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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**

11 KRISTINE KAESTNER, on behalf of
12 herself and all similarly situated individuals,

13 Plaintiff,

14 v.

15 MY JOURNEY TRANSPORT, a California
16 corporation, JOURNEY VIA GURNEY,
17 LLC, a California limited liability company,
18 and DOES 1 through 10, inclusive,

19 Defendants.

CLASS ACTION

CASE NO: 34-2022-00330013

Assigned to the Hon. Lauri Damrell, Dept. 28

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

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SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

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1 the Effective Date is the day after (1) the settlement is upheld by the Court of Appeals, or (2) all
2 appeal, reviews or writs are dismissed, denied and/or exhausted and the Judgment is no longer
3 subject to judicial review. Defendants shall deposit the GSA and all employer taxes due no later
4 than twenty calendar days after the Effective Date.

5 **B. General.**

November 9

6 1. On ~~March 28~~, 2022, Plaintiff Kaestner exhausted the pre-filing requirements of the
7 Labor Code Private Attorneys General Act of 2004 (“PAGA”) (the “LWDA Letter”). On November
8 21, 2022, Plaintiff Kaestner initiated the Action in the Sacramento County Superior Court styled as
9 a class action complaint on behalf of herself and all other class members. On February 15, 2023,
10 Plaintiff filed a First Amended Complaint in the Action that added PAGA allegations based on
11 those alleged in the LWDA Letter.

12 2. The proposed Second Amended Complaint (attached hereto as **Exhibit 3**), which
13 the Parties will seek to file in the Action concurrently with the filing of Plaintiffs’ Motion for
14 Preliminary Approval of this Settlement Agreement, asserts class and PAGA representative action
15 claims against Defendants for (1) failure to pay all minimum and overtime wages due (Labor Code
16 §§ 221, 225.5, 510, 1194, 1194.2, 1197, 1197.1, 1198, and 1199); (2) failure to provide complaint
17 rest periods or compensation in lieu thereof (Labor Code §§ 226.2 and 226.7 and IWC Wage Order
18 9-2001); (3) failure to provide compliant meal periods or compensation in lieu thereof (Labor Code
19 §§ 226.7, 510, 512, 1194 and IWC Wage Order 9-2001); (4) knowing and intentional failure to
20 comply with itemized employee wage statement provisions (Labor Code §§ 226(a), (e), and (h));
21 (5) failure to maintain required records (Labor Code §§ 226, 1174, and 1174.5); (6) failure to timely
22 pay wages due at the separation of employment (Labor Code §§ 201-204 and 210); (7) injunctive
23 relief and restitution for the violation of Business and Professions Code § 17200 for underlying
24 violations of the Labor Code as set forth in the Action; and (8) civil penalties pursuant to Labor
25 Code §§ 2698, *et seq.* for violations of Labor Code §§ 201-202, 204, 226(a), 226.7, 510, 512, 1174,
26 1174.5, and 1194 and pursuant to Labor Code § 2699(A) for violation of Labor Code §§ 226.3 and
27 558 as set forth in the Action.

1 3. Defendants deny any liability or wrongdoing of any kind associated with the claims
2 alleged in the Action and LWDA Letter, and further deny that the Action is appropriate for class
3 treatment for any purpose other than this settlement. Defendants contend that they have complied
4 at all times with the California Labor Code, Industrial Welfare Commission Wage Orders, and all
5 other applicable federal, state and local laws and regulations. It is Defendants' position that, if this
6 case were to be litigated, class certification would be inappropriate because Plaintiff is not an
7 adequate Class Representative, Plaintiff's claims are not typical of putative class members, and
8 individual issues predominate over class issues, among other defenses. The Action, the negotiation
9 and execution of this Settlement Agreement, and all acts performed or documents executed
10 pursuant to or in furtherance of this Settlement Agreement (i) shall not be used as an admission, or
11 as evidence of wrongdoing by the Defendants, or for any other purpose whatsoever; (ii) shall not
12 be an admission or evidence of fault on behalf of Defendants in any action before a civil court,
13 criminal court, administrative agency of any type, or other tribunal; and (iii) shall not be deemed to
14 be, and may not be used as, an admission or evidence of the appropriateness of these or similar
15 claims for class certification in the Action or with respect to any other proceeding whatsoever.

16 4. The Class Representative contends that Defendants violated the California Labor
17 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
18 certification.

19 5. Class Counsel represent that they have conducted a thorough investigation into the
20 facts and law during the prosecution of this class action case, including the exchange of extensive
21 formal and informal discovery and the review and verification of statistical data and other facts and
22 information provided by Defendants. Counsel for the Parties also represent that they have
23 investigated the applicable law as applied to the facts discovered regarding the alleged claims of
24 Plaintiff and potential defenses thereto, and the damages and other losses claimed by Plaintiff.

25 6. On August 21, 2023, following their exchange of information and documents
26 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties
27 engaged in arm's-length negotiations with the assistance of an experienced wage and hour
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mediator, Gig Kyriacou, Esq., where the Parties were able to reach a resolution of the Action and the claims in the LWDA Letter as set forth herein.

7. Based on their own independent investigation and evaluation, Class Counsel are of the opinion (and will so represent to the Court) that settlement for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses asserted by Defendants. Defendants and their counsel also agree (and will so represent to the Court) that this settlement is fair and in the best interest of the Settlement Class.

8. The Parties agree that the Settlement Class described herein may be certified for settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement Class is for purposes of the settlement only. If for any reason the settlement is not approved, the certification will have no force or effect and will immediately be revoked. The Parties further agree that certification for purposes of the settlement is in no way an admission that class certification is proper under the more stringent standard applied for litigation and that evidence of this limited Settlement Agreement for settlement purposes only will not be admissible for any purpose in this or any other proceeding.

C. Terms of Settlement.

1. The financial terms of the Settlement Agreement are as follows:

(a) **Gross Settlement Amount:** The Parties agree to settle the Action for a Gross Settlement Amount of **Three Hundred Fifteen Thousand U.S. Dollars** (\$315,000) ("the Gross Settlement Amount"), subject to any increase based on the escalator provision in paragraph H(16) herein. The Gross Settlement Amount includes the attorneys' fees of Class Counsel; litigation costs and expenses (which includes, without limitation, all such fees and costs incurred to date, as well as such fees and costs to be incurred in documenting the settlement, providing any notices required as part of the settlement, securing Court approval of the settlement, and obtaining judgment in the Action); the Enhancement Payment to the Class Representative, as approved by the Court; the payment to the California Labor and Workforce Development Agency ("LWDA"); and all costs of

1 administration, including, without limitation, settlement administration fees and expenses. All
2 employer payroll tax obligations due on wage payments made from the Net Settlement Proceeds
3 shall be paid by Defendants separately and apart from, and in addition to, the Gross Settlement
4 Amount.

5 (b) **Net Settlement Proceeds:** “Net Settlement Proceeds” is defined as the
6 Gross Settlement Amount less the amounts approved and awarded by the Court for: attorneys’ fees
7 and documented litigation costs and expenses incurred or advanced by Class Counsel; the
8 Enhancement Payment to the Class Representative; the payment to the LWDA pursuant to PAGA;
9 and the costs of administering the settlement.

