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EFREN LOPEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

EFREN LOPEZ, individually and on behalf of all others of the public similarly situated Plaintiff, v. THE FISHEL COMPANY, a business entity, form unknown; and DOES 1 to 50, inclusive, Defendants.	Case No.: 30-2023-01305726-CU-OE-CXC Hon. Lon F. Hurwitz Dept. CX-103 **SUPPLEMENTAL DECLARATION OF RICHARD KIM IN SUPPORT OF MOTION FOR PAGA APPROVAL** Filed: 02/03/2023 Dept: CX103 Judge: Hon. Lon Hurwitz **Motion:** Date: October 18, 2024 Time: 1:30 p.m. Dept: CX 103

Declaration of Richard Kim

I, Richard Kim, declare:

1. I am over the age of 18 and a resident of California. I am admitted and licensed to practice law before all state courts within the State of California. I am counsel for Plaintiff EFREN LOPEZ and the aggrieved employees. I have personal knowledge of the matters stated herein. If called as a witness, I could and would testify truthfully and competently thereto under oath.

2. I submit this supplemental declaration pursuant in support of the Motion for

Approval of Settlement Pursuant to Private Attorneys General Act of 2004.

BACKGROUND

3. On January 20, 2023, on behalf of Mr. Lopez and the aggrieved employees, my office filed the PAGA Notice with the California Labor and Workforce Development Agency ("LWDA") and was assigned Case No. LWDA-CM-930339-23. Attached as Exhibit A is a copy of the PAGA letter provided to the LWDA.

4. Plaintiff filed his Complaint in this matter against Defendant The Fishel Company ("Defendant") on February 3, 2023 and filed an Amended Complaint to include PAGA allegations on May 22, 2023. Plaintiff's Complaint and Amended Complaint included class action allegations. Attached as Exhibit B is a copy of the Complaint and attached as Exhibit C is a copy of the Amended Complaint.

5. On August 23, 2023, the Amended Complaint was uploaded onto the LWDA website.

6. The Action alleges that Defendant failed to compensate their employees at the prevailing wage despite the fact that they engaged in numerous public works projects that required them to compensate their employees at the prevailing wage. Further, the Action alleges that Defendant failed provide their employees meal and rest breaks, failed to compensate their employees for all overtime worked, and failed to reimburse their employees for expenses incurred as a result of their employment.

THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

7. Prior to the mediation, my office engaged in investigation, interviews, and reviewed Defendant's written policies and procedures, Plaintiff's paystubs, and a sampling of paystubs, time sheets, pay data, and time data.

8. Upon review of the documents, I saw that there was significant evidence of rounding of the punch in, punch out times to the nearest hour or half hour.

9. Specifically, I observed that a vast majority of the time sheet clock outs were to the exact hour or half hour and that the lunch breaks were nearly all exactly 30 minutes.

10. The documents and information were provided to an economist, Nick Briscoe and

he confirmed that the time sheet clock outs were to the exact hour or half hour. He determined that roughly 90% of the clock outs were rounded and that 100% of lunch breaks were exactly 30 minutes.

11. Plaintiff stated that they had to work through their lunch periods and the employees were incentivized to work through their lunches to earn more commissions.

12. Plaintiff also stated that Defendants would change the time sheets to reflect labor code complaint lunch breaks.

13. Further, I had extensive conversations with Plaintiff about Defendant's policies and procedures, working conditions, and other relevant information to this case.

14. The evidence of the rounding just corroborated Plaintiff's claims and the claims in the operative Complaint.

15. I also had meetings and reviewed Defendant's arbitration agreement. I had numerous meetings with clients and engaged in extensive research in order to challenge the validity of the arbitration agreement. I decided that despite a lot of strong arguments that we had to challenge the validity of the arbitration agreement, due to the risks and uncertainty of testing the arguments in Court, it was the best course of action to mediate.

16. On May 3, 2024, my office gave notice of the settlement to the LWDA an uploaded a copy of the settlement agreement to the LWDA website.

17. The parties made changes to the settlement agreement pursuant to the Court's ruling that was issued on August 23, 2024.

a. The end date of the PAGA Period is July 6, 2024. This date was determined by Parties' negotiated agreement at the mediation that Defendant may elect to cut off the PAGA period at a certain pay period amount (5,222) or trigger a proportional percentage increase in the Gross Settlement Amount.

b. Parties negotiated a potential service award for Plaintiff for the PAGA claims. This was inadvertently left out of the settlement agreement. Parties included it in the revised settlement agreement.

c. Parties revised the settlement agreement to take out the PAGA Penalties definition because it is the same thing as Net Settlement Amount and parties will use the term Net Settlement Amount where they intended to use PAGA Penalties.

d. Parties met and conferred regarding Plaintiff's request for 40% of the Gross Settlement Amount. Plaintiff's counsel agreed to reduce his attorney fee request to 33.33%.

e. Parties included in their settlement agreement that the administrator will post the operative complaint, notice packet, and final order and judgment on its website for at least 90 days after approval in Section 7.5.

f. Parties included in the settlement agreement that the Court will have continuing jurisdiction pursuant to *CCP* §664.6.

