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

KARINA BROWN, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

C.W. BROWER, INC., a California
Corporation; and DOES 1 to 100, inclusive,
Defendant.

Case No.: CV-22-005735

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: December 14, 2022
FAC Filed: May 2, 2023
Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the Plaintiff Karina Brown (“Plaintiff”), on behalf of herself, the Labor and Workforce
3 Development Agency, Class Members, and Aggrieved Employees, and Defendant C.W. Brower, Inc.,
4 (“Defendant”). This Agreement is subject to the terms and conditions set forth below and the approval of
5 the Court.

6 **1. DEFINITIONS**

7 The following terms, when used in this Agreement, have the following meanings:

8 1.1 “Action” means the above stated lawsuit, *Brown v. C.W. Brower, Inc.*, Stanislaus County
9 Superior Court, Case No. CV-22-005735, filed December 14, 2022.

10 1.2 “Aggrieved Employee(s)” shall include (1) all hourly non-exempt employees who have or
11 continue to work for Defendant in California from December 9, 2021, up to either (a) the date a signed
12 order preliminarily approving the settlement is filed, or (b) March 19, 2024, whichever is earlier (“PAGA
13 Employees Subclass”); and (2) all individuals who applied to work for Defendant in California, regardless
14 of whether or not they were ultimately hired from December 9, 2021, up to either (a) the date a signed
15 order preliminarily approving the settlement is filed, or (b) March 19, 2024, whichever is earlier (“PAGA
16 Applicant Subclass”).

17 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation
18 Regarding Class Action and PAGA Settlement and Release.

19 1.4 “Class Counsel” means Galen T. Shimoda, Justin P. Rodriguez and Renald Konini of
20 Shimoda & Rodriguez Law, PC.

21 1.5 “Class Member(s)” shall include, (1) for the First through Fourth and Seventh Causes of
22 Action, all hourly non-exempt employees who have or continue to work for Defendant in California from
23 December 14, 2018, to (a) the date a signed order preliminarily approving the class settlement is filed, or
24 (b) March 19, 2024, whichever is earlier (“Employee Subclass”); and shall include, (2) for the Fifth and
25 Sixth Causes of Action, all individuals who applied to work for Defendant in California, regardless of
26 whether or not they were ultimately hired from December 14, 2019, to (a) the date a signed order
27 preliminarily approving the class settlement is filed, or (b) March 19, 2024, whichever is earlier (“Applicant
28 Subclass”).

1 1.6 “Class Period” includes, (1) for the Employee Subclass, December 14, 2018, through (a) the
2 date a signed order preliminarily approving the class settlement is filed, or (b) March 19, 2024, whichever
3 is earlier; and (2) for the Applicant Subclass, from December 14, 2019, to (1) the date a signed order
4 preliminarily approving the class settlement is filed, or (2) March 19, 2024, whichever is earlier.

5 1.7 “Class Representative” means Plaintiff Karina Brown.

6 1.8 “Class Representative’s Released Claims” means all claims arising from, that could have
7 been asserted, or related in any way to the Class Representative’s employment with Defendant, under
8 federal, state, or local laws, and/or ordinances, or tort or contract theories, whether known or unknown,
9 and whether anticipated or unanticipated, including without limitation statutory, constitutional, contractual
10 or common law claims for lost wages, unpaid wages, emotional distress, punitive damages, special
11 damages, damages, unpaid costs, penalties, liquidated damages, interest, attorneys’ fees, litigation costs,
12 restitution, equitable relief or other similar relief or claims. The Class Representative’s Released Claims
13 exclude claims for workers’ compensation, unemployment insurance benefits, or other claims that cannot
14 be released as a matter of law.

15 1.9 “Operative Complaint” means the operative First Amended Complaint on file in the Action
16 with the Court, a copy of which is attached hereto as **Exhibit 1**.

17 1.10 “Court” means the Stanislaus County Superior Court.

18 1.11 “Defendant” means C.W. Brower, Inc.

19 1.12 “Defendant’s Counsel” means Julie A. Marquis and Dane M. Willis of Freeman Mathis &
20 Gary, LLP.

21 1.13 “Enhancement Payment” means the amount approved by the Court to be paid to the Class
22 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
23 of Class Members, which is in addition to any Individual Settlement Amount paid to the Class
24 Representative as a Participating Class Member.

25 1.14 “Effective Date” means the Final Approval Date unless there is a timely objection lodged
26 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day
27 after a signed order approving this settlement has been filed provided no appellate proceeding having been
28 filed; or (b) the seventh (7th) calendar day after any appellate proceeding opposing the settlement has been

1 finally dismissed with no material change to the terms of this settlement and there is no right to pursue
2 further remedies or relief, whichever is later.

3 1.15 “Final Approval Date” means the date a signed order granting final approval of this
4 Agreement is filed with the Court.

5 1.16 “Gross Settlement Amount” is the sum of Four Hundred Sixty-Five Thousand Dollars
6 (\$465,000).

7 1.17 “Individual Settlement Amount” means an individual Class Member’s and Aggrieved
8 Employee’s allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in
9 Sections 1.19, 1.23, 5.5, and 5.8.

10 1.18 “LWDA” means the California Labor and Workforce Development Agency.

11 1.19 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
12 distribution to Class Members, as described in this Agreement, after deduction of Class Counsel’s
13 attorneys’ fees and litigation costs, Settlement Administrator Costs, the PAGA Payment, and Enhancement
14 Payment to the Class Representative.

15 1.20 “Notice of Settlement” means the document substantially in the form attached hereto as
16 **Exhibit 2.**

17 1.21 “Notice Period” means sixty (60) calendar days from the initial mailing of the Notice of
18 Settlement to Class Members and Aggrieved Employees.

19 1.22 “PAGA” means the Private Attorneys General Act.

20 1.23 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards
21 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

22 1.24 “PAGA Claim Period” means from December 9, 2021, up to either (1) the date a signed order
23 preliminarily approving the settlement is filed, or (2) March 19, 2024, whichever is earlier.

24 1.25 “Parties” means Defendant and Plaintiff.

25 1.26 “Participating Class Member” means any and all Class Members who have not made any
26 timely request to opt-out of the Agreement.

27 1.27 “Preliminary Approval Date” means the date a signed order granting preliminary approval
28 of this Agreement is filed with the Court.

1 1.28 “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator for the
2 benefit of the Participating Class Members and/or Aggrieved Employees and from which the payments
3 under this Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall
4 remain the property of Defendant until the payments required under the Agreement are made.

5 1.29 “Qualifying Workweeks” are weeks worked by Class Members and/or Aggrieved
6 Employees during the Class Period and/or PAGA Claim Period, respectively, in California as determined
7 via their Payroll Data. CWB will provide the number of workweeks worked by Class Members during the
8 Class Period, and the number of workweeks worked by Aggrieved Employees during the PAGA Claim
9 Period. The calculation of a Class Member’s and/or Aggrieved Employee’s workweeks and a determination
10 as to whether a Class Member and/or Aggrieved Employee was actively employed in California in a
11 particular workweek shall be construed from Defendant’s records.

12 1.30 “Released Class Claims” means any and all class claims that are alleged in the Operative
13 Complaint on behalf of the Class Members, and any additional wage and hour claims that could have been
14 brought based on the facts alleged in the Operative Complaint for any and all of those claims, through the
15 Class Period. The Operative Complaint is attached hereto as **Exhibit 1**. This release excludes the release
16 of claims not permitted by law. The Released Class Claims exclude claims for workers’ compensation or
17 unemployment insurance benefits. This release will cover all Class Members who do not opt out.

18 1.31 “Released PAGA Claims” means any and all claims that were brought under the Private
19 Attorneys General Act, Labor Code §§ 2698 *et seq.*, on behalf of the Aggrieved Employees contained in
20 the Operative Complaint and any additional wage and hour PAGA claims that could have been brought
21 based on the facts alleged in the Operative Complaint for any and all of those claims during the PAGA
22 Claim Period. The Operative Complaint is attached hereto as **Exhibit 1**. Aggrieved Employees cannot opt
23 out of this waiver of claims.

24 1.32 “Released Parties” means Defendant, as well as Defendant’s officers, shareholders, directors,
25 agents, employees, attorneys, and insurers.

26 1.33 “Settlement Administrator” means and refers to ILYM Group, Inc., the third-party entity that
27 will administer the Agreement as outlined in Sections 4 and 7, or any other third-party administrator agreed
28

1 to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties
2 each represent that they do not have any financial interest in the Settlement Administrator.

3 1.34 "Settlement Administrator Costs" means the fees and expenses reasonably incurred by the
4 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
5 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
6 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees
7 associated with preparing, issuing and mailing any and all notices and other correspondence to Class
8 Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class
9 Members and/or Aggrieved Employees, Class Counsel, and Defendant's Counsel; all costs and fees
10 associated with computing, processing, reviewing, and paying the Individual Settlement Amounts, and
11 resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any,
12 making related payment to federal and state tax authorities, if any, and issuing tax forms relating to
13 payments made under the Agreement; all costs and fees associated with preparing any tax returns and any
14 other filings required by any governmental taxing authority or agency; all costs and fees associated with
15 preparing any other notices, reports, or filings to be prepared in the course of administering Individual
16 Settlement Amounts; and any other costs and fees incurred and/or charged by the Settlement Administrator
17 in connection with the execution of its duties under this Agreement.