10 (c) **Calculation of the Individual Payment Amounts:** “Individual
11 Settlement Payment” means the portion of the Net Settlement Proceeds distributable to each Class
12 Member who participates in the Class Settlement (i.e., who does not submit a valid request for
13 exclusion form) and each Aggrieved Employee, whether they participate in the Class Settlement or
14 not. As to participating Class Members, the class portion of the Individual Payment Amount will
15 be determined by dividing the Net Settlement Proceeds, less the \$10,000 PAGA allocation to
16 Aggrieved Employees, by the total number of weeks worked by all participating Class Members in
17 a non-exempt position during the Class Period, excluding opt outs, resulting in the class workweek
18 value. The class workweek value is then multiplied by the number of weeks worked in a non-
19 exempt position by each participating Class Member during the Class Period to yield the class
20 portion of the Individual Settlement Payment. As to the Aggrieved Employees, the PAGA portion
21 of the Individual Settlement Payment will be determined by dividing the PAGA allocation of
22 \$10,000 by the total number of weeks worked by all Aggrieved Employees for Defendants in a
23 non-exempt position by during the PAGA Period, resulting in the applicable PAGA workweek
24 value. The PAGA workweek value will then be multiplied by the number of weeks each individual
25 Aggrieved Employee worked for Defendants in a non-exempt position during the PAGA Period to
26 yield the PAGA portion of their Individual Settlement Payment.

27 (d) For tax purposes, the class portion of each Individual Settlement Payment
28 will be apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable

1 withholdings); and (b) 80% equally as penalties and interest (reported on an IRS Form 1099, if
2 required). The PAGA portion of each Individual Settlement Payment will be apportioned 100% as
3 penalties (reported on an IRS Form 1099, if required by law). All Individual Settlement Payments
4 paid to Class Members and Aggrieved Employees will be subject to any applicable wage
5 garnishments, liens, or other legally mandated treatment as required by law.

6 (e) **PAGA Payments:** The Parties agree that Forty Thousand Dollars (\$40,000)
7 shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this amount, Seventy-
8 Five percent (75%), or Thirty Thousand Dollars (\$30,000), shall be paid to the LWDA, and the
9 remaining Twenty-Five percent (25%), or Ten Thousand Dollars (\$10,000), shall be paid to
10 Aggrieved Employees as part of the Net Settlement Proceeds.

11 (f) **Enhancement Payment to Class Representative:** The amount awarded to
12 the Class Representative as an Enhancement Payment will be set by the Court in its discretion, not
13 to exceed Five Thousand Dollars (\$5,000). This amount will be deducted from the Gross Settlement
14 Amount. An IRS Form 1099 will be issued to the Class Representative for her Enhancement
15 Payment. Defendants agree not to dispute or otherwise object to the Enhancement Payment if
16 Plaintiff requests \$5,000 or less.

17 (g) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
18 deducted from the Gross Settlement Amount in an amount to be set by the Court taking into account
19 the settlement award that has been made available for the Settlement Class by the efforts of Class
20 Counsel. The amount awarded shall not exceed one-third of the Gross Settlement Amount (i.e.,
21 One Hundred Five Thousand Dollars (\$105,000)). An IRS Form 1099 will be issued to Class
22 Counsel with respect to its award of attorneys' fees. Defendants agree not to dispute or otherwise
23 object to the attorneys' fee award requested by Class Counsel so long as the request does not exceed
24 one-third of the Gross Settlement Amount.

25 (h) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
26 the Gross Settlement Amount in an amount to be set by the Court for documented out-of-pocket
27 litigation costs and expenses, not to exceed Eighteen Thousand Dollars (\$18,000). An IRS Form
28 1099 will be issued to Class Counsel with respect to its award of costs and expenses. Defendants

1 agree not to dispute or otherwise object to the attorneys' cost award requested by Class Counsel so
2 long as the request does not exceed \$18,000.

3 (i) **Settlement Administration Costs:** The fees and other charges of the
4 Settlement Administrator to administer the Settlement are expected to total no more than Seven
5 Thousand Five Hundred Dollars (\$7,500.00) and will be paid from the Gross Settlement Amount.
6 These fees shall include any costs associated with the required tax reporting on any Individual
7 Settlement Payment, and the issuing of any and all W-2 and 1099 forms. Subject to approval of
8 the Court, the Parties have agreed that Phoenix Settlement Administrators will serve as a neutral
9 third-party claims' administrator ("Settlement Administrator") to perform all acts related to
10 providing notice to the Settlement Class. Settlement Administrator shall be responsible for (a)
11 printing and distributing the Court-approved Notice of Class Action Settlement ("Class Notice") to
12 all Class Members; (b) administering the settlement; (c) processing exclusions, objections, and field
13 inquiries from Class Members; (d) resolving disputes; (e) calculating the Individual Settlement
14 Payments each Participating Class Members is eligible to receive; (f) distributing the Gross
15 Settlement Amount as directed by the Court and set forth herein; (g) tax reporting; (h) providing
16 necessary weekly status reports; and (i) other duties and responsibilities set forth herein.

17 (j) **No Warranty by Defendants:** Plaintiff understands and agrees that
18 Defendants are not providing Plaintiff or Class Members with tax or legal advice and that
19 Defendants make no representations regarding tax obligations or consequences, if any, related to
20 this Settlement Agreement.

21 **D. Release of Claims.**

22 1. Upon the Effective Date, and subject to Defendant's full payment of the Gross
23 Settlement Amount and all associated employer payroll tax obligations, Plaintiff and all Settlement
24 Class members who do not timely opt-out of the Settlement will be deemed to have fully released
25 and discharged Defendants and their present and former officers, directors, members, owners,
26 managers, shareholders, agents, employees, operators, partners, joint ventures, subsidiaries, parent
27 companies, divisions, trustees, representatives, beneficiaries, related entities, consultants, vendors,
28 professional employer organizations (PEO), staffing agencies, attorneys, insurers, reinsurers,

1 successors or assignees and any individual or entity that could be alleged to be jointly liable with
2 Defendants (“Released Parties”) from any and all Released Class Claims which arose during their
3 employment in a non-exempt position in California during the Class Period.

4 2. Upon the Effective Date, and subject to Defendant’s full payment of the Gross
5 Settlement Amount and all associated employer payroll tax obligations, Plaintiff and all Aggrieved
6 Employees will be deemed to have fully released and discharged the Released Parties from any
7 and all Released PAGA Claims which arose during their employment in a non-exempt position in
8 California during the PAGA Period.

9 3. “Released Class Claims” means any and all claims and/or causes of action which
10 accrued during the Class Period during employment in a non-exempt position in California, that
11 are alleged, or that could have been alleged in the Action based on the facts set forth in the
12 operative complaint in the Action (which includes direct class action claims under Labor Code §§
13 201-203, 204, 210, 221, 225.5, 226, 226(a), 226(e), 226(h), 226.2, 226.3, 226.7, 510, 512, 558,
14 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and under Business & Professions Code
15 section 17200 *et seq.* predicated on the underlying Labor Code claims alleged) and IWC Wage
16 Order 7-2001, 9-2001, and 9-2001 section 7. No PAGA claims are encompassed in the Released
17 Class Claims.

