

1 BRANDON BROUILLETTE, ESQ. (SBN 273156)
bbrouillette@crosnerlegal.com
2 CHAD SAUNDERS, ESQ. (SBN 257810)
chad@crosnerlegal.com
3 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
4 **CROSNER LEGAL, PC**
9440 Santa Monica Blvd. Suite 301
5 Beverly Hills, CA 90210
Tel: (866) 276-7637
6 Fax: (310) 510-6429

7 *Attorneys for Plaintiff David Josephson*

8
9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**
11

12
13 DAVID JOSEPHSON, as an individual on behalf
of himself and on behalf of all others similarly
14 situated,

15 Plaintiff,

16 v.

17 LAMON CONSTRUCTION COMPANY INC., a
California Corporation,

18 Defendant.
19
20
21
22
23
24
25
26
27
28

Case No.: 2:23-cv-00043-DAD-AC

**DECLARATION OF CHAD SAUNDERS
IN SUPPORT OF MOTION FOR
APPROVAL OF SETTLEMENT
UNDER PRIVATE ATTORNEYS
GENERAL ACT**

Date: December 18, 2024

Time: 10:00 a.m.

Place: Courtroom 26, 8th Floor

1 uninterrupted thirty minutes. Plaintiff likewise alleges he and other employees consistently were
2 unable to take timely, off duty, ten-minute rest periods. Finally, Plaintiff alleges he and other aggrieved
3 employees had to drive their personal vehicles to/from Defendant's facility to gather and return
4 equipment prior to the start of his shifts but were not reimbursed for their mileage or use of their
5 personal vehicles on company business.

6 6. Based on these allegations, on November 8, 2022, Plaintiff filed a complaint against
7 Defendant in the Sutter County Superior Court, alleging both class claims and individual statutory
8 claims asserted by Plaintiff. Defendant removed the Class Action Complaint to this Court on January
9 9, 2023. Plaintiff subsequently filed a first amended complaint to the Class Action Complaint. On
10 January 18, 2023, Plaintiff filed a separate representative PAGA Complaint against Defendant, also
11 in Sutter County Superior Court. Defendant likewise removed the PAGA Complaint to this Court on
12 February 22, 2023, and the Parties stipulated to consolidate the two matters, and they were
13 consolidated for all pre-trial purposes under case number 2:23-cv-00043. The PAGA Complaint is the
14 "Operative Complaint" for the purposes of this Settlement.

15 7. On April 7, 2023, Defendant filed motions to dismiss and motions to compel arbitration
16 as to both Complaints based on section 301 of the Labor Management Relations Act and a collective
17 bargaining agreement covering Plaintiff's employment. Plaintiff filed a motion to remand. On
18 February 1, 2024, the Court granted Defendant's motions to compel arbitration as to the amended
19 Class Action Complaint and as to Plaintiff's individual PAGA claims under the PAGA Complaint,
20 and the representative PAGA claims were stayed. The Parties agreed that that class action component
21 of the Class Action Complaint, as amended, was no longer viable by virtue of the operative collective
22 bargaining agreement containing a class action waiver. Accordingly, only Plaintiff's individual claims
23 in the Class Action Complaint proceeded to arbitration.

24 8. On or about February 27, 2024, the Parties commenced arbitration before Barry
25 Winograd, Esq. as to all of Plaintiff's individual claims under both complaints. On March 13, 2024,
26 Defendant renewed its motions to dismiss before Mr. Winograd and, after the motions were fully
27 briefed and a hearing was held, Arbitrator Winograd issued a decision denying both motions on April
28 9, 2024.

9. Following denial of the motions to dismiss, the Parties met and conferred and agreed to attempt mediation, and further agreed on a protocol for an informal exchange of discovery and information to facilitate the mediation. Accordingly Plaintiff reviewed information including, inter alia, Plaintiff's personnel file, the number of potential Aggrieved Employees, the number of aggregate pay periods, relevant CBAs, pay stubs and time records for a sampling of the Aggrieved Employees, and relevant policy documents regarding Defendants' time keeping and reporting policies, among other pertinent materials.

10. The Parties then retained the Hon. George C. Hernandez, Jr. (Ret.), a respected neutral with extensive experience mediating wage and hour matters, and on June 7, 2024, the Parties participated in an all-day mediation presided over by Judge Hernandez. Before and during the mediation, Plaintiff and counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks. During mediation, the Parties vigorously debated the likelihood of Plaintiff's ability to proceed on a representative basis as to the PAGA claims, the legal grounds for Plaintiff's claims and Defendants' defenses, and the Parties' data analyses and conclusions based on data provided by Defendants. After a contentious day of negotiations, the Parties reached agreement and subsequently formalized their tentative settlement in the Settlement Agreement now before the Court for approval.

SUMMARY OF SETTLEMENT TERMS

11. Under the settlement, Defendant will pay a non-reversionary settlement amount of \$263,000 (the “Gross Settlement Amount” or “GSA”). The GSA is inclusive of all payments to the LWDA and Aggrieved Employees, a modest service award to Plaintiff for his service as the named Plaintiff on the PAGA claims, costs of settlement administration (estimated at no more than \$2,750), and reasonable attorney’s fees and costs. After payment of settlement administration costs, Plaintiff’s service award, and reasonable attorney’s fees and costs from the GSA, Plaintiff presently estimates about \$159,610.39 will remain (the “Net Settlement Amount” or “NSA”). Seventy-five percent of the NSA (about \$119,709.79) will go to the LWDA, and the remaining 25% (about \$39,902.60) will be distributed to the Aggrieved Employees in proportion to the total number of Pay Periods each

1 individual worked during the PAGA Period of November 14, 2021, to August 5, 2024. I estimate the
2 average award will be about \$170 per individual.

3 12. The Parties propose using Simpluris, Inc. as the Settlement Administrator. Simpluris
4 has extensive experience administering PAGA settlements, and has agreed to cap its fees at \$2,750.
5 Lamon will fund the GSA within 35 days of Effective Date, and within 14 days of funding Simpluris
6 will mail a Notice and settlement check to all Aggrieved Employees via regular First-Class U.S. Mail,
7 using the most current, known mailing addresses identified in Lamon's records. Aggrieved Employees
8 need not submit claim forms and will automatically receive a Notice and settlement check. Settlement
9 checks will be negotiable for 180 days, after which time any unclaimed residual funds will be
10 forwarded to the California State Controller's Unclaimed Property Fund.

11 13. The California Supreme Court has explained that a judgment in "a representative action
12 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ... is
13 binding not only on the named employee plaintiff but also on government agencies and any aggrieved
14 employee not a party to the proceeding." Arias v. Superior Court, 46 Cal.4th 969, 985-86 (2009).
15 Accordingly, the release in the Settlement Agreement narrowly releases only civil penalty claims
16 brought under PAGA. Under Arias, the order the Parties request the Court enter is intended to be
17 "binding not only on the named employee plaintiff but also on government agencies and any aggrieved
18 employee not a party to the proceeding." The Settlement Agreement protects the rights of the
19 Aggrieved Employees to bring their own individual claims should they wish. For these reasons, the
20 Parties contend the release narrowly applies only to the PAGA claims alleged, and the Settlement
21 Agreement specifically provides the PAGA Release is inapplicable to any claims other than those
22 brought under PAGA. Only the named plaintiff is entering into a general release of claims and waiver
23 of California Civil Code § 1542.

24 **THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE, FURTHERS THE**
25 **PURPOSES UNDERLYING PAGA, AND WARRANTS APPROVAL**

26 14. Plaintiff first alleges Lamon's time records produced show a systemic practice of
27 recording hours worked by Aggrieved Employees according to their scheduled shifts, rather than
28 recording their actual hours. Per Plaintiff, crew managers or other supervisory employees recorded

1 Aggrieved Employees' shifts on their timesheets in precise 30-minute increments, and record precise
2 30-minute meal periods. Plaintiff alleges this practice violates California law because Lamon is
3 required to pay Aggrieved Employees for all hours worked, not only for their scheduled hours, and to
4 keep track of their actual time, and Plaintiff asserts for example that he and other employees had to
5 spend up to an hour of time off the clock per shift to gather equipment from Lamon's facility in Yuba
6 City, and then to report to their assigned locations before starting their shifts, and to return the
7 equipment at the end of their shifts.

8 15. For the meal and rest break claims, Plaintiff again alleges Lamon's time records show
9 that meal breaks were "auto deducted" by Crew Chiefs to show meals were both timely and lasted y
10 precisely 30 minutes regardless of the actual amount of time the meal break lasted. The California
11 Supreme Court recently held that inaccurate or incomplete time records showing noncompliant meal
12 periods due to rounding create a rebuttable presumption of liability for meal period violations, Plaintiff
13 alleges this presumption will apply here because Defendant's pay records show that they recorded
14 thirty minutes for meal periods regardless of how long breaks actually lasted. Per Plaintiff, meal breaks
15 regularly did not last a full 30 minutes or otherwise were non-compliant, or not ever provided at all
16 and especially regarding second meal breaks on shifts of 10+ hours. For the same reasons, Plaintiff
17 also alleges Defendant failed to provide compliant 10 minute rest breaks and that aggrieved employees
18 consistently worked through rest periods to meet work deadlines or otherwise complete the day's
19 work.