18 **2. DESCRIPTION OF THE LITIGATION**

19 2.1 On or about December 9, 2022, Plaintiff sent notice to the LWDA to exhaust administrative
20 remedies under the PAGA for (1) Violation of Labor Code §§ 510, 1194; IWC Wage Order 7, § 3 (Failure
21 to Pay Overtime Wage), (2) Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 7 § 4 (Failure to
22 Pay Minimum Wages), (3) Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage
23 Statements), (4) Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records (5)
24 Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages), (6) Violation of Labor Code §
25 432.6, 432.7, 432.8 (Limitations on Employers Regarding Inquiring Into Criminal History and Waiver
26 Relating Thereto), and (7) Violation of Labor Code §§ 558, 558.1 (Provision Regarding Hours and Days
27 of Work in Any Industrial Welfare Commission Order). The LWDA did not respond to the notice within
28

1 the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorney
2 General on all alleged PAGA claims.

3 2.2 On or about December 14, 2022, Plaintiff filed a class action Complaint in Stanislaus County
4 Superior Court on behalf of herself and Class Members alleging claims for (1) Failure to Pay Overtime
5 Wages, (2) Failure to Pay Minimum Wages, (3) Failure to Provide Accurate Wage Statements, (4) Failure
6 to Pay Final Wages, (5) Violation of Labor Code Section 432.7, (6) Violation of Labor Code Section 432.6,
7 and (7) Unfair Competition. Plaintiff filed a First Amended Complaint (the “Operative Complaint”
8 attached hereto as **Exhibit 1**) on approximately May 2, 2023 to add a PAGA cause of action based on the
9 violations alleged in the December 9, 2022 notice to the LWDA on behalf of herself and Aggrieved
10 Employees.

11 2.3 Through informal discovery, Defendant and Defendant’s Counsel provided Class Counsel
12 with copies of all applicable versions of its policies and procedures, employee handbooks, information on
13 Class Members including, but not limited to, Class Members’ workweeks, dates of employment, total
14 number of Class Members, their rates of pay, and pay periods as well as timecard data and payroll reports
15 for a randomly selected sample of Class Members.

16 2.4 On January 19, 2024, the Parties participated in a lengthy mediation with private mediator
17 Mark LeHocky, Esq. At the conclusion of the mediation, the Parties were able to come to a resolution. At
18 all times, the Parties’ settlement negotiations have been non-collusive, adversarial, and at arm’s length.

19 2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties, document
20 productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and the
21 detailed analysis of the records, including expert analysis, have permitted each side to assess the relative
22 merits of the claims and the defenses to those claims.

23 2.6 In the Action, Plaintiff contends that Defendant violated California law as follows:

24 (1) “Defendants failed to compensate Plaintiff and similarly situated employees for all overtime
25 hours worked at their regular rate of pay due to its rounding practices. *See Camp v. Home Depot*
26 *U.S.A., Inc.*, 84 Cal.App.5th 638 (2022)”;

1 (2) “Plaintiff was not exempt to the State’s Minimum Wage Order. Defendants aware of their
2 obligation to pay the minimum wage for each hour worked but failed to do so due to its rounding
3 practices. *See Camp v. Home Depot U.S.A., Inc.*, 84 Cal.App.5th 638 (2022)”;

4 (3) “Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized
5 statement or failed to provide an accurate and complete itemized statement showing the
6 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
7 accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime
8 and double time hours worked and corresponding rates of pay, and gross and net wages earned.
9 The paystubs also did not accurately itemize Plaintiff’s and similarly situated employees’ total
10 hours worked due to Defendants’ rounding practice. Also, Plaintiff’s wage statements did not
11 include the inclusive dates of the period for which the employee is paid. Instead, Plaintiff’s wage
12 statements only showed an end date. Plaintiff and similarly situated employees were not able to
13 promptly and easily determine their total hours worked from their paystubs alone. Additionally,
14 Plaintiff and similarly situated employees suffered confusion over whether they received all
15 wages owed and were prevented from effectively challenging information on their wage
16 statements”;

17 (4) “Plaintiff and similarly situated employees did not receive all wages, including minimum and
18 overtime wages, and meal and rest period premiums, at their termination or within the required
19 time after their separation from employment. [] An employer who willfully fails to pay an
20 employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the
21 employee a waiting time penalty of up to thirty (30) days. See Cal. Lab. Code § 203. []
22 Defendants knew of their obligation to pay Plaintiff’s and similarly situated employees’ their final
23 wages when their employment terminated. Indeed, Defendants knew of and actively enforced its
24 rounding practice despite being able to pay actual hours down to the minute based on time records
25 it kept for employees. Furthermore, Defendant failed to pay Plaintiff all her wages due to
26 COVID-19 leave until approximately twenty days after her employment ended”;

27 (5) “Defendants inquired about Plaintiff’s criminal history including felonies, misdemeanors,
28 infractions including but not limited to traffic violations before there was any conditional offer of

1 employment. Defendants’ form of questioning is too broad and is not specific enough to inquire
2 only about Plaintiff’s relevant conviction history. Defendants’ failure to narrow its questioning to
3 specify that convictions that have been sealed, dismissed, and statutorily eradicated pursuant to
4 law are not to be disclosed violates the statute given the broadness of the question. Thus, this was
5 in violation of the law”;

6 (6) “Defendants inquired about Plaintiff’s criminal history including felonies, misdemeanors,
7 infractions including but not limited to traffic violations before there was any conditional offer of
8 employment. Defendants’ form of questioning is too broad and is not specific enough to inquire
9 only about Plaintiff’s relevant conviction history. Defendants’ failure to narrow its questioning to
10 specify that convictions that have been sealed, dismissed, and statutorily eradicated pursuant to
11 law are not to be disclosed violated the law against such disclosures. A further violation occurred
12 when Defendants also required Plaintiff and similarly situated employees to sign waivers as a
13 condition of employment that waiver claims related to Defendants improperly requiring
14 disclosure of criminal history”;

15 (7) “Plaintiff and similarly situated employees were not paid all wages owed, including minimum
16 and overtime wages, during their employment as a result of Defendants’ rounding practices. []
17 Plaintiff further alleges that such actions and/or conduct constitute a violation of the California
18 Unfair Competition Law (“UCL”) (Business and Professions Code 17200 et seq.) pursuant to
19 Cortez v. Purolator Air Filtration Products Co., 23 Cal.4th 163 (2000)”;

20 (8) “Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following
21 provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current
22 and former employees:

- 23 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 7, § 3 (Failure to Pay
24 Overtime Wages)
- 25 • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 7, § 4 (Failure to Pay
26 Minimum Wages)
- 27 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- 28 • Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 432.6, 432.7, and 432.8 (Limitations on Employers Regarding Inquiring Into Criminal History and Waiver Relating Thereto)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)”

2.7 Defendant has denied each of Plaintiff’s claims and Defendant has denied that this Action is appropriate for class certification for anything other than settlement purposes. The agreed upon Gross Settlement Amount was reached after evaluating the Parties’ theories of potential exposure for the underlying claims and the class data supporting these claims. The Parties, with the assistance of the mediator, also assessed appropriate discounts to the potential liability based on Defendant’s factual and legal contentions and defenses.

2.8 The Parties agree that the above-described investigation and evaluation, as well as discovery and the information exchanged to date, are more than sufficient to assess the merits of the respective Parties’ positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class Counsel, Defendant, and Defendant’s Counsel have concluded that it is desirable that the Action be settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action. Plaintiff, Class Counsel, Defendant, and Defendant’s Counsel are of the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

3. THE CONDITIONAL NATURE OF THIS AGREEMENT

3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis. If the Effective Date does not occur, or if the Court’s approval of the settlement is reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall

1 be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and
2 the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California
3 Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of
4 evidence that may be applicable.

5 3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties,
6 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant
7 has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or
8 the Effective Date does not occur, Defendant does not waive, but rather expressly reserves, any and all
9 rights to challenge all such claims and allegations in the Action upon all procedural, legal and factual
10 grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds,
11 as well as to assert any and all other potential defenses or privileges.

12 **4. SCOPE OF THE CLASS**

13 4.1 The scope of the class of individuals encompassed under the Agreement and subject to all
14 obligations and duties required under the Agreement, shall include all Class Members as defined in Section
15 1.5 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class
16 Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in
17 Section 7.5.1.

18 4.2 Only Participating Class Members and Aggrieved Employees are entitled to recover under
19 this Agreement.

20 4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and
21 wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name
22 did not appear on the class list provided to the Settlement Administrator prior to mailing, may submit a
23 data request to the Settlement Administrator. The data request must contain all of the following
24 information: (a) the full name and, if applicable, Social Security Number of the individual making the
25 request; (b) the name used by such employee as of the time his or her employment with Defendant ended;
26 (c) the individual's dates of employment with Defendant; and (d) a return address to which a response may
27 be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or
28 otherwise submitted to the Settlement Administrator such that it is received before the conclusion of the

1 Notice Period. Upon receipt of any data requests, the Settlement Administrator shall promptly (in no event
2 more than two business days) transmit the data requests to Defendant's Counsel and request that Defendant
3 review its records.

4 4.4 If Defendant agrees that the person listed in a data request is a Class Member and/or
5 Aggrieved Employee, the Settlement Administrator shall promptly mail a Notice of Settlement to the
6 person who submitted the data request, at the address designated for that purpose in the data request. All
7 provisions of this Agreement relating to the Notice of Settlement shall apply to Notice of Settlements sent
8 in response to data requests, and any person who submits a data request and is sent a Notice of Settlement
9 in response shall be treated by the Settlement Administrator as a Class Member and/or Aggrieved
10 Employee for all other purposes.