18. The parties executed an amended settlement agreement and on October 4, 2024, I gave notice of the amended settlement to the LWDA and uploaded a copy of the settlement agreement onto the LWDA website. A true and correct copy of the settlement agreement is attached as Exhibit E. A true and correct copy of the redline version of the settlement is attached hereto as Exhibit F.

19. Further, Parties revised the Notice to Aggrieved Employees which is attached to the settlement agreement as Exhibit A. A true and correct copy of the Notice to Aggrieved Employees is attached hereto as Exhibit G.

20. On October 4, 2024, a copy of the original Motion for PAGA Approval and the supporting papers that was filed on May 22, 2024 was served on the LWDA. Attached as Exhibit K is the Proof of Service.

21. On October 4, 2024, a copy of the Supplemental Briefing in support of the Motion for PAGA Approval and the supporting papers were served on the LWDA. Attached as Exhibit L is the proof of service.

SETTLEMENT

22. The gross settlement amount of the PAGA claims is valued at $200,000.00.

23. The net settlement amount is $200,000.00, less the following deductions subject

to Court approval:

a. ***Attorney's Fees and Expenses.*** Plaintiff requests 33.33% ($66,666.67) of the gross settlement amount as his attorneys' fees and a reimbursement of costs and expenses associated with the litigation and settlement of the Action not to exceed thirty thousand dollars ($30,000.00). If the expenses are less than $30,000.00 the Administrator will allocate the reminder to Net Settlement Amount for distribution to the aggrieved employees.

b. ***The Proposed Administrator.*** The parties agree to appoint ILYM as the "Administrator." Parties have agreed to allocate an amount not to exceed $10,000.00 as the Administrator Expenses Payment. If the expense of administering the Settlement is less than $10,000.00, the Administrator will allocate the reminder to Net Settlement Amount for distribution to the aggrieved employees. ILYM's summary estimate for administrative services is attached hereto as Exhibit I.

c. ***PAGA Representative Service Award.*** Mr. Lopez will request, and Defendants agree to not oppose, a "Service Award" of $5,000.00 in exchange for initiating and providing services in support of the Action. If the Court approves a lesser amount, the Administrator will allocate the unapproved portion to the Net Settlement Amount for distribution to the Aggrieved Employees.

d. ***Total Net Settlement Amount After Expenses.*** If the Court approves the amounts requested for Attorneys' fees and costs, the Settlement Administrators Expenses, the Service Award, and the Cost of the Settlement Administrator, the Net Settlement Amount eligible for PAGA amount is $101,938.33

24. Here, Plaintiff's expense total $21,395.00. Attached as Exhibit J is a copy Plaintiff's itemized expenses and invoices.

25. After deducing the Plaintiff's expenses ($21,395.00), the cost of the settlement administrator ($10,000.00), and the service award to Mr. Lopez ($5,000.00), the net settlement amount of the PAGA penalties of $101,938.33. Of this amount, 75% ($76,453.75) will be paid to

the State of California Labor and Workforce Development Agency ("LWDA") and 25% ($25,484.58) will be distributed to the aggrieved employees.

26. The Law Offices of Richard Kim PC does not have any fee-splitting agreement with any other counsel in this case.

MAXIMUM EXPOSURE AND DISCOUNTS

27. Based on the data and information provided by Defendant prior to mediation and information I was able to get from the client, Mr. Briscoe created a damages model based on the following benchmarks and assumptions:

a. Approximately 172 aggrieved employees during the PAGA period of January 19, 2022 the date of the mediation on February 14, 2024, including 71 aggrieved employees whose employment ended during the PAGA period.

b. Approximately 5,151 pay periods.

c. Average hourly rate of pay was $24.79 per hour.

28. In addition, based upon Mr. Lopez's theories of liabilities, the damage model assumes the following:

a. 75% violation of meal break violations

b. 90% violations of rest break violations

c. 100% violations of unpaid waves due to off the clock work (rounding)

d. 20% violations due to unpaid prevailing wage

e. 100% wage statement violations

f. 100% waiting time penalties amount for the 71 former employees.

