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*Attorneys for Plaintiff, the Putative Class,
and all other aggrieved employees*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

EFREN PALOMINO, on behalf of himself and
all others similarly situated;

Plaintiff,

v.

WINALL OIL CO., a California Corporation;
ALLEN GIMENEZ, an individual; GARY
GIMENEZ, an individual; and DOES 1 through
20, inclusive,

Defendants.

Case No. 23STCV04401

CLASS AND REPRESENTATIVE ACTION

**SECOND SUPPLEMENTAL
DECLARATION OF JOHN J. DARIN IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT**

Date: December 19, 2024
Time: 9:00 am
Dept: 17
Judge: Hon. Laura A. Seigle

Complaint Filed: February 28, 2023
FAC Filed: March 21, 2023
Trial Date: Not Set

1 I, John J. Darin, declare as follows:

2 1. I am a member in good standing of the Bar of the State of California and an
3 associate attorney at Hunter Pyle Law in Oakland, California. I submit this declaration in support
4 of Plaintiff's Motion for Preliminary Approval of the Class and Representative Action Settlement
5 ("Motion for Preliminary Approval"). Plaintiff's motion seeks preliminary approval of the
6 Stipulation of Settlement ("Settlement Agreement") agreed to by Plaintiff Efren Palomino
7 ("Plaintiff") and Defendants Winall Oil Co., Allen Gimenez, and Gary Gimenez ("Defendants").
8 Plaintiff and Defendants are collectively referred to here as the "Parties."

9 2. Hunter Pyle Law is counsel for Plaintiff and the putative class. I have personal
10 knowledge of facts set forth in this declaration and could and would testify competently to them.

11 3. On December 5, 2024, Plaintiff's Motion for Preliminary Approval came on for
12 hearing in Department 17 of the Spring Street Courthouse of the Los Angeles County Superior
13 Court, the Honorable Laura A. Siegel presiding. During the hearing, the Court noted that it would
14 soon post to Case Anywhere a list of revisions and clarifications that needed to be made before the
15 Court could consider entering an order granting preliminary approval of the Parties' Settlement
16 Agreement.

17 4. On December 6, 2024, the Court posted its list of revisions and clarifications to
18 Case Anywhere. Case Anywhere then electronically served this post to counsel via electronic mail.
19 A true and correct copy of this email received by Counsel for Plaintiff is attached hereto as **Exhibit**
20 **1**.

21 5. Plaintiff submits this declaration in order to address the Court's concerns.

22 **Item 1**

23 6. The Court's post states: "The motion states there are 69 class members but the Darin
24 Declaration states there are 105 class members. By December 12, 2024, file a statement resolving
25 this discrepancy."

26 7. This discrepancy resulted from a drafting error that did not impact the number of
27 workweeks covered by this case. As further explained below, Plaintiff's written discovery and
28 preparation for mediation determined there were 105 class members. However, while finalizing the

1 Parties' longform Settlement Agreement, Defendants represented that they had re-run the numbers
2 and confirmed a final count of only 69 class members. Plaintiff revised this number in his motion
3 but neglected to do so in the Darin Declaration.

4 8. Because the reasonableness of the Parties' settlement depends upon the number of
5 workweeks rather than the number of class members, this discrepancy does not bear on the
6 reasonableness of the settlement. The Declaration of Laurie Yoon in Support of Plaintiff's Motion
7 for Preliminary Approval confirms that the number of workweeks remains the same.

8 9. Moreover, the Settlement Agreement includes an escalator clause at paragraph 4.9.
9 Should the Settlement Administrator's workweek count deviate from Defendants' by more than
10 10%, the Settlement Amount will also increase on a pro rata basis.

11 10. A further explanation of this discrepancy follows.

12 11. On July 18, 2023, Plaintiff propounded his Special Interrogatory No. 1, requesting
13 that Defendant Winall Oil Co. "[s]tate the number of CLASS MEMBERS who worked for YOU
14 during the CLASS PERIOD."

15 12. On October 6, 2023, Defendant served responses, indicating, "116 (the employee
16 list produced concurrently shows 119 as the total number because it includes 3 salaried
17 employees)."

18 13. Subsequently, in preparation for mediation defense counsel clarified that a total of
19 14 employees appearing on the produced employee list were exempt from California's meal- and
20 rest-break laws and therefore not class members. Based upon this representation, Plaintiff
21 determined there were 105 class members.

22 14. On February 15, 2024, the Parties mediated their case and reached agreement on
23 settlement. On May 23, 2024, the Parties executed a Memorandum of Understanding.

24 15. In September of 2024, the Parties reached agreement on a draft longform Stipulation
25 of Settlement. On September 17, 2024, counsel for Defendants sent an email stating that her client
26 would confirm a final count of workweeks, class members, and aggrieved employees by September
27 19, 2024.

28 16. On September 20, 2024, counsel for the Parties spoke by phone and counsel for

1 Defendants represented that this final count determined there were 69 class members.

2 17. Plaintiff subsequently revised the number of class members in his motion to reflect
3 Defendant's most recent count but neglected to do so in the Darin Declaration.

4 **Item 2**

5 18. The Court's post states: "File a copy of the original notice letter to the LWDA."

6 19. A true and correct copy of Plaintiff's original notice letter to the LWDA is attached
7 hereto as **Exhibit 2**.

8 **Item 3**

9 20. The Court's post states: "If the class notice will be given in English only, file a
10 statement explaining why that is sufficient."

11 21. The Parties have stipulated and agreed to Simpluris being appointed as Settlement
12 Administrator. The Parties chose Simpluris after soliciting bids from three potential settlement-
13 administrators and Simpluris submitted the winning bid.

14 22. Simpluris's bid includes translation of the Court-approved Class Notice into
15 Spanish. Once the Court has approved Simpluris as Settlement Administrator and the terms of the
16 Class Notice, Simpluris will mail both English and Spanish versions of the Class Notice to Class
17 Members, pursuant to the terms of the settlement agreement.

18 **Item 4**

19 23. The Court's post states: "The settlement agreement at paragraph 4.4 states the
20 PAGA payment amount is \$130,000, but the notice at section 8 says it is \$60,000. File a revised
21 settlement agreement and/or class notice resolving this inconsistency."

22 24. Under the terms of the Settlement Agreement, paragraph 4.4, "The Parties agree to
23 allocate **up to** one-hundred-thirty-thousand dollars (\$130,000) for the PAGA Payment." (Emphasis
24 added.) This number was based upon the total civil penalties available, based upon the total
25 number of pay periods worked during the PAGA Period.

26 25. However, the Settlement Agreement reserves to Plaintiff the right to allocate less of
27 the Settlement Amount to PAGA civil penalties. In preparing his Motion for Preliminary Approval,
28 Plaintiff more closely analyzed the reasonable settlement value of his PAGA claims. For the

1 reasons stated in Plaintiff's Motion for Preliminary Approval, Plaintiff determined that \$60,000
2 was a reasonable settlement value.

3 26. This allocation will ensure that a greater proportion of the Settlement Amount
4 reaches Class Members.

5 **Item 5**

6 27. The Court's post states: "Section 19 of the class notice contains an incorrect date for
7 the fairness hearing. This date should be blank until the court sets the date for the hearing on the
8 motion for final approval.

9 28. An Amended Stipulation of Settlement, fully executed by the Parties, is attached
10 hereto as **Exhibit 3** for the Court's review. A revised Class Notice is attached as Exhibit A to the
11 Amended Stipulation of Settlement for the Court's review. A redlined version of the Amended
12 Stipulation of Settlement and revised Class Notice is attached hereto as **Exhibit 4**.

13 **Item 6**

14 29. The Court's post states: "Paragraph 8.4 states objections, etc. should be sent to the
15 court. They only need to be sent to the administrator. Please remove the requirement that they be
16 sent to the court."

17 30. An Amended Stipulation of Settlement, fully executed by the Parties, is attached
18 hereto as **Exhibit 3** for the Court's review. A revised Class Notice is attached as Exhibit A to the
19 Amended Stipulation of Settlement for the Court's review. A redlined version of the Amended
20 Stipulation of Settlement and revised Class Notice is attached hereto as **Exhibit 4**..

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct and that this declaration was executed on December 12, 2024, in
23 Oakland, California.

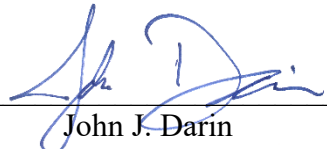
24
25 
26 John J. Darin

EXHIBIT 1

Subject: Message Posted in Palomino, et al. v. Winall Oil Co., et al., Case No. 23STCV04401
Date: Friday, December 6, 2024 at 10:20:12 AM Pacific Standard Time
From: service@caseanywhere.com <service@caseanywhere.com>
To: Jake Darin <jdarin@hunterpylelaw.com>



The following message has been posted in **Palomino, et al. v. Winall Oil Co., et al.**, 23STCV04401:

Message Title: Tentative Ruling re Motion for Preliminary Approval
To: Court and All Counsel
Posted By: Hon. Laura Seigle
Representing: Los Angeles Superior Court
Posting Date: 12/6/24
Time of Posting: 10:15 AM

Message:

The motion for preliminary approval is granted subject to the following:

1. The motion states there are 69 class members but the Darin Declaration states there are 105 class members. By December 12, 2024, file a statement resolving this discrepancy.
 2. File a copy of the original notice letter to the LWDA.
 3. If the class notice will be given in English only, file a statement explaining why that is sufficient.
 4. The settlement agreement at paragraph 4.4 states the PAGA payment amount is \$130,000, but the notice at section 8 says it is \$60,000. File a revised settlement agreement and/or class notice resolving this inconsistency.
 5. Section 19 of the class notice contains an incorrect date for the fairness hearing. This date should be blank until the court sets the date for the hearing on the motion for final approval.
 6. Paragraph 8.4 states objections, etc. should be sent to the court. They only need to be sent to the administrator. Please remove the requirement that they be sent to the court.
- Please file the documents noted above by December 12, 2024.

To reply to this message online, please click [here](#). This message will also be saved as part of the case file. You will be directed to the Case Anywhere log in page. After entering your username and password, you will be taken to the requested message thread. If you have saved your log in information by selecting the "Remember me at this computer" option, you will be automatically logged in and directed to this posting.

If your organization is no longer involved in the above-referenced matter, or if there is any other reason your organization's subscription should be terminated or billing should be modified, please contact us immediately. It is your organization's responsibility to request removal from the case site and conclusion of your subscription for this matter. If your organization is being billed for this matter, it will continue to be billed until we are notified of any such change.

Please contact us by phone at (800) 884-3163 or (818) 650-1040 or by email at support@caseanywhere.com if you have any questions.



EXHIBIT 2

Hunter Pyle Law

Hunter Pyle | Tanya Tambling | Katherine Fiester | Jake Darin | Natalia Ramírez Lee | Andrea Núñez

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October 27, 2022

By Electronic Filing and Certified Mail (Return Receipt Requested) to:

Labor and Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Winall Oil Co.
1338 E. 29th St.
Signal Hill, California 90755

Agent for Service of Process
Allen Giminez
1338 E. 29th St.
Signal Hill, California 90755

**RE: Notice of Labor Law Violations, CA Labor Code § 2699.3(a)
*Efren Palomino v. Winall Oil Co.***

Dear Labor and Workforce Development Agency and Employer:

We represent aggrieved employee Efren Palomino (“Plaintiff”), who submits this letter on behalf of all individuals currently and formerly employed by Defendant Winall Oil Co. (“Defendant”) for the purpose of staffing its gas-stations in the State of California (“aggrieved employees”).

The purpose of this letter is to comply with the statutory exhaustion requirements pursuant to California Labor Code section 2699.3(a)(1). Below we set forth our facts and theories which give rise to the wage and hour violations in this case.

Facts and Theories Supporting Employer’s Violations of the Law

Plaintiff is informed and believes that Defendant is a California-based owner and operator of more than a dozen gas stations in California.

Defendant’s stations consist of an attendant booth surrounded by multiple gas pumps. Plaintiff and other aggrieved employees staff these booths. Aggrieved employees’ duties include accepting cash payments from customers, addressing customers’ concerns, replacing nozzles, cleaning the booth and station, and performing an accounting of sales at the end of each shift.

***October 27, 2022
Page 2 of 3***

Defendant's schedule for each of its gas stations includes five shifts: Shift 1, Shift 2, Assistant Manager, Manager, Graveyard. These shifts vary in length between 5 and 9 hours.

A typical shift is supposed to include at least two employees, usually a Manager or Assistant Manager and a Shift 1 or Shift 2. Scheduling multiple employees during the same shift allows one employee to remain in the booth, helping customers, while the other replaces nozzles or cleans the booth and station. Scheduling multiple employees during the same shift also allows one employee to cover the booth while the other employee takes an uninterrupted meal break and rest breaks.

However, Defendant fails to adequately staff its stations. Defendant regularly schedules only one employee per station per shift. As a result, aggrieved employees are unable to take uninterrupted meal breaks and rest breaks. When working shifts alone, Plaintiff has never been able to take a full, uninterrupted ten-minute rest break or thirty-minute meal break. Plaintiff cannot take this time because customers will invariably need his help with something.

Plaintiff has requested that Defendant provide extra coverage during his shifts so that he may take a meal break and rest breaks. Defendant has denied this request, informing Plaintiff that the same coverage issues exist at all of its station and that is just the way it is. Plaintiff has never signed a waiver of his right to take breaks.

Based on the foregoing facts, Plaintiff is asserting PAGA claims on behalf of himself and all other aggrieved employees employed by Defendant in California from October 27, 2021 to the present for its Labor Code violations.

Employer's Labor Code Violations

Plaintiff seeks civil penalties under PAGA for the following Labor Code violations:

1. Violations of Labor Code section 558 for failing to pay wages due, including those for missed meal periods as required by Labor Code sections 226.7 and 512. Specifically, Defendant does not pay one additional hour of pay to Plaintiff and aggrieved employees at their regular rate of pay for a missed meal period.
2. Violations of Labor Code section 558 for failing to pay wages due, including those for missed rest periods as required by Labor Code section 226.7. Specifically, Defendant does not pay one additional hour of pay to Plaintiff and aggrieved employees at their regular rate of compensation for each missed rest period.

***Labor and Workforce Development Agency
Attn. PAGA Administrator***

October 27, 2022

Page 3 of 3

3. Violations of Labor Code section 226, subdivision (a) for failing to provide Plaintiff and aggrieved employees with adequate itemized wage statements that included, among other things, all meal and rest break premium wages.
4. Violations of Labor Code sections 201 through 203, requiring the timely payment of wages. Defendant has not timely paid those aggrieved employees who are no longer employed with Defendant all wages owed and due at the time of termination of their employment.
5. Violations of Labor Code sections 204 and 210, based on Defendant's failure to pay Plaintiff and other aggrieved employees all wages due on their regular paydays.

Finally, please consider this letter to constitute notice of Plaintiffs' grievances on behalf of all aggrieved employees. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 577, as modified (Jan. 12, 2005); *Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608).) We would like to provide Defendant with an opportunity to resolve these grievances. Accordingly, please notify us within 30 days if you intend to do so. If you need longer than that to respond, please let us know.

Thank you in advance for your attention to this matter.

Very Truly Yours,

HUNTER PYLE LAW



John J. Darin

EXHIBIT 3

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Attorneys for Defendant, WINALL OIL CO.,
 ALLEN GIMENEZ, and GARY GIMENEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES**

EFREN PALOMINO, on behalf of himself and
 all others similarly situated,

Plaintiff,

v.

WINALL OIL CO., a California Corporation;
 ALLEN GIMENEZ, an individual; GARY
 GIMENEZ, an individual; and DOES 1 through
 20, inclusive,

Defendants.

Case No.. 23STCV04401

**CLASS AND REPRESENTATIVE
 ACTION**

**AMENDED STIPULATION OF
 SETTLEMENT**

Trial Date: Not Set
 Action Filed: February 28, 2023

1 This AMENDED Stipulation of Settlement, including the Class Notice attached as
2 Exhibit A (the “Settlement,” “Settlement Agreement,” or “Agreement”) and the Second
3 Amended Complaint attached as Exhibit B, is made and entered into by, between, and among
4 Plaintiff EFREN PALOMINO (“Plaintiff”) on behalf of himself and the Settlement Class
5 Members, on the one hand, and Defendants WINALL OIL CO., ALLEN GIMENEZ, and
6 GARY GIMENEZ (“Defendants”) on the other hand. Plaintiff and Defendants (the “Parties”) enter into this Agreement to effect a full and final settlement and preclusive judgment
7 resolving all claims brought or that could have been brought against Defendants based on the
8 factual allegations alleged in the case *Efren Palomino v. Winall Oil Co., Allen Gimenez, Gary*
9 *Gimenez, and DOES 1 through 20* (Superior Court of the State of California, County of Los
10 Angeles, No. 23STCV04401) (the “Action”). This Agreement is intended to fully and finally
11 compromise, resolve, discharge, and settle the Released Claims, as defined and on the terms
12 set forth below, and to the full extent reflected here, subject to the Court’s approval.

14 **1. RECITALS**

15 This Agreement is made in consideration of the following facts:

16 1.1 WHEREAS, on October 28, 2022, Plaintiff notified Defendants and the Labor
17 and Workforce Development Agency (“LWDA”) of Defendant’s alleged violations of the
18 California Labor Code;

19 1.2 WHEREAS, more than 65-days later, on February 28, 2023, Plaintiff
20 commenced the Action by filing a class and representative action complaint asserting causes
21 of action for: (1) Failure to Provide Off-Duty Meal Periods; (2) Failure to Authorize and
22 Permit Rest Periods; (3) Failure to Furnish Adequate Wage Statements; (4) Unlawful Business
23 Practices; and (5) Violations of the Labor Code Private Attorneys General Act of 2004
24 (“PAGA”);

25 1.3 WHEREAS, on March 21, 2023, Plaintiff filed a First Amended Complaint,
26 correcting misspellings of the names of Defendants ALLEN GIMENEZ and GARY
27 GIMENEZ but otherwise leaving unchanged the substance of Plaintiff’s initial complaint;
28

1 1.4 WHEREAS, the Parties engaged in extensive discovery, exchanging
2 information, documents, and hiring contractors and experts to help review and analyze the
3 approximately 12,000 pages of handwritten Class Member timesheets made available by
4 Defendants, which enabled the Parties to thoroughly evaluate Plaintiff's claims, the PAGA
5 claim, the claims of the putative Class, Defendants' defenses, and the likely outcomes, risks,
6 and expense of pursuing litigation;

7 1.5 WHEREAS, on November 6, 2023, Plaintiff submitted an amended PAGA
8 notice to the LWDA, alleging additional claims for violations of the Labor Code;

9 1.6 WHEREAS, on February 15, 2024, the Parties attended a private mediation with
10 mediator David Sarnoff, Esq., and reached the terms of this arm's-length Settlement;

11 1.7 WHEREAS, on September 26, 2024, Plaintiff submitted a second amended
12 PAGA notice to the LWDA, clarifying which violations of the Labor Code he alleges;

13 1.8 WHEREAS a bona fide dispute exists as to whether any wages or penalties are
14 due from Defendants to any putative Class Member, to the LWDA, or to any allegedly
15 aggrieved employees;

16 1.9 WHEREAS the Parties desire to compromise and settle all issues and claims that
17 have been or could have been brought against Defendants based on the factual allegations of
18 the Action, including all claims brought on a putative class and representative basis in the
19 Action;

20 1.10 WHEREAS the Parties further agree that this Agreement, the fact of this
21 Settlement, any terms of this Agreement, and any documents filed in connection with the
22 Settlement shall not constitute, or be offered, received, claimed, construed, or deemed as an
23 admission, finding, or evidence of: (i) any wrongdoing by any Released Parties; (ii) any
24 violation of any statute or law by Released Parties; (iii) any liability on the claims or
25 allegations in the Action on the part of any Released Parties; or (iv) the propriety of certifying
26 a class or pursuing representative relief under PAGA in the Action or any other civil or
27 administrative proceeding; and this Agreement shall not be used by any person for any
28

purpose whatsoever in any administrative or legal proceeding, other than a proceeding to enforce the terms of this Agreement;

1.11 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED by Plaintiff, for themselves and on behalf of the Settlement Class Members, defined below, and PAGA Employees, defined below, and by Defendants that, subject to the approval of the Court, the Action shall be settled and compromised, and the Released Claims shall be finally and fully compromised and settled as to the Released Parties in the manner and upon the terms and conditions set forth in this Agreement.

2. DEFINITIONS

Unless otherwise defined herein, capitalized terms used in this Agreement have these meanings:

2.1 “Action” means the case *Efren Palomino v. Winall Oil Co., Allen Gimenez, Gary Gimenez, and DOES 1 through 20* (Superior Court of the State of California, County of Los Angeles, No. 23STCV04401).

2.2 “Class Members” means all current and former gas-station attendants who were employed by Defendants throughout California at any time from February 28, 2019, through the date of preliminary approval of the parties’ settlement agreement by the Court.

2.3 “Class Period” means February 28, 2019, through the date of preliminary approval of the parties’ settlement agreement by the Court.

2.4 “Class Counsel” means Hunter Pyle and John J. Darin of Hunter Pyle Law.

2.5 “Class Counsel Award” means the attorneys’ fees and reimbursement of litigation costs and expenses awarded by the Court to Class Counsel to fully satisfy all claims for attorneys’ fees and costs incurred by Plaintiff to litigate and settle this Action.

2.6 “Class Information” means information regarding Class Members that Defendants will in good faith compile from its records and provide to the Settlement Administrator. Class Information shall be provided to the Settlement Administrator in a Microsoft Excel spreadsheet and shall include each Class Member’s full name, Social Security Number, last known mailing address, total Workweeks, defined below, employed during the

1 Class Period, total pay periods worked during the PAGA Period, and dates of employment as a
2 non-exempt employee during the Class Period. Because Class Members' private information is
3 included in the Class Information, the Settlement Administrator shall maintain the Class
4 Information in confidence, shall limit access to the information only to those employees of the
5 Settlement Administrator with a need to use the Class Information as part of the administration
6 of the Settlement, and shall use and disclose the Class Information only for purposes of this
7 Settlement.

8 2.7 "Class Notice" means the Notice of Class Action Settlement to be provided to
9 Class Members, substantially in the form attached as "Exhibit A."

10 2.8 "Complete and General Release" means a release of the Released Parties from
11 all claims, demands, rights, liabilities, and causes of action of every nature and description
12 whatsoever, known or unknown, asserted or that might have been asserted, whether in tort,
13 contract, or for violation of any state or federal statute, rule or regulation arising out of,
14 relating to, or in connection with any act or omission by or on the part of any of the Released
15 Parties committed or omitted prior to the execution hereof. The Complete and General Release
16 also means that Plaintiff Efren Palomino stipulates and agrees that he is not due or owed any
17 additional monies and expressly waives and relinquishes, to the fullest extent permitted by
18 law, the provisions, rights, and benefits of section 1542 of the California Civil Code, or any
19 other provision under federal or state law, which provides:

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

24 2.9 "Court" means the Los Angeles County Superior Court.

25 2.10 "Effective Date" means the first business day upon which the latest of the
26 following dates: (i) if no Class Member submits an objection or, if they have submitted
27 objections, such objections have been withdrawn, then the date the Court enters an order
28 granting final approval of the Agreement; (ii) if a Class Member submits an objection to the
Agreement that has not been withdrawn, and if an appeal, review or writ is not sought from the
order granting final approval of the Agreement, then sixty-one calendar days after service of

notice of entry of the order; or (iii) if an appeal, review or writ is sought from the order, then the business day after the court of last resort to which any appeal is taken has affirmed the order or the appeal, review or writ is dismissed or denied, and the order is no longer subject to further appeal or judicial review.

2.10 “Final Approval Date” means the date of the Court’s order finally approving this Settlement.

2.11 “Final Approval Order” means the Court’s order finally approving this Settlement.

2.12 “Final Approval Hearing” means the hearing at or after which the Court will make a final decision as to whether the Settlement is fair, reasonable, and adequate, and therefore is finally approved by the Court.

2.13 “Individual Settlement Payment” means the gross payment of each Settlement Class Member’s Individual Settlement Share and Individual PAGA Payment if applicable.

2.14 “Individual Settlement Share” means the pro rata payment of the Net Distribution Fund to each Settlement Class Member.

2.15 “Individual PAGA Payment” means PAGA Employees’ pro rata share of 25% of the PAGA Payment.

2.16 “Judgment” means the judgment to be entered in the Action upon final approval of the Settlement.

2.17 “Mailed Notice Date” means the date of the initial mailing of the Class Notice to Class Members.

2.18 “Net Distribution Fund” means the Total Settlement Amount less the payment of: (1) the Class Counsel Award; (2) Plaintiff’s Service Award, if any; (3) the PAGA Payment; and (4) the Settlement Administrator Expenses.

2.19 “PAGA Employees” is defined as all current and former gas-station attendants who were employed by Defendants throughout California during the period running from October 28, 2021 through the date of preliminary approval of the parties’ settlement agreement by the Court.

1 2.20 “PAGA Payment” means a total payment of up to \$130,000 as consideration for
2 the PAGA Release. The PAGA Payment will be allocated exclusively as penalties under Labor
3 Code section 2699, of which 75% (up to \$97,500) will be paid to the LWDA and the
4 remainder of which will be distributed to the PAGA Employees. The PAGA Payment shall be
5 payable from the Total Settlement Amount.

6 2.21 “PAGA Period” means October 28, 2021, through the date of preliminary
7 approval of the Parties’ Settlement Agreement by the Court.

8 2.22 “PAGA Release” refers to the release provided by Plaintiff acting in his capacity
9 as private attorneys general on behalf of the State of California pursuant to the California
10 Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 *et seq.*, and on
11 behalf of the Labor and Workforce Development Agency and the PAGA Employees. The
12 PAGA Release shall operate to release and discharge the Released Parties from any claim for
13 civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004,
14 Labor Code section 2698 *et seq.* that arise from or could have been asserted based on any of
15 the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements,
16 omissions or failures to act alleged in Plaintiff’s Second Amended PAGA Notice submitted to
17 the Labor Workforce and Development Agency, including but not limited to claims for
18 violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246, 248.5, 512, 551, 552,
19 1174, 1198.5, 2810.3, 3550, 3551, 6430, and 6431, and the applicable IWC Wage Orders.

20 2.23 “Plaintiff” means Efren Palomino.

21 2.24 “Preliminary Approval” means entry of the Preliminary Approval Order.

22 2.25 “Preliminary Approval Order” means the order granting preliminary approval of
23 this Settlement Agreement.

24 2.26 “Released Class Claims” means any and all claims, charges, complaints, liens,
25 demands, causes of action, obligations, damages and liabilities, during the Class Period,
26 known or unknown, suspected or unsuspected, that each participating class member had, now
27 has, or may hereafter claim to have during the Class Period against Defendants and that were
28 asserted in the Action, or that arise from or could have been asserted based on any of the facts,

1 circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or
2 failures to act alleged in Plaintiff's Second Amended Complaint, regardless of whether such
3 claims arise under federal, state and/or local law, statute, ordinance, regulation, common law,
4 or other source of law. The Released Class Claims specifically include, but are not limited to
5 Labor Code §§ 226, 226.7, 246, 248.5, 512, 551, 552, 1174, 1198.5, 2810.3, 3550, 3551, 6430,
6 and 6431, and the related IWC Wage Order No. 7-2001 and Business & Professions Code
7 §§ 17200, et seq., and all other claims, such as those under the California Labor Code, Wage
8 Orders, regulations, and/or other provisions of law, that could have been pleaded based on the
9 facts asserted in the Action, including: (1) Failure to Provide Off-Duty Meal Periods; (2)
10 Failure to Authorize and Permit Rest Periods; (3) Failure to Furnish Adequate Wage
11 Statements; (4) Unlawful Business Practices; (5) Failure to Maintain and Furnish Records; (6)
12 Failure to Post Compensation Insurance Carrier and Safety Notices; and (7) Failure to Provide
13 One Day's Rest Per Workweek, as well as interest, fees, and costs. The enumeration of these
14 specific statutes shall neither enlarge or narrow the scope of res judicata based on the claims
15 that were asserted in the Action or could have been asserted in the Action based on the facts
16 and circumstances alleged in any Complaint on file in the Action.

17 2.27 "Released Parties" means Defendant Winall Oil Co.; Defendant Allen Gimenez;
18 and Defendant Gary Gimenez.

19 2.28 "Response Deadline" means the date by which a Class Member may: (i) request
20 to be excluded from the Settlement; (ii) object to the Settlement; or (iii) dispute the number of
21 Workweeks credited to him or her. The Response Deadline shall be sixty (60) calendar days
22 after the Mailed Notice Date and shall be specifically identified and set forth in the
23 Preliminary Approval Order and Class Notice. The Response Deadline may be extended in the
24 event the Class Notice is re-mailed to any Class Members as set forth in section 6. In the event
25 the Class Notice is re-mailed, the Settlement Administrator shall advise the Class Member that
26 they have an additional ten (10) calendar days from the original Response Deadline to submit
27 a response (the "Extended Response Deadline").
28

1 2.29 “Service Award” means the amounts approved by the Court to be paid to
2 Plaintiff, in addition to Plaintiff’s respective Individual Settlement Payment. The Service
3 Award payable to Efren Palomino shall not exceed \$20,000.00 each and shall be payable from
4 the Total Settlement Amount.

5 2.30 “Settlement Administrator” means Simpluris.

6 2.31 “Settlement Administrator Expenses” means the maximum amount to be paid to
7 the Settlement Administrator, which shall not exceed \$6,000. All Settlement Administrator
8 Expenses are to be paid exclusively from the Total Settlement Amount.

9 2.32 “Settlement Class Members” means all Class Members who do not opt out of
10 this Settlement.

11 2.33 “Total Settlement Amount” means One-Million-Three-Hundred-Eighty-Four-
12 Thousand-Eight-Hundred-Four Dollars and Twenty-Five Cents (\$1,384,804.25), which is the
13 maximum amount that Defendants are obligated to pay under this Settlement Agreement,
14 except for the employer’s share of payroll taxes with respect to the wage portion of Individual
15 Settlement Shares, in order to resolve and settle this Action, subject to Court approval. The
16 \$1,384,804.25 plus the employer’s share of payroll taxes is the maximum amount Defendants
17 are obligated to pay under this Agreement. The Total Settlement Amount includes the Class
18 Counsel Award, any Service Award, the Settlement Administrator Expenses, the PAGA
19 Payment (which includes Individual PAGA Payments to PAGA Employees and payment to
20 the LWDA), the Individual Settlement Shares, all related interest, and all employee-side
21 payroll and employment taxes on the wage portion of Individual Settlement Shares. The Total
22 Settlement Amount does not include the employer-side payroll and employment taxes on the
23 wage portion of Individual Settlement Shares, which Defendants agrees to pay separately.

24 2.34 “Void Date” means the date by which any checks issued to Settlement Class
25 Members shall become void, i.e., on the 181st day after mailing.

26 2.35 “Workweeks” means the number of weeks during which a Class Member
27 worked for Defendants in the State of California during the Class Period.
28

3. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

3.1 Certification of Class: Solely for the purposes of this Settlement, the Parties stipulate and agree that the Court may certify the Class.

3.2 Appointment of Class Representatives: Solely for the purposes of this Settlement, the Parties stipulate and agree that Plaintiff Efren Palomino shall be appointed representative of the Class.