11 4.5 If Defendant does not agree that the person listed in a data request is a Class Member and/or
12 Aggrieved Employee, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute in
13 good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request
14 dispute. Defendant's records shall control unless the individual submitting the data request provides
15 persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendant's
16 Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator. The
17 Settlement Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve
18 the dispute. The Settlement Administrator must resolve any dispute submitted to it within seven (7)
19 calendar days after Defendant's Counsel and Class Counsel submit the dispute to the Settlement
20 Administrator. The decision by the Settlement Administrator shall be final as between the parties, subject
21 to Court review.

22 **5. TERMS OF THE SETTLEMENT**

23 The Parties agree as follows:

24 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
25 Section 6, Defendant shall pay the Gross Settlement Amount (\$465,000). Funding of the Gross Settlement
26 Amount shall occur within thirty (30) calendar days after the Effective Date to be held in trust in a QSF by
27 the Settlement Administrator. The Gross Settlement Amount includes payments to Participating Class
28 Members, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action

1 incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering
2 the Agreement (including Settlement Administrator Costs), and obtaining final approval of the Agreement,
3 the Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary to
4 satisfy Defendant's tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage payments)
5 on any monies distributed to Participating Class Members will be paid in addition to the Gross Settlement
6 Amount.

7 5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35%
8 of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendant has
9 agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the 35%
10 threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to
11 exceed \$15,000, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not
12 oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not
13 exceed the \$15,000 threshold. The Settlement Administrator will issue Class Counsel an IRS Form 1099
14 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than
15 the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class
16 Counsel shall be added to the Net Settlement Amount to be distributed to Participating Class Members on
17 a pro rata basis.

18 5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the
19 Gross Settlement Amount and shall not exceed \$10,000. The difference between any actual costs and the
20 allocated \$10,000 shall be added to the Net Settlement Amount to be distributed to Participating Class
21 Members on a pro rata basis.

22 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for an
23 Enhancement Payment to the Class Representative in an amount not to exceed Ten Thousand Dollars
24 (\$10,000) to compensate for the risks, time, and expense of her involvement in the Action and securing the
25 benefits of this Agreement for Class Members. The Enhancement Payment is in addition to the Individual
26 Settlement Amount Plaintiff would otherwise be due under the Agreement as a Participating Class Member.
27 Defendant has agreed to not oppose Class Counsel's request for an Enhancement Payment to Plaintiff so
28 long as it does not exceed the amount stated herein. The Enhancement Payment will be designated as a

1 non-wage payment and reported on an IRS Form 1099-MISC. In the event that the Court awards less than
2 the Enhancement Payment amount requested, then any portion of the requested amount not awarded to the
3 Class Representative shall be added to the Net Settlement Amount to be distributed to Participating Class
4 Members on a pro rata basis.

5 5.5 PAGA Payment: Sixty Five Thousand Dollars (\$65,000) of the Gross Settlement Amount
6 shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment
7 will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro
8 rata basis as described below in Section 5.8. Any amount not approved by the Court for the allocated
9 PAGA Payment shall be added to the Net Settlement Amount to be distributed to Participating Class
10 Members on a pro rata basis.

11 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or PAGA
12 Payment allocated to Participating Class Members and/or Aggrieved Employees that were not claimed by
13 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be
14 donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine
15 of *cy pres*. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

16 5.7 No Additional Benefits Contributions: All Individual Settlement Amounts paid to
17 Participating Class Members and Aggrieved Employees shall be deemed to be income solely in the year in
18 which such amounts were actually received. It is expressly understood and agreed that the receipt of such
19 Individual Settlement Amounts will not entitle any Participating Class Member or Aggrieved Employee to
20 any new or additional compensation or benefits under any company bonus or other compensation or benefit
21 plan or agreement in place during the period covered by the Agreement, nor will it entitle any Participating
22 Class Member or Aggrieved Employee to any increased retirement, 401(k) and/or 403(b) benefits or
23 matching benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual
24 Settlement Amounts provided for in this Agreement are the sole payments to be made by Defendant to the
25 Participating Class Members and Aggrieved Employees in connection with this Agreement
26 (notwithstanding any contrary language or agreement in any benefit or compensation plan document that
27 might have been in effect during the period covered by this Agreement).

1 5.8 Pro Rata Distribution Formula: Payment to Participating Class Members and Aggrieved
2 Employees of their Individual Settlement Amount will not require the submission of a claim form. A Net
3 Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for
4 approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Settlement
5 Administrator Costs, and the PAGA Payment. The Net Settlement Amount will be allocated among two
6 subclasses, the Employee Subclass and the Applicant Subclass. Class Members shall not be members of
7 both subclasses. To the extent a Class Member was hired and performed any work for Defendant, the Class
8 Member shall be a part of the Employee Subclass. Four percent (4%) of the Net Settlement Amount shall
9 be allocated to the Applicant Subclass and 96% of the Net Settlement Amount shall be allocated to the
10 Employee Subclass. Distribution of the apportioned Net Settlement Amount to Participating Class
11 Members within each subclass shall be as follows: Each Employee Subclass member's share will be
12 determined by dividing their total weeks worked within the Class Period by the total weeks worked by all
13 Employee Subclass members within the Class Period. That fraction will then be multiplied by the portion
14 of the Net Settlement Amount allocated to the Employee Subclass to arrive at the individual's share of the
15 Net Settlement Amount. As the Applicant Subclass will not have any weeks worked based on the nature
16 of the claim, the portion of the Net Settlement Amount allocated to the Applicant Subclass will be divided
17 equally among all individuals within the Applicant Subclass. The allocation of the PAGA Payment
18 between the PAGA Employee Subclass and the PAGA Applicant Subclass will follow a similar allocation.
19 Aggrieved Employees shall not be members of both subclasses. To the extent an Aggrieved Employee
20 was hired and performed any work for Defendant, the individual shall be a part of the PAGA Employee
21 Subclass. The Aggrieved Employee's share of the 25% portion of the PAGA Payment will be divided as
22 follows: 96% for the PAGA Employee Subclass and 4% for the PAGA Applicant Subclass. The PAGA
23 Employee Subclass shares will be determined by dividing those individual's total weeks worked within the
24 PAGA Claim Period by the total weeks worked by all PAGA Employee Subclass members within the
25 PAGA Claim Period. That fraction will then be multiplied by the portion of the PAGA Payment allocated
26 to PAGA Employee Subclass to arrive at that individual's share. As the PAGA Applicant Subclass will not
27 have any weeks worked based on the nature of the claim, the portion of the PAGA Payment allocated to
28 the PAGA Applicant Subclass will be divided equally among all individuals within the PAGA Applicant

Subclass. These payments to Aggrieved Employees shall be allocated as 100% penalties and Aggrieved Employees will be responsible for paying any personal income taxes owed on the amounts they receive.

5.9 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to Participating Class Members and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties and wages. The Settlement Administrator shall calculate the employer's share of payroll taxes on the amounts paid to Participating Class Members as wages as well as calculating all required withholdings and deductions from said wage payments. The characterization of Individual Settlement Amounts to Participating Class Members and Aggrieved Employees are as follows:

5.9.1 One Third (1/3) of each Participating Class Members' share of the Net Settlement Amount shall be allocated for payment of disputed wages and shall be subject to required employer taxes. Participating Class Members shall receive an IRS Form W-2 for reporting of this portion of their Individual Settlement Amount.

5.9.2 Two Thirds (2/3) of each Participating Class Members' share of the Net Settlement Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for which the Participating Class Members shall receive IRS Forms 1099-MISC and 1099-INT and this payment shall be divided equally among the 1099-MISC and 1099-INT designations.

5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for which the Aggrieved Employees shall receive an IRS Form 1099-MISC.

5.10 Participating Class Members and Aggrieved Employees shall be solely responsible for the reporting and payment of their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendant's Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes. No party has made any representation to any of the other Parties as to the taxability of any payments pursuant to this Agreement, including the payments to Participating Class Members, the

1 payments to Aggrieved Employees, the payments to Class Counsel, the payments to the Class
2 Representative, the payroll tax liability of Defendant, or the allocation of the Net Settlement Amount or
3 PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax
4 implications of any provision of this Agreement.

5 5.11 No Additional Contribution by Defendant: Defendant's monetary obligation under this
6 Agreement are limited to the Gross Settlement Amount and any employer side payroll taxes owed on
7 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
8 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless
9 expressly provided otherwise herein. However, in the event this Agreement is deemed null and void as
10 described in Section 3 because the Court, in its independent determination, finds that the Agreement does
11 not meet the standards for settlement approval, then Defendant and Plaintiff shall be equally responsible
12 for the costs of the Settlement Administrator incurred between the date the Agreement was executed and
13 the date of such event.

14 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
15 only, certification of the class as defined in Sections 1.5 and 4.1 is appropriate and the requisites for
16 establishing class certification have been met and are met.

17 5.13 Adequacy of Class Counsel and Class Representative: The Parties agree that, for purposes
18 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and
19 Aggrieved Employees.

20 **6. RELEASE**

21 6.1 Release of Claims by Participating Class Members: Upon the Effective Date, all Participating
22 Class Members will be deemed to fully, finally and forever release the Released Class Claims as to all
23 Released Parties. In addition, on the Effective Date, all Participating Class Members and their successors
24 in interest will be permanently enjoined and forever barred from prosecuting any of the Released Class
25 Claims against any of the Released Parties.