20 16. On the expense reimbursement claim, Plaintiff alleges he and the aggrieved employees
21 had to drive personal vehicles to/from Defendant's main facility to gather and return equipment prior
22 to the start of shifts or at the end of a shift without any reimbursement. Plaintiff further alleges
23 employees had to use their personal cell phones on company business as well, for tasks such as
24 communicating with supervisors or other employees while on the job. Per Plaintiff, Lamon did not
25 reimburse employees for any of these claimed expenses.

26 17. Plaintiff also brings claims derivative of the foregoing claims, including a derivative
27 wage statement claim based on the failure to pay all wages due, and she alleges a failure to pay all
28

1 wages due and owing upon separation of employment under Labor Code §§ 201-203 based on the
2 unpaid wage and break violation claims.

3 18. For mediation, Lamon indicated it employed approximately 234 non-exempt
4 employees in California during the relevant time frame (including 140 former employees), and these
5 individuals worked approximately 10,315 pay periods during that time. Based on the data provided by
6 Defendant, Plaintiff estimated Defendant's maximum PAGA exposure at approximately \$5,297,500
7 including approximately \$1,031,500 on the unpaid wage claims, about \$1,031,500 on the meal break
8 claims, \$1,031,500 on the rest break claims, \$1,031,500 on the wage statement claims, \$1,031,500 on
9 the expense reimbursement claims, and about \$140,000 in civil penalties for failing to timely pay
10 wages on separation of employment.

11 19. We calculated these amounts as follows:

12 **Unpaid Wages**

13 10,315 pay periods * 100% violation rate * \$100/violation = \$1,031,500

14 **Meal Period Violations**

15 10,315 pay periods * 100% violation rate * \$100/violation = \$1,031,500

16 **Rest Period Violations**

17 10,315 pay periods * 100% violation rate * \$100/violation = \$1,031,500

18 **Expense Reimbursement Violations**

19 10,315 pay periods * 100% violation rate * \$100/violation = \$1,031,500

20 **Wage Statement Violations**

21 10,315 pay periods * 100% violation rate * \$100/violation = \$1,031,500

22 **Untimely Final Wages**

23 140 former employees * 100% violation rate * \$100/violation = \$140,000

24 20. In response to Plaintiff's unpaid wage/off the clock claim, Lamon argued its time
25 keeping policies are entirely consistent with California law and did not deprive employees of
26 compensable hours worked. Per Lamon, all hours worked were tracked and recorded accurately and
27 paid at the appropriate rate. Defendant further argued its written policies strictly prohibited any off the
28 clock work, and to the extent any such work occurred, it was against company policy and done without

1 the employer's knowledge. White v. Starbucks Corp. 497 F.Supp.2d 1080, 1083 (N.D. Cal.
2 2007)(employer must have actual or constructive knowledge of the off the clock work). As such,
3 Lamon argued any alleged "off the clock" work was not compensable and did not give rise to any
4 potential civil penalties.

5 21. On the meal and rest break claims, Defendant emphasized its written policies are
6 compliant and that it authorized and permitted employees to take all required breaks required under
7 California law and the CBAs, and thus met its obligations under the law. Defendant further argued
8 its time records accurately reflect that employees took timely and compliant meal breaks, and that its
9 meal and rest break policies and practices comported with the flexibility the California Supreme
10 Court held is integral to California's meal and rest period requirements. Finally, Defendant argued
11 that Plaintiff's meal and rest break claims are not susceptible to common proof, as the claims would
12 require individualized inquiry, including whether there was an unlawful companywide policy,
13 whether employees had the opportunity to take meal and rest periods, whether they voluntarily chose
14 to forego their meal and rest periods, and whether Defendants ever prevented them from taking meal
15 and rest periods.

16 22. Defendant further argued that, since is not required to record rest periods, any
17 evidence of a failure to authorize rest periods and/or discouragement from taking rest periods would
18 be purely anecdotal and not susceptible to common proof. Defendant also contended it is only liable
19 for break violations if Plaintiff can prove, on a shift-by-shift basis, that Aggrieved Employees
20 actually did not take a rest break or receive a compliant break. This arguably would have made trial
21 of these claims unmanageable. Therefore, a sharp compromise was in order on this claim

22 23. On the expense reimbursement claims, Defendant argued there would be no
23 conceivable need for employees to use their phones for work while working in the field on a
24 construction job, and that employee weren't supposed to use personal devices unless they were on a
25 break. Thus, per Lamon, any use of employee phones while working was against company policy
26 and, to the extent it occurred, was purely for personal convenience and therefore not reimbursable as
27 a "reasonable and necessary" business expense. Similarly, Lamon argued that all equipment needed
28

1 for a project was provided and available at the job site and there would be no need for employees to
2 transport company equipment in their personal vehicles.

3 24. On the alleged derivative violations of Labor Code § 226 (wage statement violations)
4 and §§ 201-203 (waiting time penalties), Defendant emphasized both claims, since they are entirely
5 derivative, will rise or fall along with the primary unpaid wage claims and break violation claims, in
6 addition to being subject to “good faith” and other defenses available to Defendants. Accordingly,
7 Plaintiff discounted these claims significantly in light of these multiple potential defenses.
8 Defendants also contend a substantial discount should be applied to the civil penalties for these
9 derivative (i.e., “stacked”) violations, as it would be unfair to penalize Defendant multiple times for
10 the same violation.

11 25. Defendant likewise emphasized PAGA gives courts wide latitude to reduce the
12 amount of civil penalties “based on the facts and circumstances of a particular case” if “to do
13 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” I am
14 aware of several state and federal courts in California have applied significant reductions to PAGA
15 civil penalties even after plaintiffs prevailed on the merits. Here, no evidence came to light
16 suggesting any of the alleged violations were deliberate or willful, or that Defendant was not
17 operating under a good faith belief that its wage and hour policies and procedures complied with the
18 law and/or resulted in employees being paid for all time worked. Consequently, Plaintiff had to
19 account for a high probability that the Court would apply substantial deductions to any penalties
20 awarded after trial.

21 26. Thus, Defendant raised various and multi-layered defenses to each of Plaintiff’s
22 claims, any of which, if successful, could have derailed Plaintiff’s case. Defendant vowed to
23 raise all of these defenses at trial even assuming Plaintiff prevailed in his individual arbitration and
24 qualified as an “aggrieved employee” with standing to pursue these claims on a representative basis.
25 Accordingly, Plaintiff faced risky issues going forward with the litigation, and it could have taken
26 years to realize any recovery in this action along with high likelihood of post-trial appeals. In
27 addition to the merits defenses and arguing trial would be unmanageable, Defendant also intended to
28

1 raise additional defenses on damages, including the proper measure of civil penalties and the
2 appropriate discount to place on any assessment of such penalties.

3 27. Although Plaintiff and his counsel believe they could have prevailed, there was no
4 such guarantee. When the risks of overcoming a manageability defense, prevailing at trial on the
5 merits on all claims, securing the maximum theoretical civil penalties, and appellate risks all are
6 factored into the equation, the settlement value is reasonable and supported. Of course, to recover
7 anywhere near the maximum penalties Plaintiff would have to shoot the moon and win both liability
8 and maximum penalties on all claims as to each and every pay period at issue, which outcome, for
9 the reasons discussed, is unlikely. Given Defendant's various procedural and merits defenses, as well
10 as the substantial penalty reductions ordered in the cases above – which occurred after trial – the
11 proposed settlement is reasonable.

12 **SUBMISSION TO THE LWDA**

13 28. My office timely served the LWDA with the Settlement Agreement and this Motion,
14 and notified the LWDA of this approval hearing. Accordingly, the LWDA will be able to weigh in
15 as necessary and, importantly, many courts find it persuasive of approval if the LWDA ultimately
16 declines to offer any comment or objection to a proposed PAGA settlement.

17 **PLAINTIFF'S ENHANCEMENT IS REASONABLE**

18 29. Pursuant to the Settlement Agreement, Plaintiff seeks an incentive award of \$5,000.
19 This request is reasonable given Plaintiff's efforts in this case and the risks he undertook on behalf of
20 the Aggrieved Employees. By contacting and retaining counsel to pursue these claims, Plaintiff made
21 this settlement possible for the other Aggrieved Employees and the LWDA, while shouldering the risk
22 of being liable for Defendants' litigation costs if unsuccessful. Plaintiff also exposed himself to
23 unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google
24 search) for the benefit of other employees, placing Plaintiff at risk of discrimination by future
25 prospective employers. Among taking many other actions assisting in the successful litigation of this
26 case, Plaintiff provided substantial factual information to counsel, participated in numerous phone
27 calls and meetings with counsel to discuss the case, and generally was kept up to speed and informed
28

1 on the case's progress. The modest incentive payment to Plaintiff is appropriate and justified as part
2 of the Settlement.

3 **THE REQUESTED ATTORNEYS FEES AND COSTS ARE FAIR AND REASONABLE**

4 30. Under the terms of the Settlement Agreement, Plaintiff's counsel respectfully request
5 an award of attorney's fees equal to 33.33% Gross Settlement Amount, or \$87,857.90. A one-third
6 common fund attorney fee award is consistent with what courts have awarded Crosner Legal in other
7 representative actions, and awarding attorney's fees of one-third of a gross settlement amount is
8 favored by California courts when a fund established for the common benefit of others is involved,
9 such as here.