29. Based on the foregoing benchmarks and assumptions, Defendant's maximum exposure for PAGA penalties for all five (5) categories of violations for unstacked PAGA penalties are $2,345,047.00 which can be broken down as follows:

a. Meal Break Violations: $386,325.00

b. Rest Break Violations: $463,590.00

c. Unpaid Wages-Overtime (rounding): $515,100.00

d. Unpaid Wages (Prevailing Wage): $51,510.00

e. Wage Statement Violations: $515,100.00

f. Waiting Time Penalties: $422,422.00

30. The PAGA period here is from January 20, 2022 to July 6, 2024. Defendant provided updated data and information provided after settlement from Defendant provides that there are 158 aggrieved employees who worked a total of 5,199 PAGA pay periods. Based on this, the unstacked PAGA penalties are $2,345,047.00 which can be broken down as follows:

a. Meal Break Violations: $259,950.00

b. Rest Break Violations: $363,930.00

c. Unpaid Wages-Overtime (rounding): $519,900.00

d. Unpaid Wages (Prevailing Wage): $51,990.00

e. Wage Statement Violations: $519,900.00

f. Waiting Time Penalties: $422,422.00

31. Despite Defendant's maximum exposure, I recognize the challenges of proving PAGA violations, along with the risks, complexities, expense, and duration of further litigation. Specifically, the challenges of obtaining penalties and stacking multiple PAGA violations. The PAGA statutory language is unclear whether all of these PAGA violations may be stacked. Further, PAGA penalties are awarded based upon the court's discretion and the Court has the discretion to significantly reduce the PAGA penalties based on the facts of the case.

32. First, Defendant strongly contends that Labor Code violations, if they exist were significantly less than the amounts claimed by Plaintiff. They contend that they had valid policies and procedures and that working off the clock, rounding, and not taking meal and rest breaks was not a widespread policy and problem in the company. Defendants communicated their intention to mount a defense to each of Plaintiff and aggrieved employees' contentions.

33. Further, there are a lack of records to prove some of the claims and individual inquiries may be necessary, which would render a trial unmanageable.

34. To ascertain the actual number of hours and wages lost due to rounding to calculate overtime hours, unpaid meal and rest breaks, individual inquiries of the employees may be

required.

35. Given the lack of records to prove unpaid wages due to rounding claims, individual inquiries may be necessary, rendering the trial unmanageable. The meal and rest break claims face the same challenges because Plaintiff's theory is based on working through meal and rest breaks, while being clocked out.

36. The wage statement violations are also based on the off the clock work due to rounding not being listed on the wage statements. Defendant contends that the wage statements contain the correct number of hours worked and any violations were not knowing, intentional, or willful.

37. Based on these challenges in proving the PAGA claims and manageability issues, a 65% discount is reasonable. Moreover, since rest breaks are generally not tracked and Plaintiff has to prove that the wage statement violations were willful, further discounts to 85% are warranted for these penalties.

38. This would put the PAGA penalties at $571,568.00 which can be broken down as follows:

a.	Meal Break Violations:	$90,938.00
b.	Rest Break Violations:	$54,590.00
c.	Unpaid Wages (rounding):	$181,965.00
d.	Unpaid Wages (Prevailing Wage):	$18,197.00
e.	Wage Statement Violations:	$77,985.00
f.	Waiting Time Penalties:	$147,848.00

39. Further, many of Plaintiff's claims (unpaid overtime, meal breaks, wage statement violations, and waiting time penalties) are derivative of the Unpaid wages from rounding claim.

40. Upon balancing of Plaintiff and aggrieved employees' case against the risks associated with continued litigation, I believe that the gross settlement amount for PAGA penalties in the amount of $200,000.00 is a fair, reasonable, and adequate settlement and represents a strong penalty to deter Defendant from future violations of the California Labor Code. Additionally, this settlement does not preclude any of the individual employees to seek damages for their individual

labor code claims, who can file their own suit. This represents a substantial penalty for Defendant's 171 aggrieved employees as of the date of the mediation and represents a PAGA penalty of $1,169.59 per person or $42.11 per pay period.

41. The net settlement for PAGA penalties of $106,938.33 where 75% ($80,203.75) will be paid to the State of California Labor and Workforce Development Agency ("LWDA") and 25% ($26,734.58) will be distributed to the aggrieved employees. The Parties negotiated a good faith amount for PAGA penalties, which was not the product of self-interest at the expense of aggrieved employees. This PAGA penalty amount is in line with amounts approved by other courts. *See e.g., Nelson v. Avon Products, Inc.* (N.D. Cal. 2017) 2017 WL 733145 (granting final approval of $1,800,000 settlement with $10,000 as the PAGA payment); *Taylor v. Shippers Transport Express, Inc.* (C.D. Cal. 2015) 2015 WL 12658457, *19 (settlement reached for $11,040,000 with a PAGA payment of $50,000, which "is greater than [PAGA] awards deemed reasonable and approved in other cases"); *Franco v. Ruiz Food Products, Inc.* (E.D. Cal. 2012) 2012 WL 5941801, * 14 (a settlement of $2,500,000 with $10,000 as the PAGA payment "comports with settlement approval of PAGA awards in other cases").

THE PROPOSED REQUEST FOR ATTORNEYS' FEES AND COST IS REASONABLE

42. The fee award requested by my office in the amount of $66,666.67 represents 33% of the gross settlement value. This amount is reasonable in this matter.

43. The proposed award of attorneys' fees in this case can be justified under either method - lodestar or percentage recovery. Moreover, 33% of the Gross Settlement Amount is presumably reasonable. *See Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43, 66, n. 11 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); *see also*, *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F.Supp. 294 (stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million).

44. I can provide complete detailed billing records in the event the Court requests them, however, I would request the opportunity to redact attorney-client privileged information and any other privileged information. Thus far efforts expected by Counsel include, but are not limited to,

the following:

a. Investigation of the matter, including meeting with Plaintiff, reviewing Defendant's policies, requesting and reviewing Plaintiff's personnel files and timekeeping and payroll and researching the Defendant.

b. Preparing the PAGA Notice, filing, and serving Defendants with a copy.

c. Preparing the Complaint and serving Defendant.

d. Reviewing Defendant's arbitration agreement, meeting with Plaintiff and researching and investigating the validity of the arbitration agreement. Preparation and strategizing challenges to the validity of said agreement.

e. Reviewing Defendant's informal production and employment file which included employment records, payroll records, time-keeping records, and its wage and hour policies and practices.

f. Updating Client on the developments in this case.

g. Working with Opposing Counsel to select a mediator and a mediation date.

h. Working with Opposing Counsel for representative sampling data and analyzing the data with the aid of expert consultants prior to attendance at mediation.

i. Preparation of a mediation brief and damages model for use at mediation.

j. Attendance at mediation.

k. Negotiating, finalizing, and fully executing the Settlement Agreement.

l. Preparing and filing the Motion for Approval of PAGA settlement and supporting documents.

45. Based on the significant time and resources invested into this case, I believe that the fee percentage requested is reasonable.

46. Additionally, as of the filing of this motion, Plaintiff's Counsel has incurred approximately $21,395.00 in litigation expenses and anticipate additional costs up to the approval.

THE PROPOSED SERVICE AWARD IS FAIR AND REASONABLE

47. Mr. Lopez seeks a service award in of $5,000.00. This amount is to compensate

Mr. Fan for initiating and providing his services in this Action resulting in a favorable settlement. This was done at great risk to Mr. Lopez and his reputation.

48. Throughout this litigation, Mr. Lopez has cooperated with Plaintiff's counsel and has provided valuable information regarding unpaid work time, prevailing wages, off the clock work, and missed meal and rest periods.

49. The Service Award is presumably fair and reasonable, as it represents only 1.2% of the Gross Settlement Amount. *See Singer v. Becton Dickinson & Co.* (S.D. Cal. June 1, 2010) 2010 WL 2196104, at *9 (awarding $25,000 to class representative from $1 Million wage and hour case settlement (2.5% of fund)); *Thieriot v. Celtic Inc. Co, supra* 2011 WL 1522385 at *8 (awarding $25,000 service award to class representative from class settlement of $1.375 Million (1.8% of fund)).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of October 2024 in Buena Park, California.

Richard Kim

Richard Kim, Declarant

Exhibit A

Law Offices of Richard Kim

January 20, 2023

AMENDED NOTICE UNDER CALIFORNIA LABOR CODE
PRIVATE ATTORNEY GENERAL ACT OF 2004

Via Electronic/Online Submission
Labor and Workforce Development Agency
800 Capital Mall, Suite 5000
Sacramento, CA 95814
Attn: Analyst

Re: ***Efren C. Lopez v. The Fishel Company dba Team Fishel***
California Labor Code § 2699 Penalties
LWDA Case No.: LWDA-CM-930339-23

Dear Analyst

This office represents Efren C. Lopez and a proposed group of current and former employees working for the Fishel Company dba Team Fishel in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, et. seq. We herein set forth the facts and theories of California Labor Code violations which we allege the Fishel Company has engaged in with respect to Plaintiff and all of its aggrieved employees.

Senate Bill 1809 was approved as emergency legislation by the California Governor and chaptered by the Secretary of State. Senate Bill 1809 amended certain provisions of the Act. Specifically, CAL. LABOR CODE§ 2699(a) imposes a procedural "notice" requirement on any aggrieved employee intending to pursue an action under the Act. This notice provision is codified in CAL. LABOR CODE §2699.3 and requires the aggrieved employee or representative to give written notice to the Labor and Workforce Development Agency, and to the employer, of the LABOR CODE violations. This notice must include the facts and theories to support the alleged violations. By sending this correspondence, Mr. Lopez is complying with the statutory notice requirement.

This class action concerns Fishel Company's failure to properly compensate its non-exempt employees with overtime and/or double compensation for work exceeding eight (8) hours per day and/or forty (40) hours per week. In an attempt to circumvent the protections mandated under both the California Labor Code and applicable Industrial Wage Orders, Fishel Company subjected and required certain members of the Class, including Mr. Lopez, to work shifts exceeding eight (8) hours a day and/or forty (40) hours a week without paying them overtime or double time compensation. In addition, on certain occasions Fishel Company required Mr. Lopez and members of the Class to work in excess of twelve (12) hours per day within a twenty-four (24) hour period.

Fishel Company also was contracted for many public works projects. However, Mr. Lopez and all aggrieved employees were not provided with the prevailing wage. Further, Fishel Company failed to comply with the additional payroll reporting requirements for public works projects.

Fishel Company also failed to provide its non-exempt employees with uninterrupted meal and rest periods. For every occurrence of rest and meal period violations, Fishel Company failed to pay an hour premium payment to Mr. Lopez or members of the Class. Fishel Company also failed to provide an adequate supply of potable water, soup, or other cleansing agent or single use towels for hard washing.

Based on the foregoing, Fishel Company required Mr. Lopez and members of the Class to work shifts exceeding eight (8) hours a day and/or forty (40) hours a week without overtime and/or double compensation. In addition, for every occurrence of rest and meal period violations, Fishel Company failed to pay an hour premium payment to Mr. Lopez or members of the Class. As a derivative result, Mr. Lopez and members of the Class were not provided with accurate itemized wage statements reflecting all hours worked or the corresponding rates of pay, nor were they paid all wages due upon termination.

<u>The Applicable Labor Code and Industrial Wage Order Violations</u>

Based on the facts set forth herein, Mr. Lopez seeks civil penalties against Defendants for the following Labor Code and Industrial Wage Order Violations:

1. Failure to compensate employees at the minimum wage and the prevailing wage in violation of *Cal. Labor Code* §§1197, 1182.12, 1194, 1194.2, 1197.1, and 1199, *et. seq.,* §1720, *et. seq.*, and *Cal. Code Regs* §11160(4),

2. Failure to timely pay wages at the appropriate rate of pay in violation of *Cal. Labor Code* §§ 510, 511, 558, 1182, 1182.12, 1194, 1194.2, 1198, 204.3, & 1194; 8 *Cal Code Regs* §11160(3), *et. seq.*

3. Failure to provide meal periods as mandated by *Cal. Labor Code* §§226.7 and 512, and 8 *Cal. Code Regs* §11160(10), *et. seq.*

4. Failure to provide rest periods as mandated by *Cal. Labor Code* §226.7 and 8 *Cal. Code Regs* §11160(11), et. seq.

5. Failure to provide employee adequate supply of potable water, soap, or other suitable

cleansing agent and single use towels for hand washing in violation of 8 *Cal. Code Regs* §11160(10)(D).

6. Failure to compensate for missed rest periods at his regular rate of pay as mandated by *Cal. Labor Code* §226.7 and 8 *Cal. Code Regs* §11160(11), et. seq.

7. Failure to provide prompt payment of wages to employees upon termination and resignation in violation of *Cal. Labor Code* §§201, 202, and 203

8. Failure to provide accurate itemized wage statements to employees in violation of *Cal. Labor Code* §§226 and 226.3 and 8 *Cal. Code Regs* §11160(6), et. seq.

9. Failure to comply with payroll reporting requirements for public works projects in violation of *Cal. Labor Code* §1776 and 8 *Cal. Code Regs* §11160(6), et. seq.

10. Failure to Reimburse for Work-Related Expenses in violation of *Cal. Labor Code* §2802, *et. seq.* and 8 *Cal. Code Regs* §11160(8), et. seq.

Prayer

Pursuant to section 2699 of the California Labor Code, Mr. Lopez, individually and on behalf of all aggrieved employees, requests to recover civil penalties against Defendants including but not limited to:

1. Where penalties are not already specified in the applicable provision of the California Labor Code, penalties under CAL. LABOR CODE § 2699 in the amount of $100 for each aggrieved employee per pay-period for the initial violation, and $200 for each aggrieved employee per pay period for each subsequent violation (*see* CAL. LAB. CODE § 2699(f)(2));

2. Penalties under CAL. LAB. CODE § 226.3 for violations of CAL. LAB. CODE § 226, in addition to any other penalty provided by law, of two hundred fifty dollars ($250) per aggrieved employee for the first violation, and one thousand dollars ($1,000) per aggrieved employee for each subsequent violation;

3. Penalties under Title 8 of the California Code of Regulations, as set forth in the applicable Wage Order, in the amount of $50 for each aggrieved employee per pay period for an initial violation, and $100 for each aggrieved employee per pay period for each subsequent violation (*see* CAL. LAB. CODE § 558);

4. Penalties under CAL. LABOR CODE § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code, in the amount of

$100 for each aggrieved employee per pay period for the initial violation, and $200 for each aggrieved employee per pay period for each subsequent violation or any willful or intentional violation, plus 25% of the wages wrongfully withheld; and

5. Any and all additional penalties and sums as provided by the California Labor Code, and/or other statutes.

In addition, Mr. Lopez seeks and is entitled to have 75% of all penalties recovered pursuant to §§ 2699, *et seq*., allocated to the Agency, and 25% to the aggrieved employees.

NOTICE

Mr. Lopez is placing The Fishel Company dba Team Fishel on notice by mailing a copy of this correspondence via certified mail.