26 6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved
27 Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all
28 Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in

1 interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA
2 Claims against any of the Released Parties.

3 6.3 Release by Plaintiff: Upon the Effective Date, Plaintiff will be deemed to fully, finally and
4 forever release the Released Class Claims, Released PAGA Claims, and Class Representative's Released
5 Claims as to all Released Parties. In addition, on the Effective Date, Plaintiff and any successors in interest
6 will be permanently enjoined and forever barred from prosecuting any of the Released Class Claims,
7 Released PAGA Claims, and Class Representative's Released Claims against any of the Released Parties.

8 7. **SETTLEMENT ADMINISTRATION**

9 7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible for:
10 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are
11 valid; 2) calculating estimated Individual Settlement Amounts and any and all taxes associated with the
12 Individual Settlement Amounts, including employer taxes; 3) taking appropriate steps to trace and locate
13 any individual Class Members and Aggrieved Employee whose address or contact information as provided
14 to the Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class
15 Members; 4) providing notification to the appropriate state and federal officials of this Agreement as
16 required under the law; 5) receiving, independently reviewing, and resolving any challenges (in
17 consultation with Class Counsel and Defendant's Counsel) from Class Members or Aggrieved Employees,
18 including any associated documentation, regarding their Qualified Workweek calculations; 6) receiving
19 and serving on Class Counsel, Defendant's Counsel, and the Court, copies of any written objections, and/or
20 any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and requests
21 for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9)
22 determining and paying the final amounts due to be paid under the Agreement after resolution of all
23 challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement Administrator Costs, PAGA
24 Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability
25 to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late opt-
26 outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual funds
27 from uncashed checks; 12) reporting to Class Counsel and Defendant's Counsel regarding the statistics of
28 the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of

forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final statistics of the administration and compliance with all payment obligations under the Agreement; 14) completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts to Participating Class Members and Aggrieved Employees; and 15) carrying out other related tasks as necessary to effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and obligations contemplated by the Agreement have been fully executed.

7.2 Notice to Class Members and Aggrieved Employees: Defendant represents and warrants that, to the best of its knowledge, Class Members and Aggrieved Employees are able to read and write in English such that no translation of the Notice of Settlement into another language is necessary. The Notice of Settlement will provide Class Members and Aggrieved Employees with a summary of the terms and conditions of the Agreement, how to participate in the settlement, how to object to the Agreement, how to dispute the individual's Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of Settlement will also inform Class Members and Aggrieved Employees of the Gross Settlement Amount, Net Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement Payments, proposed Settlement Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the class, the nature and extent of the released claims, dates set for a fairness hearing and hearing on Class Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include information regarding Class Member's and Aggrieved Employee's estimated Individual Settlement Amount. The Notice of Settlement will provide information on how to access electronic copies online of the Notice of Settlement, any motions for approval of the Agreement, any motions for approval of attorneys' fees and costs, and any other documents as the Court directs.

1 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
2 Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the first and last
3 name, last known mailing address, last known telephone number, Social Security Number, start and end
4 date (if any) of employment of each Class Member and Aggrieved Employee, the Qualifying Workweeks
5 for the class payment from the Net Settlement Amount, the Qualifying Workweeks for the PAGA Payment,
6 and any other information the Settlement Administrator needs to effectuate notice to Class Members and
7 Aggrieved Employees as outlined herein, including the assigned subclass for the Class Member. No later
8 than fourteen (14) calendar days after receipt of such address information, the Settlement Administrator
9 will perform a national change of address (“NCOA”) search, update the addresses per the results of the
10 NCOA search, and then mail the Notice of Settlement, substantially in the form attached as **Exhibit 2**, to
11 each Class Member and Aggrieved Employee by first-class mail, postage prepaid. The Settlement
12 Administrator shall maintain all information received from Defendant as CONFIDENTIAL to itself, and
13 Defendant’s Counsel. However, Class Counsel shall be able to review the breakdown of Qualified
14 Workweeks and estimated Individual Settlement Amounts for Class Members and Aggrieved Employees
15 prior to mailing for quality assurance provided the personal identifying information is redacted and/or
16 omitted.

17 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
18 is returned to the Settlement Administrator as undeliverable on or before the conclusion of the Notice
19 Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5)
20 calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly
21 attempt to determine a correct address using a skip-trace, computer or other search using the name, address
22 and/or Social Security number of the individual involved, and shall then perform a single re-mailing within
23 five (5) calendar days to any more recent address found as a result of the search. Following each search
24 that does not result in a corrected address, for those Class Members who appear to be current employees
25 of Defendant at the time of the Preliminary Approval Date, the Settlement Administrator shall contact
26 Defendant’s Counsel for assistance and Defendant shall cooperate in good faith with the Settlement
27 Administrator’s reasonable efforts to obtain valid mailing addresses for Class Members to the extent they
28 are active employees of Defendant. In the event the Notice of Settlement is forwarded to a new address

1 and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out,
2 a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-
3 mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are
4 followed and the Class Member does not timely and properly request to opt-out, the Class Member shall
5 be bound by all terms of the Agreement, including the releases contained in Section 6.

6 7.5 Responses to Notice of Settlement:

7 7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish to
8 exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The
9 request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or
10 she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be
11 excluded from the settlement; (c) identify the case name and number (*i.e. Brown v. C.W. Brower, Inc.*, Case
12 No. CV-22-005735); (d) be signed; and (e) be post-marked no later than the conclusion of the Notice Period
13 or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign the request to opt-
14 out. No request to opt-out may be made on behalf of a group of Class Members. The date of the postmark
15 on the return-mailing envelope shall be the exclusive means used to determine whether a request to opt-
16 out has been timely submitted. Any Class Member who requests to opt-out of the Agreement will not be
17 entitled to any portion of the Net Settlement Amount nor will they have any right to object, appeal or
18 comment thereon. The name of any Class Member who submits a valid and timely opt out request will be
19 specifically identified in any proposed order granting final approval. Class Members who fail to submit a
20 valid and timely request to opt-out shall be bound by all terms of the Agreement and any order or final
21 judgment thereon. Regardless of whether an Aggrieved Employee opts out of being a Class Member, they
22 will still receive their share of the PAGA Payment as Aggrieved Employees cannot opt out of this
23 Agreement as it relates to the PAGA Payment or Released PAGA Claims.

24 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes to
25 object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
26 objections to the Settlement Administrator and also serve copies of the objections on Class Counsel and
27 Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny
28 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's

1 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
2 the reasons for the objection(s), including any supporting documentation; (d) identify the case name and
3 number (*i.e. Brown v. C.W. Brower, Inc.*, Case No. CV-22-005735); (e) be signed; and (f) be post-marked
4 no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The
5 Notice of Settlement will inform the Class Member that they should also file a notice of intent to appear
6 with the Court and serve the notice on Class Counsel and Defendant's Counsel, if they intend to appear at
7 the final approval hearing.

8 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
9 Workweeks or their assigned Subclass on the Notice of Settlement shall contact the Settlement
10 Administrator. The dispute must (a) identify the nature of the dispute; (b) provide any information or
11 documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than the conclusion
12 of the Notice Period or the re-mailing timeline stated in Section 7.4. The Settlement Administrator shall
13 promptly (in no event more than two business days) forward all such disputes to Defendant's Counsel and
14 request that Defendant review the dispute. Defendant's records shall presumptively control unless the
15 Class Member can produce documentation evidencing other periods of employment worked. If Defendant
16 agrees with submitted information, the Class Member shall be reassigned to a new subclass and/or credited
17 or subtracted Qualifying Workweeks in accordance with their submitted dispute and that final number of
18 Qualified Workweeks shall govern the calculation of that Class Member's Individual Settlement Amount.
19 If Defendant disagrees with the submitted information, Defendant's Counsel will promptly advise Class
20 Counsel of the dispute, which includes turning over any documentation submitted by the Class Member as
21 part of the dispute. Defendant's Counsel and Class Counsel shall attempt in good faith to resolve any such
22 dispute within five (5) calendar days of Class Counsel being advised of the dispute. Each dispute that
23 Defendant's Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement
24 Administrator, subject to Court review.

25 7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
26 objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement
27 Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the
28 deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure

1 the deficiency shall be the end of the Notice Period or 10 calendar days from the date of the deficiency
2 letter, whichever is later.

3 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
4 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
5 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
6 Counsel or Defendant's Counsel to provide notice of the proposed Agreement.

7 7.7 Settlement Administrator Declaration Regarding Notice Period: Within fourteen (14)
8 calendar days after the conclusion of the Notice Period, the Settlement Administrator shall provide Class
9 Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete
10 and detailed report regarding the statistics and responses of settlement administration to date and all the
11 Settlement Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

12 7.8 Settlement Administrator Payments to Participating Class Members, Class Counsel and
13 Plaintiff: Within seven (7) calendar days after the Effective Date and the Court's determination of the
14 amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to
15 Plaintiff, the PAGA Payment, and Settlement Administrator Costs, the Settlement Administrator shall
16 calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class
17 Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these
18 calculations to Class Counsel and Defendant's Counsel. Defendant shall wire the Gross Settlement
19 Amount and applicable taxes necessary to fund the Settlement as described in Section 5.1 to the Settlement
20 Administrator within thirty (30) calendar days after the Effective Date to be to be held in trust in a QSF.
21 Within seven (7) calendar days after Defendant funds the settlement, the Settlement Administrator shall
22 deliver payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to
23 Plaintiff, the 75% portion of the PAGA Payment payable to the LWDA, Settlement Administrator Costs,
24 and payment to Participating Class Members and/or Aggrieved Employees as required under this
25 Agreement and approved by Court.