10 31. There are several additional factors why I believe that the Court should award one-third
11 of the common fund as a reasonable attorney's fee. First, Crosner Legal's efforts resulted in a common
12 fund settlement amount of \$263,000.00, which for the reasons explained, is fair and reasonable in light
13 of the risks/defenses Defendants raised in litigation and threatened to raise at trial and in post-trial
14 appeals. Further, this is a significant sum that furthers the purposes underlying PAGA such as
15 augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions,
16 and deterring future non-compliance. Moreover, this result was achieved by the work and success of
17 this office, who negotiated the settlement after extensive law and motion, preparation, informal
18 discovery, and an adversarial mediation.

19 32. Second, Plaintiff faced significant risks going forward with the litigation. As discussed
20 above, Defendant raised various defenses to their claims, anyone of which, if successful, could have
21 decimated Plaintiff's case. Further, it would have taken several more years to realize any recovery in
22 this action along with the need to conclude the individual arbitration and the possibility of post-trial
23 appeals.

24 33. Third, my office are experienced class and representative action litigators, and have
25 achieved multiple approved wage and hour class and PAGA settlements. This experience and
26 expertise, combined with the high quality of work performed, resulted in the settlement achieved in
27 this case.
28

1 34. I received a Bachelor of Arts in Philosophy from the University of Maryland
2 Baltimore County in 2001 and a Juris Doctor from New College of California School of Law in 2008.
3 While a law student, I completed 600 hours of public interest law apprenticeship, at Legal Services
4 for Children, Disability Rights California, and as a Certified Legal Intern with the Bay Area Legal
5 Aid Housing Clinic. I have been a member of the California Bar since 2008. Since 2009, I have been
6 a class action attorney, practicing mainly in the area of California wage and hour law, with the firms
7 of Hoffman & Lazear, Kralowec Law P.C., Sundeen Salinas & Pyle, and Hunter Pyle Law. I joined
8 Crosner Legal in May 2021 as a Senior Associate Attorney. In this role I routinely draft complaints
9 and discovery, brief motions, appear before California courts for law and motion and settlement
10 hearings, lead mediation negotiations, and draft settlement approval documents. I also regularly
11 communicate with class members, co-counsel, and opposing counsel. I have represented thousands
12 of employees in both state and federal courts, involving class actions and PAGA claims, and I have
13 assisted in obtaining millions of dollars for employees during my years of practice.

14 35. I have been approved as Class Counsel by numerous courts throughout California,
15 including in the following cases: *Alonzo, et al. v. First Transit, Inc.* (Los Angeles Superior Court
16 case no. BC433932; settled for \$2 million); *Sadiq v. Greatwide Dedicated Transport II, LLC*
17 (Alameda County Superior Court case no. RG15789114; settled for \$762,500); *Kostyuk v. Golden*
18 *State Overnight Delivery Service, Inc.* (Alameda County Superior Court case no. RG14727191;
19 settled for \$1.25 million); *Newcomb, et al. v. J.B. Hunt Transport, Inc.* (Alameda County Superior
20 Court case no. RG16815734; settled for \$750,000); *Hooper v. URS Midwest, Inc.*, (San Bernardino
21 Superior Court Case No. CIV DS1607489; settled for approximately \$3 million); *Brooks, et al. v.*
22 *Chariot Transit, Inc.* (San Francisco Superior Court case no. CGC-16-554398; settled for
23 \$750,000); *Austin, et al. v. Foodliner, Inc.* (Northern District of California, case number 16-cv-
24 07185-HSG; settled for \$1.2 million); *Castro, et al. v. ABM Industries, Inc., et al.* (Northern
25 District of California, case number 17-cv-03026-YGR; settled for \$5.4 million); *Benton v.*
26 *Northern California InAlliance* (Sacramento County Superior Court, case number 34-2021-
27 00293036; settled for \$650,000); *French v. Lonza, Inc.* (Los Angeles County Superior Court, case
28 number 21STCV08097; settled for \$556,500); *McKinnie v. Iron Mountain Secure Shredding, Inc.*,

1 *et al.* (Los Angeles Superior County Superior Court, case number 21STCV05707; settled for \$1.5
2 million); and *Bland v. Marin Airporter* (Marin County Superior Court, case number CIV 2003640;
3 settled for \$450,000).

4 36. Zach Crosner is a 2010 graduate of University San Diego School of Law, and has
5 some 13 years of experience as a practicing attorney, all of which have focused on litigation of
6 employment, labor law, consumer, and class action claims. Following graduation, he immediately
7 began working for a nationally recognized plaintiff's complex litigation firm, CaseyGerry, where he
8 had the fortune of working directly with past presidents of the consumer attorneys and recipients of
9 trial attorneys of the year awards. He also worked for former CAALA and CLAY trial attorney of
10 the year recipient, attorney Conal Doyle, as his sole associate attorney. During his tenure at these
11 firms, he focused on advocating for the rights of consumers and employees in class action litigation,
12 civil rights and employment litigation, catastrophic injuries, insurance bad faith and appellate
13 litigation.

14 37. In 2013, Mr. Crosner founded the law firm of Crosner Legal, P.C. which since its
15 inception has focused almost exclusively on wage and hour class actions and other labor and
16 employment law cases representing plaintiffs. Currently, over ninety percent (90%) of his practice
17 is dedicated exclusively to the prosecution of wage and hour class actions, and Crosner Legal is
18 currently responsible as lead counsel or co-lead counsel for prosecuting well over fifty (50) wage
19 and hour class actions and/or PAGA representative actions in both federal and state courts
20 throughout California.

21 38. Mr. Crosner currently is an executive board member of the Wage and Hour
22 Committee and the Legislative Committee for the California Employment Lawyers Association; a
23 member of the Grassroots Advocacy Team for the National Employment Lawyers Association;
24 Wage and Hour Committee member and Class Action Committee member for the National Trial
25 Lawyers; a member of the American Association for Justice; and member of the Pound Civil Justice
26 Institute. He was selected for 2018-20 by Super Lawyers as a "Southern California Rising Star" for
27 employment and labor law.
28

1 39. Brandon Brouillette is a graduate of Loyola Law School, Los Angeles, from which he
2 received a *juris doctorate* degree in 2009. Prior to attending law school, he attended the University of
3 Southern California, from which he received a bachelors of science in Business Administration in
4 2006.

5 40. Mr. Brouillette has been a Partner at Crosner Legal since February 1, 2023. Prior to
6 joining Crosner Legal, he was a Senior Associate and Team Director of a Wage and Hour Litigation
7 Team at Capstone Law APC, which he originally joined as an associate attorney in May 2016.

8 41. Since being admitted to the California State Bar in 2010, his entire legal career has
9 been dedicated to protecting employee and consumer rights through the prosecution of class action
10 and representative actions filed on behalf of plaintiffs in class actions and statewide representative
11 actions. Throughout my career he have managed or co-managed more than 100 class action and
12 PAGA representative cases, from initial filing of the complaint through final resolution.

13 42. In particular, he has served as class counsel in several certified class action cases,
14 including:

- 15 a. *Party City Wage and Hour Cases*, JCCP4781 (class counsel for certified class of non-
16 exempt hourly employees who worked for Defendants in California)
- 17 b. *Lewis v. Express Messenger Systems*, Los Angeles Superior Court Case No. BC501521
18 (class counsel for certified class of last-mile delivery drivers who were alleged to be
19 misclassified as independent contractors)
- 20 c. *Ramirez-Vivar v. Grifols Diagnostic Solutions, Inc., et al.*, Alameda County Superior
21 Court, Case No. RG21099519 (class counsel for certified classes of non-exempt hourly
22 employees who worked for Defendants in California)
- 23 d. *Jones v. LA Live* , Los Angeles County Case No. BC687908 (class counsel for certified
24 issue classes consisting of hourly employees who worked at Staples Center and Nokia
25 Theater)

26 43. The following is a representative sample of settlements in wage and hour class
27 action and PAGA representative cases in which Mr. Brouillette was listed as an attorney of record
28

1 and either managed, or co-managed with attorneys at my firm and other co-counsel:

- 2 e. *Cruz v. Walmart*, Los Angeles County Super. Ct. Case No. 18STCV03128 (\$15 million
3 global PAGA settlement on behalf of hourly employees statewide for alleged Labor Code
4 violations.)
- 5 f. *Vorise v. 24 Hour Fitness USA, Inc.*, Contra Costa County Super. Ct., Case No. C 15-
6 02051 (\$11 million global PAGA settlement on behalf of over 36,000 employees for
7 Labor Code violations.)
- 8 g. *Gross v. Sodexo*, Kern County Super Ct., Case No. BCV-18-101746 Capstone (\$4.75
9 million class and PAGA settlement on behalf of class of non-hourly employees for Labor
10 Code violations.)
- 11 h. *Campbell v. AEG* (\$1.8M class and PAGA settlement on behalf of group of hourly
12 employees who worked at concert venues in California for alleged Labor Code
13 violations)
- 14 i. *Fiebelkorn v. AEG*, et al. Los Angeles Superior Court Case No. BC717337 (\$1.75M class
15 settlement on behalf of group of hourly employees who worked at Oakland Coliseum for
16 alleged Labor Code violations)
- 17 j. *Amaro v. Anaheim Arena Management*, Orange County Superior Court Case No. 30-
18 2017-00917542 (\$2,212,500 class and PAGA settlement on behalf of group of hourly
19 employees who worked at Honda center in Anaheim California for alleged Labor Code
20 violations)
- 21 k. *Espindola v. Panda Express*, San Bernardino Superior Court Case No. CIVDS1931455
22 (\$3.125M class and PAGA settlement on behalf of hourly employees statewide for
23 alleged Labor Code violations)
- 24 l. *Gold v. Benihana*, San Diego Court Superior Court Case No. 37-2016-00022320-CU-
25 OE-NC (\$2.25M class and PAGA settlement on behalf of hourly employees statewide for
26 alleged Labor Code violations)
- 27 m. *Party City Wage and Hour Cases*, JCCP4781 (\$6.5M class and PAGA settlement on
28 behalf of hourly employees statewide for alleged Labor Code violations)

- 1 n. *Lewis v. Express Messenger Systems*, Los Angeles County Super Court Case No.
2 BC501521 (\$10.5M class and PAGA settlement on behalf of a statewide group of
3 independent contractor last-mile delivery drivers alleged to be misclassified)
- 4 o. *Flores v. Tesla*, Alameda County Superior Court Case No. RG18907072 (\$4M class and
5 PAGA settlement on behalf of statewide group of hourly employees for alleged Labor
6 Code violations)
- 7 p. *Ruiz v. Disney Stores*, San Bernardino Superior Court Case No. CIVDS2016983 (\$2M
8 class and PAGA settlement on behalf of statewide group of hourly employees who
9 worked at retail stores in California for alleged Labor Code violations)
- 10 q. *Ramirez v. Yin Management*, Sacramento County Superior Court Case No. 34-2021-
11 00301530 (\$1.8M class and PAGA settlement on behalf of statewide group of hourly
12 employees who worked at Defendant's McDonald's franchises in California for alleged
13 Labor Code violations).
- 14 r. *Suhartono v. RRG Besh*, Los Angeles County Superior Court Case No. 19STCV22184
15 (\$2.25 class and PAGA settlement on behalf of statewide group of hourly employees who
16 worked at Defendant's McDonald's franchises in California for alleged Labor Code
17 violations).
- 18 s. *Gomes v. Kura Sushi*, Los Angeles County Superior Court Case No. 19STCV18977
19 (\$1.75M class and PAGA settlement on behalf of statewide group of hourly employees
20 who worked at Defendant's restaurants in California for alleged Labor Code violations)
- 21 t. *Saldana v. Hydrochem*, Contra Costa Superior Court Case No. CIVMSC19-02624
22 (\$1.38M class and PAGA settlement on behalf of statewide group of hourly employees
23 for alleged Labor Code violations).

24 44. In addition, below are settlements in consumer class action cases in which Mr.
25 Brouillette was listed as an attorney of record and either managed, or co-managed with attorneys at
26 my firm:

- 27 u. *Lopez v. Seterus, et al.*, Los Angeles Superior Court Case No. BC484297 (\$3M Class
28 settlement on half of thousands of borrowers in California, Florida, and Texas for UCL

violations premised on improper late fee collections)

v. *McGill v. Citibank*, Riverside County Superior Court Case No. RIC 1109398 (in landmark case that established the ‘McGill rule’ precluding the waiver of public injunctive relief in pre-dispute arbitration agreements, negotiated confidential settlement on behalf of consumer who sued for damages and class injunctive relief stemming from marketing of credit protector plan)

45. Finally, Mr. Brouillette has been selected as a Super Lawyers ‘Rising Star’ every year since 2016 through 2022, which is a recognition that is provided to only 2.5% of active lawyers practicing within the State of California

46. Jamie Serb is a partner with Crosner Legal and head of the firm’s Wage and Hour practice group. She graduated from the University of California, San Diego in 2004, graduated from California Western School of Law in 2013, and has been a member of the California Bar since 2013. She gained extensive experience in wage and hour litigation, beginning work as a class action attorney in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm, APLC; Turley Law Firm, APLC). She has handled wage and hour class actions and PAGA lawsuits for nearly ten years and has assisted in obtaining millions of dollars for employees during her years of practice.

47. Kiara Bramasco received her undergraduate degree, magna cum laude, from Loyola Marymount University in Political Science, and then received her JD from Loyola Law School in 2018. She then spent several years with well-known plaintiff’s firm Moss Bollinger, first as a law clerk and then as an associate, where her practice focused on employment law, particularly wage and hour class action and PAGA litigation. She joined Crosner Legal in 2021.

48. Branden Hamilton obtained her undergraduate degree from UCLA in 2004, and her law degree from George Washington University in 2007. She has been affiliated with Crosner Legal firm since 2017 and became Of Counsel with Crosner Legal in 2019, and her practice focuses almost exclusively on wage and hour class and representative actions. She has spent her entire career representing plaintiffs in employment litigation, including several years as an associate at well-known plaintiff’s firm Carlin & Buchsbaum.

49. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class action settlements while serving as lead class counsel in recent years, including but not limited to a \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America, Inc.*, Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252 (Sacramento Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017 (*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a \$1.8 million wage and hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc. dba American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and hour class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160 JGB (C.D. Cal.)), a \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million wage and hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-CV-04864-YGR (N.D.Cal.)); a \$7.25 million wage and hour class action settlement in 2020 in *Avina, et al. v. First Alarm Security & Patrol, Inc.*, Case No. 18CV323753 (Santa Clara Cty. Super Ct.); a \$2.2 million wage and hour class action settlement in 2021 (*Ghorchian, et al. v. West Hills Hospital, et al.*, Case No. LS029737 (Los Angeles Cty. Super. Ct.)); a \$2.85 million dollar wage and hour settlement in 2021 (*Valencia v. The Original Mowbray's Tree Service, Inc.*, Case No. CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1 million wage and hour class action settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super. Ct.)), a \$1.4 million wage and hour class action settlement in 2023 in *Correa, et al. v. FedEx Supply Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.), a \$2.38 million wage and hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case No. 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million wage and hour class action settlement in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino Cty. Super. Ct.); \$1.015 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo Autism Therapy*, Case No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a \$1.15 million wage and hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*, Case No. 21STCV18512 (Los Angeles Cty. Super. Ct.); a \$1.5 million wage and hour class action settlement in

1 *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty. Super. Court); a \$1.3 million
2 wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*, Case No. 20STCV06618 (Los
3 Angeles Cty. Super. Court); a \$1.925 million wage and hour class settlement in 224 in *Lo v.*
4 *Cyberpower, Inc.*, Case No. 21STCV31479 (Los Angeles Cty. Super. Ct); and a \$1.19 million dollar
5 wage and hour class action settlement in 2024 in *Herrera v. Signature Flight Support LLC*, Case No.
6 22STCV18367 (Los Angeles Cty. Super. Ct.).

7 50. Based upon the qualifications and experience set forth above, I believe the following
8 hourly rates are reasonable: Zach Crosner \$800/hr, Brandon Brouillette, Jamie Serb, and Chad
9 Saunders \$750/hr, Brenden Hamilton \$600/hr; and Kiara Bramasco, \$650/hr.

10 51. I request the Court apply the above hourly billing rates in this case, as it reasonable in
11 the California legal market for attorneys handling wage and hour class and PAGA actions. I have
12 personal knowledge of the hourly rates charged by a number of plaintiff-side wage and hour class
13 action firms in major California legal markets for partner-level attorneys with experience comparable
14 to mine. These rates have ranged from \$650 to \$900 per hour for calendar years 2018-2023. Some
15 examples include attorney Ron Makarem of Makarem & Associates in Los Angeles, with 28 years of
16 experience, \$900/hour (2023), Matthew Matern of Matern Law Group in Los Angeles, with
17 approximately 26 years of experience \$850/hour (2018); Craig Ackermann of Ackermann & Tilajef,
18 PC in Los Angeles with approximately 25 years of experience \$850/hour (2021), Michael Singer and
19 Isam Khoury of Cohelan Khoury & Singer in San Diego, 35 years and 45 years of experience
20 respectively, both \$825/hour (2018), Zachary Crosner of Crosner Legal PC in Los Angeles, 13 years
21 of experience \$750/hour (2022), and James Kawahito of Kawahito Law Group in Los Angeles, with
22 approximately 16 years of experience \$750/hour (2020).

23 52. The requested rates also comport with the adjusted Laffey Matrix, which provides that
24 reasonable hourly rates for attorneys with 10+ years of experience, such as myself, Mr. Brouillette,
25 Mr. Crosner and myself, are over \$800/hour. The adjusted Laffey Matrix may be found at
26 <http://www.laffeymatrix.com/see.html>.

27 53. Fourth, Crosner Legal has been representing Plaintiff Josephson (and the State of
28 California) in this matter on a strictly contingent basis and as such, had to forego other financial

1 opportunities to litigate other cases, incurred the risk of non-recovery after a substantial investment of
2 time, money, and resources, and have done so since the inception of this case without any payment or
3 compensation. This is not an easy burden for a small firm. If, despite these hardships and risks, the
4 best this office could hope for is merely to be paid our customary hourly rate multiplied by the number
5 of hours worked on the case, then we would not be compensated for the hardships and serious risks it
6 faced litigating this contingency case, and would not be incentivized to take on similar private attorney
7 general cases in the future.