18 4. “Released PAGA Claims” means any and all PAGA claims and/or causes of action
19 which accrued during the PAGA Period during employment in a non-exempt position in
20 California, that are alleged in the operative complaint on file in the Action, the LWDA Letter filed
21 by Plaintiff dated November 9, 2022 (LWDA Letter), or that could have been alleged in the Action
22 based on the facts set forth in the operative complaint or LWDA letter, including Labor Code §§
23 201-202, 226, 226(a), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 2698 *et seq.*, 2699(a), and
24 2699(g)(1). No Aggrieved Employee may opt out of the PAGA portion of the Settlement.

25 5. Upon the Effective Date, and subject to Defendants’ full payment of the Gross
26 Settlement Amount and all associated employer payroll tax obligations, Plaintiff Kaestner shall be
27 deemed to have fully, finally, and forever released the Released Parties from any and all claims,
28 obligations, demands, action, rights, causes of action, and liabilities against the Released Parties,

1 of whatever kind and nature, character, and description, whether in law or equity, whether
2 sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common
3 law, or other source of law, whether known or unknown, and whether anticipated or unanticipated,
4 including unknown claims covered by Civil Code Section 1542, arising through the date of her
5 signature hereon, for any type of relief, including, without limitation, claims for wages, damages,
6 unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation
7 costs, restitution, or equitable relief. These claims include, but are not limited to, the Released
8 Class Claims and Released PAGA Claims, as well as any other claims under any provision of the
9 California Labor Code or any applicable California Industrial Welfare Commission Wage Orders,
10 and claims under local, state, or federal discrimination statutes, including, without limitation, the
11 California Fair Employment and Housing Act, California Government Code §§ 12940 et seq.; the
12 Unruh Civil Rights Act, California Civil Code §§ 51 et seq.; the California Constitution; Title VII
13 of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 et seq.; the Americans with Disabilities Act,
14 42 U.S.C. §§ 12101 et seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C.
15 §§ 1001 et seq.; and all of their implementing regulations and interpretive guidelines. With respect
16 to these Released Claims as described in this Section, Plaintiff Kaestner shall be deemed to have
17 expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights,
18 and benefits he may otherwise have had pursuant to Section 1542 of the California Civil Code,
19 which provides as follows:

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

24 Notwithstanding Section 1542, Plaintiff understands and agrees that this Agreement shall
25 act as a release of all future claims that may arise from Plaintiff Kaestner's employment or
26 separation from employment with Defendants, or any other matters that existed between Plaintiff
27 Kaestner and the Released Parties up to the date of this Agreement, whether such claims are
28 currently known or unknown, and that Plaintiff intentionally waives any rights she may have under
the provisions of Section 1542, as well as under any other statutes or common law principles of

1 similar effect in the State of California or in any other state.

2 **E. Notice and Exclusion Process.**

3 1. Within ten (10) calendar days after entry of the order granting preliminary approval
4 of this Settlement, Defendants shall provide to the Settlement Administrator a list of all Class
5 Members, including their last known addresses, telephone numbers, social security numbers, and
6 their dates of employment as non-exempt employees in California during the Class Period
7 (“Settlement Class Information”). The names, addresses, telephone numbers, and Social Security
8 numbers will only be disclosed to the Settlement Administrator and not to Plaintiff Counsel. All
9 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This
10 information shall be kept confidential and shall not be disclosed, either in writing or orally, by the
11 Settlement Administrator. The Settlement Administrator shall use due care with respect to the
12 storage, custody, use, and/or dissemination of the confidential information. Such information must
13 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

14 2. A notice of pendency of class action, proposed settlement, and hearing date for
15 Court approval (“Class Notice”) in the form attached hereto as **Exhibit 1**, and as approved by the
16 Court, shall be sent by the Settlement Administrator to the Class Members and Aggrieved
17 Employees, by first class mail, within twenty (20) calendar days after entry of the order granting
18 preliminary approval. Attached to the Class Notice will be a request for exclusion form (“Request
19 for Exclusion Form”) in the form attached hereto as **Exhibit 2**.

20 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
21 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
22 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the
23 Class Member received the Class Notice. In the event of returned or non-deliverable notices, the
24 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
25 notices.

26 4. Each Class Member will be fully advised of the settlement, the ability to object to
27 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
28 inform the Class Members of the Court-established deadlines for filing objections and a Request

1 for Exclusion Form. Aggrieved Employees may neither object to, nor exclude themselves from,
2 the PAGA portion of the settlement.

3 5. Each Class Notice will contain personalized information setting forth the number of
4 weeks each Class Member worked for Defendants in California in a non-exempt position during
5 the Class Period and their estimated Individual Settlement Payment. To the extent a Class Member
6 disputes any of the information listed on his or her Class Notice, he or she may produce evidence
7 to the Settlement Administrator showing such information the individual contends should be
8 reflected in the Class Notice. Defendants' records will be presumed determinative, however, and
9 the Settlement Administrator's decision on these matters will be final. The Class Notice will also
10 set forth IRS W-9 information if required.

11 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
12 to receive an Individual Settlement Payment Amount and all Aggrieved Employees will be eligible
13 to receive a share of the PAGA allocation from the Net Settlement Proceeds, which shall be mailed
14 to them if and when the Effective Date occurs.

15 7. In order to elect not to participate in the Settlement, a Class Member must submit a
16 Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five
17 (45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to
18 Class Members, unless the Court requires a longer period, in which case the Court ordered
19 exclusion period will apply. The date of the postmark shall be deemed the date of submission. The
20 timeliness of submitted Request for Exclusion Forms will be determined by valid postmark. If the
21 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended to the
22 next day on which the U.S. Postal Service is open.

23 8. The deadline for submission of Exclusion Forms shall be extended once by 30 days
24 for those Class Members whose Class Notice and Exclusion Form are returned as "undeliverable."
25 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
26 on which the U.S. Postal Service is open.

27 9. The Settlement Administrator will search for additional addresses on returned mail
28 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days

1 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second
2 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not
3 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
4 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
5 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
6 Settlement Administrator will search using the social security number for a more current address.
7 If no address is found within 10 days, no further action is required.

8 10. The Settlement Administrator will notify the Parties of the total number of valid
9 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
10 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice
11 and Request for Exclusion Forms to Class Members).

12 11. In order to object to the settlement, a Class Member must mail his or her objection
13 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the
14 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
15 period, in which case the Court ordered objection period will apply. If the 45th day falls on a
16 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
17 which the U.S. Postal Service is open.

18 12. The Settlement Administrator shall provide to the Parties, at least twelve (12)
19 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration
20 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request
21 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve
22 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report
23 listing the amount of all payments to be made to each Class Member without names or personal
24 identifying information.

25 13. Defendants shall deposit the Gross Settlement Amount and all employer payroll tax
26 obligations with the Settlement Administrator no later than twenty (20) calendar days after the
27 Effective Date. Defendants shall be jointly and severally liable to pay the Gross Settlement Amount.

1 14. Class Members and Aggrieved Employees must cash each of their Individual
2 Settlement Amount checks within one hundred eighty (180) calendar days after they are mailed by
3 the Settlement Administrator. The value of any checks uncashed more than one hundred eighty
4 (180) days after mailing shall be paid to the State of California Controller's Office – Unclaimed
5 Property Fund, to be held in the name of the respective Class Member or Aggrieved Employee
6 pursuant to California's Unpaid Property Law.