26 7.8.1 The Settlement Administrator shall wire the Court-approved attorneys' fees and
27 costs to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide
28

1 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
2 after the Final Approval Date.

3 7.8.2 The Settlement Administrator shall send a check by mail for the Court-approved
4 Enhancement Payment to the Class Representative, care of Class Counsel unless another method is
5 requested by Class Counsel.

6 7.8.3 Only Participating Class Members and Aggrieved Employees will receive their
7 Individual Settlement Amount.

8 7.8.4 The Settlement Administrator shall remit and report the applicable portions of the
9 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this
10 Agreement. Defendant agrees to reasonably cooperate with the Settlement Administrator to the extent
11 necessary to determine the amount of the payroll tax payment required.

12 7.9 Settlement Check Expiration and Uncashed Checks: The Settlement Administrator shall
13 issue Individual Settlement Amounts to Participating Class Members and Aggrieved Employees in the
14 form of a check, which shall become null and void if not deposited within one hundred eighty (180)
15 calendar days of issuance. After one hundred eighty (180) calendar days of issuance, the checks shall be
16 voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The
17 Settlement Administrator shall deliver these funds within fourteen (14) calendar days after the check
18 cashing deadline.

19 7.10 Settlement Administrator Declaration Regarding Compliance and Settlement
20 Administration: Within twenty-one (21) calendar days after the last day for Participating Class Members
21 and Aggrieved Employees to cash their settlement checks, the Settlement Administrator shall provide Class
22 Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete
23 and detailed report regarding the settlement administration documenting that all payments under the
24 Agreement have been made, that the Court's final approval order has been complied with, and that all the
25 obligations of the Settlement Administrator have been completed.

26 **8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE**

27 8.1 The schedule may be modified depending on whether and when the Court grants necessary
28 approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings. The

schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund settlement	Within 30 calendar days after the Effective Date

1 2 3 4 5	Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
6 7 8	Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
9 10 11	Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
12 13 14	Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will provide comments and/or proposed revisions within two weeks after receipt of the draft Preliminary Approval Motion from Class Counsel. With regard to the final approval documents, a similar one-week maximum review and response

1 time shall be observed by the Parties. The Parties will request that the Court's preliminary approval of this
2 Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA
3 Settlement.

4 9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2)
5 Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice
6 of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily appointing
7 Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement
8 administration services to be provided by the Settlement Administrator; 6) Preliminarily approving the
9 proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment of
10 reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)
11 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
12 approved as fair, reasonable and adequate as to the Class Members.

13 9.1.2 Defendant shall not oppose Plaintiff's motion for approval of the proposed
14 Agreement.

15 9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during
16 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
17 appropriate to assure effective communication to individual Class Members of information about their
18 rights and obligations under this Agreement.

19 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
20 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
21 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
22 Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the
23 Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results
24 of the Settlement Administrator's mailings including tracing and re-mailing efforts. The Settlement
25 Administrator declaration shall identify, by name, any Class Member who submitted a timely and valid
26 request to opt out during the Notice Period.

27 9.2.1 Class Counsel and Defendant shall work in good faith to draft a mutually agreeable
28 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment. The

Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an Enhancement Payment to the Class Representative; 3) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4) Approving the Settlement Administrator Costs; and 5) Providing that the Court will retain jurisdiction to oversee administration and enforcement of the terms of the Agreement and the Court's orders.

9.2.2 Following entry of the Court's order granting final approval of the Agreement, the Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgment be filed, all Parties will support the final approval order on appeal or otherwise; 2) Class Counsel will assist the Settlement Administrator as needed or requested in the process of identifying and locating Participating Class Members and Aggrieved Employees entitled to payments under the Agreement and assuring delivery of such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each other and assist the Settlement Administrator as needed or requested in completing the distribution of any residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with the Settlement Administrator, will certify to the Court completion of all payments required to be made by this Agreement.

9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment.

9.4 Notice to LWDA: Plaintiff will provide notice to the Labor and Workforce Development Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

10. MISCELLANEOUS TERMS

10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date, 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance with the provisions of the Agreement, Defendant may rescind the Agreement and all actions taken in its furtherance will be thereby null and void. Defendant must exercise this right of rescission, in writing, to Class Counsel, within seven (7) calendar days after the Settlement Administrator notifies the Parties of the

total number of opt-outs. If the option to rescind is exercised, then any Settlement Administrator Costs shall be paid by Defendant. Defendant has represented that there are no more than 33,404 workweeks during the Class Period. In the event the number of workweeks during the Class Period is more than 36,745 (i.e., greater than 10% more than 33,404), then either, at the option of Defendant, (1) the Gross Settlement Amount will increase by a pro-rata dollar value equal to the number of workweeks in excess of 36,745 workweeks (the 10% escalation limit) or (2) the Class Period End Date will be the date immediately prior to the date that the actual number of workweeks exceeds 33,404 by 10% (i.e., the number of workweeks first equals 36,745). In the event Defendant elects the former, for example, if the actual number of workweeks is determined to be 12% higher than 33,404 (i.e., the number of workweeks increases to 37,412), the Gross Settlement Amount shall be increased by 2%. To the extent the Class Period is shortened under this provision, the PAGA Claim Period shall be similarly shortened to the same end date.

10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO

1 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
2 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
3 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
4 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
5 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY
6 THIS AGREEMENT.

7 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
8 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
9 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
10 and discharged in this Agreement.

11 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
12 signing this Agreement Defendant is waiving any rights to appeal from the Court's approval of the
13 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
14 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

15 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set forth
16 in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
17 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

18 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment will
19 be entered according to this Agreement. The Parties stipulate and agree that the Stanislaus County Superior
20 Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil Procedure
21 Code section 664.6 and that the prevailing party in any action necessary to enforce the terms of the
22 Agreement after default by the other party may recover reasonable attorney's fees and costs related thereto.

23 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
24 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution
25 of such other documents and the taking of such other action as may reasonably be necessary to fulfill the
26 terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
27 contemplated by this Agreement and any other efforts that may become necessary by Court order, or
28 otherwise, to effectuate this Agreement and the terms set forth herein.

1 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendant of the
2 terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to be,
3 construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the
4 Operative Complaint, the representative character of the Action, the validity of any of the claims that were
5 or could have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of
6 Defendant in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
7 Defendant of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or
8 any other person, and Defendant specifically disclaims any liability, culpability, negligence, or wrongdoing
9 toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this
10 Stipulation with the intention to avoid further disputes and litigation.

11 10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
12 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
13 third business day after mailing by United States certified mail, return receipt requested, addressed as
14 follows:

15 To Plaintiff and the Class Counsel:

16 Galen T. Shimoda
17 Justin P. Rodriguez
18 Renald Konini
19 Shimoda & Rodriguez Law, PC
20 9401 East Stockton Blvd., Suite 120
21 Elk Grove, CA 95624

22 To Defendant:

23 Julie A. Marquis
24 Dane M. Willis
25 Freeman Mathis & Gary, LLP
26 1010 B Street, Suite 400
27 San Rafael, California 94901

28 10.10 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
party or its counsel participated in the drafting of this Agreement.

1 10.11 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys acting
2 for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover any
3 amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except as
4 expressly provided in this Agreement.

5 10.12 No Modifications: This Agreement may be amended or modified only by a written
6 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
7 discharged except by performance in accordance with its terms.

8 10.13 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
9 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and
10 to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
11 to effectuate its terms and to execute any other documents required to effectuate the terms of this
12 Agreement.

13 10.14 Class Member Signatories: Because the Action has not yet been certified, and the Class
14 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
15 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
16 may be executed on behalf of all Class Members by the Class Representative.

17 10.15 Counterparts: This Agreement shall become effective upon its execution by all of the
18 undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement
19 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed
20 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
21 and effect of originals.

22 10.16 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
23 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the
24 rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with,
25 and governed by, the substantive laws of the State of California without giving effect to that State's choice
26 of law principles.

1 10.17 Headings and Captions: Section titles or captions contained in the Agreement are inserted
2 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
3 this Agreement, or any provision thereof.

4 10.18 No Retaliation or Discouragement: The Parties agree they will take no action that could be
5 construed as retaliation against any Class Members for participating or seeking to participate in this class
6 action settlement. The Parties will not discourage any class member from participating or seeking to
7 participate in this class action settlement. This is a material term of the Agreement and non-breaching
8 Parties will seek court intervention if this provision is breached.

9 10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the
10 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
11 Each party acknowledges that there is no representation, inducement, promise or agreement which has been
12 made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which
13 is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the
14 terms of this Agreement are fully understood and voluntarily accepted by the Parties.

15 10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the
16 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

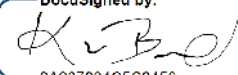
17 10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
18 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
19 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

20 10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this Agreement
21 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute
22 a further waiver by such party of the same or any other condition, covenant, right or remedy.

23 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
24 attorneys, as of the day and year herein set forth.

25 **For Plaintiff:**

26 Date: 4/2/2024

DocuSigned by:

3A237034C5C3458...

FOR Defendant:

Date: _____

By: _____

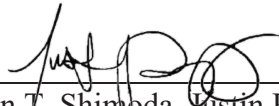
For C.W. Brower, Inc.

APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

Dated: April 5, 2024

By: _____


Galen T. Shimoda, Justin P. Rodriguez and
Renald Konini
Attorneys for Plaintiff, the Class Members
and Aggrieved Employees

APPROVED AS TO FORM

FREEMAN MATHIS & GARY, LLP

Dated: _____

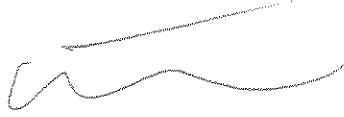
By: _____

Julie A. Marquis
Dane M. Willis
Attorneys for Defendant

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FOR Defendant:

Date: 3-29-24


By: _____
For C.W. Brower, Inc.

APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

Dated: _____

By: _____
Galen T. Shimoda, Justin P. Rodriguez and
Renald Konini
Attorneys for Plaintiff, the Class Members
and Aggrieved Employees

APPROVED AS TO FORM

FREEMAN MATHIS & GARY, LLP

Dated: April 10, 2024

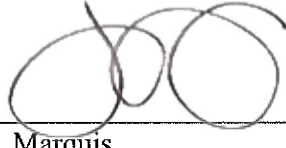

By: _____
Julie A. Marquis
Dane M. Willis
Attorneys for Defendant

EXHIBIT 1

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Electronically Filed
5/2/2023 11:32 AM
Superior Court of California
County of Stanislaus
Clerk of the Court
By: Raquel Enriquez, Deputy

Attorneys for Plaintiff KARINA BROWN,
individually and on behalf of all other similarly situated employees

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

KARINA BROWN, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

C. W. BROWER, INC., a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. CV-22-005735

CLASS ACTION

*Assigned for all purposes to Hon. John D.
Freeland
Department: 23*

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

- 1. Failure to Pay Overtime Wages**
- 2. Failure to Pay Minimum Wages**
- 3. Wage Statement Violations**
- 4. Waiting Time Penalties**
- 5. Violation of Labor Code Section 432.7**
- 6. Violation of Labor Code Section 432.6**
- 7. Unfair Competition**
- 8. Private Attorneys General Act**

DEMAND FOR JURY TRIAL

1 Plaintiff KARINA BROWN (“Plaintiff”), on behalf of herself and all other similarly situated
2 employees, hereby files this First Amended Complaint against Defendants C. W. BROWER, INC., a
3 California Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as
4 “Defendants”). On information and belief, Plaintiff allege the following:

5 **INTRODUCTION**

6 1. This is a class action and Private Attorneys General Act (“PAGA”) lawsuit brought by
7 Plaintiff for failure to provide overtime wages, failure to provide minimum wages, failure to pay all final
8 wages owed, failure to provide accurate itemized wage statements, unlawfully requiring the disclosure
9 of criminal history waiving rights protecting against improperly requiring disclosure of criminal history,
10 and unfair competition.

11 **JURISDICTION AND VENUE**

12 2. The Stanislaus County Superior Court has jurisdiction in this matter pursuant to
13 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
14 Labor Code, California Business and Professions Code, and Wage Order No. 7.

15 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that
16 Defendants reside in Stanislaus County. In addition, some of the wrongful acts and violations of law
17 asserted herein occurred within Stanislaus County, and Defendants’ obligation to pay wages arose in
18 Stanislaus County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414
19 (1984).

20 4. Plaintiff sought permission pursuant to California Labor Code section 2699 *et seq.* to
21 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
22 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
23 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
24 (“LWDA”) on approximately December 9, 2022. Plaintiff provided facts and legal bases for his claims
25 within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause
26 of action. Plaintiff also submitted the \$75.00 filing fee. The December 9, 2022, notice was also sent via
27 certified mail to Defendants on the same day. To date, the LWDA has not provided any response to
28 Plaintiff’s notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies

pursuant to the Private Attorneys General Act (“PAGA”) and may bring this action on behalf of himself and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees include, but is not limited to the following: all hourly non-exempt employees who have or continue to work for Defendants in California from December 9, 2021 to present. For violation of labor code sections 432.6, 432.7, and 432.8, Aggrieved Employees include, but is not limited to the following: all individuals who applied to work for Defendants in California, regardless of whether or not they were ultimately hired from December 9, 2021, to present.

PARTIES

5. KARINA BROWN is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges, C. W. BROWER, INC., is now and/or at all times mentioned in this Complaint was a California Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained.

8. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

10. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

CLASS ALLEGATIONS

12. Plaintiff brings the First through Seventh Causes of Action on behalf of herself, and all others similarly situated, as a class action pursuant to California Code of Civil Procedure section 382. The classes which Plaintiff seeks to represent is composed of, and defined, as follows:

First through Fourth and Seventh Causes of Action: All hourly non-exempt employees who have or continue to work for C.W. BROWER, INC. in California from December 14, 2018, to the present.

Fifth and Sixth Causes of Actions: All individuals who applied to work for C.W. BROWER, INC. in California, regardless of whether or not they were ultimately hire from December 14, 2019, to the present.

13. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as 100 individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

(1) Whether Defendants had rounded employees' hours worked despite being able to and actually recording actual hours worked down to the minute;

- 1 (2) Whether Defendants violated the law by only paying employees for their rounded
2 hours rather than all actual hours worked, including minimum wages and
3 overtime;
- 4 (3) Whether Defendants paid the putative class members for all hours worked;
- 5 (4) Whether Defendants maintained accurate payroll records;
- 6 (5) Whether, as a result of Defendants' policies and practices, Plaintiff and putative
7 class members were not paid all minimum and overtime wages owed;
- 8 (6) Whether, as a result of Defendants' policies and practices, Plaintiffs and putative
9 class members received all wages, due and owing, at the time of their termination
10 or separation;
- 11 (7) Whether Defendants' new hire applications and hiring documents violated the
12 Labor Code's prohibitions on requiring disclosure of criminal history and waiving
13 protections against such disclosures; and
- 14 (8) Whether Defendants provided Plaintiff's and putative class members with wage
15 statements that complied with Labor Code section 226.
- 16 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
17 class. The putative class also sustained damages arising out of Defendants' common
18 course of conduct in violation of the law as complained of herein. Plaintiff and all
19 members of the putative class were non-exempt employees who were not paid minimum
20 and overtime wages as a result of Defendants' rounding practices. Additionally,
21 Defendants issued Plaintiff and all members of the putative class wage statements that
22 did not comply with Labor Code section 226 and failed to pay these wages at termination.
23 Furthermore, the application materials and process was the same for all individuals
24 seeking employment and all improperly required disclosure of criminal history before
25 any conditional offers of employment and sought waivers of rights protecting against
26 those practices. As a result, Plaintiff and each member of the putative class will have
27 suffered the same type of harm and seek the same type of recovery based on the same
28 legal theories.

1 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
2 putative class. For all relevant times, Plaintiff resided in California and worked for
3 Defendants in California. Moreover, Plaintiff is an adequate representative of the
4 putative class as Plaintiff has no interests that are adverse to those of putative class
5 members. Additionally, Plaintiff has retained counsel who has substantial experience in
6 complex civil litigation and wage and hour matters.

7 (e) Superiority: A class action is superior to other available means for the fair and efficient
8 adjudication of the controversy since individual joinder of all members of the putative
9 class is impracticable. Class action treatment will permit a larger number of similarly
10 situated persons to prosecute their common claims in a single forum simultaneously,
11 efficiently, and without the unnecessary duplication of effort and expense that numerous
12 individual actions would engender. Further, as damages suffered by each individual
13 member of the class may be relatively small, the expenses and burden of the individual
14 litigation would make it difficult or impossible for individual members of the class to
15 redress the wrongs done to them, and an important public interest will be served by
16 addressing the matter as a class action. The cost to the court system of adjudication of
17 such individualized litigation would be substantial. Individualized litigation would also
18 present the potential for inconsistent or contradictory judgments.

19 14. Plaintiff is unaware of any difficulties that are likely to be encountered in the
20 management of this action that would preclude its maintenance as a class action.

21 GENERAL ALLEGATIONS

22 15. Plaintiff incorporate(s) by reference and re-allege(s) paragraphs 1 through 15 as though
23 fully set forth herein.

24 16. Plaintiff worked for Defendants from August 8, 2022, to September 9, 2022. Her hourly
25 rate was \$16.00 per hour. Prior to receiving a conditional offer of employment, Defendants required
26 Plaintiff and similarly situated employees to fill out and disclose, both directly and indirectly,
27 information regarding gang related activity, an individual's ability to be bonded, arrests, and conviction
28 history. Defendants sought new applicants and brought them in for interviews in groups, having

1 Plaintiff and similarly situated employees fill out documents that required disclosing gang related
2 activity, arrests, and conviction history. The inquiry further required Plaintiff to specify and explain any
3 convictions. The inquiry did not specify a date range that the convictions must have occurred and did
4 not specify what she did not need to include in her answer. Despite some of these documents stating
5 that a conditional offer of employment had been made, this was untrue as these documents were filled
6 out in Defendants lobby before the initial interview had even been completed. For example, Defendants
7 discussed the information contained in Plaintiff's disclosure during her first meeting and interview
8 before there was any conditional offer of employment made. Defendants also required Plaintiff and
9 similarly situated employees to sign a document waiving claims relating to Defendants securing and
10 investigating the information disclosed.