Sincerely,

LAW OFFICE OF RICHARD KIM, PC

Richard Kim

Richard Kim, Esq.

cc: ***Via U.S. Certified Mail***
Team Fishel
647 Young St
Santa Ana, CA 92705

The Fishel Company dba Team Fishel
1366 Dublin Rd.
Columbus OH 43215

Exhibit B

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Attorneys for Plaintiff and the Putative Class

Assigned for all purposes
Judge Lon F. Hurwitz
CX-103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

EFREN LOPEZ, individually and on behalf of all others of the public similarly situated

Plaintiff,

v.

THE FISHEL COMPANY, a business entity, form unknown; and DOES 1 to 50, inclusive,

Defendants.

CLASS ACTION

Case No.: 30-2023-01305726-CU-OE-CXC

CLASS ACTION COMPLAINT FOR
:

1. **Failure to Pay Minimum Wage (Cal. Labor Code §§1182, 1182.12, 1194, 1194.2, 1197.1, 1199 *et seq.*; §1720; 8 Cal. Code Regs §11160(4))**

2. **Failure to Pay Overtime and Double Time Compensation (Cal. Labor Code §510, 1194, 1198; 8 Cal. Code regs §11160(3)**

3. **Failure to Provide Meal Periods (Cal. Labor Code §226.7, 512; 8 Cal. Code regs §11160(10)**

4. **Failure to Provide Rest Periods (Cal. Labor Code §226.7, 512; 8 Cal. Code regs §11160(11)**

5. **Failure to Provide Accurate Itemized Wage Statements (Cal. Labor Code §226, 226.3; 8 Cal. Code Regs**

§11160(6)

6. **Waiting Time Penalties (Cal. Labor Code §203)**

7. **Failure to Reimburse for Work-Related Expenses (Cal. Labor Code §2802, *et. seq.*; 8 Cal. Code Regs §11160(8), et. seq.**

8. **Unfair Competition and Unlawful Business Practices (Cal. Labor Code §17200, et. seq.)**

9. **Failure to Furnish Payroll Records (Cal. Labor Code §§226(b), 226(c), 226(f), 1198.5, 1198.5(a), 1198.5(b), and 1198.5(k)**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff Efren Lopez ("Plaintiff"), and submits this unverified Complaint ("Complaint") as follows.

I.

INTRODUCTION

1. Plaintiff brings this action on behalf of himself, and all similarly situated individuals for (a) Failure to Pay Minimum Wages; (b) Failure to Pay Overtime and Double Time Compensation; (c) Failure to Provide Meal Periods; (d) Failure to Provide Rest Periods; (e) Failure to Provide Accurate Itemized wage Statements; (f) Waiting Time Penalties; (7) Failure to Reimburse for Work-Related Expenses; (8) Unfair Competition and Unlawful Business Practices; and (9) Failure to Furnish Payroll records.

2. All allegations in this Complaint are based upon information and belief except those allegations that pertain to Plaintiff named herein and his counsel. Each allegation in this

Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

II.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to *Cal. Code Civ. Pro.* §410.10

4. Venue is proper in this Court pursuant to *Cal. Code Civ. Pro.* §§395 and 395.5 because the facts and circumstances giving rise to this action as alleged occurred in the County of Orange.

III.

THE PARTIES

A. The Plaintiff.

5. Plaintiff is, and at all times mentioned herein was, an individual;

a. Residing in the County of Orange, State of California;

b. Who worked for Defendants, including DOES 1 through 50, as a non-exempt employee;

c. Who worked in excess of eight (8) hours in a workday and more than forty (40) hours in a workweek, bur did not receive all of minimum wages, overtime, and doublte time compensation which he was entitled;

d. Who did not receive uninterrupted rest breaks or meal periods;

e. Who was not indemnified or reimbursed for all out-of-pocket expenses;

f. Who did not receive accurate itemized wage statements;

g. Who was not paid all wages due upon termination; and

h. Who is a member of the Class as defined in below:

B. The Defendants.

6. Plaintiff is informed and believes, and based upon that information and belief alleges that Defendant the Fishel Company, is a business entity, form unknown, conducting business in the County of Orange, State of California, which:

a. Failed to pay at least minimum wages (including the prevailing wage as required) for all hours worked;

b. Failed to pay overtime and double time compensation for hours worked in excess of 9 hours in a workday and/or over forty hours in a workweek;

c. Failed to provide uninterrupted rest periods and meal periods;

d. Failed to indemnify or reimburse its employees for all out of pocket expenses;

e. Failed to provide employees with accurate itemized wage statements;

f. Failed to pay employees all wages due upon termination of their employment relationship.

IV.

THE CLASS DEFINITION

7. The members of the class (the "Class") consists of:

All persons employed by Defendant the Fishel Company and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions who work for the Fishel Company during the time period of January 31, 2019 to the present.

V.

THE CLASS ALLEGATIONS

8. The persons who comprise the Class are so numerous that joinder of all such persons is impracticable, and the disposition of their claims will benefit the parties and the Court.

Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff will fairly and adequately protect the interests of the Class that he seeks to represent. Plaintiff does not have any interests that are antagonistic to the Class that he seeks to represent. Counsel for Plaintiff are experienced, qualified, and general able to conduct complex class action litigation.

9. The Court should permit this action to be maintained as a class action pursuant to section 382 of the California Code of Civil Procedure because:

a. The questions of law and fact common to the Class predominate over any question affecting only individual members;

b. A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;

c. The members of the Class are so numerous that it is impractical to bring all members of the Class before the Court;

d. Plaintiff and the other Class members will not be able to obtain effective and economic legal redress unless this action is maintained as a class action;

e. There is a community of interest in obtaining appropriate legal and equitable relief for the legal and statutory violations andother improprieties, and in obtaining adequate compensation for the damages and injuries that Defendant's actions have inflicted upon the class;

f. There isa community of interest in ensuring that the combined assets and available insurance of Defendant is sufficient to adequately compensate the members of the Class for injuries sustained;

g. Without class certification, the prosecution of separate actions by individual members of the Class for the injuries sustained; would create a risk of:

i. Inconsistent or varying adjudicationswith respect to invidual members of the Class which would establish incompatible standards of conduct for Defendants, and/or

ii. Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible defendants.

h. Defendant has acted or refused to at on grounds generally applicable to the Class , thereby making final injunctive relief appropriate with respect to the Class as a whole.

VI.
FACTUAL ALLEGATIONS

10. Within four years preceding the initiation of this action and ongoing, Plaintiff and members of the Class were and/or are currently employed by Defendants as non-exempt employees.

11. Plaintiff is informed and believes, and thereupon alleges that Defendant required him and other members of the Class to work shifts exceeding eight (8) hours a day and/or forty (40) hours but failed to compensate them with overtime and/or double compensation for all time worked in excess of eight (8) hours in a workday and/or forty (40) hours in any given workweek.

12. Plaintiff is informed and believes, and thereupon alleges, that it was Defendants' policy and practice to prohibit Plaintiff, and members of the Class, from having uninterrupted meal and rest periods. For each occurrence of these rest and meal period violations, Defendants

failed to pay Plaintiff and members of the Class an hour premium payment at their regular rate of pay.

13. Plaintiff is further informed and believes, and thereupon further alleges, that Defendants' failed to provide members of the Class an adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing.

14. Plaintiff is further informed and believes, and thereupon alleges, that Defendants failed to compensate Plaintiff, and members of the Class at the appropriate minimum wage.

15. Plaintiff is further informed and believes, and thereupon alleges, that Defendants had Plaintiff and other members of the Class work on public works projects and failed to pay the prevailing wage as required.

16. Due to Defendants failure to properly pay its employees for all hours worked, including overtime compensation, double time compensation, and meal and rest break premiums, as a derivative result Plaintiffs and members of the Class were not provided with accurate itemized wage statements, nor were they paid all wages due upon termination. In addition, because the Plaintiffs and members of the Class were not compensated for all hours worked, their paychecks did not, and do not, accurately or correctly reflect all hours worked or the corresponding rates of pay.

FIRST CAUSE OF ACTION

(Failure to Pay Minimum Wage [Cal. Labor Code §§1182, 1182.12, 1194, 1194.2, 1197.1, 1199 *et seq.*; §1720; 8 Cal. Code Regs §11160(4), *et. seq.*]

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

17. Plaintiff re-alleges and incorporates each and every allegation contained in each of the preceding paragraphs in this Complaint and which are fully set forth herein by reference.

18. California law requires the state minimum wage to be at least equal to the federal minimum wage. *Cal. Labor Code* §1182(b)

19. Notwithstanding section 1182(b) of the California Labor Code, the minimum wage may be fixed by applicable state or local law, and the payment of a lower wage than the minimum so fixed is unlawful. *Cal. Labor Code* §1197.

20. On April 4, 2016, Governor Jerry Brown signed legislation adopting a six-step increase to the state minimum wage:

> For any employer who employees 26 or more employees, and minimum wage shall be as follows: [¶]
>
> (A) From January 1, 2017, to December 31, 2017, inclusive,-ten dollars and fifty cents ($10.50) per hour. [¶]
>
> (B) From January 1, 2018, to December 31, 2018, inclusive,-eleven dollars ($11) per hour. [¶]
>
> (C) From January 1, 2019, to December 31, 2019, inclusive,-twelve dollars ($12) per hour. [¶]
>
> (D) From January 1, 2020, to December 31, 2020, inclusive,-thirteen dollars ($13) per hour. [¶]
>
> (E) From January 1, 2021, to December 31, 2021, inclusive,-fourteen dollars ($14) per hour. [¶]
>
> (F) From January 1, 2022, and until adjusted by subdivision (c)-fifteen dollars ($15) per hour.

Cal. Labor Code §1182.12(1)(b), *et. seq.*

21. Plaintiff is informed and believes, and thereupon alleges, that within the four years preceding the initiation of this action, Defendants, including DOES 1 through 40, both individually and in the aggregate, employed 26 or more employees, including Plaintiff and members of the Class.