7 **F. Duties of the Parties Prior to Court Approval.**

8 1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the
9 Court for preliminary approval of this settlement and entry of an order accomplishing the
10 following:

11 (a) Permitting Plaintiff to file the Second Amended Complaint in the form
12 attached hereto as Exhibit 3

13 (b) scheduling a fairness hearing on the question of whether the proposed
14 settlement should be finally approved as fair, reasonable and adequate as to the Class Members
15 and Aggrieved Employees;

16 (c) approving as to form and content the proposed Class Notice;

17 (d) approving as to form and content the proposed Request for Exclusion
18 Form;

19 (e) preliminarily certifying the Settlement Class for purposes of approving
20 this Settlement only;

21 (f) preliminarily approving the PAGA payment of \$30,000 to the LWDA;

22 (g) preliminarily setting attorneys' fees and costs payable to Class Counsel;

23 (h) preliminarily setting the Enhancement Payment to the Class Representative;

24 and

25 (i) preliminarily approving Phoenix Settlement Administrators as the
26 Settlement Administrator and its estimated fees and costs of \$7,500.

27 2. The Parties shall submit this Settlement Agreement to the Court and the LWDA
28 in support of Plaintiff's unopposed motion for preliminary approval of the settlement.

G. Duties of the Parties in Connection with and Following Final Court Approval.

1. In connection with the hearing on final approval of the settlement provided for in this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10) calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered by the Court):

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

(b) approving Class Counsel's application for an award of attorneys' fees and reimbursement of documented litigation costs and expenses, the Enhancement Payment to the Class Representative, the PAGA Payment to the LWDA, and the costs of administering the settlement; and

(c) Entering judgment in the Action in accordance with this Settlement Agreement, pursuant to Cal. Rules of Court, Rule 3.769(h).

2. Class Counsel shall file an application for attorneys' fees and reimbursement of costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered by the Court).

H. Miscellaneous Provisions:

1. Voiding the Agreement.

A failure of the Court to approve any material condition of this Settlement Agreement which effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or materially modified on appellate review, shall render the entire Settlement Agreement voidable and unenforceable as to all Parties herein at the option of any Party.

2. Parties' Authority.

The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

3. Mutual Full Cooperation.

The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and such other

1 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
2 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated
3 by this Settlement Agreement and any other efforts that may become necessary by order of the
4 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As
5 soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the
6 assistance and cooperation of Defendants and their counsel, take all necessary steps to secure the
7 Court's preliminary and final approval of the settlement.

8 **4. No Prior Assignments.**

9 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
10 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
11 entity any portion of any liability, claim, demand, action, cause of action or rights released and
12 discharged by this Settlement Agreement.

13 **5. No Admission.**

14 Nothing contained herein, nor the consummation of this Settlement Agreement, is to be
15 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
16 of Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this
17 Settlement Agreement with the intention of avoiding further disputes and litigation with the
18 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
19 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
20 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
21 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

22 **6. Construction.**

23 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
24 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement
25 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
26 any Party or her or their counsel participated in the drafting of this Settlement Agreement.

27 \\\

28 \\\

1 **7. Captions and Interpretations.**

2 Paragraph titles or captions contained herein are inserted as a matter of convenience and for
3 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement
4 or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a
5 recital.

6 **8. Modification.**

7 This Settlement Agreement may not be changed, altered, or modified, except in writing and
8 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
9 discharged except by performance in accordance with its terms or by a writing signed by each of
10 the Parties hereto on their attorneys.

11 **9. Integration Clause.**

12 This Settlement Agreement contains the entire agreement between the Parties relating to
13 the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,
14 understandings, representations, and statements, whether oral or written and whether by a Party or
15 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in
16 writing.

17 **10. Binding on Assigns.**

18 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
19 hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

20 **11. Governing Law.**

21 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
22 according to the laws of the State of California, without giving effect to any conflict of law
23 principles or choice of law principles.

24 **12. Signatures of All Class Members Unnecessary to be Binding.**

25 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
26 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,
27 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release
28

provided herein and such shall have the same force and effect as if this Settlement Agreement was executed by each Class Member.

13. Counterparts.

This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties.

14. Confidentiality

Until Plaintiff files her motion for preliminary approval of the class action settlement of the Action, the Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the amount and terms of the Settlement, except as to spouses, children, parents, tax or financial advisors, attorneys, taxing agencies, or as otherwise required by law.

15. No Publicity

Plaintiff and her Counsel will not contact the media about the Settlement Agreement or respond to any inquiries by the media regarding the Settlement, other than to state that the matter was amicably settled, and the Court did not find Defendants liable. Plaintiff and her Counsel also will not post any information about the Settlement Agreement on social media or their firms' websites.

16. Defendants' Option to Terminate Settlement

If 10% or more members of the Settlement Class exercise their rights to exclude themselves and opt out of the Resolution, Defendants may, in their sole discretion, unilaterally withdraw from and terminate the Resolution no later than five (5) court days prior to the date of the Final Approval Hearing. In the event of Defendants' withdrawal, no party may use the fact that the Parties agreed to the Resolution for any reason and the litigation of the Action returns to the status it was in prior to the signing of this Settlement Agreement.

17. Representation Regarding Class Size; Escalator Provision

Defendants represent that there are 13,119 workweeks worked by Class Members through the date of mediation (August 21, 2023). Should the number of workweeks increase by more than

1 10% through the conclusion of the Class Period, this will increase the Gross Settlement Amount
2 proportionally over the 10% increase. For example, if the number of workweeks increase by 11%
3 through the last day of the Class Period, the Gross Settlement Amount shall increase by 1%.
4 Alternatively, Defendants may elect to end the Class Period and PAGA Period as of the date that
5 the number of class workweeks reaches but does not exceed 10%.

6 **18. Continuing Jurisdiction.**

7 The Parties agree that upon the occurrence of the entry of judgment in this case pursuant to
8 the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code
9 of Civil Procedure Section 664.6 and all other applicable law, and the Court shall retain exclusive
10 and continuing equity jurisdiction of this Action over all Parties and Class Members to interpret
11 and enforce the terms, conditions and obligation of the Agreement.

12 **19. Default; Notice; Cure; Acceleration; Time is of the Essence.**

13 Time is of the essence with respect to all provisions of this Agreement. If Defendants fail
14 to timely make the payment due hereunder, they shall be in default of their obligations. Plaintiff
15 shall thereafter give notice of default to counsel of record for Defendants and Defendants must cure
16 said default within ten (10) calendar days thereof. In the event of an uncured default, all unpaid
17 amounts shall be due and payable with interest at the legal rate from the date of default.

18 *[SIGNATURES ON FOLLOWING PAGE]*
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20
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28

1 Dated: 10 / 26 / 2023
2

Kristine Kaestner
By: _____
KRISTINE KAESTNER
Plaintiff and Class Representative

3
4 Dated: _____

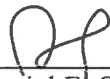
MY JOURNEY TRANSPORT
By: _____
Its: _____

5
6
7 Dated: _____

JOURNEY VIA GURNEY, LLC
By: _____
Its: _____

8
9
10
11 **APPROVED AS TO FORM AND CONTENT:**

12 Dated: October 27, 2023

GAINES & GAINES, APLC
By: 
Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Counsel for Plaintiff and Class
Representative Kristine Kaestner

13
14
15
16
17 Dated: _____

FISHER & PHILLIPS LLP
By: _____
Christine D. Baran,, Esq.
Counsel for Defendants My Journey
Transport and Journey Via Gurney, LLC

1 Dated: _____

2 By: _____
3 KRISTINE KAESTNER
4 Plaintiff and Class Representative

5 Dated: _____

6 MY JOURNEY TRANSPORT

7 By: ChG/H/Deuter
8 Its: President

9 Dated: _____

10 JOURNEY VIA GURNEY, LLC

11 By: ChG/H/Deuter
12 Its: Managing Member

13 **APPROVED AS TO FORM AND CONTENT:**

14 Dated: _____

15 GAINES & GAINES, APLC

16 By: _____
17 Daniel F. Gaines, Esq.
18 Alex P. Katofsky, Esq.
19 Counsel for Plaintiff and Class
20 Representative Kristine Kaestner

21 Dated: October 26, 2023

22 FISHER & PHILLIPS LLP

23 By: Christine D. Baran
24 Christine D. Baran, Esq.
25 Counsel for Defendants My Journey
26 Transport and Journey Via Gurney, LLC

EXHIBIT 1

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

KRISTINE KAESTNER, on behalf of herself
and all similarly situated individuals,

Plaintiff,

v.

