts and meal periods, which were automatically presumed by Defendants to have been lawfully provided when they were not. Defendants also failed to accurately record and pay for all regular and overtime hours worked by Aggrieved Employees, including by failing to pay all overtime hours at the correctly calculated overtime premium rate. Defendants also failed to accurately list the name of the Employer on wage statements in further violation of section 226(a).

When Plaintiff received his pay, he was confused during most pay periods by the omission of required information, including the rates he was being paid at and the identity of his employer. Defendants provided Plaintiff, and upon information and belief the other Aggrieved Employees, with summary documents detailing the payments during a pay period rather than a compliant wage statement. Plaintiff did not understand who the listed employer was on his pay summaries because DBA Wireless Proz was listed as the employer. Defendants have thus also failed to comply with Labor Code § 226(a) by failing to provide a wage statement and/or inaccurately reporting total hours worked and total wages earned by Aggrieved Employees, along with the appropriate applicable rates, and by failing to list the employer, among other requirements under Labor Code § 226(a).

Defendants have thus also failed to comply with Labor Code § 226(a) by failing to provide a wage statement and/or inaccurately reporting total hours worked and total wages earned by Aggrieved Employees, along with the appropriate applicable rates, among other requirements under Labor Code § 226(a). Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the

employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime and double time premium wages owed for work conducted on a work shift and a workday, or to pay them at the correct rate, as addressed above. In addition to not paying for all hours worked off the clock and for all meal and rest period premiums owed during a pay period, Defendants failed to pay overtime at the required premium rate by not including all forms of compensation received in the calculation of the regular rate used to calculate and pay overtime premium wages, which further directly violates Labor Code § 204 for failure to pay all wages owed twice monthly and failing to provide a wage statement at all. This is also exemplary of Defendants' failure to provide accurate itemized wage statements listing these hours worked and applicable rates under Labor Code § 226(a) and under the corresponding requirements in the Wage Order.

Therefore, Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to Plaintiff and other similarly situated Aggrieved Employees at the time of their termination or within seventy-two hours of their resignation, as required by California wage-and-hour laws. Labor Code §§ 201-203. In view of the above addressed violations, Defendants have also failed to pay all wages owed to Plaintiff and the Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204.

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, premium pay, etc., as addressed above, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and Plaintiff is entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Defendants also required Plaintiff to agree and sign his name to a statement in a termination notice saying he was paid all wages and received all meal and rest breaks, whether or not they were reflected in his time records. In instances such as this and in others where Employees were unlawfully required to release claims against Defendants in order to receive their pay checks, Defendants committed uniform and systematic violations of Labor Code §§ 206.5 and 432.5. Any alleged releases such as these Defendants claim to have received from Aggrieved Employees are null and void and they are entitled to recover damages and penalties from Defendants for requiring them.

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Defendants also failed to reimburse all necessary business expenses Aggrieved Employees incurred in discharging their job duties at Defendants' behest. Defendants had a company-wide policy of requiring Employees to utilize their own personal cellular phones and/or cellular data to carry out their job duties, but Defendants failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Plaintiff was required to use his personal cellular phone to input time entries into the ADP application and to use other applications for group communication and text messaging. Defendants also required Aggrieved Employees to purchase and maintain company uniform items without reimbursement, including company T-shirts and other items Employees were required to pay to maintain and clean. Additionally, Plaintiff was on occasion asked to work at two different facilities during the same work shift, and in those instances failed to reimburse any costs incurred by Plaintiff to travel between the store locations.

Defendants uniformly failed to reimburse those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the attached Class Action Complaint, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states: "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid

balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit."

As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants' unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

Defendants thus failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with off the clock work, including all the time required to remain on duty and under Defendants' control and due to the work demands placed upon them by Defendants' management and during breaks. Defendants, and each of them, have also intentionally and improperly rounded, changed, adjusted and/or modified Employee hours, or required Employees to do so, and imposed difficult to attain job and shift scheduling requirements on Plaintiff and the Aggrieved Employees, which resulted in off the clock work and underpayment of all wages owed to Employees over a period of time, while benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the Aggrieved Employees, including by requiring systematic off the clock work. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Aggrieved Employees as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other Aggrieved Employees as to minimum wage pay.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime and double time. Specifically, Defendants had a consistent policy of not paying Employees wages for all hours worked, including hours at their required regular, overtime, and double-time rates, or of miscalculating them by not including all forms of remuneration in the regular rate of compensation. Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted and/or modified certain employees' hours, including Plaintiff's, or required Aggrieved Employees to do so, or otherwise caused them to work off the clock to avoid paying Aggrieved Employees all earned and owed straight time and overtime wages and other benefits.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. With work shifts generally requiring eight hours or more of work on a given day, this unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of eight hours or twelve hours in a given day, and/or forty hours in a given week. Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code §§ 226.7, 512 and Penalties

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with uninterrupted meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods, were provided with breaks late and well after the fifth hour of work, could not be relieved to take breaks, or were required to remain on-duty at all times and were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks.

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendant's control, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided, including by miscalculating any premium payments they did make. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions. Defendants also miscalculated the rate at which they paid any meal period or rest period premiums when Defendant did attempt to pay them, resulting in further violations of section 226.7.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Rest-Break Liability under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations, and Defendants' policies and procedures required Aggrieved Employees to remain under Defendants' control during breaks to respond to job requirements.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal

to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unlawfully Collecting or Receiving Wages in Violation of Labor Code § 221

Labor Code § 221 provides, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." As discussed above, Defendants unlawfully received and/or collected wages from the Aggrieved Employees by implementing a policy understating the hours worked and by requiring off the clock work and miscalculation of the regular rate for overtime, meal, and rest premium payments, as alleged above. Aggrieved Employees had their wages unlawfully deducted when Defendants recorded fewer hours worked in the timekeeping records than were in fact worked. By not compensating Employees for all hours worked and failure to pay for hours spent under Defendants' control, or by miscalculating and underpaying overtime, Defendants unlawfully deducted wages earned by and owed to Aggrieved Employees, in violation of Labor Code § 221.

In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558. Under the PAGA, and following exhaustion of the notice period, Plaintiff seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide accurate itemized wage statements in writing, as required by the Labor Code and paragraph 7 of the applicable IWC Wage Orders. Any wage statements given to Employees by Defendants necessarily failed to accurately account for wages, overtime, and premium pay, including by failing to pay for all hours worked, failure to pay for all overtime hours worked or at the correct rate of pay and for providing deficient meal periods and rest breaks, all of which Defendants knew or reasonably should have known were owed to the

Employees, as alleged above. Defendants also committed facial violations of section 226 by failing to list the address of the Employer and its legal name and also failing to list pay period beginning dates.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday, or miscalculated these premiums by not including all forms of remuneration in the regular rate, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204. Additionally, by not providing wage statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.

Given the above described off the clock work and deductions from hours worked perpetrated by Defendants' management, Plaintiff was not paid at the correct overtime rate for all hours he

worked after eight hours into a shift or over forty in a work week and that he was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by unlawful rounding and off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Requiring Unlawful and Unenforceable Releases from Aggrieved Employees under Labor Code §§ 206.5, 432.5

Labor Code §432.5 provides: "No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law." It is well settled that agreements purporting to waive an employee's right to a trial of PAGA claims is contrary to California law and unenforceable. *See Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 384 ("We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.");

California Labor Code § 206. 5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee." Additionally, Labor Code § 2699.5 instructs that: "The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5,... 206.5.

Defendants also required Plaintiff to agree and sign his name to a statement in a termination notice saying he was paid all wages and received all meal and rest breaks, whether or not they were reflected in his time records. In instances such as this and in others where Employees were unlawfully required to release claims against Defendants in order to receive their pay checks, Defendants committed uniform and systematic violations of Labor Code §§ 206.5 and 432.5. Any alleged releases such as these Defendants claim to have received from Aggrieved Employees are null and void and they are entitled to recover damages and penalties from Defendants for requiring them.

Defendants' policy and practice of requiring Aggrieved Employees to release their

claims for meal or rest period violations and/or uncompensated hours worked is in violation of California Labor Code § 206.5. Plaintiffs and the Aggrieved Employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code §§ 2699(a), (f)-(g) and the other applicable Labor Code and Wage Order sections.

Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802

Defendants had a company-wide policy of requiring Employees to utilize their own personal cellular phones and/or cellular data to carry out their job duties, but Defendants failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Plaintiff was required to use his personal cellular phone to input time entries into the ADP application and to use other applications for group communication and text messaging. Defendants also required Aggrieved Employees to purchase and maintain company uniform items without reimbursement, including company T-shirts and other items Employees were required to pay to maintain and clean. Additionally, Plaintiff was on occasion asked to work at two different facilities during the same work shift, and in those instances failed to reimburse any costs incurred by Plaintiff to travel between the store locations. Defendants did not reimburse these necessary business expenses resulting in systematic and ongoing violation of Labor Code § 2802.

Defendants systematically and uniformly failed to reimburse those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unfair Competition Under Business and Professions Code § 17200, et seq.

Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 et seq.

Plaintiff's PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the attached Class Action Complaint, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: 201, 201.3, 202, 203, 204, 206.5, 226, 226.7, 246, 248.1, 248.2, 248.5, 432.5,

510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and 2698 *et seq.*, including as follows:

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiff and the Aggrieved Employees with wage statements or with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Unlawful Deductions and Failure to Reimburse Business Expenses: For Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5,

and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) Requiring Unlawful and Unenforceable Releases from Aggrieved Employees under Labor Code §§ 206.5, 432.5: For the instances when Defendants required Employees to agree to and execute releases of their wage and hour claims as a prerequisite to receiving their pay checks in violation of Labor Code §§ 206.5 and 432.5, and seeking the civil and statutory penalties available and applicable under Labor Code §§ 206.5 and 2699(a), (f)(2), (g), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

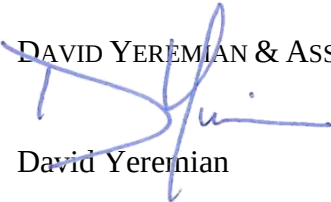
(g) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against Total PCS Solutions, Inc. and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.

David Yeremian

Cc: Total PCS Solutions, Inc.

EXHIBIT 3

McLaren v. Total PCS Solutions, Inc.**Litigation Costs**

Service Date		Details		Provider		Amount
9/9/22		LWDA Letter		LWDA		\$ 75.00
9/13/22		Summons and Complaint		Rapid Legal		\$ 1,501.53
9/19/22		Process of Service - Total PCS Solutions, Inc.		Rapid Legal		\$ 113.85
9/26/22		Proof of Service of Summons		Rapid Legal		\$ 16.30
11/17/22		First Amended Complaint		Rapid Legal		\$ 16.30
12/7/22		NAR to First Amended Complaint - Total PCS Solutions, Inc.		Rapid Legal		\$ 16.30
12/21/22		NAR to First Amended Complaint - Total PCS Solutions, Inc.		Rapid Legal		\$ 16.30
1/10/23		Case Management Statement (1.17.23)		VCOURT		\$ 16.30
1/10/23		Case Management Statement (1.17.23)		Rapid Legal		\$ 16.30
1/11/23		Notice of Change of Address of Davtyan Law Firm		Rapid Legal		\$ 16.30
9/1/23		Case Management Conference (9.5.23)		VCOURT		\$ 30.35
9/14/23		Notice of Association AL; Law Firm Name Change/Address - Broadway		Rapid Legal		\$ 17.10
2/12/24		Case Management Statement (3.4.24)		VCOURT		\$ 15.04
2/21/24		Case Management Statement (3.3.24)		Rapid Legal		\$ 15.04
4/18/24		Mediation (9.11.24)		Judicate West		\$ 7,425.00
8/21/24		Case Management Conference (9.3.24)		VCOURT		\$ 37.35
9/10/24		Notice of Continued Case Management Conference (11.12.24)		Rapid Legal		\$ 15.19
9/24/24		Notice of Association; Law Firm Name Change/Address - Broadway		Berger Consulting Group		\$ 7,865.00
10/8/24		Notice of Change of Address - Brand		Rapid Legal		\$ 15.19
10/30/24		Case Management Statement (11.12.24)		Rapid Legal		\$ 15.19
11/22/24		Notice of Association - EK		Rapid Legal		\$ 15.19
2/13/25		(Rejected) Joint Stipulation & Proposed Order to Dismiss Hearing		Rapid Legal		\$ 11.33
2/14/25		Joint Stipulation & Proposed Order to Continue Dismissal of Hearing		Rapid Legal		\$ 37.29
4/7/25		Motion for Final Approval		Rapid Legal		\$ 80.00
FUTURE		Notice of Entry of Order		Rapid Legal		\$ 15.19
FUTURE		Declaration of Class Admin re Final Disbursement		Rapid Legal		\$ 15.19

Total**\$ 17,429.12**

EXHIBIT 4

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

McLaren v. Total PCS Solutions, Inc.

Superior Court of the State of California for the County of Stanislaus

Case No. CV-22-004069

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Payment from *McLaren v. Total PCS Solutions, Inc*

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit (“Settlement”) *McLaren v. Total PCS Solutions, Inc.*, Stanislaus County Superior Court (“Court”), Case No. CV-22-004069. The Court has approved the settlement and this payment to you.

WHAT IS THE CASE ABOUT?

This case was filed by Plaintiff Eric M. McLaren (“Plaintiff”) against Total PSC Solutions Inc. (“Defendant”) (Plaintiff and Defendant collectively referred to herein as “the Parties”), pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (“PAGA”), which permits aggrieved employees to sue their employers for Labor Code violations and seek civil penalties on behalf of the state. Plaintiff filed the lawsuit on behalf of himself, the State of California, and all current and former non-exempt employees of Defendant in California who worked during the PAGA Period, which is the period from September 9, 2021, through September 12, 2024 (“PAGA Period”). The group of employees referenced above is called the “Aggrieved Employees,” and you have been identified as an Aggrieved Employee.

In this case, Plaintiff alleged that Defendant owed civil penalties under PAGA for certain California Labor Code (the “Labor Code”) violations, including (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Labor Code § 226.7; (4) Rest-Break Liability Labor Code § 226.7; (5) Violation of Labor Code § 226; (6) Violation of Labor Code § 204; (7) Violation of Labor Code § 203; (8) Violation of Labor Code §§ 432.5, 206.5; (9) Violation of Labor Code § 2802; and (10) Violation of Business & Professions Code § 17200 *et seq.* Plaintiff alleged Defendant failed to pay at least minimum wages and overtime wages to Aggrieved Employees for all hours worked, including off-the-clock work, failed to timely pay all wages due to Aggrieved Employees during their employment and timely upon separation from employment, failed to provide Aggrieved Employees with legally compliant meal and rest periods, failed to reimburse business expenses incurred by Aggrieved Employees, failed to maintain Aggrieved Employees’ records, failed to issue accurately itemized wage statements to Aggrieved Employees and required Aggrieved Employees to agree to unlawful and unenforceable

releases to representative claims under Labor Code § 2699 *et seq.* Defendant denies the allegations in the lawsuit, any failure to comply with the laws identified in the lawsuit, and any and all liability for the causes of action alleged.

WHAT ARE THE IMPORTANT TERMS OF THE SETTLEMENT?

The Parties agreed to resolve the case, and as part of the Settlement, Defendant agreed to pay Three Hundred Twenty-Five Thousand Dollars and Zero Cents (\$325,000.00), which is called the Gross Settlement Amount. From the Gross Settlement Amount, and as approved by the Court, Plaintiff's counsel ("PAGA Counsel") will receive a PAGA Counsel Fees Payment of \$108,333.00 for attorneys' fees and a PAGA Counsel Litigation Expenses Payment of \$17,429.12 for litigation costs incurred in prosecuting the lawsuit. In addition, and as approved by the Court, the Settlement Administrator will receive an Administration Expenses Payment of \$7,000.00 for its services in administering the settlement. Plaintiff will receive a payment of \$10,000.00 from Defendant in exchange for providing a general release of claims and waiver of rights under California Civil Code Section 1542. The balance of the monies, called the Net Settlement Amount, in the amount of \$182,187.88, represents the "PAGA Penalties."

Under PAGA, the law requires that PAGA Penalties get divided between the California Labor and Workforce Development Agency (the “LWDA”) and the Aggrieved Employees, with 75% of the settlement going to the LWDA and 25% being divided amongst the Aggrieved Employees. As a result, and as approved by the Court, \$136,640.91 will be paid to the LWDA for its share of the PAGA Penalty payment, and \$45,546.97 will be paid to the Aggrieved Employees as Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. The Administrator will report all Individual PAGA Payments on IRS 1099 Forms.

The settlement of this action does not constitute an admission by Defendant of any of the matters alleged in the case or an admission of liability. Defendant denies violating any laws or failing to pay any wages. Defendant contends it complied with all applicable laws.

YOUR SETTLEMENT CHECK AND THE RELEASE OF CLAIMS

The enclosed check, in the amount of \$ [REDACTED], represents your Individual PAGA Payment, which is based on the number of pay periods you worked during the PAGA Period. As an Aggrieved Employee, you are legally barred from asserting any of the claims released under the Settlement. This means that you, along with all Aggrieved Employees, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or the Released Parties based on the facts alleged in the case to have occurred during the PAGA Period and resolved by this Settlement. The release by Aggrieved Employees is as follows:

Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Complaint and the PAGA Notice, including (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Labor Code § 226.7; (4) Rest-Break Liability Labor Code § 226.7; (5) Violation of Labor Code § 226; (6) Violation of Labor Code § 204; (7) Violation of Labor Code § 203; (8) Violation of Labor Code §§ 432.5, 206.5; (9) Violation of Labor Code § 2802; and (10) Violation of Business & Professions Code § 17200 *et seq.*

“Released Parties” means Defendant and each of its former and present directors, officers, managing agents, shareholders, owners, members, attorneys, employees, managers, insurers, predecessors, successors, assigns, subsidiaries, parent companies, and affiliated entities and individuals.

“Operative Complaint” means the First Amended Complaint filed by Plaintiff on November 14, 2022 in this lawsuit.

“PAGA Notice” means Plaintiff Eric C. McLaren’s PAGA Notice letter to Defendant and the LWDA submitted on September 9, 2022 (LWDA Case No. LWDA-CM-906881-22) providing notice pursuant to Labor Code section 2699.3, subd. (a).

This release applies to you, regardless of whether you cash your check, and regardless of whether this letter can be delivered to you. Aggrieved Employees have no right to object to this settlement, and they cannot opt out of this settlement. You will be bound by this release whether you cash your check or not.

QUESTIONS?

If you have any questions, you can contact the Settlement Administrator (whose contact information is at the top of this letter) or Plaintiff’s counsel, whose contact information is as follows:

Counsel for Plaintiff:

Emil Davtyan, Esq.

David Yeremian, Esq.

Alvin B. Lindsay, Esq.

Enoch Kim, Esq.

Rose Sorial, Esq.

Melissa Rodriguez, Esq.

D.Law, Inc.

450 N. Brand Blvd., Suite 840

Glendale, California 91203

Very Truly Yours,

Apex Class Action Administration

[INSERT CONTACT INFORMATION]

PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE

EXHIBIT 5