3.3 Appointment of Class Counsel: Solely for the purposes of this Settlement, the Parties stipulate and agree that Class Counsel shall be approved as counsel for Settlement Class Members.

3.4 Appointment of Settlement Administrator: Solely for the purposes of this Settlement, the Parties stipulate and agree that Simpluris shall be appointed to serve as Settlement Administrator. The Settlement Administrator shall be responsible for establishing a toll-free telephone number by which Class Members can inquire about the Settlement and a Post Office Box for receipt of Class Members' communications; preparing, printing and mailing the Class Notice; receiving and reviewing requests for exclusion, objections, or disputes submitted by Class Members; calculating Individual Settlement Shares and Individual PAGA Payments; calculating and paying any and all payroll tax or other required withholdings from the wage portion of the Individual Settlement Shares as required under this Agreement and applicable law; providing weekly status reports to Defendants' counsel and Class Counsel; providing a due diligence declaration for the Court prior to the Final Approval Hearing; mailing Individual Settlement Payments, any Service Award, the Class Counsel Award, and 75% of the PAGA Payment to the LWDA; printing and providing Plaintiff, Class Counsel, and Settlement Class Members with IRS Forms W-2 or 1099 as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Court upon the completion of the Settlement; and for other tasks as the Parties mutually agree. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize Settlement Administrator Expenses.

1 3.5 Conditional Nature of Stipulation for Certification: Solely for the purposes of
2 this Settlement, the Parties stipulate and agree to the certification of the Class. Should for
3 whatever reason the Settlement not become effective, the fact that the Parties were willing to
4 stipulate to certification as part of the Settlement shall have no bearing on, and shall not be
5 admissible in connection with, the issue of whether the Class should be certified in a non-
6 Settlement context in this Action or in any other lawsuit. Defendants expressly reserves their
7 right to oppose any claim or class certification in this or any other action should this
8 Settlement not become effective.

9 3.6 The Parties agree to stay all proceedings in the Action, except those proceedings
10 necessary to implement and complete the Settlement, from the date that this Settlement
11 Agreement is executed by Plaintiff until such time as the Parties shall agree in writing that the
12 stay is lifted, which stay shall extend the time within which this action must be brought to trial
13 pursuant to California Code of Civil Procedure section 583.310, et seq.

14 **4. NON-REVERSIONARY SETTLEMENT CONSIDERATION**

15 4.1 Defendants' total monetary obligation under this Settlement is the Total
16 Settlement Amount (\$1,384,804.25) and is non-reversionary. This is an "all in" number that
17 includes, without limitation, all monetary benefits and payments for Settlement Class
18 Members, Service Awards, the Class Counsel Award, Settlement Administrator Expenses, the
19 PAGA Payment, and all other claims for interest, fees, and costs. Under no circumstances shall
20 Defendants be required to pay anything more than the Total Settlement Amount, except that
21 Defendants will separately pay the employer payroll and employment taxes due for the wages
22 portion of Individual Settlement Shares made under this Agreement. In no event shall
23 Defendants be liable for making any payments under this Settlement, or for providing any
24 relief to the Settlement Class Members, before the Effective Date of this Agreement. Within
25 thirty (30) calendar days of the Effective Date, Defendants will transfer the total settlement
26 amount to the Settlement Administrator. Such funding is conditioned on the Settlement
27 Administrator providing valid transmission instructions, which shall include the amount of
28 additional employer-side payroll taxes.

1 4.2 Defendants agrees not to oppose Plaintiff Efren Palomino's application for a
2 Service Award in an amount up to \$20,000.00. Any Service Award awarded by the Court shall
3 be paid from the Total Settlement Amount. If the Court awards less than the full Service
4 Award, the unawarded funds shall become part of the Net Distribution Fund.

5 4.3 Plaintiff shall seek a Class Counsel Award from the Court, consisting of
6 attorneys' fees in an amount of up to \$461,601.42, or one-third of the Gross Settlement
7 Amount, and all litigation costs and expenses incurred subject to proof in an amount not to
8 exceed \$5,000. Defendants agrees not to oppose a request for these amounts. Any Class
9 Counsel Award awarded by the Court shall be paid from the Total Settlement Amount. Any
10 portion of the Class Counsel Award that is not approved by the Court and awarded to Class
11 Counsel shall become part of the Net Distribution Fund.

12 4.4 The Parties agree to allocate up to one-hundred-thirty-thousand dollars
13 (\$130,000) for the PAGA Payment, of which 75% or \$97,500 shall be paid to the LWDA, and
14 the remaining 25% or \$75,000 shall be paid to PAGA Employees on a pro rata basis based on
15 Workweeks in the PAGA Period, if any, and irrespective of whether or not they request
16 exclusion from the Settlement. The PAGA Payment shall be paid from the Total Settlement
17 Amount. Any portion of the PAGA Payment that is not approved by the Court shall become
18 part of the Net Distribution Fund.

19 4.5 The Settlement Administrator Expenses are estimated not to exceed Six
20 Thousand Dollars (\$6,000.00). The Settlement Administrator Expenses shall be paid from the
21 Total Settlement Amount. Any portion of the Settlement Administrator Expenses not actually
22 incurred by the Settlement Administrator shall become part of the Net Distribution Fund.

23 4.6 The Settlement Administrator shall calculate the Individual Settlement Shares
24 based on the Class Information provided to the Settlement Administrator by Defendants.
25 Payment of Individual Settlement Shares to Settlement Class Members will be made from the
26 Net Distribution Fund as follows:

- 27 (a) The allocation of the Net Distribution Fund shall be made pursuant to a formula by
28 which each Class Member receives a pro rata portion of the Net Distribution Fund

1 based upon the number of Workweeks the Class Member worked for Defendants
2 during the Class Period.

3 (b) Each Class Member's number of Workweeks will be derived by Defendants based
4 on the payroll and time records kept by Defendants in the ordinary course of
5 business during the Class Period. Individual Settlement Shares shall be characterized
6 as 20 percent wages, 60 percent penalties, and 20 percent interest. Wage payments
7 shall be subject to all required withholdings. Defendants shall be responsible for the
8 employer's share of any applicable payroll taxes. Each Class Member's Individual
9 Settlement Award will be reported on a W-2 or 1099 Form.

10 4.7 PAGA Employees will receive an Individual PAGA Payment that consists of a
11 pro rata share of 25% of the PAGA Payment based on total pay periods worked during the
12 PAGA Period. Specifically, 25% of the PAGA Payment shall be divided by the total of all
13 Workweeks worked by PAGA Employees during the PAGA Period in order to establish the
14 value of each Workweek. The Individual PAGA Payment to be made to each PAGA
15 Employee shall be calculated by multiplying the value of a Workweek by the number of
16 Workweeks worked by the PAGA Employee during the PAGA Period.

17 4.8 Settlement Class Members may dispute the number of Workweeks with which
18 they have been credited, as reflected in their respective Class Notices. In order to dispute
19 Workweeks, Settlement Class Members must submit a written letter returned to the Settlement
20 Administrator by mail at the specified address, postmarked on or before the Response
21 Deadline. The written letter must: (a) contain the case name and number of the Action; (b) be
22 signed by the Settlement Class Member; (c) contain the full name, address, telephone number,
23 and the last four digits of the Social Security Number of the disputing Settlement Class
24 Member; (d) clearly state that the Settlement Class Member disputes the number of
25 Workweeks credited to him or her and what he or she contends is the correct number to be
26 credited to him or her; and (e) include information or attached documentation demonstrating
27 that the amount of Workweeks that he or she contends should be credited to him or her are
28 correct. The date of the postmark on the submission will be the exclusive means to determine

whether a dispute has been timely submitted. Absent evidence rebutting the accuracy of Defendants' records and data as they pertain to the number of Workweeks to be credited to a disputing Settlement Class Member, Defendants' records will be presumed correct and determinative of the dispute. However, if a Class Member produces information or documents to the contrary, the Settlement Administrator will evaluate the materials submitted by the Class Member and the Settlement Administrator will resolve and determine the number of eligible Workweeks that the disputing Settlement Class Member should be credited with under the Settlement. The Settlement Administrator's decision on such disputes will be final and non-appealable.

4.9 Defendants have represented that Class Members have worked a total of no greater than 15,320 total Workweeks through February 15, 2024. Should the actual number of workweeks worked by Class Members during this period exceed 15,320 by more than 10% greater than this figure (i.e., if there are 16,852 or more total workweeks), then the Settlement Amount will increase by the proportion of the increase in the total workweeks (e.g., if the number of workweeks increases by 12% the Settlement Amount shall also increase by 12%).

4.10 Individual PAGA Payments will be allocated as one hundred percent (100%) penalties to be reported on IRS Form 1099.

4.11 Settlement Class Members (except Plaintiff with respect to their Service Awards) are not eligible to receive any compensation other than the Individual Settlement Payments discussed above.

4.12 The Settlement Administrator shall never be empowered to make payments to Class Members exceeding the total Net Distribution Fund or deviate from the payment formula agreed upon by the Parties.

4.13 Amounts paid to Plaintiff and Settlement Class Members pursuant to this Settlement Agreement shall be deemed to be paid to such Settlement Class Members and PAGA Employees solely in the year in which such payments actually are received by the Settlement Class Members and PAGA Employees. It is expressly understood and agreed that such Individual Settlement Payments and Individual PAGA Payments will not be utilized to

1 calculate any additional compensation or any additional benefits under any compensation or
2 benefit plans to which any Settlement Class Member or PAGA Employee may be eligible,
3 including, but not limited to: bonus, contest or commissions plans; profit-sharing plans, bonus
4 plans, 403(b) and 457 plans, deferred compensation plans; vacation plans, sick leave plans,
5 PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement
6 Agreement will not affect any rights, contributions, or amounts to which any Settlement Class
7 Members or PAGA Employees may be entitled under any compensation or benefit plans.

8 4.14 In consideration of his Service Awards, Plaintiff Efren Palomino, individually
9 and on behalf of his heirs, estates, trustees, executors, administrators, representatives, agents,
10 successors, and assigns, and anyone claiming through him or acting or purporting to act on his
11 behalf, agrees to provide a Complete and General Release.

12 4.15 In exchange for the consideration provided by Defendants, Plaintiff Efren
13 Palomino, acting in the capacity of a representative of the State of California and on behalf of
14 the group of PAGA Employees, agrees to release any and all claims during the PAGA Period
15 that that arise from or could have been asserted by the State of California and on behalf of the
16 Labor and Workforce Development Agency against Defendants based on any of the facts,
17 circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or
18 failures to act alleged in Plaintiff's Second Amended PAGA Notice submitted to the Labor
19 Workforce and Development Agency, including but not limited to claims for violations of
20 Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246, 248.5, 551, 552, 558, 3550, 3551,
21 6430, and 6431, and the applicable IWC Wage Orders.

22 4.16 In exchange for the consideration provided by Defendants, Settlement Class
23 Members, individually and on behalf of their heirs, estates, trustees, executors, administrators,
24 representatives, agents, successors, and assigns, and anyone claiming through them or acting
25 or purporting to act on their behalf, will agree to forever release, discharge, and hold harmless
26 each and all of the Released Parties for the Released Claims during the Class Period.

27 4.17 All releases identified herein shall be null and void if Defendants fail to fully
28 fund the Total Settlement Amount. The releases identified herein shall become effective on the

date on which Defendants fully funds the Total Settlement Amount.

4.18 Any uncashed settlement compensation left after distributing the Net Distribution Fund and after the 180-day period for negotiating checks will constitute a *cy pres* fund to be the Wage Justice Center, subject to Court approval.

4.19 Defendants will not receive reversion of any part of the Total Settlement Amount, unless the Settlement is not finally approved by the Court with the terms materially identical to the terms articulated in this Agreement. In the event the Settlement is void per this term, or is not given final approval by the Court, Defendants will bear only one half of the already-accrued costs of the Settlement Administrator.

5. PROCEDURE FOR REQUESTING PRELIMINARY APPROVAL OF THE SETTLEMENT

5.1 After execution of this Settlement Agreement, Plaintiff shall promptly submit a motion for preliminary approval of the Settlement to the Court, along with the Settlement Agreement. Plaintiff's motion for preliminary approval shall request that the Court enter a preliminary approval order.

5.2 The Preliminary Approval Order shall:

- Conditionally certify the Settlement Class for settlement purposes;
- Preliminarily appoint Plaintiff as representative of the proposed Settlement Class;
- Grant Plaintiff leave to file his Second Amended Complaint, which is attached hereto as "Exhibit B";
- Preliminarily approve Class Counsel to represent the Settlement Class;
- Appoint Simpluris as the Settlement Administrator and order the Settlement Administrator to provide notice of the Settlement as outlined in this Agreement;
- Stay all litigation of the Action pending the Final Approval Hearing, except as necessary to implement and effectuate the Settlement; and
- Order that the preliminary approval of the Settlement, conditional certification of the Settlement Class, and all actions associated with them, are undertaken on

1 the condition that they shall be vacated if the Settlement Agreement is
2 disapproved in whole or in part by the Court, or any appellate court or other
3 court of review, in which event the Settlement Agreement and the fact that it
4 was entered into shall not be offered, received, or construed as an admission or
5 as evidence for any purpose, including but not limited to an admission by any
6 Party of liability or non-liability or of the certifiability of a litigation class or the
7 appropriateness of maintaining a representative action.

8 5.3 The motion for preliminary approval shall request: the Final Approval Hearing;
9 that any determination on the request for a Class Counsel Award and Service Award be set no
10 earlier than forty-five (45) calendar days after the Response Deadline; and that Plaintiff be
11 permitted to file Plaintiff's motion for final approval of the Settlement no later than sixteen
12 (16) court days before the Final Approval Hearing.

13 5.4 At the same time that Plaintiff file the motion for preliminary approval, Class
14 Counsel will submit the Settlement Agreement to the LWDA.

15 **6. PROCEDURE FOR PROVIDING NOTICE OF SETTLEMENT**

16 6.1 No more than thirty (30) calendar days after Preliminary Approval, Defendants
17 shall provide the Settlement Administrator with the Class Information for purposes of sending
18 the Class Notice to Class Members.

19 6.2 No more than forty-five (45) calendar days after Preliminary Approval, the
20 Settlement Administrator shall mail the Class Notice to Class Members via first-class regular
21 U.S. mail. Prior to mailing, the Settlement Administrator will perform a search based on the
22 National Change of Address Database to update and correct for any known or identifiable
23 address changes. For each Class Notice returned as undeliverable without a forwarding
24 address, the Settlement Administrator will perform a single computer or "skiptrace" search to
25 obtain an updated address. All Class Members' names and postal mail addresses obtained
26 through these sources shall be protected as confidential and not used for purposes other than
27 the notice and administration of this Settlement. The address determined by the Settlement
28 Administrator as the current mailing address shall be presumed to be the best mailing address

1 for each Class Members. The Settlement Administrator shall promptly re-mail the Class
2 Notice to any Class Member whose original notice was returned because of a wrong address
3 within three (3) business days of obtaining an updated address and advise the Class Member of
4 the Extended Response Deadline.

5 6.3 If any Class Notice to a Class Member is returned to the Settlement
6 Administrator with a forwarding address, the Settlement Administrator shall forward the postal
7 mailing to that address within three (3) business days. Class Members whose Class Notices are
8 re-mailed shall have an additional ten (10) calendar days from the original Response Deadline
9 to submit a response (the Extended Response Deadline). The Settlement Administrator will
10 advise Class Members of the Extended Response Deadline where applicable.

11 6.4 The Settlement Administrator shall continue to obtain updated mailing addresses
12 for any undeliverable Class Notices until the Response Deadlines. The Settlement
13 Administrator shall maintain a log detailing the instances Class Notices are returned as
14 undeliverable, re-mailed, and when applicable, returned again.

15 6.5 The Class Notice shall include a statement as to the number of Workweeks
16 credited to the Class Member, where applicable, as well as an explanation of how the
17 Workweeks will be used to calculate the Individual Settlement Shares and Individual PAGA
18 Payments if applicable.

19 6.6 The Class Notice will inform Class Members that, unless they submit a request
20 to be excluded from the Settlement, they will become Settlement Class Members and will
21 receive Individual Settlement Payments under the Agreement.

22 6.7 The Class Notice will inform Class Members of their right to request exclusion
23 from the Settlement or to object to the Settlement, dispute the amount of Workweeks credited
24 to them, and of the procedure for doing so. The Class Notice will also inform Class Members
25 that if they request exclusion from the Class, they may not also object to the Settlement or
26 dispute the number of Workweeks credited to them. The Class Notice will inform PAGA
27 Employees that all claims to PAGA penalties are settled by operation of law and that they are
28

1 not able to exclude themselves from the PAGA Release and will receive an Individual PAGA
2 Payment whether or not they request exclusion from the Action and the Settlement.

3 6.8 Class Members will have sixty (60) days from the mailing of the Class Notice to
4 submit a request for exclusion or objections (which periods shall run concurrently).

5 6.9 The Parties agree that the procedures set forth in this Section comply with all
6 due process requirements, constitute reasonable and best practicable notice under the
7 circumstances, and constitute an appropriate and sufficient effort to locate current addresses
8 for Class Members such that no additional efforts to do so shall be required.

9 6.10 No more than ten (10) calendar days after the Response Deadline or Extended
10 Response Deadline in the event the Class Notice is re-mailed, the Settlement Administrator
11 shall provide a declaration of due diligence confirming: its dissemination of the Class Notice
12 in accordance with the notice procedures of this Agreement; all attempts by the Settlement
13 Administrator to locate Class Members; the number of delivered and undeliverable Class
14 Notices; the number of objections received and copies of same; the number of requests for
15 exclusion received and copies of same; and the number of Workweek payment disputes
16 received. Class Counsel shall be responsible for filing the due diligence declaration with the
17 Court.

18 **7. PROCEDURE FOR REQUESTING EXCLUSION**

19 7.1 All requests for exclusion will be submitted to the Settlement Administrator,
20 who will timely certify jointly to Plaintiff' counsel and Defendants' counsel the forms that
21 were timely and correctly submitted.

22 7.2 Class Members who wish to exclude themselves from (or "opt out" of) the
23 Settlement must submit timely, signed written requests for exclusion from the Settlement to
24 the Settlement Administrator that includes the Class Member's name, a clear and unequivocal
25 statement that the individual wishes to be excluded from the Settlement, and the Class
26 Member's signature.

27 7.3 The request for exclusion must be mailed to the Settlement Administrator at the
28 address provided in the Class Notice and must be postmarked no later than the Response

1 Deadline. The date of the postmark on the envelope containing the request for exclusion shall
2 be the exclusive means used to determine whether a request for exclusion has been timely
3 submitted.

4 7.4 The Settlement Administrator shall immediately notify Class Counsel and
5 counsel for Defendants by email and phone if the number of timely-submitted requests for
6 exclusion reaches ten percent (10%) of all Class Members. If Class Members representing
7 more than 10% of the total Workweeks in the Class Period submit exclusion forms of any
8 kind, Defendants may exercise the option to rescind and revoke the entire Settlement
9 Agreement by sending written notice to Class Counsel that it revokes the Settlement within ten
10 (10) calendar days after the Response Deadline or Extended Response Deadline if applicable.
11 However, if Defendants exercises this option, it will be responsible for paying all settlement
12 administration costs incurred to date.

13 7.5 All Class Members who do not opt out of the Settlement shall be bound by the
14 Final Approval Order and Judgment even if they never received the Class Notice or other
15 actual notice of this Settlement. However, if a Class Member's information was not part of the
16 Class Information that Defendants provided to the Settlement Administrator, Defendants shall
17 provide additional funding sufficient to fully fund the share the Class Member would have
18 otherwise been entitled to receive under the terms of this Agreement.

19 7.6 Plaintiff agrees not to request exclusion from the Settlement.

20 7.7 The Parties agree there is no statutory or other right for any PAGA Employee to
21 opt out or otherwise exclude themselves from the settlement and release of the PAGA Claims.

22 **8. PROCEDURE FOR WRITTEN OBJECTION**

23 8.1 Any Class Member who has not opted out of the Settlement and who wishes to
24 submit a written objection to the fairness, reasonableness, or adequacy of this Agreement must
25 provide the written objection to the Settlement Administrator, who shall immediately forward
26 it to Class Counsel and counsel for Defendants by the Response Deadline or Extended
27 Response Deadline.
28

1 8.2 All written objections and supporting papers must be postmarked no later than
2 the Response Deadline or Extended Response Deadline if applicable. The date of the postmark
3 on the envelope containing the objection shall be the exclusive means used to determine
4 whether the written objection has been timely submitted. The Parties shall file all objections
5 with the Court prior to the Final Approval Hearing.

6 8.3 The objection should contain at least the following: (i) the objector's full name,
7 address, telephone number, last four digits of his or her Social Security number, and signature;
8 (ii) the name and case number of the Action; (iii) a statement of the specific legal and factual
9 basis for each objection argument; and (iv) a statement whether the objector intends to appear
10 at the Final Approval Hearing, either remotely, in person, or through counsel, and, if through
11 counsel, a statement identifying that counsel by name, bar number, address, and telephone
12 number.

13 8.4 All written objections, supporting papers, or notices of intent to appear at the
14 Final Approval Hearing must: (a) clearly identify the case name and number (*Efren Palomino*
15 *v. Winall Oil Co., Allen Gimenez, Gary Gimenez, and DOES 1 through 20* (Superior Court of
16 the State of California, County of Los Angeles, No. 23STCV04401)); (b) be submitted to the
17 Settlement Administrator as set forth in the Class Notice; and (c) be postmarked on or before
18 the Response Deadline or Extended Response Deadline if applicable.

19 8.5 Class Members who object to the Settlement shall remain Settlement Class
20 Members and shall be deemed to have voluntarily waived their right to pursue an independent
21 remedy against Defendants and the Released Parties for the Released Claims if the Court
22 grants final approval of the Settlement. To the extent any Settlement Class Member objects to
23 the Settlement, and such objection is overruled in whole or in part, those Settlement Class
24 Members will be forever bound by the Final Approval Order and Judgment if the Court grants
25 final approval of the Settlement.

26 8.6 The Parties agree there is no statutory or other right for any PAGA Employee to
27 object to the PAGA Release portion of the Settlement.
28

9. PROCEDURE FOR REQUESTING FINAL APPROVAL OF THE SETTLEMENT

9.1 Promptly after receipt of the declaration of due diligence from the Settlement Administrator, Plaintiff shall file a motion requesting final approval of the Settlement, along with a proposed Final Approval Order.

9.2 The Final Approval Order shall adjudge, among other things, that:

- The Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement and that the Class Notice: (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated under the circumstances to apprise Class Members of the pendency of the Action and their right to exclude themselves from or object to the proposed Settlement and to appear at the Final Approval Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of due process and any other applicable rules or law;
- The Settlement is fair, reasonable, and adequate;
- Plaintiff and Class Counsel may adequately represent the Settlement Class for the purpose of entering into and implementing the Agreement;
- The Settlement Administrator is to execute the distribution of proceeds pursuant to the terms of this Agreement;
- Wage Justice Center is approved as the *cy pres* beneficiary;
- The Final Approval Order and Judgment shall be final and entered forthwith;
- Without affecting the finality of the Final Approval Order and Judgment, the Court retains continuing jurisdiction over Plaintiff, Defendants, and Settlement Class Members, as to all matters concerning the administration, consummation, and enforcement of this Settlement Agreement;
- As of the Effective Date of the Release, Plaintiff and Settlement Class Members compromised, settled, discharged, and provided the release of the Released Class

1 Claims during the applicable time period against Defendants and the Released
2 Parties and are bound by the provisions of this Settlement Agreement;

- 3 • Notwithstanding the submission of a timely request for exclusion, PAGA
4 Employees are still bound by the PAGA Release portion of the Settlement and
5 the State's claims for civil penalties pursuant to PAGA are also extinguished;
- 6 • This Settlement Agreement and the Final Approval Order and Judgment are
7 binding on, and have *res judicata* and preclusive effect in, all pending and future
8 lawsuits or other proceedings that encompass Plaintiff's and Settlement Class
9 Members' claims released herein, and that are maintained by or on behalf of
10 Plaintiff and Settlement Class Members; and
- 11 • The Settlement provided for herein, and any proceedings undertaken pursuant
12 thereto, are not, and should not in any event be offered, received, or construed as
13 evidence of, a presumption, concession, or an admission by any Party of liability
14 or non-liability or of the certifiability or non-certifiability of a litigation class or
15 collective, or that PAGA representative claims may validly be pursued.

16 9.3 In a separate motion to be heard at the same time as the Final Approval Hearing,
17 Class Counsel shall request entry of an Order approving the Class Counsel Award and the
18 Service Award to Plaintiff. Any Class Counsel Award or Service Award shall be paid
19 exclusively from the Total Settlement Amount.

20 9.4 The Parties expressly agree that the Court's approval or denial of any request for
21 a Service Award is not a material condition to this Agreement and is to be considered by the
22 Court separately from the fairness, reasonableness, adequacy, and good faith of the Settlement.
23 Any order or proceeding relating to the application by Class Counsel of a Service Award shall
24 not operate to terminate or cancel this Agreement. To the extent the Court awards less than the
25 amount of the requested Service Award, the consideration referenced above in section 4 shall
26 not be affected, and the requirement for or validity of an executed Complete and General
27 Release by Plaintiff Efren Palomino shall remain in force and effect. To the extent the Court
28

awards less than the amount of the requested Service Award, any remaining amount will be redistributed amongst participating Class Members on a pro rata basis.

10. PROCEDURE FOR EXECUTING THE SETTLEMENT IF/WHEN IT BECOMES EFFECTIVE

10.1 Defendants shall provide payment to the Settlement Administrator as provided in section 4.1.

10.2 Within thirty (30) calendar days of receipt of the Total Settlement Amount, the Settlement Administrator shall distribute the following payments: (a) full payment to Plaintiff of Plaintiff' Court-approved Service Awards; (b) full payment to the LWDA for its 75% portion of the PAGA Payment; (c) full payment of the Court-approved Settlement Administrator Expenses; (d) full payment of the Court-approved litigation costs and expenses; (e) full payment of the Individual Settlement Payments to Settlement Class Members; (f) full payment to PAGA Employees of their 25% portion of the PAGA Payment; and (g) the Court-approved Class Counsel Award to Class Counsel.

10.3 The Settlement Administrator shall prepare all tax forms related to any and all employer taxes incurred by Defendants as a result of this Settlement, shall inform Defendants and its Counsel of the amounts owed, shall collect the necessary funds from Defendants and remit them to the requisite taxing authorities.

10.4 If any Individual Settlement Payments are not cashed, deposited, or negotiated on or before the Void Date, then within thirty (30) calendar days of the Void Date, the Settlement Administrator shall void the uncashed checks and shall transmit the funds to the Wage Justice Center.

10.5 Upon completion of administration of the Settlement, the Settlement Administrator will provide a written declaration under oath to certify completion to the Court and counsel for all Parties. Class Counsel shall file the declaration with the Court to confirm full satisfaction of the Settlement.

10.6 The Individual Settlement Payments cashed shall be reported by the Settlement Administrator to the applicable governmental authorities on IRS Forms W-2 or 1099s if

1 required. The portions allocated to Service Awards shall likewise be reported on IRS Form
2 1099s by the Settlement Administrator. The Settlement Administrator shall be responsible for
3 issuing copies of all IRS Forms for Plaintiff and Settlement Class Members.

4 10.7 The Parties make no representation as to the tax treatment or legal effect of the
5 payments called for here, and Plaintiff and the Settlement Class Members are not relying on
6 any statement, representation, or calculation by any of the Parties, their counsel, or the
7 Settlement Administrator in this regard. Plaintiff and Settlement Class Members understand
8 and agree that they will be solely responsible for payment of any taxes and penalties assessed
9 on the payments described herein and will hold Plaintiff, Class Counsel, Defendants,
10 Defendants' counsel, and the Released Parties free and harmless from and against any claims
11 resulting from the tax treatment of payments under this Agreement, with the sole exception of
12 the employer's portion of the payroll withholdings described in section 10.3. Plaintiff and the
13 Settlement Class Members acknowledge and agree that no provision of this Settlement, and no
14 written communication or disclosure between or among the Parties or their attorneys and other
15 advisers, is or was intended to be, nor will any such communication or disclosure constitute or
16 be construed or be relied upon as, tax advice within the meaning of United States Treasury
17 Department Circular 230 (31 C.F.R. Part 10, as amended).

18 10.8 Payments and tax reporting by the Settlement Administrator in the manner
19 described above shall be deemed conclusive of compliance with this Settlement Agreement as
20 to all Settlement Class Members. No Settlement Class Members shall have any claim against
21 the Plaintiff, Class Counsel, Defendants, Defendants' counsel, or the Settlement Administrator
22 for distributions made substantially in accordance with this Settlement Agreement or orders of
23 the Court.

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26 **11. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**
27 **SETTLEMENT AGREEMENT**
28

1 11.1 If the Court does not approve the Settlement as set forth in this Settlement
2 Agreement, or if the Court enters the Judgment and appellate review is sought, and on such
3 review, the entry of Judgment is vacated, modified in any way, or reversed, or if the Final
4 Approval Order does not otherwise become Final, then this Settlement Agreement shall be
5 cancelled and terminated, unless the Parties, in their sole discretion within thirty (30) days
6 from the date such ruling becomes final, provide written notice to each other of their intent to
7 proceed with the Settlement under the terms of the Judgment as it may be modified by the
8 Court or any appellate court.

9 11.2 In the event that: (i) the Settlement is not approved, is overturned, or is
10 materially modified by the Court or on appeal; (ii) the Judgment does not become Final; or
11 (iii) this Settlement Agreement is terminated, cancelled, or fails to become effective pursuant
12 to this Agreement, then: (a) the Parties stipulate and agree that the Settlement, the Class
13 Information, and all documents exchanged and filed in connection with the Settlement shall be
14 treated as inadmissible mediation communications under Cal. Evid. Code §§ 1115 *et seq.*; (b)
15 the Settlement shall be without force and effect upon the rights of the Parties, and none of its
16 terms shall be effective or enforceable, with the exception of this paragraph, which shall
17 remain effective and enforceable; (c) the Parties shall be deemed to have reverted to their
18 respective status prior to execution of this Agreement; (d) all Orders entered in connection
19 with the Settlement, including the certification of the Class, shall be vacated without prejudice
20 to any Party's position on the issue of class certification, the issue of amending the complaint,
21 or any other issue, in this Action or any other action, and the Parties shall be restored to their
22 litigation positions existing on the date of execution of this Agreement; and (e) the Parties
23 shall proceed in all respects as if the Settlement Agreement and related documentation and
24 orders had not been executed, and without prejudice in any way from the negotiation or fact of
25 the Settlement or the terms of the Settlement Agreement. The Settlement, all documents,
26 orders, and evidence relating to the Settlement, the fact of their existence, any of their terms,
27 any statement or report concerning the Settlement Agreement, its existence, or their terms, any
28 negotiations, proceedings, acts performed, or documents executed pursuant to or in furtherance

1 of the Settlement Agreement shall not be admissible in any proceeding, and shall not be
2 offered, received, or construed as evidence of a presumption, concession, or an admission of
3 liability, of unenforceability of any arbitration agreement, of the certifiability of a litigation
4 class, or otherwise used by any person for any purpose whatsoever, in any trial of this Action
5 or any other action or proceedings.

6 **12. ADDITIONAL PROVISIONS**

7 12.1 Exhibit A to this Agreement, the Class Notice, is an integral part of the
8 Settlement and is incorporated by reference as though fully set forth herein.

9 12.2 Unless otherwise noted, all references to “days” in this Agreement are to be
10 calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend
11 or federal legal holiday, such date or deadline shall be on the first business day thereafter.

12 12.3 The Parties to the Settlement agree that the terms of the Settlement were
13 negotiated at arm’s length and in good faith by the Parties, resulted from an arm’s-length
14 mediation session, and reflect a settlement that was reached voluntarily based upon adequate
15 information and sufficient discovery and after consultation with experienced legal counsel.

16 12.4 Plaintiff, Class Counsel, Defendants, and counsel for Defendants have concluded
17 that the Settlement constitutes a fair, reasonable, and adequate resolution of the claims that
18 Plaintiff asserted against Defendants, including the claims on behalf of the Class Members,
19 and that it promotes the best interests of the Class Members.

20 12.5 To the extent permitted by law and unless otherwise necessary to seek Court
21 approval of this Settlement Agreement, all agreements made and orders entered during the
22 course of the Action relating to the confidentiality of information shall survive this Settlement
23 Agreement.

24 12.6 The waiver by one Party of any breach of this Settlement Agreement by any
25 other Party shall not be deemed a waiver of any other prior or subsequent breach of this
26 Settlement Agreement.

12.7 The Parties may not amend or modify any provision of this Settlement Agreement except by written agreement signed by counsel for the Parties and subject to any necessary Court approval.

12.8 All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by email at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendants:

MURCHISON & CUMMING, LLP

Kenneth H. Moreno, Esq.

Laurie E. Yoon, Esq.

2175 N. California Blvd., Suite 900

Walnut Creek, California 94596

Telephone: (415) 524-4303

Facsimile: (415) 391-2058

kmoreno@murchisonlaw.com

lyoon@murchisonlaw.com

if to Plaintiff:

HUNTER PYLE LAW

Hunter Pyle, Esq.

John J. Darin, Esq.

505 14th Street, Suite 600

Oakland, California 94612

Telephone: (510) 444-4400

Facsimile: (510) 444-4410

hunter@hunterpylelaw.com

jdarin@hunterpylelaw.com

12.9 This Settlement Agreement, including its Exhibits, constitutes the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits, other than the representations, warranties, and covenants contained and memorialized in this Settlement Agreement and its Exhibits.

1 12.10 This Settlement Agreement may be executed in one or more counterparts. All
2 executed counterparts and each of them, including facsimile, electronic, and scanned copies of
3 the signature page, shall be deemed to be one and the same instrument.

4 12.11 The Parties and their respective counsel agree that they will use their best efforts
5 to obtain all necessary approvals of the Court required by this Agreement. The Parties agree
6 that Plaintiff will submit to the Court a Motion for Preliminary Approval of this Settlement
7 containing all of the terms and conditions contained herein notwithstanding any new legal
8 developments regarding the Released Claims or PAGA Release.

9 12.12 This Settlement Agreement shall be binding upon and shall inure to the benefit
10 of the successors and assigns of the Parties, including any and all Released Parties and any
11 corporation, partnership, or other entity into or with which any Party hereto may merge,
12 consolidate, or reorganize.

13 12.13 In the event of any dispute arising out of the performance or breach of any
14 provision of this Settlement Agreement, the prevailing party in such disputes shall be entitled
15 to recover his, her, or its reasonable attorneys' fees and costs incurred arising from the dispute,
16 provide that the prevailing party gives 30 days written notice before commencing legal action
17 regarding any failure to perform or breach of any provision of this Settlement Agreement.

18 12.14 This Settlement Agreement shall not be construed more strictly against one Party
19 than another merely because of the fact that it may have been prepared by counsel for one of
20 the Parties. It is recognized that because of the arm's-length negotiations resulting in the
21 Settlement Agreement, all Parties have contributed substantially and materially to the
22 preparation of the Settlement Agreement.

23 12.15 Except where this Settlement Agreement itself provides otherwise, all terms,
24 conditions, and Exhibits are material and necessary to this Settlement Agreement and have
25 been relied upon by the Parties in entering into this Settlement Agreement.

26 12.16 This Settlement Agreement shall be governed by California law. Any action
27 based on this Settlement Agreement, or to enforce any of its terms, shall be venued in the Los
28 Angeles County Superior Court, which shall retain jurisdiction over all such disputes. All

Parties to this Settlement Agreement shall be subject to the jurisdiction of this Court for all purposes related to this Settlement Agreement.

12.17 The Court shall retain continuing and exclusive jurisdiction over the Parties to this Settlement Agreement for the purpose of the administration and enforcement of this Settlement Agreement.

12.18 The headings used in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

12.19 In construing this Settlement Agreement, the use of the singular includes the plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

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SO STIPULATED.

Date: 12/12/2024, 2024

Plaintiff EFREN PALOMINO

Signed by:

5224966467D847D...
Plaintiff

Date: , 2024

Defendant WINALL OIL CO.

by Allen Gimenez

Date: , 2024

Defendants ALLEN GIMENEZ

Date: , 2024

Defendants GARY GIMENEZ

1 **SO STIPULATED.**

2
3 Date: _____, 2024

Plaintiff EFREN PALOMINO

4
5 _____
6 Plaintiff

7
8 Date: 12/12/2024, ~~2024~~

Defendant WINALL OIL CO.

9 
10 _____
11 by Allen Gimenez

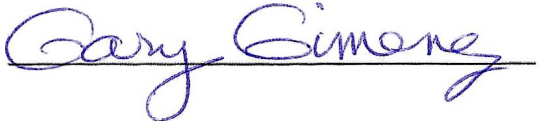
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13 Date: 12/12/2024, ~~2024~~

Defendants ALLEN GIMENEZ

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15 _____

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17 Date: 12/12/2024, ~~2024~~

Defendants GARY GIMENEZ

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1 **APPROVED AS TO FORM**

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3
4 Date: _____, 2024

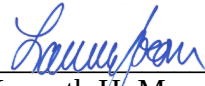
HUNTER PYLE LAW

5
6 _____
7 Hunter Pyle
8 John J. Darin

9 *Attorneys for Plaintiff, the Putative Class,*
10 *and all other aggrieved employees*

11 Date: _____ December 12 _____, 2024

MURCHISON & CUMMING, LLP

12 _____
13 
14 Kenneth H. Moreno
15 Laurie E. Yoon

16 Attorneys for Defendants
17 Winall Oil Co., Allen Gimenez, and
18 Gary Gimenez
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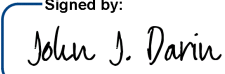
1 **APPROVED AS TO FORM**

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4 Date: 12/12/2024, 2024

HUNTER PYLE LAW

5 Signed by:
6 
7 Hunter Pyle
8 John J. Darin

9 *Attorneys for Plaintiff, the Putative Class,*
10 *and all other aggrieved employees*

11 Date: _____, 2024

MURCHISON & CUMMING, LLP

12
13 _____
14 Kenneth H. Moreno
15 Laurie E. Yoon

16 Attorneys for Defendants
17 Winall Oil Co., Allen Gimenez, and
18 Gary Gimenez

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT
SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

Efren Palomino v. Winall Oil Co., et al., No. 23STCV04401

You are receiving this Notice because you are or were employed by Winall Oil Co. (“Winall Oil”) as a gas-station attendant in California at any time during the period of February 28, 2019, through [date of preliminary settlement approval]. All such persons are referred to in this Notice as “Class Members.”

Additionally, Class Members who also worked for Winall Oil at any time during the period of October 28, 2021, through [date of preliminary settlement approval] are referred to in this Notice as “PAGA Employees.” “PAGA” refers to the Private Attorneys General Act.

All PAGA Employees are also Class Members; however, not all Class Members are PAGA Employees. Those Class Members who stopped working for Winall Oil before October 28, 2021 are not PAGA Employees.

The Superior Court of California, County of Los Angeles, authorized this Notice.
This is not a solicitation from a lawyer.

- This Notice contains important information about your legal rights as part of a class and PAGA action settlement. Please read it fully and carefully.
- Efren Palomino is a current employee who filed a lawsuit against Winall Oil and its officers: Allen Gimenez and Gary Gimenez (the “Gimenez Defendants”). Mr. Palomino is called “Plaintiff” in this Notice.
- The lawsuit is pending in the Superior Court of California, County of Los Angeles (Case No. 23STCV04401) (the “Action”). Plaintiff, Winall Oil, Allen Gimenez, and Gary Gimenez are referred to collectively as the “Parties.”
- Plaintiff’s allegations are brought on his own behalf and on behalf of all Class Members and PAGA Employees, as defined in this Notice.
- Plaintiff has asserted a variety of claims, described in more detail below, against Winall Oil and the Gimenez Defendants that pertain to rest-break violations and other alleged wage and hour violations.
- Winall Oil and the Gimenez Defendants deny Plaintiff’s allegations, deny that they violated the law in any manner, and contend that its policies and practices have complied with the law at all times.
- The Court has not decided whether Winall Oil or the Gimenez Defendants did anything wrong. The Court also has not decided whether Plaintiff’s claims have merit.
- Under the proposed Stipulation of Settlement (“Settlement”), Winall Oil and the Gimenez Defendants will pay a total of \$1,384,804.25 to be apportioned and paid among Class

Members, after deductions for Court-approved payments for attorneys' fees and costs, a service payment to the Plaintiff, payment to the State of California for civil penalties under PAGA, and settlement administration costs.

YOUR OPTIONS	
Do Nothing	You will receive a proportionate share of the Settlement if final approval is granted and will give up any right to bring any claims in the future that are part of the Settlement.
Opt Out of the Settlement	If you opt yourself out of the Settlement, you will not receive an Individual Settlement Payment, but you will retain the right to assert claims that are included in the Settlement. By doing so, you will bear the risk that you may lose those claims. To opt out, you must timely write to the Settlement Administrator and follow the procedures described below. However, you may not exclude yourself from the PAGA Release, and the PAGA claims described in this Notice will be released even if you opt-out of the Settlement.
Object to the Settlement	If you disagree with any aspect of this Settlement, you may assert your objections by timely writing to the Settlement Administrator according to the procedures described below. If you opt out, you may not object. If you object, you will still be bound by the Settlement if it is approved by the Court.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made only if the Court approves the Settlement and that approval becomes final, which may be after appeals (if any) are resolved. Please be patient.

BASIC INFORMATION

1. Why did I get this Notice, and why should I read this Notice?

The records of Winall Oil indicate that you are a Class Member. If the Court approves the Settlement, you will receive a payment, and your legal rights will be affected. Thus, you have a right to information about the Settlement and your legal rights. That is the intent of this Notice.

2. What is this lawsuit about?

Plaintiff has asserted the following claims against Winall Oil and the Gimenez Defendants on behalf of Class Members:

(1) Failure to Provide Off-Duty Meal Periods; (2) Failure to Authorize and Permit Rest Periods; (3) Failure to Furnish Adequate Wage Statements; (4) Unlawful Business Practices; (5) Failure to Maintain and Furnish Records; (6) Failure to Post Compensation Insurance Carrier and Safety Notices; and (7) Failure to Provide One Day's Rest Per Workweek.

Plaintiff have asserted the following claims against Winall Oil on behalf of PAGA Employees:

Civil Penalties Pursuant to PAGA ("PAGA Claims").

All of these claims are referred to in this Notice collectively as the "Claims."

Winall Oil and the Gimenez Defendants deny that the Claims are valid, deny that the Court should permit Plaintiff to bring the Claims on behalf of the Class Members and PAGA Employees, and contend that they complied with the law at all times. Winall Oil and the Gimenez Defendants further contend that they have complied with the requirements of the California Labor Code applicable to the employment and compensation of its employees.

3. What is a class action?

In a class action, one or more people sue on behalf of people who they allege have similar claims.

4. Why is there a settlement?

The Court has not yet decided in favor of either of the Parties on the Claims being settled. Plaintiff thinks he could recover a significant amount of wages, penalties, and interest on behalf of the Class Members if he were to win at trial. On the other hand, Winall Oil and the Gimenez Defendants deny all liability and believe that Plaintiff will not win anything in the case. After extensive negotiations, both sides have agreed to the Settlement of the Claims.

The Parties have entered into the proposed settlement agreement voluntarily. The purpose of the Settlement is so that the risks and costs of trial, for both sides, are eliminated.

The Court has given its preliminary approval of the Settlement as fair and reasonable to the Class Members.

5. How do I know if I am part of the Settlement?

Everyone who fits this description is a Class Member: all current and former and former gas-station attendants who were employed by Winall Oil throughout California at any time between February 28, 2019, through [date of preliminary settlement approval].

6. Are there exceptions to being included?

Yes. If you are a Class Member, you may opt out as stated in Section 13 below. If you do not opt out, you will receive part of the Settlement if approved.

However, if you are a PAGA Employee, you are not able to exclude yourself from the PAGA Release and you will receive an Individual PAGA Payment, whether or not you request exclusion from the Action and the Settlement. All claims for PAGA penalties are settled by operation of law.

7. What if I'm still not sure if I am included?

If you are still not sure whether you are included, you can call the Settlement Administrator at [Number] or write to the Settlement Administrator at [address]. You also may contact Class Counsel identified below for more information.

8. How much money is the Settlement for, and how is it allocated?

In exchange for the release of claims against it and final disposition of the Action, Winall Oil and the Gimenez Defendants will pay a total of One-Million-Three-Hundred-Eighty-Four-Thousand-Eight-Hundred-Four Dollars and Twenty-Five Cents (\$1,384,804.25) ("Total Settlement Amount"). Plaintiff is asking the Court to approve the following payments that, if approved, will be deducted from the Total Settlement Amount.

- **Class Representative Service Award:** For acting as the Class Representative, Plaintiff will request from the Court a service award of no more than Twenty Thousand Dollars and No Cents (\$20,000.00), in recognition of and as compensation for his efforts, such as starting the Action, volunteering time to assist with the Action, and providing information and documents, as well as risks he assumed in starting and assisting with the prosecution of the Action.
- **Class Counsel Award:** Class Counsel will request from the Court no more than Four-Hundred-Sixty-One-Thousand-Six-Hundred-One Dollar and Forty-Two Cents

(\$461,601.42) as attorneys' fees for litigation and resolution of the Action. Class Counsel will also request from the Court reimbursement for actual litigation costs advanced on behalf of the Class Members, which will be no more than Fifty-Thousand Dollars and No Cents (\$50,000.00).

- **PAGA Payment:** Sixty Thousand Dollars and No Cents (\$60,000.00) from the Total Settlement Amount is allocated for settlement of Plaintiff' claims under PAGA. Upon Court approval, 75% of the PAGA Payment (\$45,000.00) will be paid to the California Labor & Workforce Development Agency, and 25% of the PAGA Payment (\$15,00.00) will be distributed to the PAGA Employees.
- **Settlement Administrator Expenses:** The costs of settlement administration will not exceed Six Thousand Dollars and No Cents (\$6,000.00), which pays for tasks such as mailing and tracking this Notice, mailing checks and tax forms, and reporting to the parties and the Court. Any amount ordered by the Court for settlement administration will be paid from the Total Settlement Amount.

After Court-approved payments for attorneys' fees and costs, service awards to the Plaintiff, the PAGA Payment to be paid to the State, and settlement administration costs are deducted from the Total Settlement Amount, the remaining "Net Distribution Fund" will be distributed to Class Members.

The Settlement Administrator will apportion the Net Distribution Fund to be paid to Class Members based on their number of workweeks during the Class Period, as explained below.

9. How much will my payment be, and what is the information used to calculate my share?

Based on the calculation described above, it is currently estimated that your share of the Settlement will be [amount].

This amount could change based on how many Class Members opt out or based on further determinations by the Settlement Administrator or rulings by the Court.

If you are entitled to an Individual Settlement Payment, the Settlement Administrator will allocate twenty percent (20%) as taxable wages to be reported on IRS Form W-2. Twenty percent (20%) will be allocated to interest, and sixty percent (60%) will be allocated to penalties, both of which will be reported on IRS Form 1099, if applicable ("Individual Settlement Payment").

If you are entitled to an Individual PAGA Payment under the Settlement, the Settlement Administrator will allocate one hundred percent (100%) of the PAGA payment as penalties, which will be reported on IRS Form 1099 ("Individual PAGA Payment").

No other tax or deductions will be taken out of your share of the Settlement. Ultimately, you are responsible for all tax liability in relation to payments to you under the Settlement.

This Notice is not tax advice. Do not ask Class Counsel or Winall Oil or the Gimenez Defendants or their counsel for tax advice, as they will not provide it. You should consult your own tax advisor.

Winall Oil's records show that the following information is pertinent to the calculation of your estimated share of the Settlement:

- Your number of workweeks during the Class Period is [number].
- Your number of pay periods during the PAGA Period (October 28, 2021, through [date of preliminary settlement approval] (the "PAGA Period")) is [number].

If you disagree with this information, you must notify the Settlement Administrator by writing to them at the address set forth in paragraph 7. Be sure to include your full name, email address, mailing address, telephone number, last four digits of your social security number, and all supporting documentation, and sign your document.

Your notification must be signed and postmarked no later than [60 days from mailing]. After inquiring further of Winall Oil, the Settlement Administrator will make a final decision of dispute.

10. How can I get a payment?

You do not need to do anything to qualify for a payment. It is important that you immediately notify the Settlement Administrator if your mailing address is different from the address to which this Notice was sent, or if that address changes.

11. When will I receive a payment?

Payments will be distributed under a schedule established by the Settlement and by the Court. Presently, the expected date of payment is estimated to be [date]. This could change depending on factors influencing the Settlement Administrator's tasks, any objections to the Settlement, and actions by the Court.

12. What am I giving up to get a payment?

In exchange for the Settlement payment, each Class Member (except those who properly opt out) will release the following Released Claims: any and all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, during the Class Period, known or unknown, suspected or unsuspected, that each participating class member had, now has, or may hereafter claim to have during the Class Period against Defendants and that were asserted in the Action, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in Plaintiff's operative Second Amended Complaint, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law. The Released Class Claims specifically include, but are not limited to Labor Code §§ 226, 226.7, 246, 248.5, 512, 551, 552, 1174, 1198.5, 2810.3, 3550, 3551, 6430, and 6431, and the related IWC

Wage Order No. 7-2001 and Business & Professions Code §§ 17200, et seq., and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts asserted in the Action, including: (1) Failure to Provide Off-Duty Meal Periods; (2) Failure to Authorize and Permit Rest Periods; (3) Failure to Furnish Adequate Wage Statements; (4) Unlawful Business Practices; (5) Failure to Maintain and Furnish Records; (6) Failure to Post Compensation Insurance Carrier and Safety Notices; and (7) Failure to Provide One Day's Rest Per Workweek, as well as interest, fees, and costs. The enumeration of these specific statutes shall neither enlarge or narrow the scope of res judicata based on the claims that were asserted in the Action or could have been asserted in the Action based on the facts and circumstances alleged in any Complaint on file in the Action.

Additionally, Plaintiff acting in their capacity as private attorneys general on behalf of the State of California pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 *et seq.*, and on behalf of the Labor and Workforce Development Agency and the PAGA Employees. The PAGA Release shall operate to release and discharge the Released Parties from any claim for civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 *et seq.* that were asserted in the Action, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in Plaintiff's Second Amended PAGA Notice submitted to the Labor Workforce and Development Agency, including but not limited to claims for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246, 248.5, 512, 551, 552, 1174, 1198.5, 2810.3, 3550, 3551, 6430, and 6431 and the applicable IWC Wage Orders.

13. How do I opt out of the Settlement?

To exclude yourself from the Settlement, you must send a signed letter by mail to the Settlement Administrator stating words to the effect of "I wish to be excluded from the Settlement Class." You must include your name and signature.

Your request to opt out of the Settlement must be postmarked no later than **[60 days from mailing]** to the Settlement Administrator at the address in paragraph 7.

If you ask to be excluded, you will not be legally bound by the Settlement if approved. You will not get any Individual Settlement Payment from the Settlement, and you will not be allowed to object to the Settlement.

14. If I don't exclude myself, can I sue Winall Oil for the same thing later?

No. Unless you exclude yourself, you will give up any right to sue Winall Oil, Allen Gimeenz, or Gary Gimenez for the claims that this Settlement resolves. If you have a pending lawsuit for the same claims that are being settled against Winall Oil, Allen Gimenez, or Gary Gimenez, speak to your lawyer in that case immediately. You must exclude yourself from this Settlement in order to

continue your own lawsuit if it involves the same claims. However, you are not able to exclude yourself from the PAGA Release.

15. If I exclude myself, can I get money from this Settlement? Will any money be returned to Winall Oil?

No. If you exclude yourself, you will not receive any money from this Settlement except for your Individual PAGA Payment if you are a PAGA Employee. If you exclude yourself from the Settlement, the monies you would have received will be distributed on a pro-rata basis to all the other Class Members. No money will revert to Winall Oil.

16. Who is my legal representative in this case?

The Court has appointed as Class Counsel the following attorneys:

HUNTER PYLE LAW
Hunter Pyle, Esq.
John J. Darin, Esq.
505 14th Street, Suite 600
Oakland, California 94612
Telephone: (510) 444-4400
Facsimile: (510) 444-4410
hunter@hunterpylelaw.com
jdarin@hunterpylelaw.com

You will not be charged for the work performed by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

If you have questions about this Settlement, you may contact Class Counsel. They will consult with you and attempt to answer your questions. Do not contact Winall Oil or the Gimenez Defendants with any questions about the Settlement.

17. How do I object to the Settlement?

If you are a Class Member and do not opt out, you can object to the Settlement if you don't like any part of it. However, the Court cannot order a larger settlement. The Court can only approve or deny the proposed Settlement.

If the Court denies approval, no settlement payments will be sent out, and the Action will continue. If that is what you want, you must object. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views.

To object to the Settlement, you must send a written objection no later than [60 days from mailing] to the Settlement Administrator at the address in paragraph 7. Your objection must include your full name, address, telephone number, the last four digits of your Social Security Number, and your signature, as well as the case name and number. It must set forth, in clear and concise terms, a statement of the specific reasons why you believe the Court should find that the Settlement is not

in the best interest of the Class Members and the reasons why the Settlement should not be approved. Your objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class.

If you also wish to appear at the Fairness Hearing, in person or through an attorney, you must *also* file a notice of your intention to appear at the same time as the objection is submitted. You must state whether you plan to appear either remotely, in person, or through counsel, and, if through counsel, submit a statement identifying that counsel by name, bar number, address, and telephone number. Unless otherwise ordered by the Court, you will not be entitled to speak at the Final Approval Hearing unless you have submitted a timely written objection and notice of intention to appear.

Please see section 19, below, for more information about how to appear in person.

18. What's the difference between objecting and opting out?

Objecting is simply saying that you don't like something about the Settlement and do not want it approved. Opting out is saying that you don't want to be part of the Class and participate in the Settlement of the Class Claims. If you opt out, you have no basis to object because the case no longer affects you.

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

The Court will hold a Fairness Hearing at 9:00 a.m. on [date of final approval hearing], in Department 17 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At this hearing, the Court will make a final decision as to whether the Settlement is fair, reasonable, and adequate. If you or other Class Members object to the Settlement, the Court will consider the objections. At or after the hearing, the Court will decide whether to grant final approval to the Settlement. At the Fairness Hearing, the Court may continue the hearing to another date without additional notices being sent out.

The judge overseeing this case encourages remote appearances. Class members who wish to appear remotely should contact class counsel at least three days before the hearing if possible.

Any class member who wishes to appear in person may do so at Department 17 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012.

20. Do I have to come to the hearing?

No. Class Counsel will answer questions the Judge may have. You are welcome to come at your own expense. If you properly submit an objection, you do not have to come to Court to talk about it. As long as you properly submit your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. You cannot appear and speak at the hearing if you opt out.

22. What happens if I do nothing at all?

If you do nothing, or fail to act timely, you'll receive your share of the Settlement, but you will be barred from bringing the Released Claims against Winall Oil, Allen Gimenez, and Gary Gimenez as described in paragraph 12.

23. Can Winall Oil or the Gimenez Defendants retaliate against me for participating in this Settlement?

California law makes it unlawful to retaliate against you for participating in a lawsuit like this one.

24. How do I get more details about the Settlement?

This Notice is intended as a summary and does not fully describe this action, the claims, the defenses, or the proposed Settlement, which is subject to the terms and conditions of the Stipulation of Settlement filed with the Court and as preliminarily approved by the Court. For the precise terms and conditions of the Settlement, you are referred to the detailed Stipulation of Settlement, which is on file with the Clerk of the Court. The pleadings and other records in this Action, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of Los Angeles's Electronic Filing and Service Website at <https://www.lacourt.org/paos/v2/Login>, or (b) in person at Records, Superior Court of California, County of Los Angeles, 312 North Spring Street, Los Angeles, CA 90012, between the hours of 8:30 a.m. and 3:00 p.m. Monday through Thursday and between 8:30 a.m. and 12:00 p.m. on Fridays, excluding Court holidays and closures.

For further information, you may call or contact the Settlement Administrator (see paragraph 7) or Class Counsel (see paragraph 16). Do not contact Winall Oil or the Gimenez Defendants.

The Settlement Administrator also maintains a website where some important documents in this Action are available. The URL for the website is **[insert]**.

You may also obtain more information by contacting Class Counsel or by accessing the Court's Electronic Filing and Service Website (https://www.scscourt.org/online_services.shtml).

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR WINALL OIL OR ITS COUNSEL WITH INQUIRIES.

Date: **[insert]**

This Notice has been approved by the Judge of the Superior Court of California, County of Los Angeles, responsible for overseeing and deciding this case.

NOTICE OF CLASS ACTION SETTLEMENT
SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

Efren Palomino v. Winall Oil Co., et al., No. 23STCV04401

You are receiving this Notice because you are or were employed by Winall Oil Co. (“Winall Oil”) as a gas-station attendant in California at any time during the period of February 28, 2019, through [date of preliminary settlement approval]. All such persons are referred to in this Notice as “Class Members.”

Additionally, Class Members who also worked for Winall Oil at any time during the period of October 28, 2021, through [date of preliminary settlement approval] are referred to in this Notice as “PAGA Employees.” “PAGA” refers to the Private Attorneys General Act.

All PAGA Employees are also Class Members; however, not all Class Members are PAGA Employees. Those Class Members who stopped working for Winall Oil before October 28, 2021 are not PAGA Employees.

The Superior Court of California, County of Los Angeles, authorized this Notice.
This is not a solicitation from a lawyer.

- This Notice contains important information about your legal rights as part of a class and PAGA action settlement. Please read it fully and carefully.
- Efren Palomino is a current employee who filed a lawsuit against Winall Oil and its officers: Allen Gimenez and Gary Gimenez (the “Gimenez Defendants”). Mr. Palomino is called “Plaintiff” in this Notice.
- The lawsuit is pending in the Superior Court of California, County of Los Angeles (Case No. 23STCV04401) (the “Action”). Plaintiff, Winall Oil, Allen Gimenez, and Gary Gimenez are referred to collectively as the “Parties.”
- Plaintiff’s allegations are brought on his own behalf and on behalf of all Class Members and PAGA Employees, as defined in this Notice.
- Plaintiff has asserted a variety of claims, described in more detail below, against Winall Oil and the Gimenez Defendants that pertain to rest-break violations and other alleged wage and hour violations.
- Winall Oil and the Gimenez Defendants deny Plaintiff’s allegations, deny that they violated the law in any manner, and contend that its policies and practices have complied with the law at all times.
- The Court has not decided whether Winall Oil or the Gimenez Defendants did anything wrong. The Court also has not decided whether Plaintiff’s claims have merit.
- Under the proposed Stipulation of Settlement (“Settlement”), Winall Oil and the Gimenez Defendants will pay a total of \$1,384,804.25 to be apportioned and paid among Class

Members, after deductions for Court-approved payments for attorneys' fees and costs, a service payment to the Plaintiff, payment to the State of California for civil penalties under PAGA, and settlement administration costs.

YOUR OPTIONS	
Do Nothing	You will receive a proportionate share of the Settlement if final approval is granted and will give up any right to bring any claims in the future that are part of the Settlement.
Opt Out of the Settlement	If you opt yourself out of the Settlement, you will not receive an Individual Settlement Payment, but you will retain the right to assert claims that are included in the Settlement. By doing so, you will bear the risk that you may lose those claims. To opt out, you must timely write to the Settlement Administrator and follow the procedures described below. However, you may not exclude yourself from the PAGA Release, and the PAGA claims described in this Notice will be released even if you opt-out of the Settlement.
Object to the Settlement	If you disagree with any aspect of this Settlement, you may assert your objections by timely writing to the Settlement Administrator according to the procedures described below. If you opt out, you may not object. If you object, you will still be bound by the Settlement if it is approved by the Court.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made only if the Court approves the Settlement and that approval becomes final, which may be after appeals (if any) are resolved. Please be patient.

BASIC INFORMATION

1. Why did I get this Notice, and why should I read this Notice?

The records of Winall Oil indicate that you are a Class Member. If the Court approves the Settlement, you will receive a payment, and your legal rights will be affected. Thus, you have a right to information about the Settlement and your legal rights. That is the intent of this Notice.

2. What is this lawsuit about?

Plaintiff has asserted the following claims against Winall Oil and the Gimenez Defendants on behalf of Class Members:

(1) Failure to Provide Off-Duty Meal Periods; (2) Failure to Authorize and Permit Rest Periods; (3) Failure to Furnish Adequate Wage Statements; (4) Unlawful Business Practices; (5) Failure to Maintain and Furnish Records; (6) Failure to Post Compensation Insurance Carrier and Safety Notices; and (7) Failure to Provide One Day's Rest Per Workweek.

Plaintiff have asserted the following claims against Winall Oil on behalf of PAGA Employees:

Civil Penalties Pursuant to PAGA ("PAGA Claims").

All of these claims are referred to in this Notice collectively as the "Claims."

Winall Oil and the Gimenez Defendants deny that the Claims are valid, deny that the Court should permit Plaintiff to bring the Claims on behalf of the Class Members and PAGA Employees, and contend that they complied with the law at all times. Winall Oil and the Gimenez Defendants further contend that they have complied with the requirements of the California Labor Code applicable to the employment and compensation of its employees.

3. What is a class action?

In a class action, one or more people sue on behalf of people who they allege have similar claims.

4. Why is there a settlement?

The Court has not yet decided in favor of either of the Parties on the Claims being settled. Plaintiff thinks he could recover a significant amount of wages, penalties, and interest on behalf of the Class Members if he were to win at trial. On the other hand, Winall Oil and the Gimenez Defendants deny all liability and believe that Plaintiff will not win anything in the case. After extensive negotiations, both sides have agreed to the Settlement of the Claims.

The Parties have entered into the proposed settlement agreement voluntarily. The purpose of the Settlement is so that the risks and costs of trial, for both sides, are eliminated.

The Court has given its preliminary approval of the Settlement as fair and reasonable to the Class Members.

5. How do I know if I am part of the Settlement?

Everyone who fits this description is a Class Member: all current and former and former gas-station attendants who were employed by Winall Oil throughout California at any time between February 28, 2019, through [date of preliminary settlement approval].

6. Are there exceptions to being included?

Yes. If you are a Class Member, you may opt out as stated in Section 13 below. If you do not opt out, you will receive part of the Settlement if approved.

However, if you are a PAGA Employee, you are not able to exclude yourself from the PAGA Release and you will receive an Individual PAGA Payment, whether or not you request exclusion from the Action and the Settlement. All claims for PAGA penalties are settled by operation of law.

7. What if I'm still not sure if I am included?

If you are still not sure whether you are included, you can call the Settlement Administrator at [Number] or write to the Settlement Administrator at [address]. You also may contact Class Counsel identified below for more information.

8. How much money is the Settlement for, and how is it allocated?

In exchange for the release of claims against it and final disposition of the Action, Winall Oil and the Gimenez Defendants will pay a total of One-Million-Three-Hundred-Eighty-Four-Thousand-Eight-Hundred-Four Dollars and Twenty-Five Cents (\$1,384,804.25) ("Total Settlement Amount"). Plaintiff is asking the Court to approve the following payments that, if approved, will be deducted from the Total Settlement Amount.

- **Class Representative Service Award:** For acting as the Class Representative, Plaintiff will request from the Court a service award of no more than Twenty Thousand Dollars and No Cents (\$20,000.00), in recognition of and as compensation for his efforts, such as starting the Action, volunteering time to assist with the Action, and providing information and documents, as well as risks he assumed in starting and assisting with the prosecution of the Action.
- **Class Counsel Award:** Class Counsel will request from the Court no more than Four-Hundred-Sixty-One-Thousand-Six-Hundred-One Dollar and Forty-Two Cents

(\$461,601.42) as attorneys' fees for litigation and resolution of the Action. Class Counsel will also request from the Court reimbursement for actual litigation costs advanced on behalf of the Class Members, which will be no more than Fifty-Thousand Dollars and No Cents (\$50,000.00).

- **PAGA Payment:** Sixty Thousand Dollars and No Cents (\$60,000.00) from the Total Settlement Amount is allocated for settlement of Plaintiff' claims under PAGA. Upon Court approval, 75% of the PAGA Payment (\$45,000.00) will be paid to the California Labor & Workforce Development Agency, and 25% of the PAGA Payment (\$15,000.00) will be distributed to the PAGA Employees.
- **Settlement Administrator Expenses:** The costs of settlement administration will not exceed Six Thousand Dollars and No Cents (\$6,000.00), which pays for tasks such as mailing and tracking this Notice, mailing checks and tax forms, and reporting to the parties and the Court. Any amount ordered by the Court for settlement administration will be paid from the Total Settlement Amount.

After Court-approved payments for attorneys' fees and costs, service awards to the Plaintiff, the PAGA Payment to be paid to the State, and settlement administration costs are deducted from the Total Settlement Amount, the remaining "Net Distribution Fund" will be distributed to Class Members.

The Settlement Administrator will apportion the Net Distribution Fund to be paid to Class Members based on their number of workweeks during the Class Period, as explained below.

9. How much will my payment be, and what is the information used to calculate my share?

Based on the calculation described above, it is currently estimated that your share of the Settlement will be [amount].

This amount could change based on how many Class Members opt out or based on further determinations by the Settlement Administrator or rulings by the Court.

If you are entitled to an Individual Settlement Payment, the Settlement Administrator will allocate twenty percent (20%) as taxable wages to be reported on IRS Form W-2. Twenty percent (20%) will be allocated to interest, and sixty percent (60%) will be allocated to penalties, both of which will be reported on IRS Form 1099, if applicable ("Individual Settlement Payment").

If you are entitled to an Individual PAGA Payment under the Settlement, the Settlement Administrator will allocate one hundred percent (100%) of the PAGA payment as penalties, which will be reported on IRS Form 1099 ("Individual PAGA Payment").

No other tax or deductions will be taken out of your share of the Settlement. Ultimately, you are responsible for all tax liability in relation to payments to you under the Settlement.

This Notice is not tax advice. Do not ask Class Counsel or Winall Oil or the Gimenez Defendants or their counsel for tax advice, as they will not provide it. You should consult your own tax advisor.

Winall Oil's records show that the following information is pertinent to the calculation of your estimated share of the Settlement:

- Your number of workweeks during the Class Period is [number].
- Your number of pay periods during the PAGA Period (October 28, 2021, through [date of preliminary settlement approval] (the "PAGA Period")) is [number].

If you disagree with this information, you must notify the Settlement Administrator by writing to them at the address set forth in paragraph 7. Be sure to include your full name, email address, mailing address, telephone number, last four digits of your social security number, and all supporting documentation, and sign your document.

Your notification must be signed and postmarked no later than [60 days from mailing]. After inquiring further of Winall Oil, the Settlement Administrator will make a final decision of dispute.

10. How can I get a payment?

You do not need to do anything to qualify for a payment. It is important that you immediately notify the Settlement Administrator if your mailing address is different from the address to which this Notice was sent, or if that address changes.

11. When will I receive a payment?

Payments will be distributed under a schedule established by the Settlement and by the Court. Presently, the expected date of payment is estimated to be [date]. This could change depending on factors influencing the Settlement Administrator's tasks, any objections to the Settlement, and actions by the Court.

12. What am I giving up to get a payment?

In exchange for the Settlement payment, each Class Member (except those who properly opt out) will release the following Released Claims: any and all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, during the Class Period, known or unknown, suspected or unsuspected, that each participating class member had, now has, or may hereafter claim to have during the Class Period against Defendants and that were asserted in the Action, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in Plaintiff's operative Second Amended Complaint, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law. The Released Class Claims specifically include, but are not limited to Labor Code §§ 226, 226.7, 246, 248.5, 512, 551, 552, 1174, 1198.5, 2810.3, 3550, 3551, 6430, and 6431, and the related IWC

Wage Order No. 7-2001 and Business & Professions Code §§ 17200, et seq., and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts asserted in the Action, including: (1) Failure to Provide Off-Duty Meal Periods; (2) Failure to Authorize and Permit Rest Periods; (3) Failure to Furnish Adequate Wage Statements; (4) Unlawful Business Practices; (5) Failure to Maintain and Furnish Records; (6) Failure to Post Compensation Insurance Carrier and Safety Notices; and (7) Failure to Provide One Day's Rest Per Workweek, as well as interest, fees, and costs. The enumeration of these specific statutes shall neither enlarge or narrow the scope of res judicata based on the claims that were asserted in the Action or could have been asserted in the Action based on the facts and circumstances alleged in any Complaint on file in the Action.

Additionally, Plaintiff acting in their capacity as private attorneys general on behalf of the State of California pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 *et seq.*, and on behalf of the Labor and Workforce Development Agency and the PAGA Employees. The PAGA Release shall operate to release and discharge the Released Parties from any claim for civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 *et seq.* that were asserted in the Action, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in Plaintiff's Second Amended PAGA Notice submitted to the Labor Workforce and Development Agency, including but not limited to claims for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246, 248.5, 512, 551, 552, 1174, 1198.5, 2810.3, 3550, 3551, 6430, and 6431 and the applicable IWC Wage Orders.

13. How do I opt out of the Settlement?

To exclude yourself from the Settlement, you must send a signed letter by mail to the Settlement Administrator stating words to the effect of "I wish to be excluded from the Settlement Class." You must include your name and signature.

Your request to opt out of the Settlement must be postmarked no later than **[60 days from mailing]** to the Settlement Administrator at the address in paragraph 7.

If you ask to be excluded, you will not be legally bound by the Settlement if approved. You will not get any Individual Settlement Payment from the Settlement, and you will not be allowed to object to the Settlement.

14. If I don't exclude myself, can I sue Winall Oil for the same thing later?

No. Unless you exclude yourself, you will give up any right to sue Winall Oil, Allen Gimeenz, or Gary Gimenez for the claims that this Settlement resolves. If you have a pending lawsuit for the same claims that are being settled against Winall Oil, Allen Gimenez, or Gary Gimenez, speak to your lawyer in that case immediately. You must exclude yourself from this Settlement in order to

continue your own lawsuit if it involves the same claims. However, you are not able to exclude yourself from the PAGA Release.

15. If I exclude myself, can I get money from this Settlement? Will any money be returned to Winall Oil?

No. If you exclude yourself, you will not receive any money from this Settlement except for your Individual PAGA Payment if you are a PAGA Employee. If you exclude yourself from the Settlement, the monies you would have received will be distributed on a pro-rata basis to all the other Class Members. No money will revert to Winall Oil.

16. Who is my legal representative in this case?

The Court has appointed as Class Counsel the following attorneys:

HUNTER PYLE LAW
Hunter Pyle, Esq.
John J. Darin, Esq.
505 14th Street, Suite 600
Oakland, California 94612
Telephone: (510) 444-4400
Facsimile: (510) 444-4410
hunter@hunterpylelaw.com
jdarin@hunterpylelaw.com

You will not be charged for the work performed by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

If you have questions about this Settlement, you may contact Class Counsel. They will consult with you and attempt to answer your questions. Do not contact Winall Oil or the Gimenez Defendants with any questions about the Settlement.

17. How do I object to the Settlement?

If you are a Class Member and do not opt out, you can object to the Settlement if you don't like any part of it. However, the Court cannot order a larger settlement. The Court can only approve or deny the proposed Settlement.

If the Court denies approval, no settlement payments will be sent out, and the Action will continue. If that is what you want, you must object. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views.

To object to the Settlement, you must send a written objection no later than [60 days from mailing] to the Settlement Administrator at the address in paragraph 7. Your objection must include your full name, address, telephone number, the last four digits of your Social Security Number, and your signature, as well as the case name and number. It must set forth, in clear and concise terms, a statement of the specific reasons why you believe the Court should find that the Settlement is not

in the best interest of the Class Members and the reasons why the Settlement should not be approved. Your objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class.

If you also wish to appear at the Fairness Hearing, in person or through an attorney, you must *also* file a notice of your intention to appear at the same time as the objection is submitted. You must state whether you plan to appear either remotely, in person, or through counsel, and, if through counsel, submit a statement identifying that counsel by name, bar number, address, and telephone number. Unless otherwise ordered by the Court, you will not be entitled to speak at the Final Approval Hearing unless you have submitted a timely written objection and notice of intention to appear.

Please see section 19, below, for more information about how to appear in person.

18. What's the difference between objecting and opting out?

Objecting is simply saying that you don't like something about the Settlement and do not want it approved. Opting out is saying that you don't want to be part of the Class and participate in the Settlement of the Class Claims. If you opt out, you have no basis to object because the case no longer affects you.

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

The Court will hold a Fairness Hearing at 9:00 a.m. on [date of final approval hearing], in Department 17 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At this hearing, the Court will make a final decision as to whether the Settlement is fair, reasonable, and adequate. If you or other Class Members object to the Settlement, the Court will consider the objections. At or after the hearing, the Court will decide whether to grant final approval to the Settlement. At the Fairness Hearing, the Court may continue the hearing to another date without additional notices being sent out.

The judge overseeing this case encourages remote appearances. Class members who wish to appear remotely should contact class counsel at least three days before the hearing if possible.

Any class member who wishes to appear in person may do so at Department 17 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012.

20. Do I have to come to the hearing?

No. Class Counsel will answer questions the Judge may have. You are welcome to come at your own expense. If you properly submit an objection, you do not have to come to Court to talk about it. As long as you properly submit your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. You cannot appear and speak at the hearing if you opt out.

22. What happens if I do nothing at all?

If you do nothing, or fail to act timely, you'll receive your share of the Settlement, but you will be barred from bringing the Released Claims against Winall Oil, Allen Gimenez, and Gary Gimenez as described in paragraph 12.

23. Can Winall Oil or the Gimenez Defendants retaliate against me for participating in this Settlement?

California law makes it unlawful to retaliate against you for participating in a lawsuit like this one.

24. How do I get more details about the Settlement?

This Notice is intended as a summary and does not fully describe this action, the claims, the defenses, or the proposed Settlement, which is subject to the terms and conditions of the Stipulation of Settlement filed with the Court and as preliminarily approved by the Court. For the precise terms and conditions of the Settlement, you are referred to the detailed Stipulation of Settlement, which is on file with the Clerk of the Court. The pleadings and other records in this Action, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of Los Angeles's Electronic Filing and Service Website at <https://www.lacourt.org/paos/v2/Login>, or (b) in person at Records, Superior Court of California, County of Los Angeles, 312 North Spring Street, Los Angeles, CA 90012, between the hours of 8:30 a.m. and 3:00 p.m. Monday through Thursday and between 8:30 a.m. and 12:00 p.m. on Fridays, excluding Court holidays and closures.

For further information, you may call or contact the Settlement Administrator (see paragraph 7) or Class Counsel (see paragraph 16). Do not contact Winall Oil or the Gimenez Defendants.

The Settlement Administrator also maintains a website where some important documents in this Action are available. The URL for the website is [insert].

You may also obtain more information by contacting Class Counsel or by accessing the Court's Electronic Filing and Service Website (https://www.sccourt.org/online_services.shtml).

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR WINALL OIL OR ITS COUNSEL WITH INQUIRIES.

Date: [redacted]

This Notice has been approved by the Judge of the Superior Court of California, County of Los Angeles, responsible for overseeing and deciding this case.

EXHIBIT B

FILED
Superior Court of California
County of Los Angeles
12/05/2024

David W. Slayton, Executive Officer / Clerk of Court
By: V. Gaytan Deputy

HUNTER PYLE, SBN 191125
JOHN J. DARIN, SBN 323730
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jdarin@hunterpylelaw.com

*Attorneys for Plaintiff, the Putative Class,
and all other Aggrieved Employees*

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

EFREN PALOMINO on behalf of himself, the
Putative Class, and all other Aggrieved
Employees;

Plaintiff,

v.

WINALL OIL CO., a California Corporation;
ALLEN GIMENEZ, an individual; GARY
GIMENEZ, an individual; and DOES 1 through
20, inclusive,

Defendants.

Case No.: 23STCV04401

CLASS AND REPRESENTATIVE ACTION

SECOND AMENDED COMPLAINT

- 1. FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS (Labor Code §§ 226.7, 512, & 2810.3; Wage Order No. 7);**
- 2. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS (Labor Code §§ 226.7 & 2810.3; Wage Order No. 7);**
- 3. FAILURE TO FURNISH ADEQUATE WAGE STATEMENTS (Labor Code §§ 226 & 2810.3; Wage Order No. 7);**
- 4. UNLAWFUL BUSINESS PRACTICES (Business & Professions Code §§ 17200 *et seq.*);**
- 5. FAILURE TO MAINTAIN AND FURNISH RECORDS (Labor Code §§ 226, 246, 248.5, 1174, & 1198.5);**
- 6. FAILURE TO POST COMPENSATION INSURANCE CARRIER AND SAFETY NOTICES (Labor Code §§ 3550, 3551, 6430, & 6431);**
- 7. FAILURE TO PROVIDE ONE DAY'S REST PER WORKWEEK (Labor Code §§ 551, 552); and**

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**8. VIOLATIONS OF THE LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 (Labor Code §§ 2698, *et seq*)**

DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This is a class action under Code of Civil Procedure section 382 and a representative action under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, *et seq.*, brought by Plaintiff EFREN PALOMINO (“Plaintiff”).

2. Plaintiff seeks to represent a class of current and former gas-station attendants who were employed by defendants WINALL OIL CO. (“Winall Oil”), ALLEN GIMENEZ (“A. Gimenez”), and GARY GIMENEZ (“G. Gimenez”) (collectively, “Defendants”) from October 28, 2018 to the present (“Class Members”).

3. Defendant Winall Oil is in the gas stations business. Defendants A. Gimenez and G. Gimenez serve as the Chief Executive Officer and Chief Financial Officer, respectively, of Defendant Winall Oil. Defendants own and operate more than a dozen gas stations in Southern California, which they franchise from several major oil companies.

4. Defendants failed to provide Plaintiff and Class Members with off-duty meal and rest periods or meal- and rest-period premiums, in violation of California wage and hour law, throughout Plaintiff’s and Class Members’ employment. Defendants have sought to avoid various duties and obligations owed to employees under the California Labor Code, Industrial Welfare Commission Wage Order No. 7 (“Wage Order No. 7”), including but not limited to failure to: (1) Provide meal periods; (2) Authorize and permit rest periods; (3) Furnish adequate wage statements; (4) Failure to Furnish and Maintain Records; (5) Failure to Post Compensation Insurance and Safety Notices; and (6) Failure to Provide One Day’s Rest Per Workweek.

5. Plaintiff brings claims on behalf of Class Members for missed meal and rest periods, statutory penalties, interest, and attorneys’ fees and costs under Labor Code sections 218.5 and 226(e), and Code of Civil Procedure section 1021.5. Plaintiff, on behalf of himself and Class Members, also seeks equitable and injunctive relief for these violations pursuant to Business and Professions Code sections 17200-17208 (referred to herein as the “UCL”).

6. Plaintiff also brings a claim seeking civil penalties under the Private Attorneys General Act, Labor Code sections 2698 *et seq.* (“PAGA”).

II. JURISDICTION

7. Venue is proper in this judicial district, pursuant to Code of Civil Procedure section 395(a). Defendants employ or have employed Plaintiff and Class Members throughout California, including in the city of Los Angeles, which is located within the County of Los Angeles, California. The unlawful acts alleged herein have occurred in and have a direct effect on Plaintiff and those similarly situated within the State of California and the County of Los Angeles.

8. This Court has jurisdiction over this class action pursuant to Article 6, section 10 of the California Constitution and California Code of Civil Procedure section 410.10.

III. PARTIES

A. PLAINTIFF

9. Plaintiff and Class Members are gas-station attendants who are or were employed by Defendants in California at some time during the period beginning October 28, 2018 to the present (the "Class Period").

10. Plaintiff is a resident of California and has worked for Defendants as gas-station attendants staffing Defendants' gas stations during the relevant time periods herein.

11. Plaintiff is informed and believes, and thereon alleges that at all relevant times herein, Defendants were and are subject to the Labor Code and Wage Order 7 as employers, whose employees were and are engaged throughout counties throughout the State of California, including Los Angeles County.

B. DEFENDANTS

12. Winall Oil is a California Corporation with principal place of business in Signal Hill, California and conducts business throughout the Southern California, including out of the City of Los Angeles, located in the County of Los Angeles. At all times relevant herein Defendant Winall Oil was Plaintiff's and other aggrieved employees' employer covered by the Labor Code, Wage Order 7.

1 13. A. Gimenez is, on information and belief, an adult resident of Signal Hill,
2 California. Defendant A. Gimenez has, during the relevant time period, been listed as Chief
3 Executive Officer and Director on Defendant Winall Oil's statement of information filed with the
4 California Secretary of State. At all times relevant herein Defendant A. Gimenez was Plaintiff's
5 and Class Members' employer covered by the Labor Code, Wage Order 7. Plaintiff is informed
6 and believes that Defendant A. Gimenez is a joint employer, working with Winall Oil. Defendant
7 A. Gimenez controls and is intimately involved in the day-to-day operations of Defendant Winall
8 Oil and both determined and instituted the unlawful wage and hour violations alleged herein.
9 Defendant A. Gimenez has violated or caused to be violated the provisions of Wage Order 7
10 regulating hours and days of work as well as Labor Code sections 226 and 226.7. As such, he is
11 personally liable for the Wage Order and Labor Code violations cited above pursuant to Labor
12 Code section 558.1.

13 14. G. Gimenez is, on information and belief, an adult resident of Signal Hill,
14 California. Defendant A. Gimenez has, during the relevant time period, been listed as Secretary and
15 Chief Financial Officer on Defendant Winall Oil's statement of information filed with the
16 California Secretary of State. At all times relevant herein Defendant G. Gimenez was Plaintiff's
17 and Class Members' employer covered by the Labor Code, Wage Order 7. Plaintiff is informed
18 and believes that Defendant G. Gimenez is a joint employer, working with Winall Oil. Defendant
19 G. Gimenez controls and is intimately involved in the day-to-day operations of Defendant Winall
20 Oil and both determined and instituted the unlawful wage and hour violations alleged herein.
21 Defendant G. Gimenez has violated or caused to be violated the provisions of Wage Order 7
22 regulating hours and days of work as well as Labor Code sections 226 and 226.7. As such, he is
23 personally liable for the Wage Order and Labor Code violations cited above pursuant to Labor
24 Code section 558.1

25 15. The true names and capacities, whether individual, corporate, associate, or
26 otherwise, of Defendants sued herein as DOES 1 through 20, inclusive, are currently unknown to
27 Plaintiff, who therefore sues Defendant by such fictitious names under Code of Civil Procedure
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1 section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the
2 defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts
3 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
4 names and capacities of the defendants designated hereinafter as DOES when such identities
5 become known. Plaintiff is informed and believes, and based thereon alleges, that each of the
6 defendants designated herein as DOE is legally responsible in some manner for the events and
7 happenings referred to herein and caused injury and damage proximately thereby to Plaintiff as
8 alleged herein. Each reference in this Complaint to “Defendant,” or a specifically named defendant,
9 refers also to all defendants sued under fictitious names.

10 16. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
11 mentioned each of the defendants are and were the agent, employee and/or servant of each of the
12 remaining defendants, and in doing the things hereinafter alleged was acting within the scope of
13 such agency, employment, and servitude, with the knowledge and consent of each of the
14 defendants. Whenever this Complaint makes reference to a defendant, such allegations shall be
15 deemed to mean the acts of all defendants acting individually, jointly and/or severally.

16 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

17 17. On October 28, 2022, Plaintiff gave electronic and written notice by certified mail
18 of Winall Oil’s violations of various provisions of the California Labor Code as alleged in his
19 initial complaint and First Amended Complaint to the Labor and Workforce Development Agency
20 (“LWDA”) and Winall Oil.

21 18. On November 6, 2023, Plaintiff gave electronic and written amended notice by
22 certified mail of Winall Oil’s additional violations of various provisions of the California Labor
23 Code to the LWDA and Winall Oil.

24 19. On September 26, 2024, Plaintiff gave electronic and written second amended
25 notice by certified mail, clarifying his allegations of Winall Oil’s violations of various provisions
26 of the California Labor Code as alleged in this Second Amended Complaint to the LWDA and
27 Winall Oil.

20. The LWDA has not provided notice pursuant to Labor Code section 2699.3(a)(2)(A), and 65 calendar days have passed since the postmark date of either of Plaintiff's notices. Therefore, Plaintiff is entitled to commence a civil action pursuant to Labor Code section 2699.

V. STATEMENT OF FACTS

21. Defendants own and operate more than a dozen gas stations in Southern California. Defendants employ gas-station attendants to staff its gas stations and carry on their operations. Plaintiff and Class Members worked as gas-station attendants staffing Defendants' gas stations in Los Angeles County and Southern California.

22. Plaintiff is informed and believes and thereon alleges that, through common practices, policies and/or schemes, Defendants failed to adequately staff their gas stations. As a result of these practices, policies and/or schemes, Plaintiff and Class Members were unable to take off-duty meal and rest periods, and Defendants failed to compensate Plaintiff and Class Members for missed meal and rest periods in order to systematically deprive them of the benefits and protections applicable to employees under California law.

23. Plaintiff is informed and believes and thereon alleges that, throughout the relevant time period of this action, Defendants have employed at least two dozen (24) Class Members. At all times relevant hereto, the California Labor Code and Wage Order No. 7 have applied to Plaintiff and to Class Members.

24. Plaintiff's and Class Members' primary job duties involved accepting cash payments from customers, attending the pumps, performing paperwork related to shift management and accounting, cleaning the booth and the station.

25. Defendants controlled all work details, including Plaintiff's and Class Members' respective schedules and work locations. Based on the foregoing and other relevant factors, Plaintiff and other Class Members were employees of Defendants.

26. By failing to adequately staff its gas stations, Defendants required Plaintiff and Class Members to work continuously throughout the entirety of their shifts without providing

1 Plaintiff and Class Members with proper off-duty meal periods. Plaintiff and Class Members
2 regularly worked more than five (5) hours per day without receiving an adequate off-duty meal
3 period of at least thirty (30) minutes during which they were relieved of all duties. Defendants'
4 inadequate staffing also forced Plaintiff and other Class Members to work without a second meal
5 period of not less than thirty (30) minutes during which they are relieved of all duties when they
6 worked more than ten (10) hours per day. Defendants failed to pay one additional hour of pay at
7 Plaintiff's and Class Members' respective regular rates of compensation for each workday
8 Defendants did not provide them with an adequate meal period.

9 27. By failing to adequately staff its gas stations, Defendants also required Plaintiff and
10 Class Members to work continuously throughout the entirety of their shifts without authorizing or
11 providing paid rest periods. Plaintiff and Class Members regularly worked more than three-and-
12 one-half (3½) hours without being authorized or permitted to take a paid ten (10) minute rest
13 period. Defendants failed to pay one additional hour of pay at Plaintiff's and Class Members'
14 respective regular rates of compensation for each workday that they were not provided a rest
15 period.

16 28. Defendants also failed to provide Plaintiff and Class Members with adequate
17 itemized wage statements. For example, the wage statements provided by Defendants to Plaintiff
18 and Class Members do not adequately include all hours worked or meal- and rest-period premium
19 wages earned. Additionally, at various times throughout the Class Period, Defendants knowingly
20 and intentionally failed to furnish Plaintiff and Class Members with legally compliant wage
21 statements in accordance with Labor Code sections 226, 246, 1174, and 1198.5. Specifically,
22 Defendants failed to furnish Class Members with wage statements showing accrued sick time or
23 vacation days. Plaintiff requested furnishment of his personnel and payroll records but was not
24 timely provided with records showing accrued sick time or vacation days.

25 29. At various times throughout the Class Period, Defendants have required Plaintiff
26 and other Class Members to work seven days within a workweek without any day of rest in that
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workweek. Defendants induced Plaintiff to perform this work. Therefore, Defendants have violated Labor Code sections 551 and 552.

30. Finally, Labor Code section 3550 requires every employer subject to Workers Compensation law to post and keep posted in a conspicuous location frequented by employees a notice that states the name of the current compensation insurance carrier of the employer. Labor Code section 3551 requires every such employer to provide new employees with written notice of the same. Labor Code sections 6430 and 6431 provide for civil penalties against any employer who fails to post the Workers Compensation information required by Section 3550 or safety information required by Labor Code Section 6318, or who fails to correct a violation of any occupational safety or health standard order. During the Class Period, Defendants failed to post all of the information required by Labor Code sections 3550, 3551, 6430, and 6431 at all of its stations wherein Plaintiff and other Class Members worked.

VI. CLASS ACTION ALLEGATIONS

31. Except as to the PAGA claim set forth below, Plaintiff brings this lawsuit as a class action pursuant to Code of Civil Procedure section 382 on behalf of himself and all similarly situated employees.

32. The class that Plaintiff seeks to represent are defined as:

The Class: Current and former gas-station attendants who were employed by Defendants throughout California at any time between October 28, 2018 through the present (“Class” or “Class Members”).

33. The claims herein have been brought and may properly be maintained as a class action under Code of Civil Procedure section 382 because there is a well-defined community of interest among Class Members with respect to the claims asserted herein and the Class is easily ascertainable:

- a. Ascertainability and Numerosity: The potential members of the Class as defined herein are so numerous that joinder would be impracticable. Plaintiff is informed and believes, and based thereon alleges, that Defendants have employed at least two dozen (24) Class Members during the Class Period. The names and addresses of the Class

Members are available from Defendants. Notice can be provided to the Class Members via first class mail using techniques and a form of notice similar to those customarily used in class action lawsuits of this nature.

b. Commonality: There are questions of law and fact common to Plaintiff and the Class that predominate over any questions affecting only individual members of the Class.

These common questions of law and fact include, without limitation:

- i. Whether Defendants have violated Labor Code section 226.7 and Wage Order No. 7 by failing to authorize and permit Class Members paid rest periods;
- ii. Whether Defendants have violated Labor Code sections 226.7 and 512, and Wage Order No. 7 by failing to provide Class Members meal periods;
- iii. Whether Defendants have violated Labor Code section 226 and Wage Order No. 7 by failing to issue Class Members with adequate and legally compliant wage statements;
- iv. Whether Defendants have violated Labor Code sections 226, 246, 248.5, 1174, and 1198.5 by failing to maintain and furnish records reflecting all sick days and vacation days accrued by Class Members;
- v. Whether Defendants have violated Labor Code sections 3550, 3551, 6430, and 6431 by failing to post and keep posted current compensation insurance and other safety information and notices at all of the stations worked by Class Members;
- vi. Whether the violations set forth in subsections i-vi immediately above constitute an unlawful, unfair, and/or fraudulent business practice under Business and Professions Code Section 17200, *et seq.*;
- vii. What relief is necessary to remedy Defendant's unfair and unlawful conduct as herein alleged;

viii. Whether Defendants A. Gimenez and G. Gimenez should share with Defendant Winall Oil all civil legal responsibility for the violations set forth in subsections i-iii above under Labor Code section 558.1; and

ix. Other questions of law and fact.

- c. Typicality: Plaintiff's claims are typical of the claims of the Class: Plaintiff is and was employed by Defendants as a gas station attendant staffing Defendants' gas stations during the Class Period in California. Plaintiff and all members of the Class have sustained injuries-in-fact due to their damages arising out of and caused by Defendants' common course of conduct in violation of law, as alleged herein.
- d. Adequacy of Representation: Plaintiff is a member of the Class that he seeks to represent, and will fairly and adequately represent and protect the interests of Class. Counsel representing Plaintiff is competent and experienced in litigating wage and hour class actions.
- e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class and Subclasses predominate over any questions affecting only individual members of the Class. Class Members have suffered injury and are entitled to recover by reason of Defendants' illegal policies and/or practices as alleged herein. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Further, the prosecution of separate actions against Defendants by individual Class Members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants.

VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(Labor Code §§ 226.7, 512; Wage Order No. 7)
(on behalf of Plaintiff and all members of the Putative Class)

34. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class of similarly situated gas-station attendants who were employed by Defendants throughout California.

35. Plaintiff and Class Members have regularly worked in excess of five (5) hours per day without being permitted to take a thirty (30) minute meal period as required by Labor Code sections 226.7 and 512 and Wage Order No. 7.

36. Plaintiff and Class Members have regularly worked in excess of ten (10) hours a day without being permitted to take a second thirty (30) minute meal period as required by Labor Code sections 226.7 and 512 and Wage Order No. 7.

37. Pursuant to Labor Code section 226.7(c) and Wage Order No. 7, Defendants are liable for one hour of additional pay at Plaintiff's and Class Members' respective regular rate of pay for each workday Defendants failed to provide meal periods to Plaintiff and Class Members.

38. By violating Labor Code section 226.7 and Wage Order No. 7, Defendants are also liable for interest under Labor Code section 218.6, reasonable attorneys' fees and costs under Labor Code section 218.5.

39. On information and belief, Defendants A. Gimenez and G. Gimenez are and were, at all relevant times, owners, directors, officers, and/or managing agents of Defendant Winall Oil and violated or caused to be violated the provisions regulating minimum wages or hours and days of work in Wage Order 7 and Labor Code § 226.7. Therefore, Defendants A. Gimenez and G. Gimenez are individually liable for these violations.

40. Plaintiff, on behalf of himself and the Class, requests restitution of unpaid meal period premiums and other relief as described below.

SECOND CAUSE OF ACTION
FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
(Labor Code § 226.7; Wage Order No. 7)
(on behalf of Plaintiff and all members of the Putative Class)

41. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class of similarly situated gas-station attendants who were employed by Defendants throughout California.

42. Plaintiff and Class Members have regularly worked in excess of three and one-half (3½) hours a day without being permitted to take at least a ten (10) minute paid rest period for every three and one-half (3½) hours worked, or major fraction thereof, as required by Wage Order No. 7, and Labor Code section 226.7.

43. Accordingly, Defendants are liable to Plaintiff and Class Members for one hour of additional pay at the regular rate of compensation for each workday a rest period violation occurred, pursuant to Labor Code section 226.7(c) and Wage Order No. 7.

44. On information and belief, Defendants A. Gimenez and G. Gimenez are and were, at all relevant times, owners, directors, officers, and/or managing agents of Defendant Winall Oil and violated or caused to be violated the provisions regulating minimum wages or hours and days of work in Wage Order 7 and Labor Code § 226.7. Therefore, Defendants A. Gimenez and G. Gimenez are individually liable for these violations.

45. Plaintiff, on behalf of himself and the Class, requests restitution of unpaid rest period premiums and other relief as described below.

THIRD CAUSE OF ACTION
FAILURE TO FURNISH ADEQUATE WAGE STATEMENTS
(Labor Code § 226; Wage Order No. 7)
(on behalf of Plaintiff and all members of the Putative Class)

46. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class of similarly situated gas-station attendants who were employed by Defendants throughout the Class Period.

4 48. An employee suffering injury as the result of a knowing and intentional failure of an
5 employer to comply with Labor Code section 226(a) may recover the greater of all actual damages
6 or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one hundred
7 dollars (\$100.00) for each violation in a subsequent pay period, not to exceed the aggregate penalty
8 of four thousand dollars (\$4,000.00) and is entitled to an award of costs and reasonable attorney's
9 fees pursuant to Labor Code section 226(e)(1).

10 49. Defendants knowingly and intentionally failed to furnish Plaintiff and Class
11 Members with legally compliant wage statements in accordance with Labor Code sections 226, and
12 Wage Order No. 7. Defendants failed to furnish Class Members with adequate wage statements
13 showing gross and net wages earned and total hours worked.

14 50. Plaintiff, on behalf of himself and the Class, requests wage statement penalties and
15 other relief as described below.

FOURTH CAUSE OF ACTION
UNFAIR COMPETITION AND UNFAIR BUSINESS PRACTICES
(Business & Professions Code §§ 17200 *et seq.*)
(on behalf of Plaintiff and all members of the Putative Class)

51. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class of similarly situated gas-station attendants who were employed by Defendants throughout California.

52. Defendants' failure to pay legally required compensation, authorize and permit meal and rest periods, provide adequate wage statements, as alleged above, constitute unlawful and/or unfair activities prohibited by Business and Professions Code section 17200. Plaintiff reserves the right to identify additional unfair and unlawful practices by Defendant as further investigation and discovery warrants.

1 53. Moreover, Business and Professions Code section 17203 provides that the Court
2 may restore to an aggrieved party any money or property acquired by means of unlawful and unfair
3 business practices. Plaintiff seeks a court order requiring an audit and accounting of the payroll
4 records to determine the amount of restitution of all unpaid wages owed to himself and Class
5 Members, as well as a determination of the amount of funds to be paid to current and former
6 employees that can be identified and located pursuant to a court order and supervision.

7 54. Plaintiff and all Class Members are persons who have suffered injury in fact as a
8 result of Defendant's unfair competition within the meaning of Business and Professions Code
9 section 17204, and who comply with the requirements of Code of Civil Procedure section 382, as
10 set forth above, and therefore have standing to bring this claim for injunctive relief, restitution, and
11 other appropriate equitable relief.

12 55. As a result of its unlawful and/or unfair acts, Defendant have reaped and continue to
13 reap unfair benefits and illegal profits at the expense of Plaintiff and proposed Class Members.
14 Defendants should be enjoined from this activity and made to restore to Plaintiff and proposed
15 Class Members their wrongfully withheld wages, interest thereon, and related statutory penalties,
16 pursuant to Business and Professions Code sections 17202 and 17203.

17 56. Private enforcement of these rights is necessary, as no other agency has raised a
18 claim to protect these workers. There is a financial burden incurred in pursuing this action that
19 would be unjust to place upon Plaintiff, as the burden of enforcing workforce-wide rights is
20 disproportionately greater than that of enforcing only Plaintiff's individual claims. Additionally,
21 Plaintiff is a low-income worker who cannot afford to spend part of his wages on enforcing others'
22 wage rights. Therefore, it would be against the interests of justice to force payment of attorneys'
23 fees from Plaintiff's recovery in this action. Accordingly, attorneys' fees are appropriate and
24 sought pursuant to the Code of Civil Procedure section 1021.5.

25 57. Plaintiff, on behalf of himself and the Class, requests restitution of unpaid wage
26 premiums, injunctive relief and other relief as described below.

**FIFTH CAUSE OF ACTION
FAILURE TO MAINTAIN AND FURNISH RECORDS
(Labor Code §§ 226, 246, 248.5, 1174, & 1198.5)
(on behalf of Plaintiff and all members of the Putative Class)**

58. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class of similarly situated gas-station attendants who were employed by Defendants throughout California.

59. Labor Code sections 226, 246, 248.5, 1174, and 1198.5 all require employers to maintain and furnish to employees upon request certain time and pay records for at least three years. Labor Code section 246 specifically requires employers to maintain and provide an employee with written notice of the amount of paid sick leave available to the employee on either the employee's wage statement or in a separate writing provided on the designated pay date with the employee's payment of wages.

60. An employee suffering injury as the result of a knowing and intentional failure of an employer to comply with Labor Code sections 226 (a) may recover the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one hundred dollars (\$100.00) for each violation in a subsequent pay period, not to exceed the aggregate penalty of four thousand dollars (\$4,000.00) and is entitled to an award of costs and reasonable attorney's fees pursuant to Labor Code section 226(e)(1).

61. At various times throughout the Class Period, Defendants knowingly and intentionally failed to furnish Plaintiff and Class Members with legally compliant wage statements in accordance with Labor Code sections 226, 246, 248.5, 1174, and 1198.5. Specifically, Defendants failed to furnish Class Members with adequate wage statements showing accrued sick or vacation days.

62. Furthermore, during the Class Period Plaintiff gave Defendants a written request for his time and pay records pursuant to Labor Code sections 226 and 1198.5. However, Defendants failed to timely furnish him with records showing his accrued sick or vacation days.

63. Plaintiff, on behalf of himself and the Class, requests damages and injunctive and other relief as described below.

**SIXTH CAUSE OF ACTION
FAILURE TO POST COMPENSATION INSURANCE CARRIER
AND SAFETY NOTICES
(Labor Code §§ 3550, 3551, 6430, & 6431)
(on behalf of Plaintiff and all members of the Putative Class)**

64. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class of similarly situated gas-station attendants who were employed by Defendants throughout California.

65. Labor Code section 3550 requires every employer subject to Workers Compensation law to post and keep posted in a conspicuous location frequented by employees a notice that states the name of the current compensation insurance carrier of the employer. Labor Code section 3551 requires every such employer to provide new employees with written notice of the same.

66. Labor Code sections 6430 and 6431 provide for civil penalties against any employer who fails to post the Workers Compensation information required by Section 3550 or safety information required by Labor Code Section 6318, or who fails to correct a violation of any occupational safety or health standard order.

67. During the Class Period, Defendants failed to post all of the information required by Labor Code sections 3550, 3551, 6430, and 6431 at all of its stations.

68. Plaintiff, on behalf of himself and the Class, requests damages and injunctive and other relief as described below.

**SEVENTH CAUSE OF ACTION
FAILURE TO PROVIDE ONE DAY'S REST PER WORKWEEK
(Labor Code §§ 551, 552)
(on behalf of Plaintiff and all members of the Putative Class)**

69. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the

1 above-described Class of similarly situated gas-station attendants who were employed by
2 Defendants throughout California.

3 70. Labor Code section 551 provides that “[e]very person employed in any occupation
4 of labor is entitled to one day’s rest therefrom in seven.” Section 552 adds, “No employer of labor
5 shall cause his employees to work more than six days in seven.”

6 71. At various times throughout the Class Period, Defendants have required Plaintiff to
7 work seven days within a workweek without any day of rest in that workweek. Defendants induced
8 Plaintiff to perform this work. Therefore, Defendants have violated Labor Code sections 551 and
9 552.

10 72. Plaintiff, on behalf of himself and the Class, requests damages and injunctive and
11 other relief as described below.

12 **EIGHTH CAUSE OF ACTION**
13 **PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**
14 **(Labor Code § 2698 *et seq.*)**
(on behalf of Plaintiff and all similarly situated aggrieved employees)

15 73. The allegations of each of the preceding paragraphs are realleged and incorporated
16 herein by reference. Plaintiff allege as follows a representative cause of action on behalf of himself
17 and all other aggrieved employees.

18 74. Labor Code section 2699(f) provides, in pertinent part: “For all provisions of this
19 code except those for which a civil penalty is specifically provided, there is established a civil
20 penalty for a violation of these provisions, as follows: . . . If, at the time of the alleged violation, the
21 person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
22 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
23 aggrieved employee per pay period for each subsequent violation.”

24 75. Labor Code section 2699(g)(1) provides, in pertinent part: [A]n aggrieved employee
25 may recover the civil penalty described in subdivision (f) in a civil action . . . filed on behalf of
26 himself or herself and other current or former employees against whom one or more of the alleged
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1 violations was committed. Any employee who prevails in any action shall be entitled to an award
2 of reasonable attorney's fees and costs.

3 76. Plaintiff is an aggrieved employee as defined by Labor Code section 2699(a).

4 77. Plaintiff's cause of action under Labor Code section 2698, *et seq.* is based on the
5 following allegations:

- 6 a. Violations of Labor Code section 558 for failing to pay wages due, including those for
7 missed meal periods as required by Labor Code sections 226.7 and 512. Specifically,
8 Defendant does not pay one additional hour of pay to Plaintiff and other aggrieved
9 employees at their regular rate of pay for a missed meal period.
- 10 b. Violations of Labor Code section 558 for failing to pay wages due, including those for
11 missed rest periods as required by Labor Code section 226.7. Specifically, Defendant
12 does not pay one additional hour of pay to Plaintiff and aggrieved employees at their
13 regular rate of compensation for each missed rest period.
- 14 c. Violations of Labor Code section 226, subdivision (a) for failing to provide Plaintiff
15 and aggrieved employees with adequate itemized wage statements that included,
16 among other things, meal- and rest-period premium wages equal to one-hour's wages
17 for each shift in which a meal- or rest-period was not provided.
- 18 d. Violations of Labor Code sections 201 through 203, requiring the timely payment of
19 wages. Defendant has not timely paid those aggrieved employees who are no longer
20 employed with Defendant all wages owed and due at the time of termination of their
21 employment.
- 22 e. Violations of Labor Code sections 204 and 210, based on Defendant's failure to pay
23 Plaintiff and other aggrieved employees all wages due on their regular paydays.
- 24 f. Violations of Labor Code sections 226, 246, 248.5, 1174, and 1198.5. Defendant has
25 failed to maintain and furnish all records required by Labor Code sections 226, 1174,
26 and 1198.5. Specifically, Plaintiff's wage statements have not included his accrued
27 sick days and vacation days. Plaintiff requested his records from Defendant and
28

1 Defendant did not timely furnish wage statements that included his accrued sick days
2 and vacation days.

3 g. Violations of Labor Code sections 226, 246, 248.5, 1174, and 1198.5. Defendant has
4 failed to maintain and furnish all records required by Labor Code sections 226, 1174,
5 and 1198.5. Specifically, Plaintiff's wage statements have not included his accrued
6 sick days and vacation days. Plaintiff requested his records from Defendant and
7 Defendant did not timely furnish wage statements that included his accrued sick days
8 and vacation days.

9 h. Violations of Labor Code sections 551 and 552, based on Defendant's failure to
10 provide one day's rest in every week worked by Plaintiff and other aggrieved
11 employees.

12 78. As a direct and proximate result of Defendant's unlawful practices and policies,
13 Plaintiff and other aggrieved employees have suffered and continue to suffer monetary losses.

14 79. Plaintiff, on behalf of himself and all other aggrieved employees, requests civil
15 penalties against Defendant Winall Oil for violations of the Labor Code, as provided under Labor
16 Code section 2699(f), plus reasonable attorneys' fees and costs, as provided under Labor Code
17 section 2699(g)(1), in amounts to be proven at trial.

18 WHEREFORE, Plaintiff, on behalf of himself and all other aggrieved employees, prays for
19 judgment against Defendant Winall Oil as set forth below.

20 **VIII. PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, on behalf of himself and the above-described Class, requests
22 relief as follows:

- 23 a. Certification of the above-described Class as a class action, pursuant to Code of Civil
24 Procedure section 382;
- 25 b. Certification of the above-described Class as a representative class under Business and
26 Professions Code section 17200;
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- c. Provision of Class Notice to all Class Members who worked for Defendants during the Class Period;
- d. A declaratory judgment that Defendants have knowingly and intentionally violated the Business and Professions Code sections 17200-17208, by the conduct set forth above;
- e. A declaratory judgment that Defendants' violations as described above were willful;
- f. Injunctive relief to correct the violations alleged above herein;
- g. An equitable accounting to identify, locate, and restore to all Class Members the compensation and interest that are due;
- h. An award to Plaintiff and Class Members of meal and rest period premiums pursuant to Labor Code section 226.7 for failure to provide meal and rest periods;
- i. An award of penalties pursuant to Labor Code section 226 to Plaintiff and Class Members for failing to provide lawful itemized wage statements;
- j. An award of civil penalties under Labor Code section 2698, *et seq.*
- k. An order requiring Defendants to pay restitution of all amounts owed to Plaintiff and Class Members for Defendants' failure to pay meal and rest period premiums, and interest thereon, in an amount according to proof, pursuant to Business & Professions Code section 17203;
- l. An award to Plaintiff and Class Members of reasonable attorneys' fees and costs, pursuant to Code of Civil Procedure section 1021.5 and Labor Code sections 218.5, 226(e), and 2699, and/or other applicable law;
- m. An award to Plaintiff and Class Members of such other and further relief as this Court deems just and proper.

1 DATED: December 5, 2024

HUNTER PYLE LAW

2 By:

3 Hunter Pyle
4 John J. Darin

5 *Attorneys for Plaintiff, the Putative Class,*
6 *and all other Aggrieved Employees*
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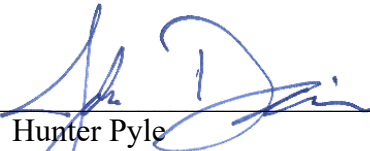
DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and the Putative Class, hereby demands a jury trial in this matter for all claims so triable.

DATED: December 5, 2024

HUNTER PYLE LAW

By:


Hunter Pyle
John J. Darin

*Attorneys for Plaintiff, the Putative Class,
and all other Aggrieved Employees*

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Hunter Pyle Law, 505 14th Street, Suite 600, Oakland, California 94612. On this day, I served the following Document(s):

SECOND AMENDED COMPLAINT

☒ By Electronic Service. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons listed below via Case Anywhere. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Kenneth H. Moreno
kmoreno@murchisonlaw.com
Laurie E. Yoon
lyoon@murchisonlaw.com
MURCHISON & CUMMING, LLP
2175 N. California Blvd., Suite 900
Walnut Creek, California 94598

Attorneys for Defendants WINALL OIL CO.
ALLEN GIMENEZ, and GARY GIMENEZ

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, December 5, 2024.


DARLENE SANCHEZ

EXHIBIT 4

HUNTER PYLE, SBN 191125
JOHN J. DARIN, SBN 323730
HUNTER PYLE LAW PC
505 14th Street, Suite 600
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Attorneys for Defendant, WINALL OIL CO.,
ALLEN GIMENEZ, and GARY GIMENEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

EFREN PALOMINO, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

WINALL OIL CO., a California Corporation;
ALLEN GIMENEZ, an individual; GARY
GIMENEZ, an individual; and DOES 1 through
20, inclusive,

Defendants.

Case No.. 23STCV04401

**CLASS AND REPRESENTATIVE
ACTION**

**AMENDED STIPULATION OF
SETTLEMENT**

Trial Date: Not Set
Action Filed: February 28, 2023

1 This AMENDED Stipulation of Settlement, including the Class Notice attached as
2 Exhibit A (the “Settlement,” “Settlement Agreement,” or “Agreement”) and the Second
3 Amended Complaint attached as Exhibit B, is made and entered into by, between, and among
4 Plaintiff EFREN PALOMINO (“Plaintiff”) on behalf of himself and the Settlement Class
5 Members, on the one hand, and Defendants WINALL OIL CO., ALLEN GIMENEZ, and
6 GARY GIMENEZ (“Defendants”) on the other hand. Plaintiff and Defendants (the “Parties”)
7 enter into this Agreement to effect a full and final settlement and preclusive judgment
8 resolving all claims brought or that could have been brought against Defendants based on the
9 factual allegations alleged in the case *Efren Palomino v. Winall Oil Co., Allen Gimenez, Gary*
10 *Gimenez, and DOES 1 through 20* (Superior Court of the State of California, County of Los
11 Angeles, No. 23STCV04401) (the “Action”). This Agreement is intended to fully and finally
12 compromise, resolve, discharge, and settle the Released Claims, as defined and on the terms
13 set forth below, and to the full extent reflected here, subject to the Court’s approval.

14 **1. RECITALS**

15 This Agreement is made in consideration of the following facts:

16 1.1 WHEREAS, on October 28, 2022, Plaintiff notified Defendants and the Labor
17 and Workforce Development Agency (“LWDA”) of Defendant’s alleged violations of the
18 California Labor Code;

19 1.2 WHEREAS, more than 65-days later, on February 28, 2023, Plaintiff
20 commenced the Action by filing a class and representative action complaint asserting causes
21 of action for: (1) Failure to Provide Off-Duty Meal Periods; (2) Failure to Authorize and
22 Permit Rest Periods; (3) Failure to Furnish Adequate Wage Statements; (4) Unlawful Business
23 Practices; and (5) Violations of the Labor Code Private Attorneys General Act of 2004
24 (“PAGA”);

25 1.3 WHEREAS, on March 21, 2023, Plaintiff filed a First Amended Complaint,
26 correcting misspellings of the names of Defendants ALLEN GIMENEZ and GARY
27 GIMENEZ but otherwise leaving unchanged the substance of Plaintiff’s initial complaint;
28

1 1.4 WHEREAS, the Parties engaged in extensive discovery, exchanging
2 information, documents, and hiring contractors and experts to help review and analyze the
3 approximately 12,000 pages of handwritten Class Member timesheets made available by
4 Defendants, which enabled the Parties to thoroughly evaluate Plaintiff's claims, the PAGA
5 claim, the claims of the putative Class, Defendants' defenses, and the likely outcomes, risks,
6 and expense of pursuing litigation;

7 1.5 WHEREAS, on November 6, 2023, Plaintiff submitted an amended PAGA
8 notice to the LWDA, alleging additional claims for violations of the Labor Code;

9 1.6 WHEREAS, on February 15, 2024, the Parties attended a private mediation with
10 mediator David Sarnoff, Esq., and reached the terms of this arm's-length Settlement;

11 1.7 WHEREAS, on September 26, 2024, Plaintiff submitted a second amended
12 PAGA notice to the LWDA, clarifying which violations of the Labor Code he alleges;

13 1.8 WHEREAS a bona fide dispute exists as to whether any wages or penalties are
14 due from Defendants to any putative Class Member, to the LWDA, or to any allegedly
15 aggrieved employees;

16 1.9 WHEREAS the Parties desire to compromise and settle all issues and claims that
17 have been or could have been brought against Defendants based on the factual allegations of
18 the Action, including all claims brought on a putative class and representative basis in the
19 Action;

20 1.10 WHEREAS the Parties further agree that this Agreement, the fact of this
21 Settlement, any terms of this Agreement, and any documents filed in connection with the
22 Settlement shall not constitute, or be offered, received, claimed, construed, or deemed as an
23 admission, finding, or evidence of: (i) any wrongdoing by any Released Parties; (ii) any
24 violation of any statute or law by Released Parties; (iii) any liability on the claims or
25 allegations in the Action on the part of any Released Parties; or (iv) the propriety of certifying
26 a class or pursuing representative relief under PAGA in the Action or any other civil or
27 administrative proceeding; and this Agreement shall not be used by any person for any
28

1 purpose whatsoever in any administrative or legal proceeding, other than a proceeding to
2 enforce the terms of this Agreement;

3 1.11 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND
4 AGREED by Plaintiff, for themselves and on behalf of the Settlement Class Members, defined
5 below, and PAGA Employees, defined below, and by Defendants that, subject to the approval
6 of the Court, the Action shall be settled and compromised, and the Released Claims shall be
7 finally and fully compromised and settled as to the Released Parties in the manner and upon
8 the terms and conditions set forth in this Agreement.

9 **2. DEFINITIONS**

10 Unless otherwise defined herein, capitalized terms used in this Agreement have these
11 meanings:

12 2.1 "Action" means the case *Efren Palomino v. Winall Oil Co., Allen Gimenez, Gary*
13 *Gimenez, and DOES 1 through 20* (Superior Court of the State of California, County of Los
14 Angeles, No. 23STCV04401).

15 2.2 "Class Members" means all current and former gas-station attendants who were
16 employed by Defendants throughout California at any time from February 28, 2019, through
17 the date of preliminary approval of the parties' settlement agreement by the Court.

18 2.3 "Class Period" means February 28, 2019, through the date of preliminary
19 approval of the parties' settlement agreement by the Court.

20 2.4 "Class Counsel" means Hunter Pyle and John J. Darin of Hunter Pyle Law.

21 2.5 "Class Counsel Award" means the attorneys' fees and reimbursement of
22 litigation costs and expenses awarded by the Court to Class Counsel to fully satisfy all claims
23 for attorneys' fees and costs incurred by Plaintiff to litigate and settle this Action.

24 2.6 "Class Information" means information regarding Class Members that
25 Defendants will in good faith compile from its records and provide to the Settlement
26 Administrator. Class Information shall be provided to the Settlement Administrator in a
27 Microsoft Excel spreadsheet and shall include each Class Member's full name, Social Security
28 Number, last known mailing address, total Workweeks, defined below, employed during the

1 Class Period, total pay periods worked during the PAGA Period, and dates of employment as a
2 non-exempt employee during the Class Period. Because Class Members' private information is
3 included in the Class Information, the Settlement Administrator shall maintain the Class
4 Information in confidence, shall limit access to the information only to those employees of the
5 Settlement Administrator with a need to use the Class Information as part of the administration
6 of the Settlement, and shall use and disclose the Class Information only for purposes of this
7 Settlement.

8 2.7 "Class Notice" means the Notice of Class Action Settlement to be provided to
9 Class Members, substantially in the form attached as "Exhibit A."

10 2.8 "Complete and General Release" means a release of the Released Parties from
11 all claims, demands, rights, liabilities, and causes of action of every nature and description
12 whatsoever, known or unknown, asserted or that might have been asserted, whether in tort,
13 contract, or for violation of any state or federal statute, rule or regulation arising out of,
14 relating to, or in connection with any act or omission by or on the part of any of the Released
15 Parties committed or omitted prior to the execution hereof. The Complete and General Release
16 also means that Plaintiff Efren Palomino stipulates and agrees that he is not due or owed any
17 additional monies and expressly waives and relinquishes, to the fullest extent permitted by
18 law, the provisions, rights, and benefits of section 1542 of the California Civil Code, or any
19 other provision under federal or state law, which provides:

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

24 2.9 "Court" means the Los Angeles County Superior Court.

25 2.10 "Effective Date" means the first business day upon which the latest of the
26 following dates: (i) if no Class Member submits an objection or, if they have submitted
27 objections, such objections have been withdrawn, then the date the Court enters an order
28 granting final approval of the Agreement; (ii) if a Class Member submits an objection to the
Agreement that has not been withdrawn, and if an appeal, review or writ is not sought from the
order granting final approval of the Agreement, then sixty-one calendar days after service of

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1 notice of entry of the order; or (iii) if an appeal, review or writ is sought from the order, then the
2 business day after the court of last resort to which any appeal is taken has affirmed the order or
3 the appeal, review or writ is dismissed or denied, and the order is no longer subject to further
4 appeal or judicial review.

5 2.10 "Final Approval Date" means the date of the Court's order finally approving this
6 Settlement.

7 2.11 "Final Approval Order" means the Court's order finally approving this
8 Settlement.

9 2.12 "Final Approval Hearing" means the hearing at or after which the Court will
10 make a final decision as to whether the Settlement is fair, reasonable, and adequate, and
11 therefore is finally approved by the Court.

12 2.13 "Individual Settlement Payment" means the gross payment of each Settlement
13 Class Member's Individual Settlement Share and Individual PAGA Payment if applicable.

14 2.14 "Individual Settlement Share" means the pro rata payment of the Net
15 Distribution Fund to each Settlement Class Member.

16 2.15 "Individual PAGA Payment" means PAGA Employees' pro rata share of 25% of
17 the PAGA Payment.

18 2.16 "Judgment" means the judgment to be entered in the Action upon final approval
19 of the Settlement.

20 2.17 "Mailed Notice Date" means the date of the initial mailing of the Class Notice to
21 Class Members.

22 2.18 "Net Distribution Fund" means the Total Settlement Amount less the payment
23 of: (1) the Class Counsel Award; (2) Plaintiff's Service Award, if any; (3) the PAGA Payment;
24 and (4) the Settlement Administrator Expenses.

25 2.19 "PAGA Employees" is defined as all current and former gas-station attendants
26 who were employed by Defendants throughout California during the period running from
27 October 28, 2021 through the date of preliminary approval of the parties' settlement agreement
28 by the Court.

1 2.20 "PAGA Payment" means a total payment of up to \$130,000 as consideration for
2 the PAGA Release. The PAGA Payment will be allocated exclusively as penalties under Labor
3 Code section 2699, of which 75% (up to \$97,500) will be paid to the LWDA and the
4 remainder of which will be distributed to the PAGA Employees. The PAGA Payment shall be
5 payable from the Total Settlement Amount.

6 2.21 "PAGA Period" means October 28, 2021, through the date of preliminary
7 approval of the Parties' Settlement Agreement by the Court.

8 2.22 "PAGA Release" refers to the release provided by Plaintiff acting in his capacity
9 as private attorneys general on behalf of the State of California pursuant to the California
10 Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 *et seq.*, and on
11 behalf of the Labor and Workforce Development Agency and the PAGA Employees. The
12 PAGA Release shall operate to release and discharge the Released Parties from any claim for
13 civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004,
14 Labor Code section 2698 *et seq.* that arise from or could have been asserted based on any of
15 the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements,
16 omissions or failures to act alleged in Plaintiff's Second Amended PAGA Notice submitted to
17 the Labor Workforce and Development Agency, including but not limited to claims for
18 violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246, 248.5, 512, 551, 552,
19 1174, 1198.5, 2810.3, 3550, 3551, 6430, and 6431, and the applicable IWC Wage Orders.

20 2.23 "Plaintiff" means Efen Palomino.

21 2.24 "Preliminary Approval" means entry of the Preliminary Approval Order.

22 2.25 "Preliminary Approval Order" means the order granting preliminary approval of
23 this Settlement Agreement.

24 2.26 "Released Class Claims" means any and all claims, charges, complaints, liens,
25 demands, causes of action, obligations, damages and liabilities, during the Class Period,
26 known or unknown, suspected or unsuspected, that each participating class member had, now
27 has, or may hereafter claim to have during the Class Period against Defendants and that were
28 asserted in the Action, or that arise from or could have been asserted based on any of the facts,

1 circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or
2 failures to act alleged in Plaintiff's Second Amended Complaint, regardless of whether such
3 claims arise under federal, state and/or local law, statute, ordinance, regulation, common law,
4 or other source of law. The Released Class Claims specifically include, but are not limited to
5 Labor Code §§ 226, 226.7, 246, 248.5, 512, 551, 552, 1174, 1198.5, 2810.3, 3550, 3551, 6430,
6 and 6431, and the related IWC Wage Order No. 7-2001 and Business & Professions Code
7 §§ 17200, et seq., and all other claims, such as those under the California Labor Code, Wage
8 Orders, regulations, and/or other provisions of law, that could have been pleaded based on the
9 facts asserted in the Action, including: (1) Failure to Provide Off-Duty Meal Periods; (2)
10 Failure to Authorize and Permit Rest Periods; (3) Failure to Furnish Adequate Wage
11 Statements; (4) Unlawful Business Practices; (5) Failure to Maintain and Furnish Records; (6)
12 Failure to Post Compensation Insurance Carrier and Safety Notices; and (7) Failure to Provide
13 One Day's Rest Per Workweek, as well as interest, fees, and costs. The enumeration of these
14 specific statutes shall neither enlarge or narrow the scope of res judicata based on the claims
15 that were asserted in the Action or could have been asserted in the Action based on the facts
16 and circumstances alleged in any Complaint on file in the Action.

17 2.27 "Released Parties" means Defendant Winall Oil Co.; Defendant Allen Gimenez;
18 and Defendant Gary Gimenez.

19 2.28 "Response Deadline" means the date by which a Class Member may: (i) request
20 to be excluded from the Settlement; (ii) object to the Settlement; or (iii) dispute the number of
21 Workweeks credited to him or her. The Response Deadline shall be sixty (60) calendar days
22 after the Mailed Notice Date and shall be specifically identified and set forth in the
23 Preliminary Approval Order and Class Notice. The Response Deadline may be extended in the
24 event the Class Notice is re-mailed to any Class Members as set forth in section 6. In the event
25 the Class Notice is re-mailed, the Settlement Administrator shall advise the Class Member that
26 they have an additional ten (10) calendar days from the original Response Deadline to submit
27 a response (the "Extended Response Deadline").
28

1 2.29 “Service Award” means the amounts approved by the Court to be paid to
2 Plaintiff, in addition to Plaintiff’s respective Individual Settlement Payment. The Service
3 Award payable to Efren Palomino shall not exceed \$20,000.00 each and shall be payable from
4 the Total Settlement Amount.

5 2.30 “Settlement Administrator” means Simpluris.

6 2.31 “Settlement Administrator Expenses” means the maximum amount to be paid to
7 the Settlement Administrator, which shall not exceed \$6,000. All Settlement Administrator
8 Expenses are to be paid exclusively from the Total Settlement Amount.

9 2.32 “Settlement Class Members” means all Class Members who do not opt out of
10 this Settlement.

11 2.33 “Total Settlement Amount” means One-Million-Three-Hundred-Eighty-Four-
12 Thousand-Eight-Hundred-Four Dollars and Twenty-Five Cents (\$1,384,804.25), which is the
13 maximum amount that Defendants are obligated to pay under this Settlement Agreement,
14 except for the employer’s share of payroll taxes with respect to the wage portion of Individual
15 Settlement Shares, in order to resolve and settle this Action, subject to Court approval. The
16 \$1,384,804.25 plus the employer’s share of payroll taxes is the maximum amount Defendants
17 are obligated to pay under this Agreement. The Total Settlement Amount includes the Class
18 Counsel Award, any Service Award, the Settlement Administrator Expenses, the PAGA
19 Payment (which includes Individual PAGA Payments to PAGA Employees and payment to
20 the LWDA), the Individual Settlement Shares, all related interest, and all employee-side
21 payroll and employment taxes on the wage portion of Individual Settlement Shares. The Total
22 Settlement Amount does not include the employer-side payroll and employment taxes on the
23 wage portion of Individual Settlement Shares, which Defendants agrees to pay separately.

24 2.34 “Void Date” means the date by which any checks issued to Settlement Class
25 Members shall become void, i.e., on the 181st day after mailing.

26 2.35 “Workweeks” means the number of weeks during which a Class Member
27 worked for Defendants in the State of California during the Class Period.
28

1 **3. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**

2 3.1 Certification of Class: Solely for the purposes of this Settlement, the Parties
3 stipulate and agree that the Court may certify the Class.

4 3.2 Appointment of Class Representatives: Solely for the purposes of this
5 Settlement, the Parties stipulate and agree that Plaintiff Efren Palomino shall be appointed
6 representative of the Class.

7 3.3 Appointment of Class Counsel: Solely for the purposes of this Settlement, the
8 Parties stipulate and agree that Class Counsel shall be approved as counsel for Settlement
9 Class Members.

10 3.4 Appointment of Settlement Administrator: Solely for the purposes of this
11 Settlement, the Parties stipulate and agree that Simpluris shall be appointed to serve as
12 Settlement Administrator. The Settlement Administrator shall be responsible for establishing a
13 toll-free telephone number by which Class Members can inquire about the Settlement and a
14 Post Office Box for receipt of Class Members' communications; preparing, printing and
15 mailing the Class Notice; receiving and reviewing requests for exclusion, objections, or
16 disputes submitted by Class Members; calculating Individual Settlement Shares and Individual
17 PAGA Payments; calculating and paying any and all payroll tax or other required
18 withholdings from the wage portion of the Individual Settlement Shares as required under this
19 Agreement and applicable law; providing weekly status reports to Defendants' counsel and
20 Class Counsel; providing a due diligence declaration for the Court prior to the Final Approval
21 Hearing; mailing Individual Settlement Payments, any Service Award, the Class Counsel
22 Award, and 75% of the PAGA Payment to the LWDA; printing and providing Plaintiff, Class
23 Counsel, and Settlement Class Members with IRS Forms W-2 or 1099 as required under this
24 Agreement and applicable law; providing a due diligence declaration for submission to the
25 Court upon the completion of the Settlement; and for other tasks as the Parties mutually agree.
26 The Parties agree to cooperate in the settlement administration process and to make all
27 reasonable efforts to control and minimize Settlement Administrator Expenses.
28

1 3.5 Conditional Nature of Stipulation for Certification: Solely for the purposes of
2 this Settlement, the Parties stipulate and agree to the certification of the Class. Should for
3 whatever reason the Settlement not become effective, the fact that the Parties were willing to
4 stipulate to certification as part of the Settlement shall have no bearing on, and shall not be
5 admissible in connection with, the issue of whether the Class should be certified in a non-
6 Settlement context in this Action or in any other lawsuit. Defendants expressly reserves their
7 right to oppose any claim or class certification in this or any other action should this
8 Settlement not become effective.

9 3.6 The Parties agree to stay all proceedings in the Action, except those proceedings
10 necessary to implement and complete the Settlement, from the date that this Settlement
11 Agreement is executed by Plaintiff until such time as the Parties shall agree in writing that the
12 stay is lifted, which stay shall extend the time within which this action must be brought to trial
13 pursuant to California Code of Civil Procedure section 583.310, et seq.

14 **4. NON-REVERSIONARY SETTLEMENT CONSIDERATION**

15 4.1 Defendants' total monetary obligation under this Settlement is the Total
16 Settlement Amount (\$1,384,804.25) and is non-reversionary. This is an "all in" number that
17 includes, without limitation, all monetary benefits and payments for Settlement Class
18 Members, Service Awards, the Class Counsel Award, Settlement Administrator Expenses, the
19 PAGA Payment, and all other claims for interest, fees, and costs. Under no circumstances shall
20 Defendants be required to pay anything more than the Total Settlement Amount, except that
21 Defendants will separately pay the employer payroll and employment taxes due for the wages
22 portion of Individual Settlement Shares made under this Agreement. In no event shall
23 Defendants be liable for making any payments under this Settlement, or for providing any
24 relief to the Settlement Class Members, before the Effective Date of this Agreement. Within
25 thirty (30) calendar days of the Effective Date, Defendants will transfer the total settlement
26 amount to the Settlement Administrator. Such funding is conditioned on the Settlement
27 Administrator providing valid transmission instructions, which shall include the amount of
28 additional employer-side payroll taxes.

1 4.2 Defendants agrees not to oppose Plaintiff Efren Palomino's application for a
2 Service Award in an amount up to \$20,000.00. Any Service Award awarded by the Court shall
3 be paid from the Total Settlement Amount. If the Court awards less than the full Service
4 Award, the unawarded funds shall become part of the Net Distribution Fund.

5 4.3 Plaintiff shall seek a Class Counsel Award from the Court, consisting of
6 attorneys' fees in an amount of up to \$461,601.42, or one-third of the Gross Settlement
7 Amount, and all litigation costs and expenses incurred subject to proof in an amount not to
8 exceed \$5,000. Defendants agrees not to oppose a request for these amounts. Any Class
9 Counsel Award awarded by the Court shall be paid from the Total Settlement Amount. Any
10 portion of the Class Counsel Award that is not approved by the Court and awarded to Class
11 Counsel shall become part of the Net Distribution Fund.

12 4.4 The Parties agree to allocate up to one-hundred-thirty-thousand dollars
13 (\$130,000) for the PAGA Payment, of which 75% or \$97,500 shall be paid to the LWDA, and
14 the remaining 25% or \$75,000 shall be paid to PAGA Employees on a pro rata basis based on
15 Workweeks in the PAGA Period, if any, and irrespective of whether or not they request
16 exclusion from the Settlement. The PAGA Payment shall be paid from the Total Settlement
17 Amount. Any portion of the PAGA Payment that is not approved by the Court shall become
18 part of the Net Distribution Fund.

19 4.5 The Settlement Administrator Expenses are estimated not to exceed Six
20 Thousand Dollars (\$6,000.00). The Settlement Administrator Expenses shall be paid from the
21 Total Settlement Amount. Any portion of the Settlement Administrator Expenses not actually
22 incurred by the Settlement Administrator shall become part of the Net Distribution Fund.

23 4.6 The Settlement Administrator shall calculate the Individual Settlement Shares
24 based on the Class Information provided to the Settlement Administrator by Defendants.
25 Payment of Individual Settlement Shares to Settlement Class Members will be made from the
26 Net Distribution Fund as follows:

- 27 (a) The allocation of the Net Distribution Fund shall be made pursuant to a formula by
28 which each Class Member receives a pro rata portion of the Net Distribution Fund

1 based upon the number of Workweeks the Class Member worked for Defendants
2 during the Class Period.

3 (b) Each Class Member's number of Workweeks will be derived by Defendants based
4 on the payroll and time records kept by Defendants in the ordinary course of
5 business during the Class Period. Individual Settlement Shares shall be characterized
6 as 20 percent wages, 60 percent penalties, and 20 percent interest. Wage payments
7 shall be subject to all required withholdings. Defendants shall be responsible for the
8 employer's share of any applicable payroll taxes. Each Class Member's Individual
9 Settlement Award will be reported on a W-2 or 1099 Form.

10 4.7 PAGA Employees will receive an Individual PAGA Payment that consists of a
11 pro rata share of 25% of the PAGA Payment based on total pay periods worked during the
12 PAGA Period. Specifically, 25% of the PAGA Payment shall be divided by the total of all
13 Workweeks worked by PAGA Employees during the PAGA Period in order to establish the
14 value of each Workweek. The Individual PAGA Payment to be made to each PAGA
15 Employee shall be calculated by multiplying the value of a Workweek by the number of
16 Workweeks worked by the PAGA Employee during the PAGA Period.

17 4.8 Settlement Class Members may dispute the number of Workweeks with which
18 they have been credited, as reflected in their respective Class Notices. In order to dispute
19 Workweeks, Settlement Class Members must submit a written letter returned to the Settlement
20 Administrator by mail at the specified address, postmarked on or before the Response
21 Deadline. The written letter must: (a) contain the case name and number of the Action; (b) be
22 signed by the Settlement Class Member; (c) contain the full name, address, telephone number,
23 and the last four digits of the Social Security Number of the disputing Settlement Class
24 Member; (d) clearly state that the Settlement Class Member disputes the number of
25 Workweeks credited to him or her and what he or she contends is the correct number to be
26 credited to him or her; and (e) include information or attached documentation demonstrating
27 that the amount of Workweeks that he or she contends should be credited to him or her are
28 correct. The date of the postmark on the submission will be the exclusive means to determine

1 whether a dispute has been timely submitted. Absent evidence rebutting the accuracy of
2 Defendants' records and data as they pertain to the number of Workweeks to be credited to a
3 disputing Settlement Class Member, Defendants' records will be presumed correct and
4 determinative of the dispute. However, if a Class Member produces information or documents
5 to the contrary, the Settlement Administrator will evaluate the materials submitted by the Class
6 Member and the Settlement Administrator will resolve and determine the number of eligible
7 Workweeks that the disputing Settlement Class Member should be credited with under the
8 Settlement. The Settlement Administrator's decision on such disputes will be final and non-
9 appealable.

10 4.9 Defendants have represented that Class Members have worked a total of no
11 greater than 15,320 total Workweeks through February 15, 2024. Should the actual number of
12 workweeks worked by Class Members during this period exceed 15,320 by more than 10%
13 greater than this figure (i.e., if there are 16,852 or more total workweeks), then the Settlement
14 Amount will increase by the proportion of the increase in the total workweeks (e.g., if the
15 number of workweeks increases by 12% the Settlement Amount shall also increase by 12%).

16 4.10 Individual PAGA Payments will be allocated as one hundred percent (100%)
17 penalties to be reported on IRS Form 1099.

18 4.11 Settlement Class Members (except Plaintiff with respect to their Service
19 Awards) are not eligible to receive any compensation other than the Individual Settlement
20 Payments discussed above.

21 4.12 The Settlement Administrator shall never be empowered to make payments to
22 Class Members exceeding the total Net Distribution Fund or deviate from the payment
23 formula agreed upon by the Parties.

24 4.13 Amounts paid to Plaintiff and Settlement Class Members pursuant to this
25 Settlement Agreement shall be deemed to be paid to such Settlement Class Members and
26 PAGA Employees solely in the year in which such payments actually are received by the
27 Settlement Class Members and PAGA Employees. It is expressly understood and agreed that
28 such Individual Settlement Payments and Individual PAGA Payments will not be utilized to

1 calculate any additional compensation or any additional benefits under any compensation or
2 benefit plans to which any Settlement Class Member or PAGA Employee may be eligible,
3 including, but not limited to: bonus, contest or commissions plans; profit-sharing plans, bonus
4 plans, 403(b) and 457 plans, deferred compensation plans; vacation plans, sick leave plans,
5 PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement
6 Agreement will not affect any rights, contributions, or amounts to which any Settlement Class
7 Members or PAGA Employees may be entitled under any compensation or benefit plans.

8 4.14 In consideration of his Service Awards, Plaintiff Efen Palomino, individually
9 and on behalf of his heirs, estates, trustees, executors, administrators, representatives, agents,
10 successors, and assigns, and anyone claiming through him or acting or purporting to act on his
11 behalf, agrees to provide a Complete and General Release.

12 4.15 In exchange for the consideration provided by Defendants, Plaintiff Efen
13 Palomino, acting in the capacity of a representative of the State of California and on behalf of
14 the group of PAGA Employees, agrees to release any and all claims during the PAGA Period
15 that that arise from or could have been asserted by the State of California and on behalf of the
16 Labor and Workforce Development Agency against Defendants based on any of the facts,
17 circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or
18 failures to act alleged in Plaintiff's Second Amended PAGA Notice submitted to the Labor
19 Workforce and Development Agency, including but not limited to claims for violations of
20 Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246, 248.5, 551, 552, 558, 3550, 3551,
21 6430, and 6431, and the applicable IWC Wage Orders.

22 4.16 In exchange for the consideration provided by Defendants, Settlement Class
23 Members, individually and on behalf of their heirs, estates, trustees, executors, administrators,
24 representatives, agents, successors, and assigns, and anyone claiming through them or acting
25 or purporting to act on their behalf, will agree to forever release, discharge, and hold harmless
26 each and all of the Released Parties for the Released Claims during the Class Period.

27 4.17 All releases identified herein shall be null and void if Defendants fail to fully
28 fund the Total Settlement Amount. The releases identified herein shall become effective on the

1 date on which Defendants fully funds the Total Settlement Amount.

2 4.18 Any uncashed settlement compensation left after distributing the Net
3 Distribution Fund and after the 180-day period for negotiating checks will constitute a *cy pres*
4 fund to be the Wage Justice Center, subject to Court approval.

5 4.19 Defendants will not receive reversion of any part of the Total Settlement
6 Amount, unless the Settlement is not finally approved by the Court with the terms materially
7 identical to the terms articulated in this Agreement. In the event the Settlement is void per this
8 term, or is not given final approval by the Court, Defendants will bear only one half of the
9 already-accrued costs of the Settlement Administrator.

10 **5. PROCEDURE FOR REQUESTING PRELIMINARY APPROVAL OF THE**
11 **SETTLEMENT**

12 5.1 After execution of this Settlement Agreement, Plaintiff shall promptly submit a
13 motion for preliminary approval of the Settlement to the Court, along with the Settlement
14 Agreement. Plaintiff's motion for preliminary approval shall request that the Court enter a
15 preliminary approval order.

16 5.2 The Preliminary Approval Order shall:

- 17 • Conditionally certify the Settlement Class for settlement purposes;
- 18 • Preliminarily appoint Plaintiff as representative of the proposed Settlement
19 Class;
- 20 • Grant Plaintiff leave to file his Second Amended Complaint, which is attached
21 hereto as "Exhibit B";
- 22 • Preliminarily approve Class Counsel to represent the Settlement Class;
- 23 • Appoint Simpluris as the Settlement Administrator and order the Settlement
24 Administrator to provide notice of the Settlement as outlined in this Agreement;
- 25 • Stay all litigation of the Action pending the Final Approval Hearing, except as
26 necessary to implement and effectuate the Settlement; and
- 27 • Order that the preliminary approval of the Settlement, conditional certification
28 of the Settlement Class, and all actions associated with them, are undertaken on

1 the condition that they shall be vacated if the Settlement Agreement is
2 disapproved in whole or in part by the Court, or any appellate court or other
3 court of review, in which event the Settlement Agreement and the fact that it
4 was entered into shall not be offered, received, or construed as an admission or
5 as evidence for any purpose, including but not limited to an admission by any
6 Party of liability or non-liability or of the certifiability of a litigation class or the
7 appropriateness of maintaining a representative action.

8 5.3 The motion for preliminary approval shall request: the Final Approval Hearing;
9 that any determination on the request for a Class Counsel Award and Service Award be set no
10 earlier than forty-five (45) calendar days after the Response Deadline; and that Plaintiff be
11 permitted to file Plaintiff's motion for final approval of the Settlement no later than sixteen
12 (16) court days before the Final Approval Hearing.

13 5.4 At the same time that Plaintiff file the motion for preliminary approval, Class
14 Counsel will submit the Settlement Agreement to the LWDA.

15 **6. PROCEDURE FOR PROVIDING NOTICE OF SETTLEMENT**

16 6.1 No more than thirty (30) calendar days after Preliminary Approval, Defendants
17 shall provide the Settlement Administrator with the Class Information for purposes of sending
18 the Class Notice to Class Members.

19 6.2 No more than forty-five (45) calendar days after Preliminary Approval, the
20 Settlement Administrator shall mail the Class Notice to Class Members via first-class regular
21 U.S. mail. Prior to mailing, the Settlement Administrator will perform a search based on the
22 National Change of Address Database to update and correct for any known or identifiable
23 address changes. For each Class Notice returned as undeliverable without a forwarding
24 address, the Settlement Administrator will perform a single computer or "skiptrace" search to
25 obtain an updated address. All Class Members' names and postal mail addresses obtained
26 through these sources shall be protected as confidential and not used for purposes other than
27 the notice and administration of this Settlement. The address determined by the Settlement
28 Administrator as the current mailing address shall be presumed to be the best mailing address

1 for each Class Members. The Settlement Administrator shall promptly re-mail the Class
2 Notice to any Class Member whose original notice was returned because of a wrong address
3 within three (3) business days of obtaining an updated address and advise the Class Member of
4 the Extended Response Deadline.

5 6.3 If any Class Notice to a Class Member is returned to the Settlement
6 Administrator with a forwarding address, the Settlement Administrator shall forward the postal
7 mailing to that address within three (3) business days. Class Members whose Class Notices are
8 re-mailed shall have an additional ten (10) calendar days from the original Response Deadline
9 to submit a response (the Extended Response Deadline). The Settlement Administrator will
10 advise Class Members of the Extended Response Deadline where applicable.

11 6.4 The Settlement Administrator shall continue to obtain updated mailing addresses
12 for any undeliverable Class Notices until the Response Deadlines. The Settlement
13 Administrator shall maintain a log detailing the instances Class Notices are returned as
14 undeliverable, re-mailed, and when applicable, returned again.

15 6.5 The Class Notice shall include a statement as to the number of Workweeks
16 credited to the Class Member, where applicable, as well as an explanation of how the
17 Workweeks will be used to calculate the Individual Settlement Shares and Individual PAGA
18 Payments if applicable.

19 6.6 The Class Notice will inform Class Members that, unless they submit a request
20 to be excluded from the Settlement, they will become Settlement Class Members and will
21 receive Individual Settlement Payments under the Agreement.

22 6.7 The Class Notice will inform Class Members of their right to request exclusion
23 from the Settlement or to object to the Settlement, dispute the amount of Workweeks credited
24 to them, and of the procedure for doing so. The Class Notice will also inform Class Members
25 that if they request exclusion from the Class, they may not also object to the Settlement or
26 dispute the number of Workweeks credited to them. The Class Notice will inform PAGA
27 Employees that all claims to PAGA penalties are settled by operation of law and that they are
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1 not able to exclude themselves from the PAGA Release and will receive an Individual PAGA
2 Payment whether or not they request exclusion from the Action and the Settlement.

3 6.8 Class Members will have sixty (60) days from the mailing of the Class Notice to
4 submit a request for exclusion or objections (which periods shall run concurrently).

5 6.9 The Parties agree that the procedures set forth in this Section comply with all
6 due process requirements, constitute reasonable and best practicable notice under the
7 circumstances, and constitute an appropriate and sufficient effort to locate current addresses
8 for Class Members such that no additional efforts to do so shall be required.

9 6.10 No more than ten (10) calendar days after the Response Deadline or Extended
10 Response Deadline in the event the Class Notice is re-mailed, the Settlement Administrator
11 shall provide a declaration of due diligence confirming: its dissemination of the Class Notice
12 in accordance with the notice procedures of this Agreement; all attempts by the Settlement
13 Administrator to locate Class Members; the number of delivered and undeliverable Class
14 Notices; the number of objections received and copies of same; the number of requests for
15 exclusion received and copies of same; and the number of Workweek payment disputes
16 received. Class Counsel shall be responsible for filing the due diligence declaration with the
17 Court.

18 7. PROCEDURE FOR REQUESTING EXCLUSION

19 7.1 All requests for exclusion will be submitted to the Settlement Administrator,
20 who will timely certify jointly to Plaintiff's counsel and Defendants' counsel the forms that
21 were timely and correctly submitted.

22 7.2 Class Members who wish to exclude themselves from (or "opt out" of) the
23 Settlement must submit timely, signed written requests for exclusion from the Settlement to
24 the Settlement Administrator that includes the Class Member's name, a clear and unequivocal
25 statement that the individual wishes to be excluded from the Settlement, and the Class
26 Member's signature.

27 7.3 The request for exclusion must be mailed to the Settlement Administrator at the
28 address provided in the Class Notice and must be postmarked no later than the Response

1 Deadline. The date of the postmark on the envelope containing the request for exclusion shall
2 be the exclusive means used to determine whether a request for exclusion has been timely
3 submitted.

4 7.4 The Settlement Administrator shall immediately notify Class Counsel and
5 counsel for Defendants by email and phone if the number of timely-submitted requests for
6 exclusion reaches ten percent (10%) of all Class Members. If Class Members representing
7 more than 10% of the total Workweeks in the Class Period submit exclusion forms of any
8 kind, Defendants may exercise the option to rescind and revoke the entire Settlement
9 Agreement by sending written notice to Class Counsel that it revokes the Settlement within ten
10 (10) calendar days after the Response Deadline or Extended Response Deadline if applicable.
11 However, if Defendants exercises this option, it will be responsible for paying all settlement
12 administration costs incurred to date.

13 7.5 All Class Members who do not opt out of the Settlement shall be bound by the
14 Final Approval Order and Judgment even if they never received the Class Notice or other
15 actual notice of this Settlement. However, if a Class Member's information was not part of the
16 Class Information that Defendants provided to the Settlement Administrator, Defendants shall
17 provide additional funding sufficient to fully fund the share the Class Member would have
18 otherwise been entitled to receive under the terms of this Agreement.

19 7.6 Plaintiff agrees not to request exclusion from the Settlement.

20 7.7 The Parties agree there is no statutory or other right for any PAGA Employee to
21 opt out or otherwise exclude themselves from the settlement and release of the PAGA Claims.

22 **8. PROCEDURE FOR WRITTEN OBJECTION**

23 8.1 Any Class Member who has not opted out of the Settlement and who wishes to
24 submit a written objection to the fairness, reasonableness, or adequacy of this Agreement must
25 provide the written objection to the Settlement Administrator, who shall immediately forward
26 it to Class Counsel and counsel for Defendants by the Response Deadline or Extended
27 Response Deadline.
28

1 8.2 All written objections and supporting papers must be postmarked no later than
2 the Response Deadline or Extended Response Deadline if applicable. The date of the postmark
3 on the envelope containing the objection shall be the exclusive means used to determine
4 whether the written objection has been timely submitted. The Parties shall file all objections
5 with the Court prior to the Final Approval Hearing.

6 8.3 The objection should contain at least the following: (i) the objector's full name,
7 address, telephone number, last four digits of his or her Social Security number, and signature;
8 (ii) the name and case number of the Action; (iii) a statement of the specific legal and factual
9 basis for each objection argument; and (iv) a statement whether the objector intends to appear
10 at the Final Approval Hearing, either remotely, in person, or through counsel, and, if through
11 counsel, a statement identifying that counsel by name, bar number, address, and telephone
12 number.

13 8.4 All written objections, supporting papers, or notices of intent to appear at the
14 Final Approval Hearing must: (a) clearly identify the case name and number (*Efren Palomino*
15 *v. Winall Oil Co., Allen Gimenez, Gary Gimenez, and DOES 1 through 20* (Superior Court of
16 the State of California, County of Los Angeles, No. 23STCV04401)); (b) be submitted to the
17 Settlement Administrator as set forth in the Class Notice; and (c) be postmarked on or before
18 the Response Deadline or Extended Response Deadline if applicable.

19 8.5 Class Members who object to the Settlement shall remain Settlement Class
20 Members and shall be deemed to have voluntarily waived their right to pursue an independent
21 remedy against Defendants and the Released Parties for the Released Claims if the Court
22 grants final approval of the Settlement. To the extent any Settlement Class Member objects to
23 the Settlement, and such objection is overruled in whole or in part, those Settlement Class
24 Members will be forever bound by the Final Approval Order and Judgment if the Court grants
25 final approval of the Settlement.

26 8.6 The Parties agree there is no statutory or other right for any PAGA Employee to
27 object to the PAGA Release portion of the Settlement.
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Deleted: Court either by mailing the objection to Clerk of the Court, Superior Court of California, County of Los Angeles, Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, or by filing in person at the same location; (c) also be mailed to the

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1 **9. PROCEDURE FOR REQUESTING FINAL APPROVAL OF THE**
2 **SETTLEMENT**

3 9.1 Promptly after receipt of the declaration of due diligence from the Settlement
4 Administrator, Plaintiff shall file a motion requesting final approval of the Settlement, along
5 with a proposed Final Approval Order.

6 9.2 The Final Approval Order shall adjudge, among other things, that:

- 7 • The Settlement Administrator has fulfilled its initial notice and reporting duties
8 under the Settlement and that the Class Notice: (i) constituted the best
9 practicable notice; (ii) constituted notice that was reasonably calculated under
10 the circumstances to apprise Class Members of the pendency of the Action and
11 their right to exclude themselves from or object to the proposed Settlement and
12 to appear at the Final Approval Hearing; (iii) was reasonable and constituted
13 due, adequate, and sufficient notice to all persons entitled to receive notice; and
14 (iv) met all applicable requirements of due process and any other applicable
15 rules or law;
- 16 • The Settlement is fair, reasonable, and adequate;
- 17 • Plaintiff and Class Counsel may adequately represent the Settlement Class for
18 the purpose of entering into and implementing the Agreement;
- 19 • The Settlement Administrator is to execute the distribution of proceeds pursuant
20 to the terms of this Agreement;
- 21 • Wage Justice Center is approved as the *cy pres* beneficiary;
- 22 • The Final Approval Order and Judgment shall be final and entered forthwith;
- 23 • Without affecting the finality of the Final Approval Order and Judgment, the
24 Court retains continuing jurisdiction over Plaintiff, Defendants, and Settlement
25 Class Members, as to all matters concerning the administration, consummation,
26 and enforcement of this Settlement Agreement;
- 27 • As of the Effective Date of the Release, Plaintiff and Settlement Class Members
28 compromised, settled, discharged, and provided the release of the Released Class

1 Claims during the applicable time period against Defendants and the Released
2 Parties and are bound by the provisions of this Settlement Agreement;

- 3 • Notwithstanding the submission of a timely request for exclusion, PAGA
4 Employees are still bound by the PAGA Release portion of the Settlement and
5 the State's claims for civil penalties pursuant to PAGA are also extinguished;
- 6 • This Settlement Agreement and the Final Approval Order and Judgment are
7 binding on, and have *res judicata* and preclusive effect in, all pending and future
8 lawsuits or other proceedings that encompass Plaintiff's and Settlement Class
9 Members' claims released herein, and that are maintained by or on behalf of
10 Plaintiff and Settlement Class Members; and
- 11 • The Settlement provided for herein, and any proceedings undertaken pursuant
12 thereto, are not, and should not in any event be offered, received, or construed as
13 evidence of, a presumption, concession, or an admission by any Party of liability
14 or non-liability or of the certifiability or non-certifiability of a litigation class or
15 collective, or that PAGA representative claims may validly be pursued.

16 9.3 In a separate motion to be heard at the same time as the Final Approval Hearing,
17 Class Counsel shall request entry of an Order approving the Class Counsel Award and the
18 Service Award to Plaintiff. Any Class Counsel Award or Service Award shall be paid
19 exclusively from the Total Settlement Amount.

20 9.4 The Parties expressly agree that the Court's approval or denial of any request for
21 a Service Award is not a material condition to this Agreement and is to be considered by the
22 Court separately from the fairness, reasonableness, adequacy, and good faith of the Settlement.
23 Any order or proceeding relating to the application by Class Counsel of a Service Award shall
24 not operate to terminate or cancel this Agreement. To the extent the Court awards less than the
25 amount of the requested Service Award, the consideration referenced above in section 4 shall
26 not be affected, and the requirement for or validity of an executed Complete and General
27 Release by Plaintiff Efren Palomino shall remain in force and effect. To the extent the Court
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awards less than the amount of the requested Service Award, any remaining amount will be redistributed amongst participating Class Members on a pro rata basis.

10. PROCEDURE FOR EXECUTING THE SETTLEMENT IF/WHEN IT BECOMES EFFECTIVE

10.1 Defendants shall provide payment to the Settlement Administrator as provided in section 4.1.

10.2 Within thirty (30) calendar days of receipt of the Total Settlement Amount, the Settlement Administrator shall distribute the following payments: (a) full payment to Plaintiff of Plaintiff Court-approved Service Awards; (b) full payment to the LWDA for its 75% portion of the PAGA Payment; (c) full payment of the Court-approved Settlement Administrator Expenses; (d) full payment of the Court-approved litigation costs and expenses; (e) full payment of the Individual Settlement Payments to Settlement Class Members; (f) full payment to PAGA Employees of their 25% portion of the PAGA Payment; and (g) the Court-approved Class Counsel Award to Class Counsel.

10.3 The Settlement Administrator shall prepare all tax forms related to any and all employer taxes incurred by Defendants as a result of this Settlement, shall inform Defendants and its Counsel of the amounts owed, shall collect the necessary funds from Defendants and remit them to the requisite taxing authorities.

10.4 If any Individual Settlement Payments are not cashed, deposited, or negotiated on or before the Void Date, then within thirty (30) calendar days of the Void Date, the Settlement Administrator shall void the uncashed checks and shall transmit the funds to the Wage Justice Center.

10.5 Upon completion of administration of the Settlement, the Settlement Administrator will provide a written declaration under oath to certify completion to the Court and counsel for all Parties. Class Counsel shall file the declaration with the Court to confirm full satisfaction of the Settlement.

10.6 The Individual Settlement Payments cashed shall be reported by the Settlement Administrator to the applicable governmental authorities on IRS Forms W-2 or 1099s if

1 required. The portions allocated to Service Awards shall likewise be reported on IRS Form
2 1099s by the Settlement Administrator. The Settlement Administrator shall be responsible for
3 issuing copies of all IRS Forms for Plaintiff and Settlement Class Members.

4 10.7 The Parties make no representation as to the tax treatment or legal effect of the
5 payments called for here, and Plaintiff and the Settlement Class Members are not relying on
6 any statement, representation, or calculation by any of the Parties, their counsel, or the
7 Settlement Administrator in this regard. Plaintiff and Settlement Class Members understand
8 and agree that they will be solely responsible for payment of any taxes and penalties assessed
9 on the payments described herein and will hold Plaintiff, Class Counsel, Defendants,
10 Defendants' counsel, and the Released Parties free and harmless from and against any claims
11 resulting from the tax treatment of payments under this Agreement, with the sole exception of
12 the employer's portion of the payroll withholdings described in section 10.3. Plaintiff and the
13 Settlement Class Members acknowledge and agree that no provision of this Settlement, and no
14 written communication or disclosure between or among the Parties or their attorneys and other
15 advisers, is or was intended to be, nor will any such communication or disclosure constitute or
16 be construed or be relied upon as, tax advice within the meaning of United States Treasury
17 Department Circular 230 (31 C.F.R. Part 10, as amended).

18 10.8 Payments and tax reporting by the Settlement Administrator in the manner
19 described above shall be deemed conclusive of compliance with this Settlement Agreement as
20 to all Settlement Class Members. No Settlement Class Members shall have any claim against
21 the Plaintiff, Class Counsel, Defendants, Defendants' counsel, or the Settlement Administrator
22 for distributions made substantially in accordance with this Settlement Agreement or orders of
23 the Court.

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26 **11. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**
27 **SETTLEMENT AGREEMENT**
28

1 11.1 If the Court does not approve the Settlement as set forth in this Settlement
2 Agreement, or if the Court enters the Judgment and appellate review is sought, and on such
3 review, the entry of Judgment is vacated, modified in any way, or reversed, or if the Final
4 Approval Order does not otherwise become Final, then this Settlement Agreement shall be
5 cancelled and terminated, unless the Parties, in their sole discretion within thirty (30) days
6 from the date such ruling becomes final, provide written notice to each other of their intent to
7 proceed with the Settlement under the terms of the Judgment as it may be modified by the
8 Court or any appellate court.

9 11.2 In the event that: (i) the Settlement is not approved, is overturned, or is
10 materially modified by the Court or on appeal; (ii) the Judgment does not become Final; or
11 (iii) this Settlement Agreement is terminated, cancelled, or fails to become effective pursuant
12 to this Agreement, then: (a) the Parties stipulate and agree that the Settlement, the Class
13 Information, and all documents exchanged and filed in connection with the Settlement shall be
14 treated as inadmissible mediation communications under Cal. Evid. Code §§ 1115 *et seq.*; (b)
15 the Settlement shall be without force and effect upon the rights of the Parties, and none of its
16 terms shall be effective or enforceable, with the exception of this paragraph, which shall
17 remain effective and enforceable; (c) the Parties shall be deemed to have reverted to their
18 respective status prior to execution of this Agreement; (d) all Orders entered in connection
19 with the Settlement, including the certification of the Class, shall be vacated without prejudice
20 to any Party's position on the issue of class certification, the issue of amending the complaint,
21 or any other issue, in this Action or any other action, and the Parties shall be restored to their
22 litigation positions existing on the date of execution of this Agreement; and (e) the Parties
23 shall proceed in all respects as if the Settlement Agreement and related documentation and
24 orders had not been executed, and without prejudice in any way from the negotiation or fact of
25 the Settlement or the terms of the Settlement Agreement. The Settlement, all documents,
26 orders, and evidence relating to the Settlement, the fact of their existence, any of their terms,
27 any statement or report concerning the Settlement Agreement, its existence, or their terms, any
28 negotiations, proceedings, acts performed, or documents executed pursuant to or in furtherance

1 of the Settlement Agreement shall not be admissible in any proceeding, and shall not be
2 offered, received, or construed as evidence of a presumption, concession, or an admission of
3 liability, of unenforceability of any arbitration agreement, of the certifiability of a litigation
4 class, or otherwise used by any person for any purpose whatsoever, in any trial of this Action
5 or any other action or proceedings.

6 **12. ADDITIONAL PROVISIONS**

7 12.1 Exhibit A to this Agreement, the Class Notice, is an integral part of the
8 Settlement and is incorporated by reference as though fully set forth herein.

9 12.2 Unless otherwise noted, all references to “days” in this Agreement are to be
10 calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend
11 or federal legal holiday, such date or deadline shall be on the first business day thereafter.

12 12.3 The Parties to the Settlement agree that the terms of the Settlement were
13 negotiated at arm’s length and in good faith by the Parties, resulted from an arm’s-length
14 mediation session, and reflect a settlement that was reached voluntarily based upon adequate
15 information and sufficient discovery and after consultation with experienced legal counsel.

16 12.4 Plaintiff, Class Counsel, Defendants, and counsel for Defendants have concluded
17 that the Settlement constitutes a fair, reasonable, and adequate resolution of the claims that
18 Plaintiff asserted against Defendants, including the claims on behalf of the Class Members,
19 and that it promotes the best interests of the Class Members.

20 12.5 To the extent permitted by law and unless otherwise necessary to seek Court
21 approval of this Settlement Agreement, all agreements made and orders entered during the
22 course of the Action relating to the confidentiality of information shall survive this Settlement
23 Agreement.

24 12.6 The waiver by one Party of any breach of this Settlement Agreement by any
25 other Party shall not be deemed a waiver of any other prior or subsequent breach of this
26 Settlement Agreement.
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1 12.7 The Parties may not amend or modify any provision of this Settlement
2 Agreement except by written agreement signed by counsel for the Parties and subject to any
3 necessary Court approval.

4 12.8 All notices, demands, and other communications to be provided concerning this
5 Settlement Agreement shall be in writing and delivered by receipted delivery and by email at
6 the addresses set forth below, or such other addresses as either Party may designate in writing
7 from time to time:

8 if to Defendants:

9 **MURCHISON & CUMMING, LLP**
10 Kenneth H. Moreno, Esq.
11 Laurie E. Yoon, Esq.
12 2175 N. California Blvd., Suite 900
13 Walnut Creek, California 94596
14 Telephone: (415) 524-4303
15 Facsimile: (415) 391-2058
16 kmoreno@murchisonlaw.com
17 lyoon@murchisonlaw.com

18 if to Plaintiff:

19 **HUNTER PYLE LAW**
20 Hunter Pyle, Esq.
21 John J. Darin, Esq.
22 505 14th Street, Suite 600
23 Oakland, California 94612
24 Telephone: (510) 444-4400
25 Facsimile: (510) 444-4410
26 hunter@hunterpylelaw.com
27 jdarin@hunterpylelaw.com

28 12.9 This Settlement Agreement, including its Exhibits, constitutes the entire
agreement among the Parties, and no representations, warranties, or inducements have been
made to any Party concerning this Settlement Agreement or its Exhibits, other than the
representations, warranties, and covenants contained and memorialized in this Settlement
Agreement and its Exhibits.

1 12.10 This Settlement Agreement may be executed in one or more counterparts. All
2 executed counterparts and each of them, including facsimile, electronic, and scanned copies of
3 the signature page, shall be deemed to be one and the same instrument.

4 12.11 The Parties and their respective counsel agree that they will use their best efforts
5 to obtain all necessary approvals of the Court required by this Agreement. The Parties agree
6 that Plaintiff will submit to the Court a Motion for Preliminary Approval of this Settlement
7 containing all of the terms and conditions contained herein notwithstanding any new legal
8 developments regarding the Released Claims or PAGA Release.

9 12.12 This Settlement Agreement shall be binding upon and shall inure to the benefit
10 of the successors and assigns of the Parties, including any and all Released Parties and any
11 corporation, partnership, or other entity into or with which any Party hereto may merge,
12 consolidate, or reorganize.

13 12.13 In the event of any dispute arising out of the performance or breach of any
14 provision of this Settlement Agreement, the prevailing party in such disputes shall be entitled
15 to recover his, her, or its reasonable attorneys' fees and costs incurred arising from the dispute,
16 provide that the prevailing party gives 30 days written notice before commencing legal action
17 regarding any failure to perform or breach of any provision of this Settlement Agreement.

18 12.14 This Settlement Agreement shall not be construed more strictly against one Party
19 than another merely because of the fact that it may have been prepared by counsel for one of
20 the Parties. It is recognized that because of the arm's-length negotiations resulting in the
21 Settlement Agreement, all Parties have contributed substantially and materially to the
22 preparation of the Settlement Agreement.

23 12.15 Except where this Settlement Agreement itself provides otherwise, all terms,
24 conditions, and Exhibits are material and necessary to this Settlement Agreement and have
25 been relied upon by the Parties in entering into this Settlement Agreement.

26 12.16 This Settlement Agreement shall be governed by California law. Any action
27 based on this Settlement Agreement, or to enforce any of its terms, shall be venued in the Los
28 Angeles County Superior Court, which shall retain jurisdiction over all such disputes. All

1 Parties to this Settlement Agreement shall be subject to the jurisdiction of this Court for all
2 purposes related to this Settlement Agreement.

3 12.17 The Court shall retain continuing and exclusive jurisdiction over the Parties to
4 this Settlement Agreement for the purpose of the administration and enforcement of this
5 Settlement Agreement.

6 12.18 The headings used in this Settlement Agreement are for the convenience of the
7 reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

8 12.19 In construing this Settlement Agreement, the use of the singular includes the
9 plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

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SO STIPULATED.

Date: _____, 2024 Plaintiff EFREN PALOMINO

Plaintiff

Date: _____, 2024 Defendant WINALL OIL CO.

by Allen Gimenez

Date: _____, 2024 Defendants ALLEN GIMENEZ

Date: _____, 2024 Defendants GARY GIMENEZ

1 **APPROVED AS TO FORM**

2
3
4 Date: _____, 2024

HUNTER PYLE LAW

5
6 _____
7 Hunter Pyle
8 John J. Darin
9 *Attorneys for Plaintiff, the Putative Class,*
10 *and all other aggrieved employees*

11 Date: _____, 2024

MURCHISON & CUMMING, LLP

12
13 _____
14 Kenneth H. Moreno
15 Laurie E. Yoon
16 *Attorneys for Defendants*
17 *Winall Oil Co., Allen Gimenez, and*
18 *Gary Gimenez*
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EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT
SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

Efren Palomino v. Winall Oil Co., et al., No. 23STCV04401

You are receiving this Notice because you are or were employed by Winall Oil Co. (“Winall Oil”) as a gas-station attendant in California at any time during the period of February 28, 2019, through [date of preliminary settlement approval]. All such persons are referred to in this Notice as “Class Members.”

Additionally, Class Members who also worked for Winall Oil at any time during the period of October 28, 2021, through [date of preliminary settlement approval] are referred to in this Notice as “PAGA Employees.” “PAGA” refers to the Private Attorneys General Act.

All PAGA Employees are also Class Members; however, not all Class Members are PAGA Employees. Those Class Members who stopped working for Winall Oil before October 28, 2021 are not PAGA Employees.

*The Superior Court of California, County of Los Angeles, authorized this Notice.
This is not a solicitation from a lawyer.*

- This Notice contains important information about your legal rights as part of a class and PAGA action settlement. Please read it fully and carefully.
- Efren Palomino is a current employee who filed a lawsuit against Winall Oil and its officers: Allen Gimenez and Gary Gimenez (the “Gimenez Defendants”). Mr. Palomino is called “Plaintiff” in this Notice.
- The lawsuit is pending in the Superior Court of California, County of Los Angeles (Case No. 23STCV04401) (the “Action”). Plaintiff, Winall Oil, Allen Gimenez, and Gary Gimenez are referred to collectively as the “Parties.”
- Plaintiff’s allegations are brought on his own behalf and on behalf of all Class Members and PAGA Employees, as defined in this Notice.
- Plaintiff has asserted a variety of claims, described in more detail below, against Winall Oil and the Gimenez Defendants that pertain to rest-break violations and other alleged wage and hour violations.
- Winall Oil and the Gimenez Defendants deny Plaintiff’s allegations, deny that they violated the law in any manner, and contend that its policies and practices have complied with the law at all times.
- The Court has not decided whether Winall Oil or the Gimenez Defendants did anything wrong. The Court also has not decided whether Plaintiff’s claims have merit.
- Under the proposed Stipulation of Settlement (“Settlement”), Winall Oil and the Gimenez Defendants will pay a total of \$1,384,804.25 to be apportioned and paid among Class

QUESTIONS? CALL _____ TOLL FREE OR VISIT [WWW.\[INSERT URL\]](#)

Members, after deductions for Court-approved payments for attorneys' fees and costs, a service payment to the Plaintiff, payment to the State of California for civil penalties under PAGA, and settlement administration costs.

YOUR OPTIONS	
Do Nothing	You will receive a proportionate share of the Settlement if final approval is granted and will give up any right to bring any claims in the future that are part of the Settlement.
Opt Out of the Settlement	If you opt yourself out of the Settlement, you will not receive an Individual Settlement Payment, but you will retain the right to assert claims that are included in the Settlement. By doing so, you will bear the risk that you may lose those claims. To opt out, you must timely write to the Settlement Administrator and follow the procedures described below. However, you may not exclude yourself from the PAGA Release, and the PAGA claims described in this Notice will be released even if you opt-out of the Settlement.
Object to the Settlement	If you disagree with any aspect of this Settlement, you may assert your objections by timely writing to the Settlement Administrator according to the procedures described below. If you opt out, you may not object. If you object, you will still be bound by the Settlement if it is approved by the Court.

Deleted: and filing with the Court your objection

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made only if the Court approves the Settlement and that approval becomes final, which may be after appeals (if any) are resolved. Please be patient.

QUESTIONS? CALL _____ TOLL FREE OR VISIT [www.\[INSERT URL\]](http://www.[INSERT URL])

BASIC INFORMATION

1. Why did I get this Notice, and why should I read this Notice?

The records of Winall Oil indicate that you are a Class Member. If the Court approves the Settlement, you will receive a payment, and your legal rights will be affected. Thus, you have a right to information about the Settlement and your legal rights. That is the intent of this Notice.

2. What is this lawsuit about?

Plaintiff has asserted the following claims against Winall Oil and the Gimenez Defendants on behalf of Class Members:

(1) Failure to Provide Off-Duty Meal Periods; (2) Failure to Authorize and Permit Rest Periods; (3) Failure to Furnish Adequate Wage Statements; (4) Unlawful Business Practices; (5) Failure to Maintain and Furnish Records; (6) Failure to Post Compensation Insurance Carrier and Safety Notices; and (7) Failure to Provide One Day's Rest Per Workweek.

Plaintiff have asserted the following claims against Winall Oil on behalf of PAGA Employees:

Civil Penalties Pursuant to PAGA ("PAGA Claims").

All of these claims are referred to in this Notice collectively as the "Claims."

Winall Oil and the Gimenez Defendants deny that the Claims are valid, deny that the Court should permit Plaintiff to bring the Claims on behalf of the Class Members and PAGA Employees, and contend that they complied with the law at all times. Winall Oil and the Gimenez Defendants further contend that they have complied with the requirements of the California Labor Code applicable to the employment and compensation of its employees.

3. What is a class action?

In a class action, one or more people sue on behalf of people who they allege have similar claims.

4. Why is there a settlement?

The Court has not yet decided in favor of either of the Parties on the Claims being settled. Plaintiff thinks he could recover a significant amount of wages, penalties, and interest on behalf of the Class Members if he were to win at trial. On the other hand, Winall Oil and the Gimenez Defendants deny all liability and believe that Plaintiff will not win anything in the case. After extensive negotiations, both sides have agreed to the Settlement of the Claims.

The Parties have entered into the proposed settlement agreement voluntarily. The purpose of the Settlement is so that the risks and costs of trial, for both sides, are eliminated.

The Court has given its preliminary approval of the Settlement as fair and reasonable to the Class Members.

5. How do I know if I am part of the Settlement?

Everyone who fits this description is a Class Member: all current and former and former gas-station attendants who were employed by Winall Oil throughout California at any time between February 28, 2019, through [date of preliminary settlement approval].

6. Are there exceptions to being included?

Yes. If you are a Class Member, you may opt out as stated in Section 13 below. If you do not opt out, you will receive part of the Settlement if approved.

However, if you are a PAGA Employee, you are not able to exclude yourself from the PAGA Release and you will receive an Individual PAGA Payment, whether or not you request exclusion from the Action and the Settlement. All claims for PAGA penalties are settled by operation of law.

7. What if I'm still not sure if I am included?

If you are still not sure whether you are included, you can call the Settlement Administrator at [Number] or write to the Settlement Administrator at [address]. You also may contact Class Counsel identified below for more information.

8. How much money is the Settlement for, and how is it allocated?

In exchange for the release of claims against it and final disposition of the Action, Winall Oil and the Gimenez Defendants will pay a total of One-Million-Three-Hundred-Eighty-Four-Thousand-Eight-Hundred-Four Dollars and Twenty-Five Cents (\$1,384,804.25) ("Total Settlement Amount"). Plaintiff is asking the Court to approve the following payments that, if approved, will be deducted from the Total Settlement Amount.

- **Class Representative Service Award:** For acting as the Class Representative, Plaintiff will request from the Court a service award of no more than Twenty Thousand Dollars and No Cents (\$20,000.00), in recognition of and as compensation for his efforts, such as starting the Action, volunteering time to assist with the Action, and providing information and documents, as well as risks he assumed in starting and assisting with the prosecution of the Action.
- **Class Counsel Award:** Class Counsel will request from the Court no more than Four-Hundred-Sixty-One-Thousand-Six-Hundred-One Dollar and Forty-Two Cents

QUESTIONS? CALL _____ TOLL FREE OR VISIT [WWW.\[INSERT URL\]](http://WWW.[INSERT URL])

(\$461,601.42) as attorneys' fees for litigation and resolution of the Action. Class Counsel will also request from the Court reimbursement for actual litigation costs advanced on behalf of the Class Members, which will be no more than Fifty-Thousand Dollars and No Cents (\$50,000.00).

- **PAGA Payment:** Sixty Thousand Dollars and No Cents (\$60,000.00) from the Total Settlement Amount is allocated for settlement of Plaintiff' claims under PAGA. Upon Court approval, 75% of the PAGA Payment (\$45,000.00) will be paid to the California Labor & Workforce Development Agency, and 25% of the PAGA Payment (\$15,00.00) will be distributed to the PAGA Employees.
- **Settlement Administrator Expenses:** The costs of settlement administration will not exceed Six Thousand Dollars and No Cents (\$6,000.00), which pays for tasks such as mailing and tracking this Notice, mailing checks and tax forms, and reporting to the parties and the Court. Any amount ordered by the Court for settlement administration will be paid from the Total Settlement Amount.

After Court-approved payments for attorneys' fees and costs, service awards to the Plaintiff, the PAGA Payment to be paid to the State, and settlement administration costs are deducted from the Total Settlement Amount, the remaining "Net Distribution Fund" will be distributed to Class Members.

The Settlement Administrator will apportion the Net Distribution Fund to be paid to Class Members based on their number of workweeks during the Class Period, as explained below.

9. How much will my payment be, and what is the information used to calculate my share?

Based on the calculation described above, it is currently estimated that your share of the Settlement will be [amount].

This amount could change based on how many Class Members opt out or based on further determinations by the Settlement Administrator or rulings by the Court.

If you are entitled to an Individual Settlement Payment, the Settlement Administrator will allocate twenty percent (20%) as taxable wages to be reported on IRS Form W-2. Twenty percent (20%) will be allocated to interest, and sixty percent (60%) will be allocated to penalties, both of which will be reported on IRS Form 1099, if applicable ("Individual Settlement Payment").

If you are entitled to an Individual PAGA Payment under the Settlement, the Settlement Administrator will allocate one hundred percent (100%) of the PAGA payment as penalties, which will be reported on IRS Form 1099 ("Individual PAGA Payment").

No other tax or deductions will be taken out of your share of the Settlement. Ultimately, you are responsible for all tax liability in relation to payments to you under the Settlement.

This Notice is not tax advice. Do not ask Class Counsel or Winall Oil or the Gimenez Defendants or their counsel for tax advice, as they will not provide it. You should consult your own tax advisor.

QUESTIONS? CALL _____ TOLL FREE OR VISIT [WWW.\[INSERT URL\]](http://WWW.[INSERT URL])

Winall Oil's records show that the following information is pertinent to the calculation of your estimated share of the Settlement:

- Your number of workweeks during the Class Period is [number].
- Your number of pay periods during the PAGA Period (October 28, 2021, through [date of preliminary settlement approval] (the "PAGA Period")) is [number].

If you disagree with this information, you must notify the Settlement Administrator by writing to them at the address set forth in paragraph 7. Be sure to include your full name, email address, mailing address, telephone number, last four digits of your social security number, and all supporting documentation, and sign your document.

Your notification must be signed and postmarked no later than [60 days from mailing]. After inquiring further of Winall Oil, the Settlement Administrator will make a final decision of dispute.

10. How can I get a payment?

You do not need to do anything to qualify for a payment. It is important that you immediately notify the Settlement Administrator if your mailing address is different from the address to which this Notice was sent, or if that address changes.

11. When will I receive a payment?

Payments will be distributed under a schedule established by the Settlement and by the Court. Presently, the expected date of payment is estimated to be [date]. This could change depending on factors influencing the Settlement Administrator's tasks, any objections to the Settlement, and actions by the Court.

12. What am I giving up to get a payment?

In exchange for the Settlement payment, each Class Member (except those who properly opt out) will release the following Released Claims: any and all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, during the Class Period, known or unknown, suspected or unsuspected, that each participating class member had, now has, or may hereafter claim to have during the Class Period against Defendants and that were asserted in the Action, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in Plaintiff's operative Second Amended Complaint, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law. The Released Class Claims specifically include, but are not limited to Labor Code §§ 226, 226.7, 246, 248.5, 512, 551, 552, 1174, 1198.5, 2810.3, 3550, 3551, 6430, and 6431, and the related IWC

QUESTIONS? CALL _____ TOLL FREE OR VISIT [WWW.\[INSERT URL\]](http://WWW.[INSERT URL])

Wage Order No. 7-2001 and Business & Professions Code §§ 17200, et seq., and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts asserted in the Action, including: (1) Failure to Provide Off-Duty Meal Periods; (2) Failure to Authorize and Permit Rest Periods; (3) Failure to Furnish Adequate Wage Statements; (4) Unlawful Business Practices; (5) Failure to Maintain and Furnish Records; (6) Failure to Post Compensation Insurance Carrier and Safety Notices; and (7) Failure to Provide One Day's Rest Per Workweek, as well as interest, fees, and costs. The enumeration of these specific statutes shall neither enlarge or narrow the scope of res judicata based on the claims that were asserted in the Action or could have been asserted in the Action based on the facts and circumstances alleged in any Complaint on file in the Action.

Additionally, Plaintiff acting in their capacity as private attorneys general on behalf of the State of California pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 *et seq.*, and on behalf of the Labor and Workforce Development Agency and the PAGA Employees. The PAGA Release shall operate to release and discharge the Released Parties from any claim for civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 *et seq.* that were asserted in the Action, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in Plaintiff's Second Amended PAGA Notice submitted to the Labor Workforce and Development Agency, including but not limited to claims for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246, 248.5, 512, 551, 552, 1174, 1198.5, 2810.3, 3550, 3551, 6430, and 6431 and the applicable IWC Wage Orders.

13. How do I opt out of the Settlement?

To exclude yourself from the Settlement, you must send a signed letter by mail to the Settlement Administrator stating words to the effect of "I wish to be excluded from the Settlement Class." You must include your name and signature.

Your request to opt out of the Settlement must be postmarked no later than **[60 days from mailing]** to the Settlement Administrator at the address in paragraph 7.

If you ask to be excluded, you will not be legally bound by the Settlement if approved. You will not get any Individual Settlement Payment from the Settlement, and you will not be allowed to object to the Settlement.

14. If I don't exclude myself, can I sue Winall Oil for the same thing later?

No. Unless you exclude yourself, you will give up any right to sue Winall Oil, Allen Gimenez, or Gary Gimenez for the claims that this Settlement resolves. If you have a pending lawsuit for the same claims that are being settled against Winall Oil, Allen Gimenez, or Gary Gimenez, speak to your lawyer in that case immediately. You must exclude yourself from this Settlement in order to

continue your own lawsuit if it involves the same claims. However, you are not able to exclude yourself from the PAGA Release.

15. If I exclude myself, can I get money from this Settlement? Will any money be returned to Winall Oil?

No. If you exclude yourself, you will not receive any money from this Settlement except for your Individual PAGA Payment if you are a PAGA Employee. If you exclude yourself from the Settlement, the monies you would have received will be distributed on a pro-rata basis to all the other Class Members. No money will revert to Winall Oil.

16. Who is my legal representative in this case?

The Court has appointed as Class Counsel the following attorneys:

HUNTER PYLE LAW
Hunter Pyle, Esq.
John J. Darin, Esq.
505 14th Street, Suite 600
Oakland, California 94612
Telephone: (510) 444-4400
Facsimile: (510) 444-4410
hunter@hunterpylelaw.com
jdarin@hunterpylelaw.com

You will not be charged for the work performed by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

If you have questions about this Settlement, you may contact Class Counsel. They will consult with you and attempt to answer your questions. Do not contact Winall Oil or the Gimenez Defendants with any questions about the Settlement.

17. How do I object to the Settlement?

If you are a Class Member and do not opt out, you can object to the Settlement if you don't like any part of it. However, the Court cannot order a larger settlement. The Court can only approve or deny the proposed Settlement.

If the Court denies approval, no settlement payments will be sent out, and the Action will continue. If that is what you want, you must object. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views.

To object to the Settlement, you must send a written objection, no later than [60 days from mailing] to the Settlement Administrator at the address in paragraph 7. Your objection must include your full name, address, telephone number, the last four digits of your Social Security Number, and your signature, as well as the case name and number. It must set forth, in clear and concise terms, a statement of the specific reasons why you believe the Court should find that the Settlement is not

Deleted: to the Court

QUESTIONS? CALL _____ TOLL FREE OR VISIT [WWW.\[INSERT URL\]](#)

in the best interest of the Class Members and the reasons why the Settlement should not be approved. Your objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class.

If you also wish to appear at the Fairness Hearing, in person or through an attorney, you must *also* file a notice of your intention to appear at the same time as the objection is submitted. You must state whether you plan to appear either remotely, in person, or through counsel, and, if through counsel, submit a statement identifying that counsel by name, bar number, address, and telephone number. Unless otherwise ordered by the Court, you will not be entitled to speak at the Final Approval Hearing unless you have submitted a timely written objection and notice of intention to appear.

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Please see section 19, below, for more information about how to appear in person.

18. What's the difference between objecting and opting out?

Objecting is simply saying that you don't like something about the Settlement and do not want it approved. Opting out is saying that you don't want to be part of the Class and participate in the Settlement of the Class Claims. If you opt out, you have no basis to object because the case no longer affects you.

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

The Court will hold a Fairness Hearing at 9:00 a.m. on [date of final approval hearing], in Department 17 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At this hearing, the Court will make a final decision as to whether the Settlement is fair, reasonable, and adequate. If you or other Class Members object to the Settlement, the Court will consider the objections. At or after the hearing, the Court will decide whether to grant final approval to the Settlement. At the Fairness Hearing, the Court may continue the hearing to another date without additional notices being sent out.

Deleted: on December 5, 2024,

The judge overseeing this case encourages remote appearances. Class members who wish to appear remotely should contact class counsel at least three days before the hearing if possible.

Any class member who wishes to appear in person may do so at Department 17 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012.

20. Do I have to come to the hearing?

No. Class Counsel will answer questions the Judge may have. You are welcome to come at your own expense. If you properly submit an objection, you do not have to come to Court to talk about it. As long as you properly submit your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. You cannot appear and speak at the hearing if you opt out.

22. What happens if I do nothing at all?

If you do nothing, or fail to act timely, you'll receive your share of the Settlement, but you will be barred from bringing the Released Claims against Winall Oil, Allen Gimenez, and Gary Gimenez as described in paragraph 12.

23. Can Winall Oil or the Gimenez Defendants retaliate against me for participating in this Settlement?

California law makes it unlawful to retaliate against you for participating in a lawsuit like this one.

24. How do I get more details about the Settlement?

This Notice is intended as a summary and does not fully describe this action, the claims, the defenses, or the proposed Settlement, which is subject to the terms and conditions of the Stipulation of Settlement filed with the Court and as preliminarily approved by the Court. For the precise terms and conditions of the Settlement, you are referred to the detailed Stipulation of Settlement, which is on file with the Clerk of the Court. The pleadings and other records in this Action, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of Los Angeles's Electronic Filing and Service Website at <https://www.lacourt.org/paos/v2/Login>, or (b) in person at Records, Superior Court of California, County of Los Angeles, 312 North Spring Street, Los Angeles, CA 90012, between the hours of 8:30 a.m. and 3:00 p.m. Monday through Thursday and between 8:30 a.m. and 12:00 p.m. on Fridays, excluding Court holidays and closures.

For further information, you may call or contact the Settlement Administrator (see paragraph 7) or Class Counsel (see paragraph 16). Do not contact Winall Oil or the Gimenez Defendants.

The Settlement Administrator also maintains a website where some important documents in this Action are available. The URL for the website is [\[insert\]](#).

You may also obtain more information by contacting Class Counsel or by accessing the Court's Electronic Filing and Service Website (https://www.sccourt.org/online_services.shtml).

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR WINALL OIL OR ITS COUNSEL WITH INQUIRIES.

Date:

QUESTIONS? CALL _____ TOLL FREE OR VISIT [WWW.\[INSERT URL\]](#)

This Notice has been approved by the Judge of the Superior Court of California, County of Los Angeles, responsible for overseeing and deciding this case.

QUESTIONS? CALL _____ TOLL FREE OR VISIT [WWW.\[INSERT URL\]](http://WWW.[INSERT URL])

EXHIBIT B

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JOHN J. DARIN, SBN 323730
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Facsimile: (510) 444-4410
Email: hunter@hunterpylelaw.com
jdarin@hunterpylelaw.com

*Attorneys for Plaintiff, the Putative Class,
and all other Aggrieved Employees*

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

EFREN PALOMINO on behalf of himself, the
Putative Class, and all other Aggrieved
Employees;

Plaintiff,

v.

WINALL OIL CO., a California Corporation;
ALLEN GIMENEZ, an individual; GARY
GIMENEZ, an individual; and DOES 1 through
20, inclusive,

Defendants.

Case No.: 23STCV04401

CLASS AND REPRESENTATIVE ACTION

SECOND AMENDED COMPLAINT

- 1. FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS (Labor Code §§ 226.7, 512, & 2810.3; Wage Order No. 7);**
- 2. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS (Labor Code §§ 226.7 & 2810.3; Wage Order No. 7);**
- 3. FAILURE TO FURNISH ADEQUATE WAGE STATEMENTS (Labor Code §§ 226 & 2810.3; Wage Order No. 7);**
- 4. UNLAWFUL BUSINESS PRACTICES (Business & Professions Code §§ 17200 *et seq.*);**
- 5. FAILURE TO MAINTAIN AND FURNISH RECORDS (Labor Code §§ 226, 246, 248.5, 1174, & 1198.5);**
- 6. FAILURE TO POST COMPENSATION INSURANCE CARRIER AND SAFETY NOTICES (Labor Code §§ 3550, 3551, 6430, & 6431);**
- 7. FAILURE TO PROVIDE ONE DAY'S REST PER WORKWEEK (Labor Code §§ 551, 552); and**

**8. VIOLATIONS OF THE LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 (Labor Code §§ 2698, *et seq*)**

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

1. This is a class action under Code of Civil Procedure section 382 and a representative action under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, *et seq.*, brought by Plaintiff EFREN PALOMINO (“Plaintiff”).

2. Plaintiff seeks to represent a class of current and former gas-station attendants who were employed by defendants WINALL OIL CO. (“Winall Oil”), ALLEN GIMENEZ (“A. Gimenez”), and GARY GIMENEZ (“G. Gimenez”) (collectively, “Defendants”) from October 28, 2018 to the present (“Class Members”).

3. Defendant Winall Oil is in the gas stations business. Defendants A. Gimenez and G. Gimenez serve as the Chief Executive Officer and Chief Financial Officer, respectively, of Defendant Winall Oil. Defendants own and operate more than a dozen gas stations in Southern California, which they franchise from several major oil companies.

4. Defendants failed to provide Plaintiff and Class Members with off-duty meal and rest periods or meal- and rest-period premiums, in violation of California wage and hour law, throughout Plaintiff’s and Class Members’ employment. Defendants have sought to avoid various duties and obligations owed to employees under the California Labor Code, Industrial Welfare Commission Wage Order No. 7 (“Wage Order No. 7”), including but not limited to failure to: (1) Provide meal periods; (2) Authorize and permit rest periods; (3) Furnish adequate wage statements; (4) Failure to Furnish and Maintain Records; (5) Failure to Post Compensation Insurance and Safety Notices; and (6) Failure to Provide One Day’s Rest Per Workweek.

5. Plaintiff brings claims on behalf of Class Members for missed meal and rest periods, statutory penalties, interest, and attorneys’ fees and costs under Labor Code sections 218.5 and 226(e), and Code of Civil Procedure section 1021.5. Plaintiff, on behalf of himself and Class Members, also seeks equitable and injunctive relief for these violations pursuant to Business and Professions Code sections 17200-17208 (referred to herein as the “UCL”).

6. Plaintiff also brings a claim seeking civil penalties under the Private Attorneys General Act, Labor Code sections 2698 *et seq.* (“PAGA”).

1
2 **II. JURISDICTION**

3 7. Venue is proper in this judicial district, pursuant to Code of Civil Procedure section
4 395(a). Defendants employ or have employed Plaintiff and Class Members throughout California,
5 including in the city of Los Angeles, which is located within the County of Los Angeles,
6 California. The unlawful acts alleged herein have occurred in and have a direct effect on Plaintiff
7 and those similarly situated within the State of California and the County of Los Angeles.

8 8. This Court has jurisdiction over this class action pursuant to Article 6, section 10 of
9 the California Constitution and California Code of Civil Procedure section 410.10.

10 **III. PARTIES**

11 **A. PLAINTIFF**

12 9. Plaintiff and Class Members are gas-station attendants who are or were employed
13 by Defendants in California at some time during the period beginning October 28, 2018 to the
14 present (the "Class Period").

15 10. Plaintiff is a resident of California and has worked for Defendants as gas-station
16 attendants staffing Defendants' gas stations during the relevant time periods herein.

17 11. Plaintiff is informed and believes, and thereon alleges that at all relevant times
18 herein, Defendants were and are subject to the Labor Code and Wage Order 7 as employers, whose
19 employees were and are engaged throughout counties throughout the State of California, including
20 Los Angeles County.

21 **B. DEFENDANTS**

22 12. Winall Oil is a California Corporation with principal place of business in Signal
23 Hill, California and conducts business throughout the Southern California, including out of the City
24 of Los Angeles, located in the County of Los Angeles. At all times relevant herein Defendant
25 Winall Oil was Plaintiff's and other aggrieved employees' employer covered by the Labor Code,
26 Wage Order 7.

1 13. A. Gimenez is, on information and belief, an adult resident of Signal Hill,
2 California. Defendant A. Gimenez has, during the relevant time period, been listed as Chief
3 Executive Officer and Director on Defendant Winall Oil's statement of information filed with the
4 California Secretary of State. At all times relevant herein Defendant A. Gimenez was Plaintiff's
5 and Class Members' employer covered by the Labor Code, Wage Order 7. Plaintiff is informed
6 and believes that Defendant A. Gimenez is a joint employer, working with Winall Oil. Defendant
7 A. Gimenez controls and is intimately involved in the day-to-day operations of Defendant Winall
8 Oil and both determined and instituted the unlawful wage and hour violations alleged herein.
9 Defendant A. Gimenez has violated or caused to be violated the provisions of Wage Order 7
10 regulating hours and days of work as well as Labor Code sections 226 and 226.7. As such, he is
11 personally liable for the Wage Order and Labor Code violations cited above pursuant to Labor
12 Code section 558.1.

13 14. G. Gimenez is, on information and belief, an adult resident of Signal Hill,
14 California. Defendant A. Gimenez has, during the relevant time period, been listed as Secretary and
15 Chief Financial Officer on Defendant Winall Oil's statement of information filed with the
16 California Secretary of State. At all times relevant herein Defendant G. Gimenez was Plaintiff's
17 and Class Members' employer covered by the Labor Code, Wage Order 7. Plaintiff is informed
18 and believes that Defendant G. Gimenez is a joint employer, working with Winall Oil. Defendant
19 G. Gimenez controls and is intimately involved in the day-to-day operations of Defendant Winall
20 Oil and both determined and instituted the unlawful wage and hour violations alleged herein.
21 Defendant G. Gimenez has violated or caused to be violated the provisions of Wage Order 7
22 regulating hours and days of work as well as Labor Code sections 226 and 226.7. As such, he is
23 personally liable for the Wage Order and Labor Code violations cited above pursuant to Labor
24 Code section 558.1

25 15. The true names and capacities, whether individual, corporate, associate, or
26 otherwise, of Defendants sued herein as DOES 1 through 20, inclusive, are currently unknown to
27 Plaintiff, who therefore sues Defendant by such fictitious names under Code of Civil Procedure
28

1 section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the
2 defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts
3 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
4 names and capacities of the defendants designated hereinafter as DOES when such identities
5 become known. Plaintiff is informed and believes, and based thereon alleges, that each of the
6 defendants designated herein as DOE is legally responsible in some manner for the events and
7 happenings referred to herein and caused injury and damage proximately thereby to Plaintiff as
8 alleged herein. Each reference in this Complaint to “Defendant,” or a specifically named defendant,
9 refers also to all defendants sued under fictitious names.

10 16. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
11 mentioned each of the defendants are and were the agent, employee and/or servant of each of the
12 remaining defendants, and in doing the things hereinafter alleged was acting within the scope of
13 such agency, employment, and servitude, with the knowledge and consent of each of the
14 defendants. Whenever this Complaint makes reference to a defendant, such allegations shall be
15 deemed to mean the acts of all defendants acting individually, jointly and/or severally.

16 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

17 17. On October 28, 2022, Plaintiff gave electronic and written notice by certified mail
18 of Winall Oil’s violations of various provisions of the California Labor Code as alleged in his
19 initial complaint and First Amended Complaint to the Labor and Workforce Development Agency
20 (“LWDA”) and Winall Oil.

21 18. On November 6, 2023, Plaintiff gave electronic and written amended notice by
22 certified mail of Winall Oil’s additional violations of various provisions of the California Labor
23 Code to the LWDA and Winall Oil.

24 19. On September 26, 2024, Plaintiff gave electronic and written second amended
25 notice by certified mail, clarifying his allegations of Winall Oil’s violations of various provisions
26 of the California Labor Code as alleged in this Second Amended Complaint to the LWDA and
27 Winall Oil.

20. The LWDA has not provided notice pursuant to Labor Code section 2699.3(a)(2)(A), and 65 calendar days have passed since the postmark date of either of Plaintiff's notices. Therefore, Plaintiff is entitled to commence a civil action pursuant to Labor Code section 2699.

V. STATEMENT OF FACTS

21. Defendants own and operate more than a dozen gas stations in Southern California. Defendants employ gas-station attendants to staff its gas stations and carry on their operations. Plaintiff and Class Members worked as gas-station attendants staffing Defendants' gas stations in Los Angeles County and Southern California.

22. Plaintiff is informed and believes and thereon alleges that, through common practices, policies and/or schemes, Defendants failed to adequately staff their gas stations. As a result of these practices, policies and/or schemes, Plaintiff and Class Members were unable to take off-duty meal and rest periods, and Defendants failed to compensate Plaintiff and Class Members for missed meal and rest periods in order to systematically deprive them of the benefits and protections applicable to employees under California law.

23. Plaintiff is informed and believes and thereon alleges that, throughout the relevant time period of this action, Defendants have employed at least two dozen (24) Class Members. At all times relevant hereto, the California Labor Code and Wage Order No. 7 have applied to Plaintiff and to Class Members.

24. Plaintiff's and Class Members' primary job duties involved accepting cash payments from customers, attending the pumps, performing paperwork related to shift management and accounting, cleaning the booth and the station.

25. Defendants controlled all work details, including Plaintiff's and Class Members' respective schedules and work locations. Based on the foregoing and other relevant factors, Plaintiff and other Class Members were employees of Defendants.

26. By failing to adequately staff its gas stations, Defendants required Plaintiff and Class Members to work continuously throughout the entirety of their shifts without providing

1 Plaintiff and Class Members with proper off-duty meal periods. Plaintiff and Class Members
2 regularly worked more than five (5) hours per day without receiving an adequate off-duty meal
3 period of at least thirty (30) minutes during which they were relieved of all duties. Defendants'
4 inadequate staffing also forced Plaintiff and other Class Members to work without a second meal
5 period of not less than thirty (30) minutes during which they are relieved of all duties when they
6 worked more than ten (10) hours per day. Defendants failed to pay one additional hour of pay at
7 Plaintiff's and Class Members' respective regular rates of compensation for each workday
8 Defendants did not provide them with an adequate meal period.

9 27. By failing to adequately staff its gas stations, Defendants also required Plaintiff and
10 Class Members to work continuously throughout the entirety of their shifts without authorizing or
11 providing paid rest periods. Plaintiff and Class Members regularly worked more than three-and-
12 one-half (3½) hours without being authorized or permitted to take a paid ten (10) minute rest
13 period. Defendants failed to pay one additional hour of pay at Plaintiff's and Class Members'
14 respective regular rates of compensation for each workday that they were not provided a rest
15 period.

16 28. Defendants also failed to provide Plaintiff and Class Members with adequate
17 itemized wage statements. For example, the wage statements provided by Defendants to Plaintiff
18 and Class Members do not adequately include all hours worked or meal- and rest-period premium
19 wages earned. Additionally, at various times throughout the Class Period, Defendants knowingly
20 and intentionally failed to furnish Plaintiff and Class Members with legally compliant wage
21 statements in accordance with Labor Code sections 226, 246, 1174, and 1198.5. Specifically,
22 Defendants failed to furnish Class Members with wage statements showing accrued sick time or
23 vacation days. Plaintiff requested furnishment of his personnel and payroll records but was not
24 timely provided with records showing accrued sick time or vacation days.

25 29. At various times throughout the Class Period, Defendants have required Plaintiff
26 and other Class Members to work seven days within a workweek without any day of rest in that
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workweek. Defendants induced Plaintiff to perform this work. Therefore, Defendants have violated Labor Code sections 551 and 552.

30. Finally, Labor Code section 3550 requires every employer subject to Workers Compensation law to post and keep posted in a conspicuous location frequented by employees a notice that states the name of the current compensation insurance carrier of the employer. Labor Code section 3551 requires every such employer to provide new employees with written notice of the same. Labor Code sections 6430 and 6431 provide for civil penalties against any employer who fails to post the Workers Compensation information required by Section 3550 or safety information required by Labor Code Section 6318, or who fails to correct a violation of any occupational safety or health standard order. During the Class Period, Defendants failed to post all of the information required by Labor Code sections 3550, 3551, 6430, and 6431 at all of its stations wherein Plaintiff and other Class Members worked.

VI. CLASS ACTION ALLEGATIONS

31. Except as to the PAGA claim set forth below, Plaintiff brings this lawsuit as a class action pursuant to Code of Civil Procedure section 382 on behalf of himself and all similarly situated employees.

32. The class that Plaintiff seeks to represent are defined as:

The Class: Current and former gas-station attendants who were employed by Defendants throughout California at any time between October 28, 2018 through the present (“Class” or “Class Members”).

33. The claims herein have been brought and may properly be maintained as a class action under Code of Civil Procedure section 382 because there is a well-defined community of interest among Class Members with respect to the claims asserted herein and the Class is easily ascertainable:

- a. Ascertainability and Numerosity: The potential members of the Class as defined herein are so numerous that joinder would be impracticable. Plaintiff is informed and believes, and based thereon alleges, that Defendants have employed at least two dozen (24) Class Members during the Class Period. The names and addresses of the Class

Members are available from Defendants. Notice can be provided to the Class Members via first class mail using techniques and a form of notice similar to those customarily used in class action lawsuits of this nature.

b. Commonality: There are questions of law and fact common to Plaintiff and the Class that predominate over any questions affecting only individual members of the Class.

These common questions of law and fact include, without limitation:

- i. Whether Defendants have violated Labor Code section 226.7 and Wage Order No. 7 by failing to authorize and permit Class Members paid rest periods;
- ii. Whether Defendants have violated Labor Code sections 226.7 and 512, and Wage Order No. 7 by failing to provide Class Members meal periods;
- iii. Whether Defendants have violated Labor Code section 226 and Wage Order No. 7 by failing to issue Class Members with adequate and legally compliant wage statements;
- iv. Whether Defendants have violated Labor Code sections 226, 246, 248.5, 1174, and 1198.5 by failing to maintain and furnish records reflecting all sick days and vacation days accrued by Class Members;
- v. Whether Defendants have violated Labor Code sections 3550, 3551, 6430, and 6431 by failing to post and keep posted current compensation insurance and other safety information and notices at all of the stations worked by Class Members;
- vi. Whether the violations set forth in subsections i-vi immediately above constitute an unlawful, unfair, and/or fraudulent business practice under Business and Professions Code Section 17200, *et seq.*;
- vii. What relief is necessary to remedy Defendant's unfair and unlawful conduct as herein alleged;

viii. Whether Defendants A. Gimenez and G. Gimenez should share with Defendant Winall Oil all civil legal responsibility for the violations set forth in subsections i-iii above under Labor Code section 558.1; and

ix. Other questions of law and fact.

- c. Typicality: Plaintiff's claims are typical of the claims of the Class: Plaintiff is and was employed by Defendants as a gas station attendant staffing Defendants' gas stations during the Class Period in California. Plaintiff and all members of the Class have sustained injuries-in-fact due to their damages arising out of and caused by Defendants' common course of conduct in violation of law, as alleged herein.
- d. Adequacy of Representation: Plaintiff is a member of the Class that he seeks to represent, and will fairly and adequately represent and protect the interests of Class. Counsel representing Plaintiff is competent and experienced in litigating wage and hour class actions.
- e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class and Subclasses predominate over any questions affecting only individual members of the Class. Class Members have suffered injury and are entitled to recover by reason of Defendants' illegal policies and/or practices as alleged herein. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Further, the prosecution of separate actions against Defendants by individual Class Members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants.

1 **VII. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**
3 **FAILURE TO PROVIDE MEAL PERIODS**
4 **(Labor Code §§ 226.7, 512; Wage Order No. 7)**
5 **(on behalf of Plaintiff and all members of the Putative Class)**

6 34. The allegations of each of the preceding paragraphs are realleged and incorporated
7 herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the
8 above-described Class of similarly situated gas-station attendants who were employed by
9 Defendants throughout California.

10 35. Plaintiff and Class Members have regularly worked in excess of five (5) hours per
11 day without being permitted to take a thirty (30) minute meal period as required by Labor Code
12 sections 226.7 and 512 and Wage Order No. 7.

13 36. Plaintiff and Class Members have regularly worked in excess of ten (10) hours a day
14 without being permitted to take a second thirty (30) minute meal period as required by Labor Code
15 sections 226.7 and 512 and Wage Order No. 7.

16 37. Pursuant to Labor Code section 226.7(c) and Wage Order No. 7, Defendants are
17 liable for one hour of additional pay at Plaintiff's and Class Members' respective regular rate of
18 pay for each workday Defendants failed to provide meal periods to Plaintiff and Class Members.

19 38. By violating Labor Code section 226.7 and Wage Order No. 7, Defendants are also
20 liable for interest under Labor Code section 218.6, reasonable attorneys' fees and costs under
21 Labor Code section 218.5.

22 39. On information and belief, Defendants A. Gimenez and G. Gimenez are and were,
23 at all relevant times, owners, directors, officers, and/or managing agents of Defendant Winall Oil
24 and violated or caused to be violated the provisions regulating minimum wages or hours and days
25 of work in Wage Order 7 and Labor Code § 226.7. Therefore, Defendants A. Gimenez and G.
26 Gimenez are individually liable for these violations.

27 40. Plaintiff, on behalf of himself and the Class, requests restitution of unpaid meal
28 period premiums and other relief as described below.

SECOND CAUSE OF ACTION
FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
(Labor Code § 226.7; Wage Order No. 7)
(on behalf of Plaintiff and all members of the Putative Class)

41. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class of similarly situated gas-station attendants who were employed by Defendants throughout California.

42. Plaintiff and Class Members have regularly worked in excess of three and one-half (3½) hours a day without being permitted to take at least a ten (10) minute paid rest period for every three and one-half (3½) hours worked, or major fraction thereof, as required by Wage Order No. 7, and Labor Code section 226.7.

43. Accordingly, Defendants are liable to Plaintiff and Class Members for one hour of additional pay at the regular rate of compensation for each workday a rest period violation occurred, pursuant to Labor Code section 226.7(c) and Wage Order No. 7.

44. On information and belief, Defendants A. Gimenez and G. Gimenez are and were, at all relevant times, owners, directors, officers, and/or managing agents of Defendant Winall Oil and violated or caused to be violated the provisions regulating minimum wages or hours and days of work in Wage Order 7 and Labor Code § 226.7. Therefore, Defendants A. Gimenez and G. Gimenez are individually liable for these violations.

45. Plaintiff, on behalf of himself and the Class, requests restitution of unpaid rest period premiums and other relief as described below.

THIRD CAUSE OF ACTION
FAILURE TO FURNISH ADEQUATE WAGE STATEMENTS
(Labor Code § 226; Wage Order No. 7)
(on behalf of Plaintiff and all members of the Putative Class)

46. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class of similarly situated gas-station attendants who were employed by Defendants throughout the Class Period.

47. Labor Code sections 226(a), 226(a)(2), and Wage Order No. 7 section 7 require employers, semi-monthly or at the time of payment, to furnish employees a statement showing gross and net wages earned and total hours worked.

48. An employee suffering injury as the result of a knowing and intentional failure of an employer to comply with Labor Code section 226(a) may recover the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one hundred dollars (\$100.00) for each violation in a subsequent pay period, not to exceed the aggregate penalty of four thousand dollars (\$4,000.00) and is entitled to an award of costs and reasonable attorney's fees pursuant to Labor Code section 226(e)(1).

49. Defendants knowingly and intentionally failed to furnish Plaintiff and Class Members with legally compliant wage statements in accordance with Labor Code sections 226, and Wage Order No. 7. Defendants failed to furnish Class Members with adequate wage statements showing gross and net wages earned and total hours worked.

50. Plaintiff, on behalf of himself and the Class, requests wage statement penalties and other relief as described below.

FOURTH CAUSE OF ACTION
UNFAIR COMPETITION AND UNFAIR BUSINESS PRACTICES
(Business & Professions Code §§ 17200 *et seq.*)
(on behalf of Plaintiff and all members of the Putative Class)

51. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class of similarly situated gas-station attendants who were employed by Defendants throughout California.

52. Defendants' failure to pay legally required compensation, authorize and permit meal and rest periods, provide adequate wage statements, as alleged above, constitute unlawful and/or unfair activities prohibited by Business and Professions Code section 17200. Plaintiff reserves the right to identify additional unfair and unlawful practices by Defendant as further investigation and discovery warrants.

1 53. Moreover, Business and Professions Code section 17203 provides that the Court
2 may restore to an aggrieved party any money or property acquired by means of unlawful and unfair
3 business practices. Plaintiff seeks a court order requiring an audit and accounting of the payroll
4 records to determine the amount of restitution of all unpaid wages owed to himself and Class
5 Members, as well as a determination of the amount of funds to be paid to current and former
6 employees that can be identified and located pursuant to a court order and supervision.

7 54. Plaintiff and all Class Members are persons who have suffered injury in fact as a
8 result of Defendant's unfair competition within the meaning of Business and Professions Code
9 section 17204, and who comply with the requirements of Code of Civil Procedure section 382, as
10 set forth above, and therefore have standing to bring this claim for injunctive relief, restitution, and
11 other appropriate equitable relief.

12 55. As a result of its unlawful and/or unfair acts, Defendant have reaped and continue to
13 reap unfair benefits and illegal profits at the expense of Plaintiff and proposed Class Members.
14 Defendants should be enjoined from this activity and made to restore to Plaintiff and proposed
15 Class Members their wrongfully withheld wages, interest thereon, and related statutory penalties,
16 pursuant to Business and Professions Code sections 17202 and 17203.

17 56. Private enforcement of these rights is necessary, as no other agency has raised a
18 claim to protect these workers. There is a financial burden incurred in pursuing this action that
19 would be unjust to place upon Plaintiff, as the burden of enforcing workforce-wide rights is
20 disproportionately greater than that of enforcing only Plaintiff's individual claims. Additionally,
21 Plaintiff is a low-income worker who cannot afford to spend part of his wages on enforcing others'
22 wage rights. Therefore, it would be against the interests of justice to force payment of attorneys'
23 fees from Plaintiff's recovery in this action. Accordingly, attorneys' fees are appropriate and
24 sought pursuant to the Code of Civil Procedure section 1021.5.

25 57. Plaintiff, on behalf of himself and the Class, requests restitution of unpaid wage
26 premiums, injunctive relief and other relief as described below.

**FIFTH CAUSE OF ACTION
FAILURE TO MAINTAIN AND FURNISH RECORDS
(Labor Code §§ 226, 246, 248.5, 1174, & 1198.5)
(on behalf of Plaintiff and all members of the Putative Class)**

58. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class of similarly situated gas-station attendants who were employed by Defendants throughout California.

59. Labor Code sections 226, 246, 248.5, 1174, and 1198.5 all require employers to maintain and furnish to employees upon request certain time and pay records for at least three years. Labor Code section 246 specifically requires employers to maintain and provide an employee with written notice of the amount of paid sick leave available to the employee on either the employee's wage statement or in a separate writing provided on the designated pay date with the employee's payment of wages.

60. An employee suffering injury as the result of a knowing and intentional failure of an employer to comply with Labor Code sections 226 (a) may recover the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one hundred dollars (\$100.00) for each violation in a subsequent pay period, not to exceed the aggregate penalty of four thousand dollars (\$4,000.00) and is entitled to an award of costs and reasonable attorney's fees pursuant to Labor Code section 226(e)(1).

61. At various times throughout the Class Period, Defendants knowingly and intentionally failed to furnish Plaintiff and Class Members with legally compliant wage statements in accordance with Labor Code sections 226, 246, 248.5, 1174, and 1198.5. Specifically, Defendants failed to furnish Class Members with adequate wage statements showing accrued sick or vacation days.

62. Furthermore, during the Class Period Plaintiff gave Defendants a written request for his time and pay records pursuant to Labor Code sections 226 and 1198.5. However, Defendants failed to timely furnish him with records showing his accrued sick or vacation days.

1 63. Plaintiff, on behalf of himself and the Class, requests damages and injunctive and
2 other relief as described below.

3 **SIXTH CAUSE OF ACTION**
4 **FAILURE TO POST COMPENSATION INSURANCE CARRIER**
5 **AND SAFETY NOTICES**
6 **(Labor Code §§ 3550, 3551, 6430, & 6431)**
7 **(on behalf of Plaintiff and all members of the Putative Class)**

8 64. The allegations of each of the preceding paragraphs are realleged and incorporated
9 herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the
10 above-described Class of similarly situated gas-station attendants who were employed by
11 Defendants throughout California.

12 65. Labor Code section 3550 requires every employer subject to Workers Compensation
13 law to post and keep posted in a conspicuous location frequented by employees a notice that states
14 the name of the current compensation insurance carrier of the employer. Labor Code section 3551
15 requires every such employer to provide new employees with written notice of the same.

16 66. Labor Code sections 6430 and 6431 provide for civil penalties against any employer
17 who fails to post the Workers Compensation information required by Section 3550 or safety
18 information required by Labor Code Section 6318, or who fails to correct a violation of any
19 occupational safety or health standard order.

20 67. During the Class Period, Defendants failed to post all of the information required by
21 Labor Code sections 3550, 3551, 6430, and 6431 at all of its stations.

22 68. Plaintiff, on behalf of himself and the Class, requests damages and injunctive and
23 other relief as described below.

24 **SEVENTH CAUSE OF ACTION**
25 **FAILURE TO PROVIDE ONE DAY'S REST PER WORKWEEK**
26 **(Labor Code §§ 551, 552)**
27 **(on behalf of Plaintiff and all members of the Putative Class)**

28 69. The allegations of each of the preceding paragraphs are realleged and incorporated
herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the

1 above-described Class of similarly situated gas-station attendants who were employed by
2 Defendants throughout California.

3 70. Labor Code section 551 provides that “[e]very person employed in any occupation
4 of labor is entitled to one day’s rest therefrom in seven.” Section 552 adds, “No employer of labor
5 shall cause his employees to work more than six days in seven.”

6 71. At various times throughout the Class Period, Defendants have required Plaintiff to
7 work seven days within a workweek without any day of rest in that workweek. Defendants induced
8 Plaintiff to perform this work. Therefore, Defendants have violated Labor Code sections 551 and
9 552.

10 72. Plaintiff, on behalf of himself and the Class, requests damages and injunctive and
11 other relief as described below.

12 **EIGHTH CAUSE OF ACTION**
13 **PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**
14 **(Labor Code § 2698 *et seq.*)**
(on behalf of Plaintiff and all similarly situated aggrieved employees)

15 73. The allegations of each of the preceding paragraphs are realleged and incorporated
16 herein by reference. Plaintiff allege as follows a representative cause of action on behalf of himself
17 and all other aggrieved employees.

18 74. Labor Code section 2699(f) provides, in pertinent part: “For all provisions of this
19 code except those for which a civil penalty is specifically provided, there is established a civil
20 penalty for a violation of these provisions, as follows: . . . If, at the time of the alleged violation, the
21 person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
22 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
23 aggrieved employee per pay period for each subsequent violation.”

24 75. Labor Code section 2699(g)(1) provides, in pertinent part: [A]n aggrieved employee
25 may recover the civil penalty described in subdivision (f) in a civil action . . . filed on behalf of
26 himself or herself and other current or former employees against whom one or more of the alleged
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1 violations was committed. Any employee who prevails in any action shall be entitled to an award
2 of reasonable attorney's fees and costs.

3 76. Plaintiff is an aggrieved employee as defined by Labor Code section 2699(a).

4 77. Plaintiff's cause of action under Labor Code section 2698, *et seq.* is based on the
5 following allegations:

- 6 a. Violations of Labor Code section 558 for failing to pay wages due, including those for
7 missed meal periods as required by Labor Code sections 226.7 and 512. Specifically,
8 Defendant does not pay one additional hour of pay to Plaintiff and other aggrieved
9 employees at their regular rate of pay for a missed meal period.
- 10 b. Violations of Labor Code section 558 for failing to pay wages due, including those for
11 missed rest periods as required by Labor Code section 226.7. Specifically, Defendant
12 does not pay one additional hour of pay to Plaintiff and aggrieved employees at their
13 regular rate of compensation for each missed rest period.
- 14 c. Violations of Labor Code section 226, subdivision (a) for failing to provide Plaintiff
15 and aggrieved employees with adequate itemized wage statements that included,
16 among other things, meal- and rest-period premium wages equal to one-hour's wages
17 for each shift in which a meal- or rest-period was not provided.
- 18 d. Violations of Labor Code sections 201 through 203, requiring the timely payment of
19 wages. Defendant has not timely paid those aggrieved employees who are no longer
20 employed with Defendant all wages owed and due at the time of termination of their
21 employment.
- 22 e. Violations of Labor Code sections 204 and 210, based on Defendant's failure to pay
23 Plaintiff and other aggrieved employees all wages due on their regular paydays.
- 24 f. Violations of Labor Code sections 226, 246, 248.5, 1174, and 1198.5. Defendant has
25 failed to maintain and furnish all records required by Labor Code sections 226, 1174,
26 and 1198.5. Specifically, Plaintiff's wage statements have not included his accrued
27 sick days and vacation days. Plaintiff requested his records from Defendant and
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1 Defendant did not timely furnish wage statements that included his accrued sick days
2 and vacation days.

3 g. Violations of Labor Code sections 226, 246, 248.5, 1174, and 1198.5. Defendant has
4 failed to maintain and furnish all records required by Labor Code sections 226, 1174,
5 and 1198.5. Specifically, Plaintiff's wage statements have not included his accrued
6 sick days and vacation days. Plaintiff requested his records from Defendant and
7 Defendant did not timely furnish wage statements that included his accrued sick days
8 and vacation days.

9 h. Violations of Labor Code sections 551 and 552, based on Defendant's failure to
10 provide one day's rest in every week worked by Plaintiff and other aggrieved
11 employees.

12 78. As a direct and proximate result of Defendant's unlawful practices and policies,
13 Plaintiff and other aggrieved employees have suffered and continue to suffer monetary losses.

14 79. Plaintiff, on behalf of himself and all other aggrieved employees, requests civil
15 penalties against Defendant Winall Oil for violations of the Labor Code, as provided under Labor
16 Code section 2699(f), plus reasonable attorneys' fees and costs, as provided under Labor Code
17 section 2699(g)(1), in amounts to be proven at trial.

18 WHEREFORE, Plaintiff, on behalf of himself and all other aggrieved employees, prays for
19 judgment against Defendant Winall Oil as set forth below.

20 **VIII. PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, on behalf of himself and the above-described Class, requests
22 relief as follows:

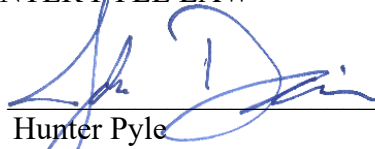
- 23 a. Certification of the above-described Class as a class action, pursuant to Code of Civil
24 Procedure section 382;
25 b. Certification of the above-described Class as a representative class under Business and
26 Professions Code section 17200;

- 1 c. Provision of Class Notice to all Class Members who worked for Defendants during the
2 Class Period;
- 3 d. A declaratory judgment that Defendants have knowingly and intentionally violated the
4 Business and Professions Code sections 17200-17208, by the conduct set forth above;
- 5 e. A declaratory judgment that Defendants' violations as described above were willful;
- 6 f. Injunctive relief to correct the violations alleged above herein;
- 7 g. An equitable accounting to identify, locate, and restore to all Class Members the
8 compensation and interest that are due;
- 9 h. An award to Plaintiff and Class Members of meal and rest period premiums pursuant to
10 Labor Code section 226.7 for failure to provide meal and rest periods;
- 11 i. An award of penalties pursuant to Labor Code section 226 to Plaintiff and Class
12 Members for failing to provide lawful itemized wage statements;
- 13 j. An award of civil penalties under Labor Code section 2698, *et seq.*
- 14 k. An order requiring Defendants to pay restitution of all amounts owed to Plaintiff and
15 Class Members for Defendants' failure to pay meal and rest period premiums, and
16 interest thereon, in an amount according to proof, pursuant to Business & Professions
17 Code section 17203;
- 18 l. An award to Plaintiff and Class Members of reasonable attorneys' fees and costs,
19 pursuant to Code of Civil Procedure section 1021.5 and Labor Code sections 218.5,
20 226(e), and 2699, and/or other applicable law;
- 21 m. An award to Plaintiff and Class Members of such other and further relief as this Court
22 deems just and proper.
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1 DATED: December 5, 2024

HUNTER PYLE LAW

2 By:

3 

4 Hunter Pyle
5 John J. Darin

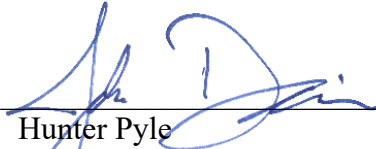
6 *Attorneys for Plaintiff, the Putative Class,*
7 *and all other Aggrieved Employees*

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff, on behalf of himself and the Putative Class, hereby demands a jury trial in this
3 matter for all claims so triable.
4

5 DATED: December 5, 2024

HUNTER PYLE LAW

6
7 By: 
8 Hunter Pyle
John J. Darin

9 *Attorneys for Plaintiff, the Putative Class,*
10 *and all other Aggrieved Employees*
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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Hunter Pyle Law, 505 14th Street, Suite 600, Oakland, California 94612. On this day, I served the following Document(s):

**SECOND SUPPLEMENTAL DECLARATION OF JOHN J. DARIN IN SUPPORT OF
PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT**

☒ By Electronic Service. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons listed below via Case Anywhere. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Kenneth H. Moreno kmoreno@murchisonlaw.com Laurie E. Yoon lyoon@murchisonlaw.com MURCHISON & CUMMING, LLP 2175 N. California Blvd., Suite 900 Walnut Creek, California 94598 Attorneys for Defendants WINALL OIL CO. ALLEN GIMENEZ, and GARY GIMENEZ
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I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, December 12, 2024.



DARLENE SANCHEZ