8 54. Fifth, the request for attorney's fees in the amount of one-third of the common fund
9 falls well within the norms accepted by state and federal courts in California in comparable wage and
10 hour actions actually handled by this office, and as reflected in the cases cited in the accompanying
11 memorandum. For all of the above reasons, a common fund fee award here in the amount of one-third
12 of the \$263,000 common fund, or \$87,857.90, is fair and reasonable.

13 55. Crosner Legal expended a total of 209.1 attorney hours on this matter, and accordingly
14 the firm's lodestar totals approximately \$155,625, excluding time to be incurred at the hearing on this
15 motion and thereafter to implement and administer the settlement. Crosner Legal's lodestar is
16 summarized in Exhibit 5 hereto. Accordingly, on a lodestar basis, the requested fees are actually lower
17 than the base lodestar.

18 56. As noted, Crosner Legal has represented Plaintiff for over three years with respect to
19 this matter and has expended a significant amount of time and resources in that representation. We
20 agreed to litigate this case on a purely contingent basis and in so doing assumed considerable risk of
21 non-payment for its fees and costs, as discussed above, and as is the case with these matters in general.
22 Under all relevant factors (as outlined herein and in the accompanying memorandum), we respectfully
23 request the Court award the requested fees of \$87,857.90 based on the common fund theory with a
24 corresponding lodestar cross-check and no lodestar enhancement.

25 57. I also request reimbursement of Crosner Legal's actual out-of-pocket expenses incurred
26 to prosecute this action. These expenses were incidental and necessary to the effective representation
27 of the employees.
28

1 58. Crosner Legal's costs are **\$7,981.71**, including court filing/service of process fees,
2 mediation fees, and postage. Notably, the requested costs do not include any and all printing and
3 research charges. A true and correct itemization of the costs and expenses incurred is set forth below:

Expense Category	Amount
Court Filing Fees/Service of Process/Attorney Service	\$3,436.65
Mediation Fees	\$4,395.00
PAGA Filing Fee	\$75.00
Postage	\$75.06
Total Costs and Expenses	\$7,981.71

12 The requested costs are reasonable and uncontested and should be approved in full.

13 59. For the foregoing reasons, it is respectfully requested that the Court approve the
14 settlement in its entirety.

15 I declare under penalty of perjury under the laws of the United States that the foregoing is true
16 and correct. Executed on November 13, 2024, at Berkly, California.

18 /s/ Chad Saunders
19 Declarant Chad Saunders

EXHIBIT

1

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff David Josephson (“Plaintiff”) and defendant Lamon Construction Company, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as the “Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1. “Action” means the Plaintiff’s lawsuit alleging Labor Code violations against Defendant captioned “*DAVID JOSEPHSON, as an individual on behalf of himself and on behalf of all others similarly situated, Plaintiff, v. LAMON CONSTRUCTION COMPANY INC., a California Corporation; and DOES 1-100, inclusive, Defendants.*,” case number 2:23-cv-00043, initiated on November 8, 2022, and pending in the United States District Court, Eastern District of California.

1.2. “Administrator” means Simpluris, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

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

1.4. “Aggrieved Employee” means all of Defendant’s non-exempt employees who were covered by the Operators or Laborers collective bargaining agreements with Defendant, or non-union members, in the State of California, at any time between November 14, 2021 to August 5, 2024.

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

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

1.7. “Court” means the United States District Court, Eastern District of California.

1.8. “Defendant” means Lamon Construction Company, Inc.

1.9. “Defense Counsel” means Murphy Austin Adams Schoenfeld LLP.

1.10. “Effective Date” is defined as the date when this Settlement becomes final, which is the date when the Final Approval Order and Judgment in this Action is entered, unless there is an appeal. If there is an appeal, the Effective Date will be the date on which (a) all such appeals have been dismissed; or (b) the Ninth Circuit Court of Appeals has entered a final judgment

3691.014-8482548.1

affirming the Final Approval Order and Judgment, which (i) is no longer subject to any further appellate challenge, or (ii) has been affirmed by the United States Supreme Court, whichever is earlier.

1.11. “Enhancement Payment” means the Court-approved payment to Plaintiff, in addition to Plaintiff’s Individual PAGA Payment, in exchange for the general release and waiver of claims specified in this Agreement.

1.12. “Gross Settlement Amount” means \$263,000.00, which is the total, and maximum, amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Administrator’s Expenses Payment, and the Enhancement Payment.

1.13. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Payment calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.14. “Judgment” means the judgment entered by the Court based upon the Final Approval.

1.15. “LWDA” means the California Labor and Workforce Development Agency.

1.16. “LWDA PAGA Payment” means the 75% of the PAGA Payment paid to the LWDA under Labor Code section 2699, subd. (i).

1.17. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Administration Expenses Payment, and the Enhancement Payment. The remainder is to be paid to the LWDA as the LWDA PAGA Payment and Aggrieved Employees as Individual PAGA Payments.

1.18. “Operative Complaint” means Plaintiff’s Representative Complaint for Violation of the Private Attorneys General Act, Cal. Labor Code Sections 2698, et seq. filed on January 18, 2023, in the California Superior Court, County of Sutter (Case No. CVCS23-0000075), and subsequently removed to the U.S. District Court for the Eastern District of California and consolidated with Plaintiff’s Class Action (Eastern District of California, Case No. 2:23-cv-00043).

1.19. “PAGA Counsel” means Crosner Legal, PC, the attorneys representing the Plaintiff in the Action.

1.20. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.21. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.22. “PAGA Period” means the period from November 14, 2021, to August 5, 2024.

1.23. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.24. “PAGA Notice” means Plaintiff’s PAGA letter sent on November 10, 2022, to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.25. “PAGA Payment” means the total amount to be paid from the Gross Settlement Amount as alleged PAGA civil penalties, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.

1.26. “Plaintiff” means David Josephson, the named plaintiff in the Action.

1.27. “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.

1.28. “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.

1.29. “Released Parties” means: Defendant and all of its present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, exempt employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be liable for any of the Released PAGA Claims, and Defendant’s counsel of record in the Action.

1.30. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS.

2.1. On November 8, 2022, Plaintiff filed a Class Action Complaint against Defendant in the Superior Court of California, County of Sutter. The Class Action Complaint alleged both class claims, and individual statutory claims asserted by Plaintiff. Defendant removed the Class Action Complaint to the United States District Court, Eastern District of California on January 9, 2023. Plaintiff subsequently filed a first amended complaint to the Class Action Complaint.

2.2. On January 18, 2023, Plaintiff filed a representative PAGA Complaint against Defendant in the Superior Court of California, County of Sutter. Defendant removed the PAGA Complaint to the United States District Court, Eastern District of California on February 22, 2023. The Parties then stipulated to consolidate the Class Action Complaint, as amended, and the PAGA Complaint. The Court approved the stipulation on March 3, 2023, and the cases were consolidated for all pre-trial purposes under case number 2:23-cv-00043. The PAGA Complaint is the “Operative Complaint” for the purposes of this Settlement.

2.3. On April 7, 2023, Defendant filed motions to dismiss and motions to compel arbitration as to both the Class Action Complaint, as amended, and PAGA Complaint, based on section 301 of the Labor Management Relations Act and a collective bargaining agreement that covered Plaintiff’s employment. Plaintiff filed a motion to remand. On February 1, 2024, the Court granted Defendant’s motions to compel arbitration as to the Class Action Complaint, as amended,

3691.014-8482548.1

and Plaintiff's individual PAGA claims under the PAGA Complaint. The representative PAGA claims under the PAGA Complaint were stayed. The Parties agreed that that class action component of the Class Action Complaint, as amended, was no longer viable by virtue of the operative collective bargaining agreement containing a class action waiver. Accordingly, only Plaintiff's individual claims in the Class Action Complaint proceeded to arbitration.

2.4. On or about February 27, 2024, the Parties commenced arbitration before Barry Winograd, Esq. as to Plaintiff's individual claims under both the Class Action Complaint, as amended, and PAGA Complaint. On March 13, 2024, Defendant renewed its motions to dismiss before Mr. Winograd. Those motions were fully briefed, and a hearing was held. Mr. Winograd issued a decision denying the motions on April 9, 2024.

2.5. On June 7, 2024, the Parties participated in an all-day mediation presided over by Hon. George C. Hernandez, Jr. (Ret.), which led to this Agreement to settle.

2.6. Prior to mediation, Plaintiff obtained, through informal discovery, Defendant's wage and hour policies, as well as time and payroll data related to the Aggrieved Employees.

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

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay \$263,000.00 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.2 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$87,657.90 and PAGA Counsel Litigation Expenses Payment of not more than \$20,000.00. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment, other than provided for by this Agreement. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees

Payment and the PAGA Counsel Litigation Expenses Payment, and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Administrator: \$2,750 for Administrator Expenses Payment and as approved by the Court. To the extent the Administration Expenses are less than estimated or less than the Court approves, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3. To the Plaintiff: In addition to Plaintiff's Individual PAGA Payment, Plaintiff shall be entitled to request, and Defendant will not oppose, an Enhancement Payment of \$5,000.00 subject to the Court's approval. If the Court awards an Enhancement Payment less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount.