11 17. Plaintiff was employed by Defendants from August 8, 2022, to September 9, 2022. Her
12 hourly rate was \$16.00 per hour. Plaintiff's work schedule was 8:00 a.m. to 4:00 p.m. five (5) days a
13 week. Defendants had the ability to, and did, track Plaintiff and similarly situated employee's hours
14 worked down to the minute. Plaintiff and similarly situated employees clocked in and out by swiping
15 cards through a machine that logged the exact clock in/out time. Despite being able to pay the actual
16 hours worked based on readily available time records, Defendants rounded Plaintiff's and similarly
17 situated employee's hours worked and failed to pay them all minimum wages and overtime wages owed
18 for those times in which the actual hours worked was rounded down. For example, Plaintiff was not
19 paid approximately \$3.86 in unpaid overtime wages during her employment. Defendants do not have a
20 rounding policy and failed to inform Plaintiff and similarly situated employees of the rounding practices.
21 This resulted in unpaid overtime and minimum wages.

22 18. On September 23, 2022, Plaintiff emailed Defendants requesting her final check be
23 mailed to her. However, Defendants responded to Plaintiff via email requesting that she leave a
24 voicemail confirming that Defendants could mail the check and include her current mailing address,
25 despite having an email request. On September 23, 2022, Plaintiff left a voicemail for Defendants once
26 again requesting to have her check mailed to her. Defendants responded that the check would go out
27 with that day's mail. This check did not include payment for the unpaid overtime and minimum wages
28 that were lost due to rounding. On August 25, 2022, Plaintiff tested positive for COVID-19 and

1 immediately informed Defendants. Plaintiff completed a California COVID-10 Leave Application for
2 the company. Plaintiff returned to work on September 6, 2022. Plaintiff's pay for the leave due to
3 COVID-19 was forty (\$40) dollars less than what we was required to be paid. Defendants did not
4 correct this until September 28, 2022, when they sent her a letter in the mail with her check enclosed.

5 19. Defendants maintained a policy where similarly situated employees working at
6 Defendants' convenience stores were required to forfeit tips left by customers. Defendants' written
7 policy required similarly situated employees to put this money into the register, which Defendants then
8 took as part of their general revenues.

9 20. Defendants maintained a policy that paid \$500.00 to each similarly situated employee
10 that successfully passed a police decoy alcohol sting. The policy set forth specific steps that an
11 employee must perform in order to be eligible for the \$500.00 bonus. When paying these bonuses,
12 Plaintiff is informed and believes that Defendants did not incorporate the value of this payment into
13 similarly situated employees regular rate of pay for overtime purposes.

14 21. Plaintiff's wage statements did not include the inclusive dates of the period for which the
15 employee is paid. Instead, Plaintiff's wage statements only showed an end date. Plaintiff could not
16 properly confirm the accuracy of her wage statement without knowing the exact range of the statement.
17 Additionally, as a result of Defendants' failure to pay Plaintiff and similarly situated employees all
18 minimum wages and overtime wages owed, the wage statements Defendants issued were inaccurate.
19 The paystubs that Defendants issued did not itemize accurate regular and overtime hours worked,
20 premiums owed, and accurate gross and net wages earned. Consequently, Plaintiff and similarly
21 situated employees were not able to determine the total wages owed to them from their paystubs alone.

22 22. As of this date of this letter, Defendants have not paid Plaintiff and similarly situated
23 employees all minimum wages and overtime wages owed.

24 **CAUSES OF ACTION**

25 **FIRST CAUSE OF ACTION**
26 **FAILURE TO PAY OVERTIME WAGES**
(As to all Defendants)

27 23. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 22 as though fully
28 set forth herein.

1 24. During the period Plaintiff was employed by Defendants, Defendants were required to
2 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
3 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
4 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 7, section (3)(A);*
5 Cal. Lab. Code §§ 510, 1194.

6 25. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
7 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
8 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
9 worked at their regular rate of pay due to its rounding practices. *See Camp v. Home Depot U.S.A., Inc.,*
10 84 Cal.App.5th 638 (2022).

11 26. Plaintiff and similarly situated employees were not exempt from overtime protections
12 employees under the California Wage Orders and Labor Code.

13 27. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
14 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
15 the extent pertinent as if set forth here in full.

16 **SECOND CAUSE OF ACTION**
17 **FAILURE TO PAY MINIMUM WAGES**
 (As to all Defendants)

18 28. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 27 as though fully
19 set forth herein.

20 29. For the period preceding the filing of this Complaint, Defendants were required to
21 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for
22 every hour worked. *See MW-Order 2019; IWC Wage Order, No. 7, section 4(A); Cal. Lab. Code §*
23 1194.

24 30. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their
25 obligation to pay the minimum wage for each hour worked but failed to do so due to its rounding
26 practices. *See Camp v. Home Depot U.S.A., Inc., 84 Cal.App.5th 638 (2022).*
27
28

31. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

32. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 31 as though fully set forth herein.

33. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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 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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

34. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime and double time hours worked and corresponding rates of pay, and gross and net wages earned. The paystubs also did not accurately itemize Plaintiff's and similarly situated employees' total hours worked due to Defendants' rounding practice. Also, Plaintiff's wage statements did not include the inclusive

1 dates of the period for which the employee is paid. Instead, Plaintiff's wage statements only showed an
2 end date. Plaintiff and similarly situated employees were not able to promptly and easily determine their
3 total hours worked from their paystubs alone. Additionally, Plaintiff and similarly situated employees
4 suffered confusion over whether they received all wages owed and were prevented from effectively
5 challenging information on their wage statements.

6 35. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
7 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
8 the extent pertinent as if set forth here in full.

9 **FOURTH CAUSE OF ACTION**
10 **WAITING TIME PENALTIES**
11 **(As to all Defendants)**

12 36. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 35 as though fully
13 set forth herein.

14 37. An employer must pay an employee who is terminated all unpaid wages immediately
15 upon termination. See Cal. Lab. Code § 201.

16 38. An employer must pay an employee who resigns all unpaid wages within seventy-two
17 (72) hours of their resignation. See Cal. Lab. Code § 202.

18 39. Plaintiff and similarly situated employees did not receive all wages, including minimum
19 and overtime wages, and meal and rest period premiums, at their termination or within the required time
20 after their separation from employment.

21 40. An employer who willfully fails to pay an employee wages in accordance with California
22 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
23 days. See Cal. Lab. Code § 203.

24 41. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
25 their final wages when their employment terminated. Indeed, Defendants knew of and actively enforced
26 its rounding practice despite being able to pay actual hours down to the minute based on time records it
27 kept for employees. Furthermore, Defendant failed to pay Plaintiff all her wages due to COVID-19
28 leave until approximately twenty days after her employment ended.

42. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE SECTION 432.7
(As to all Defendants)

43. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 42 as though fully set forth herein.

44. California Labor Code section 432.7(a)(1) makes it unlawful for an employer to ask an applicant to disclose information "concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law, including, but not limited to, Sections 1203.4, 1203.4a, 1203.425, 1203.45, and 1210.1 of the Penal Code."

45. California Labor Code section 432.7(c) provides that:

If a person violates this section, or Article 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part 4 of the Penal Code, the applicant may bring an action to recover from that person actual damages or two hundred dollars (\$200), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section shall entitle the applicant to treble actual damages, or five hundred dollars (\$500), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

46. Defendants inquired about Plaintiff's criminal history including felonies, misdemeanors, infractions including but not limited to traffic violations before there was any conditional offer of employment. Defendants' form of questioning is too broad and is not specific enough to inquire only about Plaintiff's relevant conviction history. Defendants' failure to narrow its questioning to specify that convictions that have been sealed, dismissed, and statutorily eradicated pursuant to law are not to be disclosed violates the statute given the broadness of the question. Thus, this was in violation of the law.

47. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

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SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE SECTION 432.6
(As to all Defendants)

48. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 47 as though fully set forth herein.

49. California Labor Code section 432.6 provides that “[a] person shall not, as a condition of employment, continued employment, or the receipt of any employment-related benefit, require any applicant for employment or any employee to waive any right, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code) or this code, including the right to file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation.”

50. The prohibition against waivers found in California Labor Code section 432.6 includes those found in California Government Code section 12952, which prohibits inquiry into any information related to an individual’s criminal history directly in an application or through other means directed at discovering criminal history. See Cal. Code Regs., tit. 2, § 11017.1(4).

51. Defendants inquired about Plaintiff’s criminal history including felonies, misdemeanors, infractions including but not limited to traffic violations before there was any conditional offer of employment. Defendants’ form of questioning is too broad and is not specific enough to inquire only about Plaintiff’s relevant conviction history. Defendants’ failure to narrow its questioning to specify that convictions that have been sealed, dismissed, and statutorily eradicated pursuant to law are not to be disclosed violated the law against such disclosures. A further violation occurred when Defendants also required Plaintiff and similarly situated employees to sign waivers as a condition of employment that waiver claims related to Defendants improperly requiring disclosure of criminal history.

52. As a proximate result of Defendants’ conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled “DAMAGES,” which is incorporated here to the extent pertinent as if set forth here in full.

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SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to all Defendants)

53. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 52 as though fully set forth herein.

54. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See California Business and Professions ("B&P") Code § 17200.

55. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, during their employment as a result of Defendants' rounding practices.

56. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal.4th 163 (2000).

57. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 510 and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 60 as though fully set forth herein.

59. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 7, § 3 (Failure to Pay Overtime Wages)

- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 7, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 432.6, 432.7, and 432.8 (Limitations on Employers Regarding Inquiring Into Criminal History and Waiver Relating Thereto)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

60. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

61. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

62. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;

c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;

d. Liquidated damages pursuant to California Labor Code section 1194.2;

4. As to the Third Cause of Action:

a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);

b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

5. As to the Fourth Cause of Action:

a. For statutory penalties equal to Plaintiff and similarly situated employees daily rate of pay multiplied by thirty (30) days;

6. As to the Fifth Cause of Action:

a. For any non-intentional violation, actual damages or two hundred dollars (\$200), whichever is greater;

b. For any intentional violation, treble actual damages, or five hundred dollars (\$500), whichever is greater,

c. Reasonable attorney's fees and costs;

7. As to the Sixth Cause of Action:

a. Actual damages as proven at trial;

b. declaratory relief;

c. reasonable attorney's fees and costs;

8. As to the Seventh Cause of Action:

a. Unpaid wages as proven at trial;

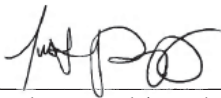
9. As to the Eighth Cause of Action:

- a. For civil penalties as provided in the Labor Code for each enumerated violation;
 - b. For those Labor Code sections where there is no civil penalty provided for their violation, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
 - c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
 - d. For any other remedies as allowed by law and/or deemed appropriate by the Court;
10. For such other and further relief as this Court may deem just and proper, including, but not limited to:
- a. Wages as proved at trial;
 - b. Injunctive and Declaratory relief;
 - c. Attorney's fees and costs as provided for by law; and
 - d. Interest.

Dated: April 24, 2023

Shimoda & Rodriguez Law, PC

By: _____



Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiff

Brown v C.W. Brower, Inc.

Stanislaus County Superior Court of California CV-22-005735

**PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5
and California Rules of Court, Rule 1.21, Rule 2.150, and Rule 2.251**

I, Elias Tapia, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On May 2, 2023, I served the following documents on the party below:

- FIRST AMENDED COMPLAINT FOR DAMAGES

FREEMAN MATHIS & GARY, LLP Julia A. Marquis (SBN 178466) Liam Gaarder-Feingold (SBN 345747) Dane M. Willis (SBN 327901) 1010 B Street, Suite 400 San Rafael, CA 94901 Phone: 415-394-9500 Facsimile: 833-317-0293 E-mail: jmarquis@fmglaw.com dane.willis@fmglaw.com Liam.Gaarder-Feingold@fmglaw.com Joseph.Artieres@fmglaw.com spinkham@fmglaw.com	
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[] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Sacramento, California, addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:_____.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct, and that this declaration was executed on May 2, 2023, at Elk
3 Grove, California.

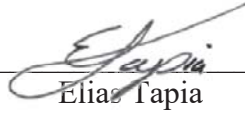
4 
Elias Tapia

EXHIBIT 2

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF STANISLAUS

KARINA BROWN, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

C.W. BROWER, INC., a California Corporation;
and DOES 1 to 100, inclusive,

Defendant.

Case No. CV-22-005735

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: (1) All hourly non-exempt employees who have or continue to work for Defendant in California from December 14, 2018, to [REDACTED] ("Employee Subclass"); and (2) All individuals who applied to work for Defendant in California, regardless of whether or not they were ultimately hired from December 14, 2019, to [REDACTED] ("Applicant Subclass").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Stanislaus County Superior Court ("Court") granting Plaintiff's motion for preliminary approval of a Joint Stipulation Regarding Class Action PAGA Settlement and Release ("Agreement" or "Settlement") as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Karina Brown ("Plaintiff" or "Class Representative"), and Defendant C.W. Brower, Inc. ("Defendant") on behalf of Class Members, which includes both the Employee Subclass and the Applicant Subclass as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant's records indicate you fall within the definition of "Class Member." Defendant's records indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below) and are part of the [Employee/Applicant] Subclass, which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate, and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On December 14, 2022, Plaintiff filed a Complaint against Defendant in the Stanislaus County Superior Court of California on behalf of herself and Class Members. The term "Action" means this putative class action pending in Stanislaus County Superior Court, Case No. CV-22-005735. The for the Employee Subclass, Class Period means December 14, 2018, to [REDACTED]. For the Applicant Subclass, Class Period means December 14, 2019, to [REDACTED].

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of herself, Class Members, and Aggrieved Employees. Plaintiff asserted the following Causes of Action against Defendant: (1) Failure to Pay Overtime Wages, (2) Failure to Pay Minimum Wages, (3) Wage Statement Violations, (4) Waiting Time Penalties, (5) Violation of Labor Code Section 432.7, (6) Violation of Labo Code section 432.6, (7) Unfair Competition, (8) Private Attorneys General Act. Defendant has denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continue to deny all

allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all individuals within the Employee Subclass or Applicant Subclass as defined above. The Agreement also applies to Aggrieved Employees, which includes all hourly non-exempt employees who have or continue to work for Defendant in California from December 9, 2021, to [REDACTED] ("PAGA Employee Subclass") and all individuals who applied to work for Defendant in California, regardless of whether or not they were ultimately hired from December 9, 2021, to [REDACTED] ("PAGA Applicant Subclass"). If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself ("opt out") from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of Four Hundred Sixty-Five Thousand Dollars (\$465,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount, attorneys' costs not to exceed \$15,000, Settlement Administrator Costs estimated not to exceed \$10,000, an Enhancement Payment to the Class Representative of \$10,000, and \$65,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. Of the \$65,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees. As explained further below, the amount of each Class Member's share of the Net Settlement Amount and each Aggrieved Employee's share of the PAGA Payment will depend on the number of weeks worked by Participating Class Members during the Class Period and their assigned subclass.

The number of weeks you worked during the Class Period, your assigned subclass, and your estimated total share of the Net Settlement Amount and PAGA Payment ("Individual Settlement Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (i.e., those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, assigned subclasses, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claim.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which an IRS Forms 1099-MISC and 1099-INT will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees of their Individual Settlement Amount will **not** require the submission of a claim form. The Net Settlement Amount will be allocated among two subclasses, the Employee Subclass and the Applicant Subclass. Class Members shall not be members of both subclasses. To the extent a Class Member was hired and performed any work for Defendant, the Class Member shall be a part of the Employee Subclass. Four percent (4%) of the Net Settlement Amount shall be allocated to the Applicant Subclass and 96% of the Net Settlement Amount shall be allocated to the Employee Subclass. Distribution of the apportioned Net Settlement Amount to Participating Class Members within each subclass shall be as follows: Each Employee Subclass member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Employee Subclass members within the Class Period. That fraction will then be multiplied by the portion of the Net Settlement Amount allocated to the Employee Subclass to arrive at the individual's share of the Net Settlement Amount. As the Applicant Subclass will not have any weeks worked based on the nature of the claim, the portion of the Net Settlement Amount allocated to the Applicant Subclass will be divided equally among all individuals within the Applicant Subclass.

The allocation of the PAGA Payment between the PAGA Employee Subclass and the PAGA Applicant Subclass will follow a similar allocation. Aggrieved Employees shall not be members of both subclasses. To the extent an Aggrieved Employee was hired and performed any work for Defendant, the individual shall be a part of the PAGA Employee Subclass. The Aggrieved Employee's share of the 25% portion of the PAGA Payment will be divided as follows: 96% for the PAGA Employee Subclass and 4% for the PAGA Applicant Subclass. The PAGA Employee Subclass shares will be determined by dividing those individual's total weeks worked within the PAGA Claim Period by the total weeks worked by all PAGA Employee Subclass members within the PAGA Claim Period. That fraction will then be multiplied by the portion of the PAGA Payment allocated to PAGA Employee Subclass to arrive at that individual's share. As the PAGA Applicant Subclass will not have any weeks worked based on the nature of the claim, the portion of the PAGA Payment allocated to the PAGA Applicant Subclass will be divided equally among all individuals within the PAGA Applicant Subclass. These payments to Aggrieved Employees shall be allocated as 100% penalties and Aggrieved Employees will be responsible for paying any personal income taxes owed on the amounts they receive. Defendant's records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period and are part of the [PAGA Employee/PAGA Applicant] Subclass, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek & Subclass Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member or their assigned subclass. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be postmarked no later than [REDACTED]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class Members who do not opt out will be deemed to have released . . . [1.30].

Aggrieved Employees will be deemed to have released . . . [1.31].

The individuals released ("Released Parties") include Defendant, as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek and assigned subclass information is accurate, **you do not need to take any further action.** Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation or subclass assignment, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from being a Class Member if you request this by [REDACTED]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (i.e., "opt out") by submitting a timely written request to the Settlement

Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (i.e. *Brown v. C.W. Brower, Inc.*, CV-22-005735); (d) be signed; and (e) be post-marked no later than [redacted]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not receive their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by submitting an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (i.e. *Brown v. C.W. Brower, Inc.*, CV-22-005735); (e) be signed; and (f) be post-marked no later than [redacted]. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiff and Defendant at the addresses identified in Section VI of this notice.

In addition to submitting a written objection, you may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. A notice of entry of entry of judgment will be filed with the Court and available online at <https://stanportal.stanct.org/search>. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department ___, [address] on [redacted] at [redacted] to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representative's Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at <https://stanportal.stanct.org/search>. You can also contact Class Counsel or Defendant's Counsel as follows:

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Justin P. Rodriguez

Julie A. Marquis
Dane M. Willis

Renald Konini
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Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Freeman Mathis & Gary, LLP
1010 B Street, Suite 400
San Rafael, California 94901
Phone: 415-394-9500
Facsimile: 833-317-0293
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT