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

KENNETH PEFFER and REGINA
VILLEGAS, individually, on a representative
basis, and on behalf of all others similarly
situated;

Plaintiff,

vs.

DILLARD-LEWIS, INC., a North Carolina
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2223428

*[Assigned to Hon. Christian Towns, Dept S26,
for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: February 3, 2025

Time: 8:30 a.m.

Dept.: S26

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiffs in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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1 **COUNSEL'S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled over 500 employee vs. employer litigation matters during my 23
7 years in practice. Over the last 17 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 300 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in close to half of those actions to date, and anticipate
12 receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). As of the end of last year, my team and I held the record for the largest
17 known PAGA-only case in California's history as of that time - a \$12.5 million-dollar court
18 approved settlement, which followed extensive litigation, summary adjudication and writs to the
19 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior
20 Court).

21 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
22 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior
23 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
24 against Walmart that was tried to the jury in District Court for the Central District, wherein the
25 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases
26 were appealed.

27 6. I was named by the LA Times as one "Southern California Leading Lawyers" in
28 the May 2023 issue of Consumer Attorney's of Southern California (a recognition given to 17

employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that only 5% of lawyers receive.

BRIEF SUMMARY OF THE SETTLEMENT

7. Following a contested mediation, Plaintiff and Defendant (collectively, the “Parties”) reached a global settlement and eventually entered into a Class Action Settlement Agreement and Release of Claims resolving the wage and hour claims of the putative class (the “Settlement Agreement” or “S.A”), which is attached hereto as **Exhibit 1**. The Settlement Agreement seeks to release and discharge Defendant from the claims brought against it in exchange for Defendant’s agreement to pay \$550,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her share of the Net Settlement Amount without having to submit a claim form or take any action, except for those who opt-out). Plaintiff seeks to represent a class of all current and former non-exempt employees employed by Defendant in California at any time during the Class Period of October 13, 2018, through June 3, 2024. Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the Settlement Amount, Class Counsel’s litigation expenses not to exceed \$20,000, settlement administrator costs of \$6,000, PAGA Penalties of \$40,000 of which \$30,000 will be paid to the LWDA and the remaining \$10,000 will be paid to the Aggrieved Employees, and a service award not to exceed \$10,000 to each Plaintiff. After subtracting these deductions from the Settlement Amount, approximately \$280,666.67 will be available to pay individual settlement amounts to approximately 148 Class Members who do not opt-out of the settlement, as follows:

<i>Settlement Amount</i>	\$ 550,000.00
Attorneys’ Fees (1/3)	\$ 183,333.33
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 6,000.00
PAGA Penalties	\$ 40,000.00
Class Representative Service Awards	\$ 20,000.00
<i>Net Settlement Amount</i>	\$ 280,666.67

1 8. Assuming 148 Class Members, the average payment to each Class Member will
2 be approximately \$1,896.40 ($\$280,666.67 / 148$). However, the actual payment will be
3 calculated on a pro-rata basis according to the number of Weeks Worked by each Class
4 Member during the Class Period, with each Work Week having a value of approximately
5 \$26.30 ($\$280,666.67 / 10,673$ estimated Work Weeks).

6 9. Each Class Member will receive the Class Notice, explaining the nature of the
7 case, and the process for participating, objecting and opting-out, and advising of his/her
8 estimated settlement payment and the number of Work Weeks that he/she is credited with
9 working during the Class Period.

10 **PROCEDURAL BACKGROUND**

11 10. My office has performed considerable work and diligently investigated and
12 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
13 significant settlement fund for the benefit of the Class. We efficiently communicated and
14 exchanged information informally with Defense counsel which enabled the parties to
15 successfully settle the case. Because of the risks involved in litigating the case and the contested
16 legal and factual issues, my office believes this settlement to be fair, reasonable, and adequate.

17 11. After being retained by Plaintiff Kenneth Pepper, we submitted an October 12,
18 2022, a letter to the California Labor Workforce Development Agency (the “LWDA”) for civil
19 penalties under the Private Attorney General Act of 2004 (the “PAGA”), and simultaneously sent
20 a letter to Defendant requesting the production of Plaintiff’s personnel and timekeeping records
21 to further evaluate the wage and hour claims. The LWDA ultimately declined to assert
22 jurisdiction over the PAGA, thereby giving Plaintiff the right to bring PAGA claims.

23 12. On October 13, 2022, Plaintiff Pepper filed a putative class action in the San
24 Bernardino County Superior Court. Shortly thereafter, in October 2022, another employee
25 (Regina Villegas) retained Plaintiff’s counsel to obtain her employment records from Defendant
26 and evaluate her potential claims.

27 13. After the LWDA declined to assert jurisdiction over the PAGA Claims, on
28 March 1, 2023, Plaintiff Pepper filed a first amended complaint that added representative PAGA

1 Claims and added Plaintiff Villegas as a class representative and plaintiff. The first amended
2 complaint alleges the following: (a) failure to pay minimum wages, (b) failure to pay overtime
3 wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to
4 reimburse business expenses, (f) failure to timely pay final wages, (g) failure to provide accurate
5 itemized wage statements; (h) unfair and unlawful competition, and (i) related PAGA claims.

6 14. Defendant retained counsel and immediately began to defend the case. Then,
7 after early discussions among counsel, the Parties agreed to attend private mediation.

8 15. In preparation for the mediation, the Parties informally exchanged documents and
9 information that allowed both sides to calculate the potential damages and evaluate potential risk,
10 including policies and procedures pertaining to each claim alleged, and statistics relating to the
11 number of current and former employees, pay periods worked and other things. Defendant also
12 provided their written policies and practices and a robust sampling of payroll and timekeeping
13 records for Class Members. This information enabled both parties to take a deep dive into the
14 claims. Additionally, during this process, Plaintiffs and their counsel analyzed, researched, and
15 investigated the potential issues, including matters related to the calculation of damages, trial,
16 and appellate issues and risks.

17 16. On April 4, 2024, Plaintiffs and Defendant participated in mediation before Hon.
18 Jonathan Cannon (Ret.), a well-respected wage-and-hour mediator. The matter resolved at
19 mediation, and the Parties entered into the Settlement Agreement submitted herewith. The
20 Parties now seek the Court's preliminary approval of the Settlement.

21 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

22 17. The settlement was the product of extensive arm's length negotiations, facilitated
23 by an experienced mediator. Though cordial and professional, the settlement negotiations were
24 adversarial and non-collusive in nature. The settlement reached is the product of substantial
25 effort by the parties and their counsel. Although we believed that there was a possibility of
26 certifying the claims, we recognized the potential risk, expense, and complexity posed by
27 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
28 on the damages awarded, and/or on an appeal that can take several more years to litigate.

1 18. The settlement will result in a fair payment to each class member based on the
2 number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiffs and my
3 office have diligently investigated the claims and defenses on behalf of the Class Members and
4 worked to achieve a resolution of the claims to maximize the recovery by avoiding further
5 expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with
6 further litigation described above and weighing them against the benefits of a known
7 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms
8 agreed to is believed to be in the best interest of Plaintiffs and the Class, and is a fair and
9 reasonable resolution of the claims alleged.

10 19. My office brought to bear a great deal of experience in negotiating the settlement
11 of this case. As detailed herein, we engaged in the necessary discovery and investigation, making
12 it possible to exercise informed judgment throughout the settlement process, including
13 significant document review (*e.g.*, documents pertaining to Defendant's policies and procedures,
14 personnel documents, among others), and conducted an extensive analysis of the detailed class-
15 wide data provided by Defendant.

16 20. Based on my experience in other cases, including wage and hour matters, I
17 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
18 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
19 settlement at this time is in the best interests of the class. The settlement provides each class
20 member with compensation for the alleged violations when viewed in relation to the costs and
21 risks inherent in obtaining class certification and proceeding to trial.

22 21. My office, as well as Defense counsel, fully endorse the terms and conditions of
23 the settlement as set forth in the abovementioned Settlement Agreement.

24 22. Of course, the settlement amount represents a compromise figure, taking into
25 account the various risks surrounding class certification and the merits of Defendant's asserted
26 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
27 members, with no reversion to Defendant.

28 ///

1 **PLAINTIFFS' REQUESTED ENHANCEMENT PAYMENT**

2 23. Plaintiffs seek an enhancement payment of \$10,000 each for their services to the
3 Class, which I believe is fair and warranted. Mr. Pepper and Ms. Villegas came forward in an
4 effort to effectuate a policy and practice change that benefitted all other Class Members, and to
5 recover unpaid wages. They assumed significant risk in bringing this litigation—namely, had
6 they lost, she would have been ordered to pay Defendant's costs.

7 24. Plaintiffs provided invaluable assistance to my office and the Class in this case,
8 including providing factual background for the Class Complaint; reviewing the litigation
9 documents; providing information and documents about Defendant's policies and practices;
10 participating in phone calls to discuss litigation and settlement strategy; and reviewing the
11 settlement documents. Plaintiffs agreed to participate in this case with no guarantee of personal
12 benefit. At final approval, Plaintiffs will submit a comprehensive declaration setting forth all of
13 the reasons why they believe that the service award should be approved.

14 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
15 **REQUESTED FEES AND COSTS**

16 25. As set forth above, I have handled well over 300 class and representative actions,
17 have been appointed as class counsel and have successfully resolved over half of those cases, and
18 many others remain pending and will successfully resolve in the future.

19 26. When this case was taken on a contingency fee basis, with my firm agreeing to
20 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
21 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
22 and mediation costs. There was never a guarantee that we would recoup those expenditures.

23 27. It is my experience that attorney fee awards of one-third of a common fund
24 settlement is the standard in California. In this case, Plaintiffs' counsel agreed to seek one-third
25 of the Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The
26 fee is further warranted because it is within the range of reasonableness typically awarded in
27 class actions. The litigation costs are reasonably capped at \$20,000 and will be based on the
28 actual amount of costs incurred at the time of final approval.

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SUBMISSION TO THE LWDA

29. Plaintiffs have concurrently submitted the Motion, Settlement Agreement and exhibits to the LWDA in accordance with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit 5**.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “1”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

KENNETH PEFFER and REGINA
VILLEGAS, individually, on a representative
basis, and on behalf of all others similarly
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Plaintiffs,

vs.

DILLARD-LEWIS, INC., a North Carolina
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Defendants.

Case No.: CIVSB2223428
*[Assigned to Hon. Christian Towns, Dept
S26, for all purposes]*

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

1 This Class Action Settlement Agreement and Release of Claims is entered into by and
2 between Plaintiffs Kenneth Pepper and Regina Villegas (“Plaintiffs”), individually and on behalf
3 of all others similarly situated, and on behalf of the State of California, on the one hand, and
4 Defendant Dillard-Lewis, Inc. (“Defendant”), on the other, and is approved by the Parties’
5 respective counsel of record, subject to the terms and conditions hereof and the Court’s approval.

6 **A. Definitions**

7 1. “Action” or “Lawsuit” means and refers to the case entitled *Peffer v. Dillard-*
8 *Lewis, Inc.*, San Bernardino County Superior Court, Case No. CIVSB2223428.

9 2. “Administrator” means and refers to Phoenix Settlement Administrators, the
10 third-party class action settlement administrator agreed to by the Parties, that will provide the
11 Notice to the Class Members and distribute the settlement amounts as described in this
12 Agreement.

13 3. “Administration Costs” means the costs payable from the Settlement Amount to
14 the Administrator for administering this Settlement, including, but not limited to, printing,
15 distributing, and tracking documents for this Settlement, tax reporting, and deposit of the
16 employee and employer share of payroll taxes, unclaimed property due diligence, reporting and
17 remittance obligations, distributing the Settlement Amount, and providing necessary reports and
18 declarations, as requested by the Parties. The Administration Costs shall be paid from the
19 Settlement Amount, including, if necessary, any such costs in excess of the amount represented
20 by the Administrator as being the maximum costs necessary to administer the Settlement.

21 4. “Aggrieved Employee(s)” means all current and former nonexempt employees
22 employed by Defendant in California at any time during the PAGA Period.

23 5. “Agreement” or “Settlement Agreement” or “Settlement” shall mean this Class
24 Action and PAGA Settlement Agreement and Release of Claims.

25 6. “Class” is defined all current and former nonexempt employees employed by
26 Defendant in California at any time during the Class Period.

27 7. “Class Member(s)” refers to individual members of the Class.
28

1 8. “Class Counsel” refers to Brian Mankin and Kristina Carlson of Lauby, Mankin
2 & Lauby LLP.

3 9. “Class Data” means a complete list that Defendant will diligently and in good
4 faith compile from its records and provide to the Administrator on one spreadsheet which shall
5 include, for each Class Member, the individual’s full name, last known address, Social Security
6 Number, total Weeks Worked as a Class Member during the PAGA Period and the Class Period.

7 10. “Class Period” is deemed to be any time during the period of October 13, 2018,
8 through June 3, 2024.

9 11. “Class Representatives” or “Plaintiffs” means and refers to Plaintiffs Kenneth
10 Peffer and Regina Villegas.

11 12. “Complaint” refers to the operative first amended class and PAGA representative
12 action complaint filed in the Action.

13 13. “Court” (or “Judge”) means the California Superior Court, County of San
14 Bernardino.

15 14. “Defendant” means and refers to Dillard-Lewis, Inc.

16 15. “Defendant’s Counsel” or “Defense Counsel” means and refers to SV
17 Employment Law Firm, PC.

18 16. “Effective Date” means the latest of the following dates: (i) if no Class Member
19 timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement
20 Agreement under Code of Civil Procedure § 663, then the date of the Court’s Notice of Entry of
21 Order regarding Final Approval of the Settlement; (ii) if a Class Member intervenes, or files a
22 motion to vacate the judgment approving the Settlement Agreement, then sixty-one (61) calendar
23 days following the date the Court enters an order granting Final Approval, assuming no appeal is
24 filed; or (iii) if a timely appeal is filed, then the date of final resolution of that appeal or other
25 collateral attack (including any requests for rehearing and/or petitions for *certiorari*), resulting in
26 final judicial approval of the Settlement.

27 17. “Escalator Clause:” Defendant represents that there are approximately 148 Class
28 Members, who collectively worked a total of approximately 7,791 Work Weeks during the

1 period from January 1, 2020 to December 31, 2023. The Parties agree that if the total count of
2 Work Weeks in the Class Period exceeds 12,098 (which is Defendant's representation for the
3 period January 1, 2020 to December 31, 2023, extrapolated to cover the Class Period, plus 10%),
4 then the Settlement Amount shall increase by \$45.46 for each Work Week above 12,098.

5 18. "Final Approval" refers to the order of the Court granting final approval of this
6 Settlement Agreement and entering a judgment approving this Agreement on substantially the
7 terms provided herein or as may be modified by subsequent agreement of the Parties.

8 19. "Individual Class Payment" refers to each Participating Class Member's share of
9 the Net Settlement Amount, as further discussed in Paragraph 48(c) below.

10 20. "Individual PAGA Payment" refers to each Aggrieved Employee's share of the
11 PAGA Penalties, as further discussed in Paragraph 48(h) below.

12 21. "Net Settlement Amount" is the Settlement Amount less the Attorneys' Fees and
13 Costs Award (defined in Paragraph 48(f) below), the Service Payment to the Class
14 Representative as awarded by the Court, the Administration Costs, and PAGA Penalties.

15 22. "Notice" means the notice of proposed class settlement that will be sent to the
16 Class Members and which will advise each Class Member of the settlement and his or her
17 estimated Individual Class Payment and Individual PAGA Payment and will further advise of the
18 setting of a Final Approval Hearing.

19 23. "Response Deadline" is 30 calendar days from the date the Notice is mailed to the
20 Class Members.

21 24. "Objecting Class Member" means a Class Member, other than Plaintiffs, who
22 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 69(c)
23 below.

24 25. "PAGA Penalties" means the amount that the Parties have agreed to pay to the
25 Labor and Workforce Development Agency ("LWDA") in connection with the California Labor
26 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA"), as well
27 as the Individual PAGA payment allocated to each Aggrieved Employee.
28

1 26. “PAGA Period” is deemed to be any time during the period of October 13, 2021,
2 through June 3, 2024.

3 27. “Participating Class Member” means any and all Class Members who are deemed
4 to participate and receive an Individual Class Payment and do not opt-out by submitting timely
5 and valid Requests for Exclusion.

6 28. “Parties” means Plaintiffs and Defendant, collectively.

7 29. “Preliminary Approval Date” means the date the Court approves the Settlement
8 Agreement and enters the Preliminary Approval Order.

9 30. “Preliminary Approval Order” means the judicial Order to be entered by the
10 Court, upon the application or motion of the Plaintiffs, preliminarily approving this Settlement
11 and providing for the issuance of the Notice to the Class, an opportunity to opt out of the
12 Settlement, an opportunity to submit timely objections to the Settlement, and setting a final
13 approval hearing on the fairness of the terms of Settlement, including approval of Attorneys’ fees
14 and costs. Provided that the motion is consistent with the terms herein, Defendant will not object
15 to Plaintiffs’ motion for preliminary approval but will be provided with an opportunity to review
16 and comment upon the motion before it is filed.

17 31. “QSF” means the Qualified Settlement Fund set up by the Administrator for the
18 benefit of the Participating Class Members and Aggrieved Employees, and from which the
19 settlement payments shall be made.

20 32. “Released Class Claims” or “Class Claims” by the Participating Class Members
21 upon Final Approval of the Settlement will include the claims stated in the Complaint and those
22 claims that reasonably could have been brought based upon the facts in the Complaint, including
23 but not limited to: (a) failure to pay straight or minimum wages, (b) failure to pay overtime or
24 doubletime wages, (c) failure to provide meal periods or premium payments in lieu thereof, (d)
25 failure to provide rest breaks or premium payments in lieu thereof, (e) failure to reimburse
26 business expenses, (f) failure to timely pay all wages due and owing each pay period and upon
27 separation of employment, including but not limited to straight, minimum, regular, doubletime
28 and overtime wages, wage premiums, vacation wages, among others, (g) failure to provide

1 accurate itemized wage statements, (h) unfair and unlawful competition, and (i) all other claims
2 for statutory penalties based on the facts or claims alleged in the Complaint and those claims that
3 reasonably could have been brought upon the facts of the Complaint. The Released Class Claims
4 include claims pursuant to California Labor Code sections 200, 201, 202, 203, 204, 208, 210,
5 218.6, 221, 222, 223, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198,
6 1199, and 2802; the applicable IWC Wage Order; Cal. Code of Regs., tit. 8, section 11090;
7 Business and Professions Code section 17200, et seq.; and Code of Civil Procedure section
8 1021.5. The time period governing the Released Class Claims shall be the Class Period.

9 33. “Released PAGA Claims” or “PAGA Claims” means any and all PAGA claims
10 that Plaintiffs alleged against the Released Parties, on behalf of the Aggrieved Employees and
11 the State of California, based on the facts stated in the Complaint and in the relevant LWDA
12 notice letters, including all PAGA claims seeking civil penalties premised upon: (a) failure to
13 pay straight or minimum wages, (b) failure to pay for overtime or doubletime wages, (c) failure
14 to provide meal periods or premium payments in lieu thereof, (d) failure to provide rest breaks or
15 premium payments in lieu thereof, (e) failure to reimburse business expenses, (f) failure to timely
16 pay all wages due and owing each pay period and upon separation of employment, including but
17 not limited to straight, minimum, regular, doubletime and overtime wages, wage premiums,
18 vacation wages, among others, (g) failure to provide accurate itemized wage statements, (h)
19 failure to maintain employment records, and (i) all other claims for civil penalties recoverable
20 under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or
21 claims alleged in the Complaint and those claims that reasonably could have been brought upon
22 the facts of the Complaint. The time period governing the Released PAGA Claims shall be any
23 time during the PAGA Period.

24 34. “Released Parties” means Defendant and its parents, subsidiaries, directors,
25 owners, shareholders, officers, agents, attorneys, servants, joint employers and employees, past
26 and present, and each of them and anyone acting in concert with foregoing.
27
28

1 35. “Release” shall mean the release and discharge of (1) the Released Class Claims
2 by Plaintiffs and all Participating Class Members and their assignees; and, (2) the Released
3 PAGA Claims by Plaintiffs on behalf of the Aggrieved Employees and the State of California.

4 36. “Release Period” shall be the time period governing the Released Class Claims,
5 which shall be the same as the Class Period.

6 37. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 69(a)
7 below.

8 38. “Service Payments” or “Service Awards” means the amount approved by the
9 Court to be paid to Class Representatives in addition to their Individual Class Payment as a
10 Participating Class Member and Individual PAGA Payment as an Aggrieved Employee.

11 39. “Settlement Amount” is \$550,000.00, subject to increase only as to the Escalator
12 Clause. With the exception of employer-side payroll taxes, the Settlement Amount shall be used
13 to satisfy all of Defendant’s liabilities arising from the Lawsuit and Settlement, which is
14 inclusive of payments to the Participating Class Members, PAGA Penalties to the State and
15 Aggrieved Employees, attorneys’ fees and litigation costs, third party administrator (“Settlement
16 Administrator”) costs, service enhancement to the Class Representatives, and interest.
17 Defendant shall be required to separately pay the employers’ share of payroll taxes due on the
18 wage portion of the Individual Settlement Payments to the Participating Class Members, as
19 further discussed in Paragraph 48(a) below.

20 40. “Work Weeks” or “Weeks Worked” in the context of a Class Member means any
21 and all work weeks during the Class Period during which the Class Member worked at least one
22 day in California for Defendant. Likewise, in the context of Aggrieved Employees, it means any
23 and all weeks worked during the PAGA Period during which the Aggrieved Employee worked at
24 least one day in California for Defendant.

25 **B. General Terms**

26 41. On October 12, 2022, Plaintiff Pepper submitted his Notice Letter to the LWDA
27 and Defendant in connection with the alleged PAGA violations.

1 42. On October 13, 2022, Plaintiff Pepper filed a putative class action complaint
2 against Defendant in San Bernardino County Superior Court. After the LWDA declined to assert
3 jurisdiction over the PAGA claims, Plaintiffs filed the operative First Amended Complaint,
4 alleging putative class and representative PAGA claims, including: (a) failure to pay minimum
5 wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to
6 provide rest breaks, (e) failure to reimburse business expenses, (f) failure to pay all wages due
7 and owing each pay period and upon separation of employment, including but not limited to
8 minimum, regular, and overtime wages, wage premiums, vacation wages, among others (g)
9 failure to provide accurate itemized wage statements, (h) unfair and unlawful competition, and
10 (i) related claims under PAGA.

11 43. Defendant denies Plaintiffs' claims and allegations and contends that the Action is
12 not suitable for class certification.

13 44. The Class Representatives believe they can proceed with the representative and
14 class claims, that the Action is meritorious, and that class certification is appropriate.

15 45. The Parties have conducted a thorough investigation into the facts of the Action.
16 This includes conducting an extensive exchange of informal discovery, including a sampling of
17 payroll and timekeeping records for Class Members. Class Counsel is both knowledgeable about
18 and has done extensive research with respect to the applicable law and potential defenses to the
19 claims of the Class. Class Counsel has diligently pursued an investigation of the Class
20 Members' claims against Defendant. Based on the foregoing data and on their own independent
21 investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant
22 for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable,
23 and adequate and is in the best interest of the Class Members in light of all known facts and
24 circumstances, including the risk of significant delay and uncertainty associated with litigation,
25 various defenses asserted by Defendant, and numerous potential appellate issues.

26 46. On April 4, 2024, Plaintiffs and Defendant participated in a full-day mediation
27 with Hon. Jonathan Cannon (Ret.), a well-respected wage-and-hour mediator. At the conclusion
28 of mediation, extensive arms-length negotiations, and after issuance of a mediator's proposal, the

Parties reached a global settlement and entered into this Settlement. The Parties entered into a Memorandum of Understanding on April 30, 2024, memorializing the material terms of the settlement (“Memorandum of Understanding”).

47. The Parties agree that neither the Parties’ Settlement, this Agreement, nor the acts to be performed or judgment to be entered pursuant to the terms of the Settlement and Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of any statute or law or liability on the claims or allegations in the Action.

48. Stipulation for Class Certification. For settlement purposes only, Defendant will stipulate that the Participating Class Members may be conditionally certified as a Class. This stipulation to certification is in no way an admission that class action certification is proper and shall not be admissible in this or in any other action except for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties’ stipulation to class certification as part of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not be admissible in connection with, the issue of whether certification would be appropriate in a non-settlement context. Defendant expressly reserves its rights and declares that it would continue to oppose class certification and the substantive merits of the case should the Court fail to issue Final Approval. Plaintiffs expressly reserve their rights and declares that he will continue to pursue class certification and a trial should the Court fail to issue Final Approval.

C. Terms of Settlement

49. The financial terms of the Settlement are as follows:

(a) Settlement Amount: The Parties agree to settle this Action for the Settlement Amount, which will increase only if the Escalator Clause described at Paragraph 17 of this Agreement is implicated. Defendant also will be obliged to separately pay the employer’s share of payroll taxes owed on the wage portion of the Individual Class Payments. Other than the employer’s share of payroll taxes, the Settlement Amount is the maximum amount that will be paid by Defendant (subject to increase only if the Escalator Clause is implicated) and includes Individual Class Payments, Class Counsel’s Attorneys’ Fees and Costs Award, the Service

1 Payment to the Class Representative, Administration Costs, and PAGA Penalties.

2 (b) Net Settlement Amount: The Net Settlement Amount shall be paid to
3 Participating Class Members in full. If the Court reduces the Attorneys' Fees and Costs Award,
4 Service Award, or Administration Costs, or either increases or decreases the amount allocated to
5 the PAGA Penalties, the difference shall be placed in the Net Settlement Amount and allocated
6 to the Participating Class Members.

7 (c) Calculation of Individual Class Payments: The Individual Class Payment
8 for each Class Member will be calculated by the Administrator using the Class Data provided by
9 Defendant as follows. Compensable workweeks will be all Weeks Worked by the Class
10 Members during the Class Period. The dollars per compensable work week will be calculated by
11 dividing the total Weeks Worked by Class Members into the Net Settlement Amount to
12 determine a per work week value ("Workweek Value"). The Workweek Value will be
13 multiplied by the number of Weeks Worked by a Participating Class Member during the Class
14 Period to determine the distribution for a Participating Class Member. If there are any timely
15 submitted Requests for Exclusion, the Administrator shall proportionately increase the Individual
16 Class Payments for each Participating Class Member so that the amount actually distributed to
17 Participating Class Members equals 100% of the Net Settlement Amount.

18 (d) Allocation of Individual Class Payments: The Individual Class Payments
19 to Participating Class Members will be allocated as follows: 20% will be allocated as wages
20 subject to withholding of all applicable local, state and federal taxes; and, 80% will be allocated
21 for all other non-wage claims (pursuant to, e.g., Labor Code section 2802), statutory penalties
22 (pursuant to, e.g., California Labor Code sections 203, 210, 226), and interest from which no
23 taxes will be withheld. The Administrator will issue to each Participating Class Member an
24 Internal Revenue Service Form W-2 and comparable state forms with respect to the wage
25 allocation and a Form 1099 with respect to the allocations to non-wage claims, penalties and
26 interest.

27 (e) Service Payment to Class Representative: The amount, if any, awarded to
28 the Class Representatives as a Service Payments will be set by the Court in its discretion, not to

1 exceed \$10,000 to each Plaintiff, in exchange for the service that Plaintiffs performed on behalf
2 of the Class. Defendant agrees not to oppose this request. The Service Payments to the Class
3 Representatives will be paid out of the Settlement Amount. The Class Representatives will be
4 issued an IRS Form 1099 in connection with this payment and shall be solely and legally
5 responsible to pay all applicable taxes on this payment. The Parties agree that any amount
6 awarded as the Service Payments to the Class Representatives less than the requested amount
7 shall not be a basis for Class Counsel to void this Settlement Agreement. Should the Court
8 approve a lesser amount for the Service Payments, the difference shall be added to the Net
9 Settlement Amount to be distributed to the Participating Class Members.

10 (f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a
11 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
12 Settlement Amount, plus reasonable litigation costs not to exceed \$20,000 ("Attorney's Fees and
13 Cost Award"). Defendant agrees not to oppose any contention by Class Counsel that attorneys'
14 fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be
15 paid from the Settlement Amount, and, except for this award, Defendant shall have no further
16 obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court
17 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
18 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court
19 order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
20 Settlement Agreement or otherwise void the Settlement. The Administrator shall issue to Class
21 Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the
22 Court.

23 (g) Administration Costs: The fees and other charges of the Administrator
24 will be paid from the Settlement Amount, not to exceed \$6,000, unless (1) the Escalator Clause
25 is triggered (whereby any reasonable increase in Administration Costs shall be paid from the
26 increased Settlement Amount, subject to Court approval), or (2) as otherwise approved by all
27 Parties and the Court.
28

1 (h) PAGA Penalties: The Parties agree that \$40,000 is allocated to PAGA
2 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
3 amount, \$30,000 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
4 Private Attorney General Act of 2004 (“PAGA”) and \$10,000 (25%) will form the Individual
5 PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata
6 on a Work Week basis, which will be treated entirely as civil penalties and shall be reported as
7 required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the
8 Settlement.

9 (i) Tax Liability: Class Counsel and Defendant make no representations as to
10 the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiffs and the
11 Class Members are not relying on any statement or representation by Class Counsel or Defendant
12 in this regard. Plaintiffs, Participating Class Members, and Aggrieved Employees understand
13 and agree that they will be solely responsible for the payment of any taxes and penalties assessed
14 on their respective Individual Class Payments and Individual PAGA Payments, described herein.
15 Forms 1099 will be distributed in the manner required by the Internal Revenue Code of 1986 (the
16 “Code”) and consistent with this Agreement. If the Code, the regulations promulgated
17 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
18 set forth in this Section may be modified in a manner to bring Defendant into compliance with
19 any such changes. Plaintiffs, Participating Class Members, and Aggrieved Employees
20 understand and agree that they will be solely responsible for the payment of any taxes and
21 penalties assessed on their respective payments described herein.

22 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
23 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
24 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
25 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
26 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
27 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
28 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH

1 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
2 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
3 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
4 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
5 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
6 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
7 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
8 OR ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY, AND (C) IS NOT
9 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
10 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
11 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
12 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
13 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
14 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
15 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
16 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
17 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

18 (k) "Non-Reversionary" Settlement. This is a "non-reversionary" settlement.
19 Under no circumstances will any portion of the Settlement Amount revert to Defendant.
20 Participating Class Members and Aggrieved Employees will not have to make a claim in order to
21 receive an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of
22 Individual Class Payment or Individual PAGA Payments will be made directly to each
23 Participating Class Member and Aggrieved Employee. The Administrator shall be responsible
24 for accurately and timely reporting and remittance obligations with respect to unclaimed funds as
25 a result of a Participating Class Member and/or Aggrieved Employee not cashing any checks
26 delivered pursuant to the Settlement by the check cashing deadline, as set forth herein.

27 (l) Class Counsel and Plaintiffs believe that the Settlement is fair and
28 reasonable and will so represent same to the Court.

1 **D. Release by the Participating Class Members**

2 50. Upon entry of the Final Approval Order and Defendant's funding of the
3 Settlement Amount and the required employer-side payroll taxes, and except as to such rights or
4 claims as may be created by this Agreement, Plaintiffs and the Participating Class Members will
5 forever completely release and discharge the Released Parties from the Released Class Claims
6 for the Class Period.

7 51. Each Participating Class Member will be deemed to have made the foregoing
8 Release as if by manually signing it.

9 52. Class Representatives, on behalf of themselves and the Class, acknowledge and
10 agree that the claims for unpaid wages and untimely payment of wages in the Action are
11 disputed, and that the payments set forth herein constitute payment of all sums allegedly due to
12 them. Class Representatives, on behalf of themselves and the Class, acknowledge and agree that
13 Labor Code § 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides
14 in pertinent part as follows: "An employer shall not require the execution of any release of any
15 claim or right on account of wages due, or to become due, or made as an advance on wages to be
16 earned, unless payment of those wages has been made."

17 **E. Release of PAGA Claims**

18 53. Upon entry of the Final Approval Order and Defendant's funding of the
19 Settlement Amount and the required employer-side payroll taxes, Plaintiffs – in their individual
20 capacity and on behalf of the State of California and LWDA – shall completely release and
21 discharge the Released Parties from the Released PAGA Claims for the PAGA Period.

22 54. Regardless of submitting a valid Request for Exclusion, neither Plaintiffs nor any
23 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
24 releasing the Released PAGA Claims.

25 55. It is the intent of the Parties that the Final Approval Order shall have full
26 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

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1 **F. Release by Plaintiffs and Class Representatives**

2 56. Class Representatives do hereby, for themselves and their spouses, heirs,
3 successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators,
4 guardians, personal representatives, and assigns forever and completely release and discharge the
5 Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
6 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
7 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
8 damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever,
9 from the beginning of time through the execution of this Agreement, whether known or
10 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
11 upon, or relating to Class Representatives' employment with Defendant or the remuneration for
12 or termination of such employment (the "Class Representatives' Claims").

13 57. Without limiting the generality of the foregoing, this general release by Plaintiffs
14 includes all federal, state and local statutory claims, federal and state common law claims
15 (including but not limited to those for contract, tort and equity), including without limitation the
16 Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil
17 Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor
18 Standards Act, the Employment Retirement Security Income Act of 1974, the California
19 Constitution, the California Fair Employment and Housing Act, the California Unfair
20 Competition Act (California Business and Professions Code section 17200 et seq.), and the
21 California Labor Code.

22 58. Plaintiffs agree that there is a risk that any injury that he or she may have suffered
23 by reason of the Released Parties' relationship with him might not now be known, and there is a
24 further risk that said injuries, whether known or unknown at the date of this Settlement
25 Agreement, might possibly become progressively worse, and that as a result thereof further
26 damages may be sustained. Nevertheless, Plaintiffs agree to forever and fully release and
27 discharge the Released Parties, and understands that by the execution of this Settlement
28 Agreement no further claims for any such injuries that existed at the time of the execution of this

1 Settlement Agreement may ever be asserted by Plaintiffs with respect to claims arising in the
2 time period from the beginning of time to the execution of this Settlement Agreement.

3 59. Plaintiffs expressly waive and relinquish all rights and benefits afforded by
4 Section 1542 of the Civil Code of the State of California and does so understanding and
5 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
6 of the State of California states:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
8 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
9 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
10 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
11 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
OR RELEASED PARTY.

12 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
13 full and complete release and discharge of all parties, Class Representatives expressly
14 acknowledge that this Settlement Agreement is intended to include in its effect, without
15 limitation, all claims that Class Representatives knew of, as well as all claims that he does not
16 know or suspect to exist in his favor against the Released Parties, or any of them, for the time
17 period from the beginning of time to the execution of this Settlement Agreement, and that this
18 Settlement Agreement contemplates the extinguishment of any such Class Representatives'
19 Claims. Notwithstanding the above, the general release by Class Representatives shall not extend
20 to claims for workers' compensation benefits, claims for unemployment benefits, claims for state
21 disability benefits, or other claims that may not be released by law.

22 **G. Interim Stay of Proceedings**

23 60. Pending completion of all of the prerequisites necessary to effectuate this
24 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
25 effective as of the date the Parties entered into that Memorandum of Understanding dated April
26 30, 2024, except such as is necessary to effectuate the Settlement.

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1 **H. Notice Process**

2 61. Appointment of Administrator. The Parties have agreed to the appointment of the
3 Administrator to perform the duties of a settlement administrator, including mailing the Notice,
4 using standard devices to obtain forwarding addresses, independently reviewing and verifying
5 documentation associated with any claims or opt-out requests, resolving any disputes regarding
6 the calculation or application of the formula for determining the Individual Class Payment and
7 Individual PAGA Payments, drafting and mailing the settlement checks to Participating Class
8 Members and Aggrieved Employees, issuing all necessary tax forms, and performing such other
9 tasks as set forth herein or as the Parties mutually agree or that the Court orders.

10 62. Disputes Regarding Administration. Any and all disputes relating to
11 administration of the Settlement by the Administrator (except for disputes regarding Class Data)
12 shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms
13 and conditions of this Agreement, until Plaintiffs and Defendant notify the Court that all
14 payments and obligations contemplated by this Agreement have been fully carried out. Prior to
15 presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the
16 dispute without the necessity of Court intervention. The Administrator shall also be responsible
17 for issuing to Plaintiffs, Participating Class Members, and Aggrieved Employees, and Class
18 Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this
19 Agreement.

20 63. Class Data. Within fourteen (14) days after entry of the Preliminary Approval
21 Order, Defendant shall provide the Class Data to the Administrator. The Administrator will run a
22 check of the Class Members' addresses against those on file with the U.S. Postal Service's
23 National Change of Address List. The Class Data provided to the Administrator will remain
24 confidential and will not be used or disclosed to anyone, except as required by applicable tax
25 authorities, pursuant to Defendant's express written consent, or by order of the Court. Although
26 Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class
27 Counsel from communicating with Class Members regarding the Action and Settlement.
28

1 64. Total Workweeks. At least 5 days prior to mailing the Notice, the Administrator
2 shall provide an anonymized spreadsheet to Class Counsel and Defense Counsel containing a
3 preliminary calculation of all payments to be paid from the Settlement Amount, including the
4 estimated Individual Class Payments to each Class Member and Individual PAGA Payments to
5 each Aggrieved Employee. Under no circumstances will personally identifiable information
6 (including names, addresses, account numbers and social security numbers) be disclosed to Class
7 Counsel. The information will be anonymized and a person's name shall be redacted and a
8 control number used in place of the name. In the event that the total Workweeks worked by all
9 Class Members triggers the Escalator Clause, the Administrator shall notify the Parties of the
10 increased Settlement Amount, and related increased payments from the Settlement Amount,
11 including increased Attorneys' Fees and Costs and any increased Administration Costs, all of
12 which shall be subject to Court approval.

13 65. Notice. The Notice, as approved by the Court, shall be sent by the Administrator
14 to the Class Members, by first class mail, in English, within ten (10) calendar days following the
15 Administrator's receipt of the Class Data. The Administrator shall use standard devices,
16 including a skip trace, to obtain forwarding addresses of Class Members if any envelopes are
17 returned.

18 66. Returned Notice Packets. The Administrator will take steps to ensure that the
19 Notice is received by all Class Members, including utilization of the National Change of Address
20 Database maintained by the United States Postal Service to review the accuracy of and, if
21 possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an
22 updated address is located within ten (10) calendar days following both the Administrator
23 learning of the failed mailing and its receipt of the updated address. The Notice shall be identical
24 to the original Notice, except that it shall notify the Class Member that the exclusion (opt-out)
25 request or objection must be returned by the later of the Response Deadline or fifteen (15) days
26 after the remailing of the Notice.
27
28

1 67. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
2 if an envelope has not been returned to Administrator by the Response Deadline that the Class
3 Member received the Notice.

4 68. Disputes Regarding Class Data. Class Members are deemed to participate in the
5 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the Released
6 PAGA Claims. The Notice will inform Class Members of his/her estimated Individual Class
7 Payment and Individual PAGA Payment, as well as the number of weeks he/she worked during
8 the Class Period and the PAGA Period. Class Members may dispute their Weeks Worked if they
9 feel they should be credited with more Weeks Worked in the Class Period and/or PAGA Period
10 in California than Defendant's records show by timely submitting evidence to the Administrator.
11 Defendant's records will be presumed determinative absent reliable evidence to rebut
12 Defendant's records, but the Administrator will evaluate the evidence submitted by the Class
13 Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to
14 meet and confer in good faith about the evidence to determine the Class Member's actual
15 number of Work Weeks and estimated Individual Class Payment and Individual PAGA Payment.
16 If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the
17 Court to render a final decision. Class Members and Aggrieved Employees will have until the
18 Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.

19 69. Declaration of Due Diligence. The Administrator shall provide counsel for the
20 Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due
21 diligence and proof of mailing with regard to the mailing of the Notice.

22 70. Class Members' Rights. Each Class Member will be fully advised of the
23 Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion
24 from the Class Claims portion of the Settlement. The Notice will inform the Class Members of
25 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
26 in accordance with the following guidelines:

27 (a) Requests for Exclusion from Class. Any Class Member, other than
28 Plaintiffs, may request to be excluded from the Class by submitting a "Request for Exclusion" to

1 the Administrator, postmarked on or before the Response Deadline. The Request for Exclusion
2 should state:

3 “I WISH TO BE EXCLUDED FROM THE CLASS IN THE
4 *PEFFER v. DILLARD-LEWIS, INC.* LAWSUIT. I UNDERSTAND
5 THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT
6 CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS
7 PAYMENT FROM THIS LAWSUIT.”

8 To be valid, any Request for Exclusion must include the full name, address, telephone
9 number, last four digits of the social security number or date of birth, and signature of the Class
10 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
11 Administrator at the specified address set forth in the Notice. Any such Request must be made in
12 accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if
13 postmarked by the Response Deadline, unless the Parties otherwise agree in writing. Any Class
14 Member who timely requests exclusion in compliance with these requirements: (i) will not have
15 any rights under this Agreement, including the right to object, appeal or comment on the
16 Settlement; (ii) will not be entitled to receive the Individual Class Payment under this
17 Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Class Member
18 who is an Aggrieved Employee who requests timely exclusion will still be subject to the
19 Released PAGA Claims to the fullest extent permitted by law and receive an Individual PAGA
20 Payment. All Parties and their counsel, including Defendant’s respective members, member
21 managers, owners, officers, and directors, shall not encourage or solicit opt-outs or objections,
22 directly or indirectly, through any means.

23 (b) Binding Effect on Participating Class Members. All Participating Class
24 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
25 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have
26 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
27 Settlement.
28

1 (c) Objections to Settlement. Any Class Member, other than Plaintiffs, who
2 do not submit a valid and timely Request for Exclusion may object to the terms of this
3 Agreement. To object, a Class Member shall inform the Administrator, in writing, of his or her
4 objection which must be postmarked by the Response Deadline at the address set forth in the
5 Notice. Such objection shall include the Objecting Class Member's full name, address,
6 telephone number, last four digits of the social security number or date of birth, signature, and
7 dates of employment with Defendant, in addition to the case name and number, the basis for the
8 objection, including any legal support and each specific reason in support of the objection, as
9 well as any documentation or evidence in support thereof, and, if the Objecting Class Member is
10 represented by counsel, the name and address of his or her counsel. The Administrator shall
11 provide objections, if any, to Class Counsel and Defense Counsel within three (3) calendar days
12 of receipt, and the Administrator shall attach the same to its declaration of due diligence and file
13 with the Court prior to the Final Approval Hearing. An Objecting Class Member remains
14 eligible to receive monetary compensation from the Settlement. Plaintiffs and Defendant shall
15 not be responsible for any fees, costs, or expenses incurred by an Objecting Class Member
16 and/or his or her counsel related to any objections to the Settlement. Submitting an objection
17 does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by
18 becoming a party of record by timely and properly intervening or filing a motion to vacate the
19 judgment under Code of Civil Procedure § 663.

20 (d) Failure to Object. Any Class Member who does not timely and properly
21 become a party of record by intervening or filing a motion to vacate the judgment waives any
22 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
23 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
24 under California Code of Civil Procedure section 473, and extraordinary writs.

25 (e) Responses to Objections. Counsel for the Parties may file a response to
26 any objections submitted by an Objecting Class Member at least five (5) court days before the
27 date of the Final Approval Hearing.
28

1 (f) Class Members will have until the Response Deadline to object or submit
2 a Request for Exclusion to the Administrator by U.S. Mail. The Administrator shall disclose
3 jointly to Class Counsel and Defense Counsel what objections or Requests for Exclusion were
4 timely submitted on a weekly basis, and upon the request of Class Counsel or Defense Counsel.

5 71. Defendant's Option to Terminate. If ten or more Class Members submit requests
6 for exclusion, Defendant, at its sole option, may nullify the Settlement within fifteen (15)
7 calendar days of learning that 10 or more of the Class Members timely and properly requested
8 exclusion from the Settlement.

9 72. Funding of the Settlement Amount. Defendant shall fund the Settlement Amount
10 within 15 days after the Effective Date (plus any employer payroll tax obligations owed) to the
11 Settlement Administrator.

12 73. Acceleration Clause. In the event that Defendant fails to make any payments
13 outlined above within 7 calendar days of the respective due date, Class Counsel shall send a
14 notice of default to Defense Counsel. Defendant will then have seven (7) calendar days after
15 issuance of the notice of default to cure and bring all payments up to the current required
16 amount. If Defendant fails to timely cure the late payment, all remaining balances shall
17 immediately become due and payable.

18 74. Distribution of Funds. No later than ten (10) calendar days after the receipt of
19 each payment referenced in Paragraph 71 above, the Settlement Administrator will issue the
20 Individual Class Payments to the Participating Class Members, the payment to Class Counsel for
21 the Attorneys' Fees and Costs Award, the Service Payment to the Class Representative, the
22 payment to the LWDA for PAGA Penalties, the Individual PAGA Payments to Aggrieved
23 Employees for PAGA Penalties, and will pay itself the Settlement Administration Costs
24 according to the percentages and/or amounts set forth herein.

25 75. Deadline for Cashing Settlement Checks. Participating Class Members and
26 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
27 Administrator to cash each settlement check. If a check is not cashed within the 180-day period,
28 the check will be voided, and a stop-payment will be issued. If the first installment is not cashed

1 within 180 days, the Settlement Administrator will hold the funds in trust, pending a request by
2 the recipient to have the payment reissued. However, once 180 days has passed after the final
3 check is mailed to the Participating Class Members and Aggrieved Employees, the Settlement
4 Administrator shall issue all unclaimed funds (from both installments) to the California State
5 Controller's Office in the name of the Participating Class Member or Aggrieved Employee,
6 unless practice and precedent in the San Bernardino courts requires the funds to go to a *cy pres*
7 recipient. In that case, the Parties agree that Disabled American Veterans Charitable Service
8 Trust is an appropriate *cy pres* recipient, as and if necessary. The Release will be binding upon
9 all Participating Class Members and Aggrieved Employees even if they do not cash their checks
10 within the 180-day period. In the event that any settlement check is returned to the Settlement
11 Administrator within 180 days of mailing, the Settlement Administrator will, within five (5)
12 business days of receipt of the returned settlement check, perform a skip trace to locate the
13 individual, and notify Defense Counsel and Class Counsel of the results. If a new address is
14 located by these means, the Administrator will have ten (10) business days to re-issue the check.
15 Neither Defendant, Defense Counsel, Class Counsel, Plaintiffs, nor the Settlement Administrator
16 will have any liability for lost or stolen settlement checks, forged signatures on settlement
17 checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the
18 event a Participating Class Member or Aggrieved Employee notifies the Settlement
19 Administrator that he or she believes that a settlement check has been lost or stolen, the
20 Settlement Administrator shall immediately stop payment on such check. If the check in
21 question has not been negotiated prior to the stop payment order, the Settlement Administrator
22 will issue a replacement check.

23 **I. Duties of the Parties Prior to the Court's Approval**

24 76. Promptly after execution of this Agreement, Plaintiffs will move the Court for
25 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
26 accomplishing the following:

- 27 (a) Approving as to form and content the proposed Notice;
28

(b) Directing the mailing of the Notice by first class mail to the Class Members;

(c) Preliminarily approving this Settlement;

(d) Preliminarily certifying the class for purposes of this Settlement;

(e) Advising the LWDA of the proposed Settlement; and

(f) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate.

J. Duties of the Parties Following Court's Final Approval

77. In connection with the Final Approval Hearing provided for in this Agreement, Class Counsel shall submit a proposed Final Approval Order:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representatives, and the payment to the Administrator for costs of administering the settlement; and

(c) Entering judgment approving settlement.

K. Voiding the Agreement

78. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Agreement which effects a fundamental change of the Settlement, the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

79. If the Settlement is voided or fails for any reason, Plaintiffs and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

1 80. If the Settlement is voided or fails for any reason, any costs incurred by the
2 Administrator shall be borne equally by Defendant and Plaintiffs, unless otherwise specified in
3 this Agreement.

4 **L. Other Terms**

5 81. Waiver. The waiver by one Party of any breach of this Agreement by another
6 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

7 82. Parties' Authority. The signatories hereto represent that they are fully authorized
8 to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

9 83. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
10 accomplish the terms of this Agreement, including but not limited to, execution of such
11 documents and to take such other action as may reasonably be necessary to implement the terms
12 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
13 contemplated by this Agreement and any other efforts that may become necessary by order of the
14 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as
15 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
16 cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's
17 preliminary and final approval of the settlement, and the final entry of judgment.

18 84. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
19 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
20 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
21 cause of action or rights released and discharged by this Agreement.

22 85. No Admission. Defendant denies any and all liability to Plaintiffs and/or any
23 Class Member and/or Aggrieved Employee in this Action, as to any and all causes of action that
24 were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to
25 settle and compromise the matters at issue in the Complaint to avoid further substantial expense
26 and the inconvenience and distraction of protracted and burdensome litigation. Defendant has
27 taken into account the uncertainty and risks inherent in litigation, and without conceding any
28 infirmity in the defenses that they have asserted or could assert against Plaintiffs, has determined

1 that it is desirable and beneficial that Plaintiffs' claims be settled in the manner and upon the
2 terms and conditions set forth in this Agreement.

3 86. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
4 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
5 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
6 Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
7 Agreement with the intention of avoiding further disputes and litigation with the attendant
8 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
9 related documents such as the notices, and motions for preliminary and final approval, shall,
10 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
11 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
12 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
13 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
14 approved, the stipulation will be of no force or effect.

15 87. Notices. Unless otherwise specifically provided herein, all notices, demands or
16 other communications given hereunder shall be in writing and shall be deemed to have been duly
17 given as of the third business day after mailing by United States registered or certified mail,
18 return receipt requested, addressed:

19 *To the Class:*

20 Brian J. Mankin
21 *brian@lmlfirm.com*
22 Lauby, Mankin & Lauby LLP
23 5198 Arlington Ave, PMB 513
24 Riverside, CA 92504
25 Tel: (951) 320-1444 | Fax: (951) 320-1445

26 *To Defendant:*

27 Jade Butman, Esq.
28 *jbutman@svelf.com*
SV Employment Law Firm, PC
160 Bovet Road, #401
San Mateo, CA 94402
Tel: 650-265-0222 | Fax: 650-265-0223

1 88. Construction. The Parties hereto agree that the terms and conditions of this
2 Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and
3 that this Agreement shall not be construed in favor of or against any Party by reason of the extent
4 to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiffs
5 and Defendant expressly waive the common-law and statutory rule of construction that
6 ambiguities should be construed against the drafter of an agreement and further agree, covenant,
7 and represent that the language in all parts of this Agreement shall be in all cases construed as a
8 whole, according to its fair meaning.

9 89. Captions and Interpretations. Paragraph titles or captions contained herein are
10 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
11 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
12 contractual and not merely a recital.

13 90. Modification. This Agreement may not be changed, altered, or modified, except
14 in writing and signed by the Parties hereto, and approved by the Court. This Settlement
15 Agreement may not be discharged except by performance in accordance with its terms or by a
16 writing signed by all of the Parties hereto.

17 91. Choice of Law. This Settlement Agreement shall be governed by and construed,
18 enforced and administered in accordance with the laws of the State of California, without regard
19 to its conflicts-of-law rules.

20 92. Integration Clause. This Settlement Agreement contains the entire agreement
21 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
22 or contemporaneous agreements, understandings, representations, and statements, whether oral
23 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
24 hereunder may be waived except in writing.

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

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

6 95. Counterparts. This Agreement may be executed in counterparts, and when each
7 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
8 original, and, when taken together with other signed counterparts, shall constitute one fully
9 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
10 signatures shall have the same force and effect as an original.

11 Dated: Sep 18, 2024

PLAINTIFF AND CLASS REPRESENTATIVE

12
13 
Kenneth peffer (Sep 18, 2024 16:43 PDT)

14 Kenneth Pfeffer

15 Dated: _____

PLAINTIFF AND CLASS REPRESENTATIVE

16
17
18 Regina Villegas

19 Dated: _____

DEFENDANT DILLARD-LEWIS, INC.

20
21 By: Steven R. Hester, its Vice President

22 **APPROVED AS TO FORM:**

23
24 Dated: _____

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

25
26
27 Brian J. Mankin
28 Attorneys for Plaintiffs

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

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

Dated: _____

PLAINTIFF AND CLASS REPRESENTATIVE

Kenneth Peffer

Dated: Sep 25, 2024

PLAINTIFF AND CLASS REPRESENTATIVE


[Regina Knox \(Sep 25, 2024 10:07 PDT\)](#)

Regina Villegas

Dated: _____

DEFENDANT DILLARD-LEWIS, INC.

By: Steven R. Hester, its Vice President

APPROVED AS TO FORM:

Dated: Sept. 25, 2024

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP


Brian J. Mankin
Attorneys for Plaintiffs

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

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7 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
8 original, and, when taken together with other signed counterparts, shall constitute one fully
9 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
10 signatures shall have the same force and effect as an original.

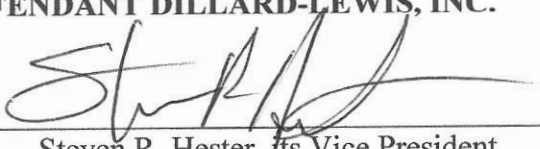
11 Dated: _____ **PLAINTIFF AND CLASS REPRESENTATIVE**

12
13
14 _____
Kenneth Peffer

15 Dated: _____ **PLAINTIFF AND CLASS REPRESENTATIVE**

16
17
18 _____
Regina Villegas

19 Dated: September 25, 2024 **DEFENDANT DILLARD-LEWIS, INC.**

20
21 
22 _____
By: Steven R. Hester, its Vice President

23 **APPROVED AS TO FORM:**

24 Dated: _____ **CLASS COUNSEL**
LAUBY, MANKIN & LAUBY LLP

25
26
27 _____
Brian J. Mankin
Attorneys for Plaintiffs

1 Dated: September 25, 2024

2 **DEFENSE COUNSEL**
SV EMPLOYMENT LAW FIRM, PC

3 *Jade Butman*
4 Jade Butman, Esq.
5 Attorneys for Defendant
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EXHIBIT “2”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Peffer v. Dillard-Lewis, Inc.

(San Bernardino County Superior Court, Case No. CIVSB2223428)

***The San Bernardino County Superior Court authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Defendant Dillard-Lewis, Inc. (“Defendant”) for alleged violations of the California Labor Code.

The Action was filed by Kenneth Peffer and Regina Villegas (“Plaintiffs” or “Class Representatives”) and seeks payment of (1) unpaid wages, meal and rest break premiums, expense reimbursement, certain other related claims, statutory damages and penalties, interest and attorneys’ fees on behalf of a class of nonexempt employees employed by Defendant Dillard-Lewis, Inc. in California (“Class Members”) during the Class Period (October 13, 2018, through June 3, 2024); and (2) penalties under the California Private Attorneys General Act (“PAGA”) for all nonexempt employees employed by Defendant Dillard-Lewis, Inc. in California during the PAGA Period (October 13, 2021, to June 3, 2024) (“Aggrieved Employees”). (Plaintiffs and Defendant shall be collectively referred to as the “Parties.”)

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring Defendant to provide funds that will be used to pay Individual PAGA Payments to Aggrieved Employees and a lump sum to the California Labor and Workforce Development Agency (“LWDA”). Based on Defendant’s records, and the Parties’ current assumptions, your Individual Class and PAGA Payments are shown in the charts below, along with the applicable data points from which these estimates are derived.

[CLASS MEMBER NAME] **[ID/CONTROL NUMBER]**

Two Parts	Weeks Worked During: Class Period (Class Member) and PAGA Period (Aggrieved Employee)	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Please note that the actual amount you receive may be different from the above and will depend on several factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.) If you believe that you worked more weeks during the periods discussed above, you can submit a challenge by **DATE, 2024** (“**Response Deadline**”). See **Section 4** of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2024 (see Section 6 for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims. See Section 6 of this Notice.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an Objection stating why you object to the settlement by [REDACTED], 2024 (see Section 7 for more details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit a written dispute to the Administrator (see Section 4 for more details on how to submit a Dispute Form). Defendant’s records will be presumed correct, but you may provide evidence to the Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT’S NOT REQUIRED	
DATE: DATE, 2024 TIME: 8:30 A.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former employees of Dillard-Lewis, Inc. The Action accuses Defendant of violating California labor laws by failing to pay all wages, including straight, minimum, overtime and doubletime wages, failing to provide meal and rest breaks, failing to reimburse business expenses, failing to timely pay wages each period and upon separation of employment, and failing to provide accurate itemized wage statements. Based on the same claims, Plaintiffs have also asserted an unfair competition claim and a claim for civil penalties under PAGA.

Defendant strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

All Parties are represented by attorneys in the Action.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendant or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”), Plaintiffs and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed

Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strengths and weaknesses of the claims and the risks and uncertainties to both sides of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendant Will Pay \$550,000 as the “Settlement Amount.” Defendant has agreed to pay a total Settlement Amount of \$550,000 and will deposit the Settlement Amount into an account controlled by the Administrator. The Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s Costs, and a lump sum classified as penalties pursuant to PAGA to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendant will fund the Settlement Amount in one payment to the Class Members approximately 15 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

A. Up to one-third of the Settlement Amount (\$183,333.33) to Class Counsel for attorneys' fees and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

B. Up to \$10,000 to each of the Class Representatives as a Service Payment for litigating the Action, working with Class Counsel and representing the Class. The Class Representative's Service Payments will be the only monies Plaintiffs will receive other than Plaintiffs' Individual Class Payment and any Individual PAGA Payment.

C. \$6,000 to the Settlement Administrator for services administering the Settlement.

D. Up to \$40,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their share of Weeks Worked during the PAGA Period.

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

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the remainder (the “Net Settlement Amount”) by making Individual Class Payments to Participating Class Members based on their pro rata share of Weeks Worked during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendant are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and the remaining 80% to all non-wage claims (for example, expense reimbursement), penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes they owe on the Wage Portion. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. Assuming no objections or appeals are filed, your Individual Settlement Payment will be mailed approximately 45 days after the Court grants Final Approval. Participating Class Members and Aggrieved Employees will have 180 days to cash their settlement check. If a check is not cashed within the 180-day period, the check will be voided, and a stop-payment will be issued. The Administrator shall issue all unclaimed funds to the California State Controller's Unclaimed Property Fund in the name of the Participating Class Member or Aggrieved Employee, so that the Participating Class Member or Aggrieved Employee can attempt to collect the funds at a later date.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

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

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

9. Participating Class Members' Release. After the Judgment is final and Defendant has fully funded the Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective representatives, agents, heirs, and assigns, release the Released Parties from the claims stated in the operative complaint and those claims that reasonably could have been brought based upon the facts in the operative complaint and in the relevant LWDA notice letters, including but not limited to: (a) failure to pay straight or minimum wages, (b) failure to pay overtime or doubletime wages, (c) failure to provide meal periods or premium payments in lieu thereof, (d) failure to provide rest breaks or premium payments in lieu thereof, (e) failure to reimburse business expenses, (f) failure to timely pay all wages due and owing each pay period and upon separation of employment, including but not limited to straight, minimum, regular, doubletime and overtime wages, wage premiums, vacation wages, among others, (g) failure to provide accurate itemized wage statements, (h) unfair and unlawful competition, and (i) all other claims for statutory penalties based on the facts or claims alleged in the Complaint and those claims that reasonably could have been brought upon the facts of the Complaint. The Released Class Claims include claims pursuant to California Labor Code sections 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 222, 223, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802; the applicable IWC Wage Order; Cal. Code of Regs., tit. 8, section 11090; Business and Professions Code section 17200, et seq.; and Code of Civil Procedure section 1021.5. The time period governing the Released Class Claims shall be the Class Period.

As used herein, “Released Parties” means Defendant and its parents, subsidiaries, directors, owners, shareholders, officers, agents, attorneys, servants, joint employers and employees, past and present, and each of them and anyone acting

in concert with foregoing.

10. Release of Released PAGA Claims. After the Court's judgment is final, and Defendant has paid the Settlement Amount (and separately paid the employer-side payroll taxes), Plaintiffs on behalf of themselves, the State of California and the LWDA shall release the Released Parties of all PAGA claims that Plaintiffs alleged against the Released Parties, on behalf of the Aggrieved Employees and the State of California, based on the facts stated in the operative Complaint and in the relevant LWDA notice letters, including all PAGA claims seeking civil penalties premised upon: (a) failure to pay straight or minimum wages, (b) failure to pay for overtime or doubletime wages, (c) failure to provide meal periods or premium payments in lieu thereof, (d) failure to provide rest breaks or premium payments in lieu thereof, (e) failure to reimburse business expenses, (f) failure to timely pay all wages due and owing each pay period and upon separation of employment, including but not limited to straight, minimum, regular, doubletime and overtime wages, wage premiums, vacation wages, among others, (g) failure to provide accurate itemized wage statements, (h) failure to maintain employment records, and (i) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 et seq. based on the facts or claims alleged in the Complaint and those claims that reasonably could have been brought upon the facts of the Complaint. The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Weeks Worked for all Participating Class Members during the Class Period, and (b) multiplying the result by the number of Weeks Worked credited to each individual Participating Class Member during the Class Period.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$10,000 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.

3. Disputing Weeks Worked. The number of weeks you worked during the Class Period and PAGA Period, as recorded in Defendant’s records, are stated in the tables on page 2 of this Notice. You have until **DATE** (“Response Deadline”) to dispute the number of Workweeks credited to you by submitting evidence to the Administrator. Section 9 of this Notice has the Administrator’s contact information.

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

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (which includes every Class Member who doesn't opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

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

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not later than the Response Deadline.

If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Administrator a “Request for Exclusion” letter/card postmarked no later than [REDACTED], 2024 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE CLASS IN THE *PEFFER V. DILLARD-LEWIS, INC.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM THIS LAWSUIT.”

Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Claims remain eligible to receive an Individual PAGA Payment.

If you do not want to participate in the Settlement, the Administrator will exclude you based on timely receipt of a writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as *Peffer v. Dillard-Lewis, Inc.*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and last four digits of social security number or your date of birth for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator by [REDACTED], 2024 (the “Response Deadline”), or it will be invalid.** Section 9 of the Notice has the Administrator’s contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. **The deadline for sending written objections to the Administrator is [REDACTED], 2024 (the “Response Deadline”).**

If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, and the objection must include your full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with Defendant, in addition to the case name and number (*Peffer v. Dillard-Lewis, Inc.*, Case No. CIVSB2223428), the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof. Additionally, if you are represented by an attorney, the objection must include the name and address of your attorney. This objection and all supporting information must be sent to the Administrator at the address listed in Section 9, **postmarked** on or before [REDACTED], 2024.

If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. WHEN IS THE FINAL APPROVAL HEARING?

On [REDACTED], 2024, the Court will hold a public hearing in Department S26 of the Superior Court for the State of California, County of San Bernardino, 247 West 3rd Street, San Bernardino, CA 92415, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel's applications for attorneys' fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiffs' request for the service award. This hearing may be continued or rescheduled by the Court. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the process to Opt-Out or Object, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you may contact the Administrator for more information or to request that a copy of this Notice be sent to you in the mail. And you may also contact Class Counsel. Contact information for both the Administrator and Class Counsel is provided here:

Settlement Administrator	Class Counsel
Name Mailing Address Telephone Number	Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Kristina Carlson, Esq. <i>kristina@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444

You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on DATE, 2024 and available to be inspected at any time during regular business hours at the Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

DO NOT TELEPHONE THE COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT “3”



LAUBY, MANKIN & LAUBY LLP

October 25, 2022

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Dillard-Lewis, Inc.
4209 Willow Oak Road
Raleigh, NC 27604

Dillard-Lewis, Inc.
Attn: Valerie Dunning
P.O. Box 40686
Raleigh, NC 27629

Re: PAGA Civil Penalty Claim
Kenneth Pepper and Regina Villegas v.
Dillard-Lewis, Inc., dba Highland Express Shuttle Service
LWDA Case No. LWDA-CM-913503-22

To the Labor and Workforce Development Agency and Dillard-Lewis, Inc.:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as amended notification of the PAGA civil penalty claim of aggrieved employees Kenneth Pepper and Regina Villegas (“Claimants”), on behalf of the State of California and all Aggrieved Employees, against their former employer, Dillard-Lewis, Inc., dba Highland Express Shuttle Service., and any affiliated entities (collectively, the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant Pepper was employed by the Company from approximately 2018 through September 2022. Claimant Villegas was employed by the Company from approximately March 2020 through October 2022. Claimants allege that they and all other employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to which Claimants were subjected during her employment.

For instance, at all relevant times, Claimants and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. As one specific example, Claimants and the Aggrieved Employees were frequently required to perform off-the-clock work at the beginning and end of shifts without compensation (such as completing pre- and post-trip inspections, fueling, and other tasks). And Claimants and the Aggrieved Employees were often required to perform work while clocked out for meal periods, leading to uncompensated work. These

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practices violate California law and led to minimum and overtime wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation”); See also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company’s control and where the tasks served the employer’s interests).

Claimants were also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company’s policies and practices, as well as the hectic and demanding workload, Claimants were subjected to meal period violations when: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts in excess of 10 hours.

The Company also failed to provide Claimants with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimants’ rest breaks and Claimants were often not authorized and/or permitted to take mandated rest breaks. Furthermore, on occasions when Claimants worked 10 hours or more in a shift, the Company failed to authorize and/or permit the mandated additional rest breaks.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, meal and rest break premiums, and the Company further failed to pay the Aggrieved Employees for mandated sick time at a rate “calculated in the same manner as the regular rate of pay.”

Also, the Company required Claimants and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company via phone and text message. Finally, during employment with the Company, Claimants received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimants allege that she worked under the joint direction and control of the entities listed herein and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that the entities listed herein acted as a single employer of Claimants and the Aggrieved Employees. Furthermore, on information and belief, the entities listed herein are an integrated enterprise and should be treated as a single employer because the entities share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, the entities listed herein share common management, a centralized control of labor operations, and common ownership or financial control. Claimants also allege the entities listed herein were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others.

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As a result of these violations, and others described below, Claimants allege that they and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimants and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked and the failure to pay overtime. This resulted in earned, but unpaid, wages due and owing to Claimants and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.” Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimants and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company's policies described above. Although the Company was required to pay Claimants and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee's regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

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**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimants and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimants and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 210 and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, [...] any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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At all times pertinent hereto, the Company failed to provide accurate itemized wage statements due to violations including: failure to accurately state total hours worked (the paystubs failed to accurately reflect total compensable hours); failure to accurately state gross wages earned, all deductions, and net wages earned (due to, for example, the failure to pay all required minimum and overtime wages); failure to state the applicable hourly rates (including the accurate overtime rate of pay); failure to state the accurate start and end dates of the pay period; failure to accurately state the name and address of the legal entity that is the employer, and; failure to accurately state the corresponding number of hours worked at each hourly rate. Additionally, the Company's wage statements directly violated Labor Code § 226(a) each period due to the failure to pay and report premium wages for denied meal/rest breaks under § 226.7. Accordingly, Labor Code §§ 226.3 and 2699 impose civil penalties for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

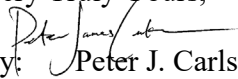
(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants are entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimants seek attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimants become aware of any additional claims for Labor Code violations related to their employment and/or other employees of the Company, they reserve the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call.

Very Truly Yours,

By:  Peter J. Carlson, Esq.

E-mail: peter@lmlfirm.com

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EXHIBIT “4”



CASE ASSUMPTIONS

Class Members	175
Opt Out Rate	1%
Opt Outs Received	4
Total Class Claimants	171
Subtotal Admin Only	\$6,501.72

Flat Fee Total \$6,000.00

For 175 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

April 23, 2024

Case: Pepper vs. Dillard-Lewis, Opt-Out & PAGA Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Brian J. Mankin
Firm: Lauby, Mankin & Lauby, LLP
Contact Number: (951) 320-1444
Email: brian@lmfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly. Estimate is based on **175** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.00	30		\$60.00
NCOA (USPS)	\$35.00	1		\$35.00
Total				\$595.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Website

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Data Merge & Duplication Scrub	\$0.10	175		\$17.50
Notice Packet & Opt-Out Form	\$1.30	175		\$227.50
Estimated Postage (up to 2 oz.)*	\$0.64	175		\$112.00
Static Website	\$200.00	1		\$200.00
Total				\$757.00

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



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CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Skip Tracing Undeliverables	\$1.00	26		\$26.25
Remail Notice Packets	\$1.00	23		\$23.25
Estimated Postage	\$0.64	23		\$14.88
Programming Undeliverables	\$50.00	2		\$100.00
			Total	\$274.38

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Database	\$150.00	1		\$150.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	4		\$220.00
Deficiency & Dispute Letters	\$10.00	9		\$90.00
Case Manager	\$85.00	2		\$170.00
			Total	\$830.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	2		\$270.00
Mail Class Checks *	\$0.90	171		\$153.90
Estimated Postage	\$0.64	171		\$109.44
			Total	\$1,128.34

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	2		\$230.00
Remail Checks (Postage Included)	\$2.00	26		\$52.00
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	4		\$340.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	3		\$255.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting & Escheating to the State of CA Included)	\$1,300.00	1		\$1,300.00
Total				\$2,917.00

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$6,501.72



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT “5”