MY JOURNEY TRANSPORT, a California
corporation, JOURNEY VIA GURNEY, LLC, a
California limited liability company, and DOES
1 through 10, inclusive,

Defendants.

CASE NO: 34-2022-00330013

Assigned to the Hon. Lauri Damrell, Dept. 28

**NOTICE OF PENDENCY OF PROPOSED
CLASS ACTION SETTLEMENT AND
FINAL HEARING**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$315,000 to pay claims to all persons who are or were employed by My Journey Transport and Journey Via Gurney, LLC (“Defendants”) in a non-exempt position in the State of California between November 18, 2018 and November 8, 2023.
- The settlement resolves a lawsuit alleging that Defendants failed to pay all wages, including all minimum and overtime wages; failed to provide compliant meal and rest periods or premium compensation in lieu thereof; failed to timely issue final wages upon separation of employment; failed to issue accurate and complete itemized wage statements; failed to maintain payroll records; engaged in violations of Business and Professions Code § 17200; and is subject to penalties under the Labor Code Private Attorneys General Act of 2004. The Settlement avoids costs and risks of continuing the lawsuit, pays money to employees, and releases Defendants from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$105,000 as attorney’s fees and \$18,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendants deny liability and believes all appropriate wages were paid and that they otherwise complied with all Labor Code obligations. The Parties disagree on how much money could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below.
Exclude Yourself	To exclude yourself, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you will receive no money from the class settlement. This is the only option that allows you to ever be part of any other lawsuit against My Journey Transport and Journey Via Gurney, LLC about the legal claims that were brought in this case. Even if you exclude yourself, you will still be an Aggrieved Employee subject to the PAGA settlement
Object	Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement, as detailed below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On November 21, 2022, Plaintiff Kristine Kaestner ("Plaintiff"), a former employee of Defendants My Journey Transport and Journey Via Gurney, LLC, filed this lawsuit in the Riverside County Superior Court. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all persons who are or were employed by Defendants in a non-exempt position in the State of California between November 18, 2018 and November 8, 2023 ("Class Period"). Specifically, the lawsuit alleges that members of the Class were not paid all wages, including all minimum and overtime wages due; provided compliant meal and rest periods or premium compensation in lieu thereof; timely issued final wages upon separation of employment; maintain accurate records; issued accurate and complete itemized wage statements; and related claims. The Settlement seeks recovery of wages, liquidated damages, damages, interest, statutory and civil penalties, restitution, attorney's fees, and costs. Defendants deny all of the material allegations in the lawsuit and deny that they owe Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Gaines & Gaines, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Phone: (866) 550-0855

Defendant's Attorneys

Christine D. Baran, Esq.
Lauren Roseman, Esq.
Joshua D. Klein, Esq.
Fisher & Phillips LLP
2050 Main Street, Suite 1000
Irvine, California 92614

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendants. Plaintiff believes she would have prevailed on her claims at a trial. Defendants do not believe that Plaintiff would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement and Release of Claims ("Settlement" or "Settlement Agreement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiff and Plaintiff's Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members.

B. Who is in the Settlement Class? Who is an Aggrieved Employee?

The Settlement encompasses a class composed of all persons who are or were employed by Defendants in a non-exempt position in the State of California between November 18, 2018 and November 8, 2023 ("Class Period"). It also encompasses Aggrieved Employees composed of all persons who are or were employed by Defendants in a non-exempt position in the State of California between November 9, 2021 and November 8, 2023 ("PAGA Period").

C. What does the Settlement provide?

1. Gross Settlement Amount.

The Settlement provides that Defendants will pay \$315,000 (the "Gross Settlement Amount") to settle the lawsuit.

2. Net Settlement Proceeds.

The "Net Settlement Proceeds" is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Proceeds is the Gross Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Participating Class Members. The Court will set these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorney's Fees** in an amount set by the Court, not to exceed one-third of the Gross Settlement Amount (estimated at \$105,000);

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$18,000;

(c) **Service Payment and General Release Payment to the Class Representative** in an amount set by the Court, not to exceed \$5,000 to Plaintiff for her service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$7,500, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$40,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). Of that amount, 75% or \$30,000, shall be paid to the California Labor and Workforce Development Agency ("LWDA"). The remaining 25%, or \$10,000, shall be included in the Net Settlement Proceeds for payment to Aggrieved Employees.

3. Individual Payment Amount.

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Upon the Effective Date, and subject to Defendants' full payment of the Gross Settlement Amount and all associated employer payroll tax obligations, Plaintiff and all Settlement Class members who do not timely opt-out of the Settlement will be deemed to have fully released and discharged the Released Parties from any and all Released Class Claims which arose during their employment in a non-exempt position in California during the Class Period.

"Released Class Claims" means any and all claims and/or causes of action which accrued during the Class Period during employment in a non-exempt position in California, that are alleged, or that could have been alleged in the Action based on the facts set forth in the operative complaint in the Action (which includes direct class action claims under Labor Code §§ 201-203, 204, 210, 221, 225.5, 226, 226(a), 226(e), 226(h), 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and under Business & Professions Code section 17200 et seq. predicated on the underlying Labor Code claims alleged), IWC Wage Order 7-2001, 9-2001, and 9-2001 section 7. No PAGA claims are encompassed in the Released Class Claims.

"Released Parties" means Defendants and their present and former officers, directors, members, owners, managers, shareholders, agents, employees, operators, partners, joint ventures, subsidiaries, parent companies, divisions, trustees, representatives, beneficiaries, related entities, consultants, vendors, professional employer organizations (PEO), staffing agencies, attorneys, insurers, reinsurers, successors or assignees and any individual or entity that could be alleged to be jointly liable with Defendants.

Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and all associated employer payroll tax obligations, Plaintiff and all Aggrieved Employees will be deemed

to have fully released and discharged the Released Parties from any and all Released PAGA Claims which arose during their employment in a non-exempt position in California during the PAGA Period. No Aggrieved Employee may opt out of the PAGA portion of the Settlement.

“Released PAGA Claims” means any and all PAGA claims and/or causes of action which accrued during the PAGA Period during employment in a non-exempt position in California, that are alleged in the operative complaint on file in the Action, the LWDA letter filed by Plaintiff dated November 9, 2022 (LWDA Letter), or that could have been alleged in the Action based on the facts set forth in the operative complaint or LWDA Letter, including Labor Code §§ 201-202, 226(a), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 2698 et seq, 2699(a), and 2699(g)(1). No Aggrieved Employee may opt out of the PAGA portion of the Settlement.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) shall receive an “Individual Payment Amount,” which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form), and a PAGA portion of the Individual Payment Amount, which is distributable to each Aggrieved Employees regardless of whether they participate in the Settlement (Aggrieved Employees will receive the PAGA portion of the Individual Payment Amount even if they exclude themselves from the Settlement).

“Individual Payment Amount” means the portion of the Net Settlement Proceeds distributable to each Class Member who participates in the Class Settlement (i.e., who does not submit a valid request for exclusion form) and each Aggrieved Employee, whether they participate in the Class Settlement or not. As to participating Class Members, the class portion of the Individual Payment Amount will be determined by dividing the Net Settlement Proceeds, less the \$10,000 PAGA allocation, by the total number of weeks worked by the entire Settlement Class in a non-exempt position in California during the Class Period, net of opt outs, resulting in the class workweek value; and then multiplying the class workweek value by the number of weeks worked by each participating Class Member in a non-exempt position in California during the Class Period.

As to the Aggrieved Employees, the PAGA portion of the Individual Payment Amount will be determined by dividing the PAGA settlement amount (\$10,000) by the total number of weeks worked by all Aggrieved Employees in a non-exempt position in California during the PAGA Period, resulting in the PAGA workweek value; and then multiplying the PAGA workweek value by the number of weeks worked by each Aggrieved Employee in a non-exempt position in California during the PAGA Period.

For tax purposes, the class portion of each Individual Payment Amount will be apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 80% equally as penalties and interest (reported on an IRS Form 1099, if required). The PAGA portion of each Individual Payment Amount will be apportioned 100% as penalties (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members and Aggrieved Employees will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

Settlement Class Payment: According to the records of Defendant, you worked [] weeks while employed as a non-exempt employee in California from November 18, 2018 through November 8, 2023. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[]. This amount is subject to change based on the final ruling of the Court.

PAGA Payment: According to the records of Defendant, you worked [_____] weeks while employed as a non-exempt employee in California from November 9, 2021 through November 8, 2023. Based on these weeks worked, you are entitled to a PAGA Payment Amount of approximately \$[_____]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than _____, 2023. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendants and will make a final and binding determination without a hearing or right of appeal by you.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the “Final Settlement Hearing”) on _____, at 8:30 a.m., in the Courtroom of Judge Lauri Damrell of the Sacramento County Superior Court, Department 28, located at 3255 E Tahquitz Canyon Way Palm Springs, California 92262. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorney’s fees and costs to be awarded to Plaintiff’s Attorneys; and (v) the amount that should be awarded to Plaintiff as a Service Payment and General Release Payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than _____. The Settlement Administrator’s address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than _____.

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement except you will participate in the PAGA portion thereof and be paid a share of the PAGA settlement. With that exception, you will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendants and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than _____.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Settlement Agreement and Release of Claims” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Riverside County Superior Court, located at 3255 E Tahquitz Canyon Way, Palm Springs, California 92262.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number].

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS *Kristine Kaestner v. My Journey Transport, et al.*, Sacramento County Superior Court Case. No. 34-2022-00330013. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.**

I confirm that I was employed by Defendants My Journey Transport and Journey Via Gurney, LLC in a non-exempt position in the State of California between November 18, 2018 and November 8, 2023.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE **[45 days after mailing of Notice]**. Send this signed request for exclusion form to the Settlement Administrator:

My Journey Transport Claims Administrator
c/o _____

EXHIBIT 3

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Kristine Kaestner, on behalf of herself and all similarly situated individuals

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

KRISTINE KAESTNER, on behalf of herself
and all similarly situated individuals,

Plaintiff,

v.

MY JOURNEY TRANSPORT, a California
corporation, JOURNEY VIA GURNEY, LLC,
a California limited liability company, and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: 34-2022-00330013

Assigned to the Hon. Lauri Damrell, Dept. 28

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

**1. FAILURE TO PAY ALL MINIMUM
AND OVERTIME WAGES DUE (LABOR
CODE §§ 221, 225.5, 510, 1194, 1194.2,
1197, 1197.1, 1198, AND 1199)**

**2. FAILURE TO PROVIDE REST
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.2 AND
226.7; IWC WAGE ORDER 9-2001)**

**3. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7, 510,
512, AND 1194); IWC WAGE ORDER 9-
2001)**

**4. KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a), (e), (h))**

**5. FAILURE TO MAINTAIN REQUIRED
RECORDS (LABOR CODE §§ 226, 1174,
AND 1174.5)**

**6. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION OF**

3. Plaintiff, on behalf of herself and Class Members, brings this action pursuant to Labor Code §§ 201-203, 204, 210, 221, 225.5, 226, 226(a), 226(e), 226(h), 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 1199 seeking compensation for all unpaid minimum and overtime wages, premium meal and rest period wages, liquidated damages, statutory penalties, injunctive relief, and reasonable attorneys' fees and costs.

4. Plaintiff, on behalf of herself and Class Members and pursuant to Business & Professions Code §§ 17200-17208, also seeks restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages to the Class Members.

5. Plaintiff, on behalf of herself and all aggrieved employees pursuant to Labor Code § 2698 *et seq.*, seeks penalties for Defendants' various violations of the California Labor Code.

6. Venue as to each Defendant is proper in Sacramento County Superior Court. The Labor Code violations alleged against each Defendant herein arose in Sacramento County, California.

II.

PARTIES

A. Plaintiff

7. Plaintiff KRISTINE KAESTNER was employed by Defendants from April 2022 through August 2023 as a non-exempt employee in Sacramento County, California.

8. During her work with Defendants, Plaintiff was:

- a. Denied the payment of all minimum and overtime wages due and owing during employment;
- b. Willfully denied meal and rest breaks or premium wages in lieu thereof;
- c. Willfully denied accurately itemized wage statements;
- d. Willfully denied the production of her requested employee file; and
- e. Willfully denied the timely payment of all wages due upon separation of employment.

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1 **B. Defendants**

2 9. Defendant MY JOURNEY TRANSPORT is a California corporation that operates in
3 California and employed Plaintiff and similarly situated employees within California. The violations
4 alleged herein arose in Sacramento County, State of California.

5 10. Defendant JOURNEY VIA GURNEY, LLC, is a California limited liability that
6 operates in California. Defendant JOURNEY VIA GURNEY, LLC employed Plaintiff and similarly
7 situated employees within California. The violations alleged herein arose in Sacramento County, State
8 of California.

9 11. The true names and capacities, whether individual, corporate, associate, or otherwise,
10 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
11 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
12 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
13 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
14 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
15 designated hereinafter as DOES when such identities become known.

16 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
17 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
18 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
19 attributable to the other Defendants.

20 13. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
21 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
22 provisions of the California Labor Code as alleged herein.

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1 **III.**

2 **CLASS ACTION ALLEGATIONS**

3 14. Plaintiff brings this action on behalf of herself, and all others similarly situated as a
4 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the
5 following class composed of and defined as follows:

6 **THE CLASS**

7 All persons who are or were employed by Defendants in a non-exempt
8 position in the State of California between November 18, 2018 and
9 November 8, 2023

10 15. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
11 modify this class description with greater specificity or further division into subclasses or limitation
12 to particular issues.

13 16. This action has been brought and may properly be maintained as a class action under
14 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
15 interest in the litigation and the proposed Classes is easily ascertainable.

16 **A. Numerosity**

17 17. The potential Class Members as defined are so numerous that joinder of all the
18 members each the Class impracticable. While the precise number of Class Members has not been
19 ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 currently employ, and during the relevant time periods employed, over 50 persons in the State of
21 California who fall within the Class definition.

22 18. Accounting for employee turnover during the relevant period necessarily increases this
23 number. Plaintiff alleges that Defendants' employment records would provide information as to the
24 number and location of Class Members. Joinder of Class Members not practicable.

25 **B. Commonality**

26 19. There are questions of law and fact common to the Class that predominate over any
27 questions affecting only individual Class Members. These common questions of law and fact include,
28 without limitation:

- a. Whether Defendants failed to pay all minimum and overtime wages due and owing to Plaintiff and Class Members, in violation of Labor Code §§ 221, 225.5, 510, 1194, 1194.2, 1197, 1197.1, 1198, and 1199;
- b. Whether Defendants failed to properly provide rest periods or compensation in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§ 226.2 and 226.7, and IWC Wage Order 9-2001;
- c. Whether Defendants failed to properly provide meal periods or compensation in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§ 226.7, 510, 512, and 1194 and IWC Wage Order 9-2001;
- d. Whether Defendants failed to provide Plaintiff and Class Members with accurately itemized wage statements, in accordance with Labor Code § 226(a) and (e);
- e. Whether Defendants failed to maintain accurate required records for Plaintiff and Class Members, in violation of Labor Code §§ 1174 and 1174.5;
- f. Whether Defendants failed to timely pay all wages due and owing upon separation of employment, in violation of Labor Code §§ 201-204 and 210; and
- g. Whether Plaintiff and Class Members are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

C. Typicality

20. The claims of the named Plaintiff are typical of the claims of Class Members. Plaintiff and Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. Adequacy of Representation

21. Plaintiff will fairly and adequately represent and protect the interests of Class Members. Counsel who represents Plaintiff are competent and experienced in litigating large employment class actions.

1 **E. Superiority of Class Action**

2 22. A class action is superior to other available means for the fair and efficient adjudication
3 of this controversy. Individual joinder of all proposed Class Members not practicable, and questions
4 of law and fact common to the proposed Class predominate over any questions affecting only
5 individual members of the proposed Class. Each member of the proposed Class has been damaged
6 and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

7 23. Class action treatment will allow those similarly situated persons to litigate their
8 claims in the manner that is most efficient and economical for the parties and the judicial system.
9 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
10 action that would preclude its maintenance as a class action.

11 **IV.**

12 **CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION**

14 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

15 **FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES**

16 **(LABOR CODE §§ 221, 225.5, 510, 1194, 1194.2, 1197, 1197.1, 1198, AND 1199)**

17 24. Plaintiff incorporates paragraphs 1 through 23 of this Complaint as though fully set
18 forth herein.

19 25. During the liability period, Defendants require Plaintiff and Class Members to be on
20 call for twelve hours: if they are not called into work, they are only paid for two hours, and if they are
21 called into work, they are only paid for the time spent working, notwithstanding the fact they are
22 subject to Defendants' control during this on-call time. An employer is obligated to pay the wages of
23 an hourly employee for all time that the employee is under the control of the employer, and this
24 includes all the time the employee is suffered or permitted to work, whether or not required to do so.
25 When Plaintiff and Class Members are on-call, they are under the control of Defendants and required
26 to be compensated for all hours worked. Defendants, however, fail to do this. These instances deprive
27 Plaintiff and Class Members of significant hours worked and minimum and overtime wages due, and
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1 constitute violations of Labor Code §§ 221, 225.5, 510, 1194, 1194.2, 1197, 1197.1, 1198, and 1199
2 and IWC Wage Order 9-2001.

3 26. As a result of the unlawful acts of Defendants in willfully failing to pay all minimum
4 and overtime wages, Plaintiff and Class Members have been deprived of wages in amounts to be
5 determined at trial, and are entitled to restitution and recovery of such amounts, liquidated damages,
6 plus interest thereon, attorneys' fees, and costs pursuant to Labor Code §§ 1194 and 1194.2.

7 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

8 **V.**

9 **SECOND CAUSE OF ACTION**

10 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

11 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

12 **(LABOR CODE §§ 226.2 AND 226.7 AND IWC WAGE ORDER 9-2001)**

13 27. Plaintiff incorporates paragraphs 1 through 26 of this Complaint as though fully set
14 forth herein.

15 28. Plaintiff and Class Members are entitled to one hour of pay for each day that
16 Defendants failed to properly provide one or more rest periods as set forth in Labor Code §§ 226.2
17 and 226.7 and IWC Wage Order 9-2001.

18 29. Defendants failed to provide Plaintiff and Class Members proper rest periods, or
19 compensation in lieu thereof, in violation of Labor Code §§ 226.2 and 226.7 and IWC Wage Order
20 9-2001. Due to the busy nature of their work schedule, they were unable to always take, and not
21 authorized to take, 10-minute rest periods for every four hours of work or major fraction thereof.
22 Plaintiff and Class Members were simply denied and not authorized to take their legally entitled rest
23 periods and were never paid premium wages for missed rest periods.

24 30. Pursuant to Labor Code §§ 226.2 and 226.7 and IWC Wage Order 9-2001, Plaintiff
25 seeks the payment of all rest period compensation which Class Members are owed for four years
26 preceding the filing of this Action, according to proof.

27 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

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VI.
THIRD CAUSE OF ACTION
PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF
(LABOR CODE §§ 226.7, 510, 512 AND 1194 AND IWC WAGE ORDER 9-2001)

31. Plaintiff incorporates paragraphs 1 through 30 of this Complaint as though fully set forth herein.

32. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001.

33. Defendants failed to provide Plaintiff and Class Members with proper meal periods, or compensation in lieu thereof, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-minute meal period for every shift worked that exceeds five hours in duration, or a second, uninterrupted, 30-minute meal period for every shift worked that exceeds ten hours in duration, but were not paid premium wages of one hour's pay for each missed first or second meal period. When Plaintiff and Class Members do receive a meal period, it is typically late, short, interrupted, or they have to clock out and continue working, which also deprives them of all wages due since they are not paid for all hours worked. This violates Labor Code §§ 226.7, 510, 512, 1194 and IWC Wage Order 9-2001.

34. Pursuant to Labor Code §§ 226.7, 510, 512, 1194 and IWC Wage Order 9-2001, Plaintiff seeks the payment of all unpaid wages and premium meal period compensation which Class Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

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VII.

FOURTH CAUSE OF ACTION

PLAINTIFF AND CLASSES I AND II AGAINST ALL DEFENDANTS
KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT PROVISIONS
(LABOR CODE § 226(a), (e))

35. Plaintiff incorporates paragraphs 1 through 34 of this Complaint as though fully set forth herein.

36. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and 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. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

37. As stated above, Plaintiff and Class Members were not paid all minimum and overtime wages due and all premium meal and rest period wages due. As such, the wage statements issued by Defendants fail to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), the total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9).

38. As a consequence of Defendants' willful conduct in failing to provide Class Members with accurate itemized wage statements, Plaintiff and Class Members have been injured because they

1 have not been paid all wages due and/or were issued wage statements which do not reflect, and fail
2 to state, all information required by Labor Code § 226(a). As a result, Plaintiff and Class Members
3 are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages
4 or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation
5 in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are
6 entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

7 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

8 **VIII.**

9 **FIFTH CAUSE OF ACTION**

10 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

11 **FAILURE TO MAINTAIN REQUIRED RECORDS**

12 **(LABOR CODE §§ 226, 1174, AND 1174.5)**

13 39. Plaintiff incorporates paragraphs 1 through 38 of this Complaint as though fully set
14 forth herein.

15 40. During the Class Period, as part of Defendants' illegal payroll policies and practices
16 to deprive Plaintiff and Class Members of all wages earned and due, Defendants knowingly and
17 intentionally failed to maintain records as required under California Labor Code §§ 226, 1174, and
18 IWC Wage Order No. 9-2001, § 7, including but not limited to the following records: total daily hours
19 worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing
20 when each employee begins and ends each work period; and accurate itemized statements. Defendants
21 also refused to produce Plaintiff's requested employee file. This violates Labor Code §§ 1174 and
22 1174.5

23 41. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and
24 Class Members have been damaged in an amount according to proof at trial, and are entitled to all
25 wages earned and due, plus interest thereon. Additionally, Plaintiff and Class Members are entitled
26 to all available statutory penalties, including but not limited to penalties pursuant to California Labor
27 Code §§ 226(e) and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including
28 but not limited to those provided in California Labor Code § 226(e), as well as other available

1 remedies.

2 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

3 **IX.**

4 **SIXTH CAUSE OF ACTION**

5 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

6 **FAILURE TO TIMELY PAY WAGES DUE AT**

7 **SEPARATION OF EMPLOYMENT**

8 **(LABOR CODE §§ 201-204 AND 210)**

9 42. Plaintiff incorporates paragraphs 1 through 41 of this Complaint as though fully set
10 forth herein.

11 43. California Labor Code § 201 and § 202 require Defendants to pay employees all wages
12 due within 72 hours after resignation of employment or the day of termination of employment. Labor
13 Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must,
14 as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full
15 or an action is commenced. The penalty cannot exceed 30 days of wages.

16 44. Defendants paid Plaintiff and Class Members their final wages beyond the time frames
17 set forth in Labor Code §§ 201 and 202 in violation of Labor Code § 203. Plaintiff and Class Members
18 were not paid all wages due and owing throughout the course of their employment, as detailed above.
19 Consequently, at the time of their separation from employment with Defendants, they were not paid
20 all final wages due and owing for the entirety of their employment.

21 45. More than 30 days have passed since Plaintiff and certain Class Members have left
22 Defendants' employ.

23 46. As a consequence of Defendants' willful conduct in not paying wages owed timely
24 upon separation of employment, Plaintiff and Class Members are entitled to up to 30 days' wages as
25 a penalty under Labor Code §§ 203, 204, and 210 for Defendants' failure to timely pay legal wages
26 at separation of employment.

27 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

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X.
SEVENTH CAUSE OF ACTION
PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
UNFAIR COMPETITION PURSUANT TO
BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

47. Plaintiff incorporates paragraphs 1 through 46 of this Complaint as though fully set forth herein.

48. This is a Class Action for Unfair Business Practices. Plaintiff, on her own behalf and on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and Class Members. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

49. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

50. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices.

51. Wage and hour laws express fundamental public policies. Properly providing employees with all wages due is a fundamental public policy of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and its employees from competitors who lower their costs by failing to comply with minimum labor standards.

52. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,

1 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
2 guaranteed to all employees under law.

3 53. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
4 §17200 *et seq.* of the Business & Professions Code.

5 54. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
6 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
7 17200 *et seq.* of the Business & Professions Code.

8 55. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
9 similarly situated have been damaged in a sum as may be proven.

10 56. Unless restrained by this Court, Defendants will continue to engage in unlawful
11 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
12 should make such orders or judgments, including the appointment of a receiver, as may be necessary
13 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
14 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
15 to, disgorgement of profits which may be necessary to restore Plaintiff and Class Members to the
16 money Defendants have unlawfully failed to pay.

17 **XI.**

18 **EIGHTH CAUSE OF ACTION**

19 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
20 **PENALTIES PURSUANT TO LABOR CODE § 2698 ET SEQ. FOR VIOLATIONS OF**
21 **LABOR CODE §§ 201, 202, 226, 226(a), 226.7, 510, 512, 1174, 1174.5, AND 1194 AND**
22 **PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§**
23 **226.3 AND 558**

24 57. Plaintiff incorporates paragraphs 1 through 56 of this Complaint as though fully set
25 forth herein.

26 58. As a result of the acts alleged above, including the Labor Code violations set forth
27 herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

28 59. For each such violation, Plaintiff and all other aggrieved employees are entitled to

1 penalties in an amount to be shown at the time of trial subject to the following formula:

- 2 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
3 each subsequent violation of Labor Code §§ 201, 202, 226, 226(a), 226.7, 510,
4 512, 1174, 1174.5, and 1194; and
5 b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor
6 Code §§ 226.3 and 558.

7 60. Penalties recovered will be allocated 75% to the Labor and Workforce Development
8 Agency, and 25% to the affected employees.

9 61. On November 9, 2022, Plaintiff sent a letter, by online submission to the LWDA and
10 by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the
11 violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor
12 Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)
13 calendar days of November 9, 2022. Plaintiff may therefore commence this action to seek civil
14 penalties pursuant to Labor Code § 2698 *et seq.*

15 Wherefore, Plaintiff and the aggrieved employees she seeks to represent request relief as
16 described below.

17 **XI.**

18 **RELIEF REQUESTED**

19 WHEREFORE, Plaintiff prays for the following relief:

- 20 1. For compensatory damages in the amount of all wages not paid to Plaintiff and Class
21 Members pursuant to Labor Code § 1194;
22 2. For liquidated damages in the amount of all minimum wages not paid to Plaintiff and
23 Class Members pursuant to Labor Code § 1194.2;
24 3. For compensatory damages in the amount of one hour of wages for each day on which
25 a meal period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§
26 226.7 and 512;

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1 4. For compensatory damages in the amount of one hour of wages for each day on which
2 a rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §
3 226.7;

4 5. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;

5 6. For penalties pursuant to Labor Code § 2698 *et seq.*, for Plaintiff and all other
6 Aggrieved Employees;

7 7. An award of prejudgment and post-judgment interest;

8 8. For restitution for unfair competition pursuant to Business & Professions Code §
9 17200 *et seq.* for Plaintiff and Class Members;

10 9. An award providing for payment of costs of suit pursuant to Labor Code §§ 226(h),
11 1194, 2699(g)(1), and other applicable law;

12 10. An award of attorneys' fees pursuant to Labor Code §§ 226(h), 1194, 2699(g)(1), and
13 other applicable law; and

14 11. Such other and further relief as this Court may deem just and proper.

15 Dated: October 26, 2023

Respectfully submitted,

17 GAINES & GAINES
A Professional Law Corporation

19 By: _____
20 DANIEL F. GAINES
EVAN S. GAINES
21 Attorney for Plaintiff

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

24 Dated: October 26, 2023

Respectfully submitted,

25 GAINES & GAINES
A Professional Law Corporation

27 By: _____
28 DANIEL F. GAINES
EVAN S. GAINES
Attorney for Plaintiff