3.2.4. To the LWDA and Aggrieved Employees: The PAGA Payment to be paid from the Gross Settlement Amount, with 75% allocated to the LWDA PAGA Payment, and 25% allocated to the Individual PAGA Payments.

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

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Data. Within thirty-five (35) days of the Effective Date, Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee's privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Aggrieved Employee Data will only be disclosed to the Administrator and not to PAGA Counsel. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.2. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than thirty-five calendar (35) days after the Effective Date.

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

4.3.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

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

4.3.3. For any Aggrieved Employees whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

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

5. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount Plaintiff, Aggrieved Employees, and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. In addition to the claims being released by all Aggrieved Employees, Plaintiff and his respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, knowingly and voluntarily release and forever discharge Released Parties, of and from any and all claims, known and unknown, asserted or unasserted, which Plaintiff has or may have against Releasees as of the date of execution of this Agreement ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that

Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

5.2 Release by Aggrieved Employees. All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties arising during the PAGA Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including, but not limited to: all claims for civil penalties, interest, attorneys fees' and costs, under the PAGA, including, but not necessarily limited to, claims for: (1) failure to keep accurate records; (2) failure to produce employment records; (3) meal period violations; (4) rest period violations; (5) minimum wage and overtime violations; (6) failure to provide written commission agreements; (7) violation of Labor Code section 976; (8) violation of Labor Code section 226.2; (9) statutory wage violations; (10) refusal to make payment; (11) standard condition of labor violations; (12) business expense violations; (13) wage statement violations; (14) unlawful deductions; (15) seating violations; (16) sick leave violations; (17) failure to provide supplemental paid sick leave; (18) failure to pay vested vacation/paid time off; (19) untimely payment of final wages; and (20) unlawful agreements/unlawful criminal history inquiries.

5.2.1 The Parties agree that there is no statutory right for Aggrieved Employees to opt out or otherwise exclude themselves from the PAGA Payment and the associated release of claims and rights under the PAGA.

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

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

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

3691.014-8482548.1

financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. The notice of settlement to be sent to the Aggrieved Employees and the proposed Order Granting Approval of PAGA Settlement are to be mutually agreed upon by the Parties prior to being presented to the Court. Plaintiff will also provide Defendant with the motion for approval of the Settlement at least three (3) business days before the motion is filed with the Court.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than thirty (30) days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Order Granting Approval of PAGA Settlement to the Administrator.

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

7. SETTLEMENT ADMINISTRATION.

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

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

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

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

3691.014-8482548.1

8. **ESCALATOR.** If the number of pay periods covered by this Agreement is greater than 5,911 (i.e. the total provided at mediation, as of May 11, 2024, plus 10%), then Defendant will proportionally increase the GSA according to the following formula: $\text{Proportionally Increased GSA} = \text{Total Number of pay periods} \div 5,911 \text{ (i.e. the total provided at mediation plus 10\%)} \times \$263,000$. Alternatively, Defendant has the option of shortening the PAGA period end date to where total pay periods do not exceed 110% of the pay period estimate.

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

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

10. **ADDITIONAL PROVISIONS.**

10.1 **No Admission of Liability or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

10.2 **Integrated Agreement.** Upon execution by all Parties and their counsel, this Agreement, in conjunction with the Memorandum of Understanding Re Settlement executed by the Parties in July, 2024, shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

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

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

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

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

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

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

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

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

10.11 Confidentiality. Plaintiff and PAGA Counsel will not make any public disclosures of any kind regarding the Settlement, including but not limited to postings on PAGA Counsel's website and postings on any social media sites/outlets. PAGA Counsel will take all steps necessary to ensure Plaintiff is aware of, and will encourage him to adhere to, the restriction against any public disclosures regarding the Settlement. PAGA Counsel will not include or use the Settlement for any marketing or promotional purposes, or for attempting to influence Defendant's business relationships, either before or after the Court approves of this settlement. Following approval of the Settlement, Plaintiff and PAGA Counsel will not initiate any communications with the media or third parties regarding this Settlement. If contacted by the media or third parties will only discuss information publicly available. PAGA Counsel will take all steps necessary to ensure Plaintiff is aware of, and will encourage him to adhere to, the restriction against initiating any media comment. PAGA Counsel further agrees not to use the Settlement or any of its terms for any marketing or promotional purposes. Nothing herein will restrict PAGA Counsel from including publicly available information regarding this settlement in future judicial submissions regarding PAGA Counsel's qualifications and experience.

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

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

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

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

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

To Plaintiff:

Brandon Brouillette; bbrouillette@crosnerlegal.com
Chad Saunders; chad@crosnerlegal.com
Crosner Legal, PC
9440 Santa Monica Blvd., Suite 301
Beverly Hills, CA 90210
(866) 276-7637

To Defendant:

Aaron B. Silva; asilva@murphyaustin.com
Murphy Austin Adams Schoenfeld LLP
555 Capitol Mall, Suite 850
Sacramento, CA 95814
(916) 446-2300

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

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

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement.

Executed on 10 / 11 / 2024

By: 
Plaintiff, David Josephson

CROSNER LEGAL, P.C.

Executed on 11/13/2024

By: 
Brandon Brouillette
Chad Saunders
Attorneys for Plaintiff

Executed on _____

By: _____
Defendant, Lamon Construction Co., Inc.

Murphy Austin Adams Schoenfeld LLP

Executed on _____

By: _____
Aaron B. Silva
Attorneys for Defendant

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

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement.

Executed on _____

By: _____
Plaintiff, David Josephson

CROSNER LEGAL, P.C.

Executed on _____

By: _____
Brandon Brouillette
Chad Saunders
Attorneys for Plaintiff

Executed on 10/22/24

By: 
Defendant, Lamon Construction Co., Inc.

Executed on 10/23/24

Murphy Austin Adams Schoenfeld LLP
By: 
Aaron B. Silva
Attorneys for Defendant

EXHIBIT

2



Los Angeles Office
9440 Santa Monica Blvd.
Beverly Hills, CA 90210

Kiara Bramasco, Esq.
kiara@crosnerlegal.com
direct: (323) 205-7495
office: (310) 496-5818
fax: (310) 510-6429

November 10, 2022

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

Steve Ithurburn
Agent for Service of Process for:
Lamon Construction Company, Inc.
871 Von Geldern Way
Yuba City, CA 95993

Lamon Construction Company, Inc.
Attn: Human Resources/ Legal Department
871 Von Geldern Way
Yuba City, CA 95993

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Lamon Construction Company, Inc.
Date: November 10, 2022
Subject: *David Josephson v. Lamon Construction Company, Inc. et. al.*

Introduction

This office represents COMPLAINANT, David Josephson (hereinafter "COMPLAINANT") in connection with COMPLAINANT's claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual

managing agents of said entities: Lamon Construction Company, Inc. (hereinafter, this entity and its managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed by EMPLOYER in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by EMPLOYER in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT’s claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT’s intent to seek civil penalties against EMPLOYER.

COMPLAINANT, on behalf of COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/ABC, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant

times, was an employer or person acting on behalf of employer(s) who violated COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

EMPLOYER owns, operates or otherwise manages a construction company, providing construction of nonresidential buildings and other construction services to customers in California. Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a construction worker or similar title from in or around July 2019 through the separation of his employment, on or about February 4, 2022. Most of COMPLAINANT's work for EMPLOYER was performed in Sutter County. COMPLAINANT worked for EMPLOYER out of EMPLOYER's locations including but not limited to, EMPLOYER's facility located on Von Geldern Way in Yuba City, California. COMPLAINANT regularly worked at least eight (8) hours per day, at least five (5) days per week. Occasionally, COMPLAINANT had shifts as long as 13 hours per day. During most of his employment with EMPLOYER, COMPLAINANT worked on a paving crew consisting of at least ten (10) other construction workers. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked.

COMPLAINANT consistently worked without being provided a first or second meal period. For example, on August 24, 2021, COMPLAINANT worked at least 9 hours, but was not provided with a first meal period. On August 25, 2021, COMPLAINANT worked at least 8 hours and was not provided with a first meal period. On August 26, 2021, COMPLAINANT worked at least 12

hours and was not provided with a first or second meal period. On August 27, 2021, COMPLAINANT worked at least 12.5 hours and was not provided with a first or second meal period. COMPLAINANT was also not authorized or permitted to take rest breaks at any time, including, for example, during the August 23, 2021 through August 27, 2021 workweek. COMPLAINANT was not paid premium wages for unprovided meal or rest periods at any time, including during for the August 23, 2021 through August 27, 2021 workweek. Based on information and belief, EMPLOYER automatically deducted thirty minutes of wages from COMPLAINANT's pay per shift for a meal period COMPLAINANT did not receive between August 23, 2021 and August 27, 2021. This time was compensable work time that was owed to COMPLAINANT as hours worked.

On October 11, 2021, COMPLAINANT worked at least 10.5 hours, but was not provided with a first or second meal period. On October 12, 2021, COMPLAINANT worked at least 9 hours, but was not provided with a first meal period. On October 14 and 15, 2021, COMPLAINANT worked at least 8.5 hours each day, but was not provided with a first meal period. COMPLAINANT was not paid meal period premiums for these unprovided meal periods. COMPLAINANT was also not authorized or permitted to take rest breaks at any time, including, for example, during the October 11, 2021 through October 15, 2021 workweek. COMPLAINANT was not paid premium wages for unprovided meal or rest periods at any time, including during the October 11, 2021 through October 15, 2021 workweek. Based on information and belief, EMPLOYER automatically deducted thirty minutes of wages from COMPLAINANT's pay per shift for a meal period COMPLAINANT did not receive between October 11, 2021 and October 15, 2021. This time was compensable work time that was owed to COMPLAINANT as hours worked.

Similarly, COMPLAINANT worked during the November 28, 2021 to December 4, 2021 pay period and was not provided with first or second meal break. COMPLAINANT was also not authorized or permitted to take rest breaks at any time, including for example, during the November 28, 2021 to December 4, 2021 workweek. COMPLAINANT was not paid premium wages for unprovided meal or rest periods at any time, including during the November 28, 2021 to December 4, 2021 workweek. Based on information and belief, EMPLOYER automatically deducted thirty minutes of wages from COMPLAINANT's pay per shift for a meal period COMPLAINANT did not receive between November 28, 2021 and December 4, 2021. This time was compensable work time that was owed to COMPLAINANT as hours worked.

Furthermore, COMPLAINANT's wage statements failed to comply with Labor Code section 226, as the wage statements COMPLAINANT received the August 23-27, 2021, October 11-15, 2021, and November 28-December 4, 2021 pay periods failed to list the correct total hours worked (failing to include time spent working during automatically deducted meal breaks and other off-the-clock work), failed to include the correct gross and net wages earned, and failed to include meal and rest period premium pay.

COMPLAINANT was not reimbursed for the business use of his cellphone, which was used to communicate with EMPLOYER, including supervisors, foremen, and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES regarding work-

related issues. COMPLAINANT was also not reimbursed for the business use of his personal vehicle, including mileage, wear and tear, and gas when he was required to drive between job sites. On information and belief, during the workweeks of August 23-27, 2021, October 11-15, 2021, and November 28-December 4, 2021, COMPLAINANT was required to use his personal vehicle for business purposes without reimbursement for mileage, wear and tear on the vehicle, or gas. On information and belief, during the workweeks of August 23-27, 2021, October 11-15, 2021, and November 28-December 4, 2021, COMPLAINANT was required to use his personal cellphone and data plan for business purposes without reimbursement.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (14) failed and continues to fail to provide suitable seating; and (15) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in

writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, EMPLOYER failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of EMPLOYER’s time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices.

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER’s failure to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER’s control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, EMPLOYER further failed, and continues to fail, to record the true start and end times of COMPLAINANT’s and NON-EXEMPT AGGRIEVED EMPLOYEES’ meal periods.

Based on further information and belief, EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES’ work shifts.

Additionally, EMPLOYER failed, and continues to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER’s failure to keep “accurate and complete” payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor

Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.¹

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction." An employer's failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, on March 17, 2022, COMPLAINANT, through counsel, sent a written request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to timely produce complete records within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by

¹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject EMPLOYER to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, COMPLAINANT did not sign a valid meal period waiver throughout COMPLAINANT's employment by EMPLOYER.

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, COMPLAINANT estimates he was required to work through part or all of his owed first meal period most if not all shifts he worked.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to EMPLOYER's premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet EMPLOYER's goals and expectations.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal periods. For example, COMPLAINANT was prohibited from leaving the worksite during his shifts, including during any purported meal periods. Also, at all times during his shifts, including but not limited to, during any purported meal periods, COMPLAINANT was required to monitor his personal cell phone for work-related communications from his foremen/supervisors and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which EMPLOYER failed to take into account when scheduling meal periods for NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which were free of EMPLOYER's control owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Based on information and belief, per EMPLOYER's uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break. For example, when COMPLAINANT worked more than ten hours in a shift, he was not provided with any form of a second meal period. For instance, on 11/24/21, COMPLAINANT worked at least eleven (11) hours and was not provided with a second meal period; on 12/2/21 and 12/3/21, COMPLAINANT worked at least 11.5 hours and was not provided with a second meal period; on 1/21/22 and 1/22/22,

COMPLAINANT worked at least eleven (11) hours and was not provided with a second meal period.

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to EMPLOYER's premises), despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

Moreover, based on information and belief, EMPLOYER failed to keep accurate records of the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, to the extent meal period were recorded, EMPLOYER illegally rounded the start and end times of purported meal periods resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, EMPLOYER failed to instruct COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, EMPLOYER did not have a compliant written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual and/or constructive knowledge that its time-rounding and/or auto-deduction policies and practices resulted in the denial of lawful meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC

Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have any sort of compliant rest period policy in practice. For example, COMPLAINANT was not informed, authorized, instructed about nor permitted an opportunity to take off-duty rest periods for every

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

four hours worked or major fraction thereof. Any rest periods were taken once tasks were completed and/or as time permitted. COMPLAINANT estimates he had to work through his owed rest periods most if not all shifts he worked for EMPLOYER.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES' rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

Moreover, based on information and belief, EMPLOYER failed to provide any form of a third rest period on shifts lasting longer than ten hours. For example, when COMPLAINANT worked shifts lasting longer than ten hours, he was not provided with any version of a third rest period. For instance, COMPLAINANT worked shifts lasting longer than ten hours on including but not limited to, 11/24/21, 12/2/21, 12/3/21, 1/21/22 and 1/22/22 and was not provided with any version of a third rest period during those shifts.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest periods. For example, COMPLAINANT was required to monitor and respond to work-related communications on his personal cell phone at all times during his shifts, including but not limited to, during any purported rest periods. COMPLAINANT was also required to remain on the worksite during any purported rest periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Furthermore, EMPLOYER failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty,

for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³

Cooldown Recovery Period Violations: California Code of Regulations, Title 8, section 3395 mandates that all employers with “outdoor places of employment” implement a heat illness prevention program that includes, among other requirements, providing workers “cool-down” periods of at least five minutes in the shade. Specifically, section 3395 provides that “employees shall be allowed and encouraged to take a cool-down rest in the shade for a period of no less than five minutes at a time when they feel the need to do so to protect themselves from overheating” and that “such access to shade shall be permitted at all times.” Under California Labor Code section 226.7, if an employer fails to provide an employee a recovery period, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were required to spend multiple hours at a time outdoors in significantly high temperature heat conditions. EMPLOYER failed to provide proper heat illness prevention training and/or heat illness policies/practices/programs as required by California’s Heat Illness Prevention statute, Title 8 Section 3395(d). EMPLOYER failed to provide adequate access to drinking water as required by California’s Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, EMPLOYER maintained a policy and practice of not permitting necessary time for cooldown recovery breaks, and as a result, NON-EXEMPT AGGRIEVED EMPLOYEES were required to remain outdoors with little to no access to shade for extended periods of time. In addition, EMPLOYER, failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with an additional hour of pay at COMPLAINANT’s regular rate of pay for each missed cooldown recovery period.

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” The applicable Wage Order defines “hours worked” as “the time during which an

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

EMPLOYER failed to compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER’s automatic deduction and time rounding policies, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

Based on information and belief, EMPLOYER implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to EMPLOYER’s control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER’s policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For example, COMPLAINANT was required to perform pre-shift and post-shift off-the-clock work outside of his scheduled shift times, for which EMPLOYER did not compensate COMPLAINANT, resulting in the underpayment of wages owed to COMPLAINANT. For instance, COMPLAINANT was required to be at the construction job site by his scheduled shift start time. However, EMPLOYER required COMPLAINANT to first drive to EMPLOYER’s yard/facility located on Von Geldern to retrieve equipment, such as but not limited to, water shovels, rakes, water meters, rollers, small excavators and/or other items/equipment, load and/or prepare the trailer and/or truck and/or complete other work tasks prior to traveling to the assigned construction site. Similarly, COMPLAINANT was required to return to EMPLOYER’s facility on Von Geldern Way after his scheduled shift ended to return and/or unload equipment, the trailer and/or truck and/or perform other work tasks off-the-clock, resulting in the underpayment of wages owed to COMPLAINANT. COMPLAINANT estimates these pre-shift and post-shift off-the-clock work tasks he was required to perform resulted in an average of at least an hour of off-the-clock work each shift he worked for which EMPLOYER failed to compensate COMPLAINANT, resulting in the significant underpayment of wages owed to COMPLAINANT.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also pressured to complete at least some of their work tasks off-the-clock in order to meet EMPLOYER's goals and expectations. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also required to complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or messages they received to their personal phones and were required to respond to, including but not limited to, communications from supervisors regarding scheduling and/or other work tasks, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. For example, COMPLAINANT estimates he received work-related phone calls and/or messages to his personal cell phone from his foremen/supervisor and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES outside of his scheduled shift times at least a couple times per week. This time COMPLAINANT was required to spend responding to work-related phone calls and/or messages outside of his scheduled shift times was not compensated, resulting in the underpayment of wages owed to COMPLAINANT.

Based on information and belief, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by EMPLOYER. Based on information and belief, this work time was completed off-the-clock and was not compensated.

Based on further information and belief, EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. For example, EMPLOYER's time records for COMPLAINANT and wage statements issued to COMPLAINANT show EMPLOYER rounded COMPLAINANT's hours worked to at least the nearest half hour. For instance, EMPLOYER's time records for COMPLAINANT beginning on 11/28/21 through 12/4/21 show a consistent shift start or "in" time of precisely 7:00 a.m. for each shift worked from 11/28/21 through 12/4/21 and a shift end/ "out" time that is rounded to the nearest half hour. For example, from 11/28/21 through 12/4/21, COMPLAINANT's shift end times are rounded to nearest quarter hour and recorded as included but not limited to 3:30 p.m., 4:30 p.m. or 6:30 p.m. Likewise, EMPLOYER's time records for COMPLAINANT for the subsequent week (i.e. beginning on 12/5/21 and ending on 12/11/21) evidence that each recorded time entry is rounded to the nearest half hour. EMPLOYER's failure to pay for all time worked by virtue of its time-rounding practices resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

EMPLOYER's failure to pay for all time worked by virtue of its time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages

owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work resulted in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

Based on information and belief, EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's automatic deduction and time rounding policies and practices for meal periods, payment according to scheduled hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal periods and/or time spent restricted to EMPLOYER's premises and/or subject to EMPLOYER's control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

⁴ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Based on information and belief, EMPLOYER failed and continues to fail to pay premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, EMPLOYER sometimes paid COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES multiple rates of base pay in one workweek but failed to incorporate all multiple rates of base pay into the regular rate of pay for purposes of calculating the owed overtime rate. For example, at times, COMPLAINANT earned multiple base pay rates during the same workweek, yet, EMPLOYER failed to incorporate all/both base pay rates into the regular rate of pay for purposes of calculating the owed overtime rate, resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT. Based on information and belief, EMPLOYER similarly failed to incorporate multiple base rates of pay earned in a workweek by other NON-EXEMPT AGGRIEVED EMPLOYEES into the regular rate of pay used to calculate the owed overtime rate(s), resulting in unpaid wages to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to

⁵ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to unpaid meal periods that were restricted to EMPLOYER's premises) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, EMPLOYER further failed to provide notice of the correct sick leave amount balance available to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statement.

Based on information and belief, EMPLOYER failed to put NON-EXEMPT AGGRIEVED on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the NON-EXEMPT AGGRIEVED EMPLOYEE throughout the relevant time period.

Based on information and belief, throughout the relevant period, EMPLOYER failed to provide notice of sick leave amount balance left for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid but was not, as a result of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, EMPLOYER violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁶

⁶ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements EMPLOYER issued to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a). For example, EMPLOYER's wage statements issued to COMPLAINANT show EMPLOYER rounded COMPLAINANT's hours worked to the nearest half hour, thereby failing to list the accurate hours COMPLAINANT worked on EMPLOYER's issued wage statements. Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

EMPLOYER's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, EMPLOYER has violated California

Labor Code § 226 by willfully failing to furnish COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, wage statements issued by EMPLOYER failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9). For example, based on information and belief, EMPLOYER's wage statements issued to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES do not provide an accurate overtime rate because instead of multiplying the regular rate of pay by one and one-half, the wage statements provide at least two separate overtime rate categories with each providing an inaccurate overtime rate based on each base rate of pay as opposed to the regular rate of pay. As such, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are forced to perform extensive calculation using outside resources to determine what their pay rate was for each corresponding hour worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011). As described herein, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period, including but not limited to, non-discretionary bonus/incentive pay and/or shift differential pay and/or other non-discretionary compensation and/or multiple base rates of pay into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, EMPLOYER issued wage statements to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

As a result, the wage statements provided to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁷

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by, including but not limited to, failing to pay COMPLAINANT and other NON-EXEMPT

⁷ See Lab. Code §226.3 (establishing that the civil penalty is “per employee per violation”).

AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

Seating Violations: Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not actively engaged in the work duties that would not permit them to be seated.

All applicable IWC Wage Orders, Section 14(A-B) provides:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

Based on information and belief, EMPLOYER failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, based on information and belief, there were periods of time when NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, EMPLOYER failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting EMPLOYER to civil penalties under Labor Code sections 1199 and 2699. Each

violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁸

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, suitable seating, and business expenses, result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Pay Vested Vacation/Paid Time Off:

California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and belief, EMPLOYER had and continues to have a uniform policy and practice of failing to allow NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

⁸ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f 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.” Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, EMPLOYER untimely provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES’ final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates. For example, COMPLAINANT’s employment separated, on or about February 4, 2022, yet COMPLAINANT was not provided his final paycheck until more than several days after COMPLAINANT’s employment ended, and the final paycheck was devoid of all wages owed, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates.

Moreover, EMPLOYER failed to timely provide all owed wages immediately upon discharge of employment. For example, at times, including but not limited to, during winter 2021, COMPLAINANT experienced breaks in his employment caused by EMPLOYER whereby COMPLAINANT would not be called in for work for longer than a single pay period due to including but not limited to EMPLOYER’s lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet, EMPLOYER failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED

EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁹

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

Based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, EMPLOYER shifted its costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, uniforms and/or the use of NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ personal mobile phone and data usage for work related purposes including but not limited to receiving and responding to work related messages and/or phone calls. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for

⁹ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

work related purposes and/or the cost of purchasing and/or maintaining work uniforms/clothing. For example, COMPLAINANT was required to supply his own work boots and at times had to supply his own earplugs and Covid-protection masks EMPLOYER required yet COMPLAINANT was not reimbursed by EMPLOYER for the business expenses he incurred in connection therewith. Also, during at least seventy-five percent of COMPLAINANTs shifts, COMPLAINANT received work-related calls and/or messages from his foremen/supervisors, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES and also received work-related calls and/or messages outside his scheduled shift times at least a couple times per week without being provided any reimbursement for EMPLOYER's business use of his personal mobile phone.

Additionally, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the business use of their personal vehicles, including mileage, wear and tear, and gas when they were required to drive between job sites. For example, while at times EMPLOYER purported to provide a company vehicle, COMPLAINANT was regularly required to use his personal vehicle to drive from EMPLOYER's yard to the construction job site(s) and/or between various job site(s) during the months at a time EMPLOYER did not provide any company vehicle at all and/or at other times due to the company vehicle being unavailable and/or in use. For example, for the approximately last four (4) months of COMPLAINANT's employment, after arriving at work, COMPLAINANT had to use his personal vehicle to drive from EMPLOYER's yard to the construction job site and then drive his personal vehicle from the job site back to EMPLOYER's yard at the end of his shift but was not provided any reimbursement for EMPLOYER's business use of his personal vehicle. COMPLAINANT was required to use his personal vehicle for business purposes without reimbursement for mileage, wear and tear on the vehicle, or gas.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER.

As a pattern and practice, EMPLOYER regularly failed to reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out EMPLOYER's orders and/or carrying out the duties assigned by EMPLOYER.

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT, NON-EXEMPT AGGRIEVED

EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that “no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law.” Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

The California Labor Code places certain procedural and substantive limits on employers’ ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information (e.g., EMPLOYER’s purported background check

disclosure contains/contained a liability waiver and/or other extraneous information), failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER violated Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, EMPLOYER knew that requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES agree in writing to unlawful provisions as a condition of employment, EMPLOYER violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law.

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act ("FEHA"), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law.

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California's Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and

EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

As such, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Kiara Bramasco
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink, reading "Kiara Bramasco". The signature is written in a cursive, flowing style.

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Ashley Gutierrez <agutierrez@crosnerlegal.com>

Thank you for submission of your PAGA Case.

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "zach@crosnerlegal.com" <zach@crosnerlegal.com>

Thu, Nov 10, 2022 at 5:38 PM

11/10/2022

LWDA Case No. LWDA-CM-919040-22
Law Firm : Crosner Legal PC
Plaintiff Name : David Josephson
Employer: Lamon Construction Company, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT

3



Ashley Gutierrez <agutierrez@crosnerlegal.com>

Thank you for your Court Complaint Submission.

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
To: zach@crosnerlegal.com

Thu, Feb 23, 2023 at 9:43 AM

02/23/2023 09:43:07 AM

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

Item submitted: Court Complaint

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT

4

EXHIBIT

5

Josephson v. Lamon Construction Co., Inc.
Crosner Legal Time Report

Tasks	Zachary Crosner	Jamie Serb	Brandon Brouillette	Chad Saunders	Branden Hamilton	Kiara Bramasco
Pre-filing Case Investigation	4.7	0.0	0.0	0.0	7.5	5.2
Pleadings and Law and Motion	6.5	0.0	4.2	34.6	7.3	0.0
Discovery and Post-Filing Investigation	4.1	2.7	0.0	22.3	0.0	0.0
Court Appearances	0.0	0.0	0.0	2.7	0.0	0.0
Case Management; Litigation Strategy & Analysis	8.9	21.4	13.0	17.5	0.0	0.0
Mediation and Settlement	6.6	0.0	16.5	23.4	0.0	0.0
Total Hours	30.8	24.1	33.7	100.5	14.8	5.2
Hourly Rate	\$800	\$750	\$750	\$750	\$600	\$650
Lodestar	\$24,640	\$18,075	\$25,275	\$75,375	\$8,880	\$3,380

Total Hours: 209.1 Total Lodestar: \$155,625