22. Plaintiff and class members were not compensated for all of the hours worked.

23. Defendant worked on public works projects and were required to pay all of their employees the prevailing wage under *Cal. Labor Code* §1720.

24. Defendant failed to pay Plaintiff and members of the Class the prevailing wage.

25. By virtue of Defendant's unlawful failure to pay Plaintiff and members of the Class their respective and applicable minimum wages, as alleged herein, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown, but which exceed the jurisdictional limits of this Court, and which will be ascertained according to proof at trial.

26. By virtue of Defendant's unlawful failure to pay Plaintiff and members of the Class their respective and applicable minimum wages, as alleged herein, Plaintiff and members of the Class are entitled to recover the unpaid balance of the full amounts of the minimum wages as applicable, including interest thereon, reasonable attorneys' fees and costs of suit. *Cal Labor Code* §1194.

27. In addition, Plaintiff an the Class are "entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon." *Cal. Labor Code* §1194.2

28. Plaintiff and the Class are also entitled to seek and recover interest, penalties, and reasonable attorneys' fees and costs pursuant to *Cal. Labor Code* §§218.5 and 1194.

SECOND CAUSE OF ACTION

(Racial Discrimination in Violation of Government Code section 12940, *et. seq.*- Against All Defendants Failure to Pay Overtime and Double Time Compensation ([Cal. Labor Code §510, 1194, 1198; 8 Cal. Code regs §11160(3)]

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

29. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this Complaint as fully set forth herein by reference.

30. *Cal. Labor Code* §§510, 1194, and 1198 and *Industrial Wage Order* No. 16-2001(3)(A)(1)(a), which is codified under 8 CAL. CODE REGS. § 11160(3)(A)(1)(a), as amended, provide that employees in California shall not be employed more than eight (8) hours in any workday or more than forty (40) hours in any workweek, unless they receive additional compensation beyond their regular wages in amounts specified by law. In addition, an employer must pay double the employee's regular rate of pay for all hours worked in excess of twelfth (12) hours in any workday, and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. 8 CAL. CODE REGS. § 11160(3)(A)(1)(b).

31. *Cal. Labor Code* §1194 provides that an employee who has not been paid overtime compensation as required by section 1198 may recover the unpaid balance of the full amount of such overtime compensation, together with costs of suit, penalties, interest thereon, and attorneys' fees in a civil action.

32. Plaintiffs and members of the Class were not compensated for all hours worked. As a result, Plaintiff and members of the Class worked more than eight (8) hours in a workday, and/or more than forty (40) hours in a workweek as non-exempt employee of Defendant, including DOES 1 through 50, without receiving overtime or double time compensation.

33. At all times relevant hereto, Defendants, including DOES 1 through 50, failed to pay Plaintiff or members of the Class overtime and double time compensation for the hours he worked in excess of the maximum hours permissible by law as required by 8 CAL. CODE REGS. §11160 and *Cal. Labor Code* §§510, 1194, and 1198.

34. At no time relevant hereto were Plaintiff or members of the Class exempt from any wage and hour provision under California law, including without limitation, any statute, rule, or regulation governing the payment of overtime compensation.

35. By virtue of Defendant's unlawful failure to pay additional compensation to the Plaintiff and the Class for their overtime hours, they have suffered, and will continue to suffer, damages in the form of unpaid overtime and double time compensation subject to proof.

36. Plaintiff and the Class are also entitled to seek and recover interest, penalties, and reasonable attorney's fees and costs pursuant to *Cal. Labor Code* §128.5, 281.6, 1194, and *Cal. Civil Code* §3289, *et. seq.*

<u>THIRD CAUSE OF ACTION</u>

(Failure to Provide Meal Periods [Cal. Labor Code §226.7, 512; 8 Cal. Code regs §11160(10)])

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

37. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this Complaint as fully set forth herein by reference.

38. *Cal. Labor Code* §512(a) provides that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. An employee who works no more than six (6) ours may waive the meal period by mutual consent.

39. INDUSTRIAL WAGE ORDER No. 16-2001 (11)(A), which is codified under 8 CAL. CODE REGS. § 11160(10)(A), states that an employer must relieve the employee of all work-related duties during meal breaks; otherwise, the employee will be considered to be "on duty," which constitutes compensable time.

40. At all times mentioned herein, Government Code section §12900, *et seq*. was in full force and effect and was binding on each of Defendants. Specifically, Government Code section 12940, subdivision (h) prohibits any employer or person from discharging or otherwise discriminating against any person because that person has opposed discrimination or harassment forbidden under the California's Fair Employment and Housing Act.

41. In addition, CAL. LAB. CODE § 226.7 provides, in relevant part, as follows:

> (b) An employer shall not require an employee to work during a meal… period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission . . .
>
> ***
>
> (c) If an employer fails to provide an employee a meal… period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission[]…, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal… period is not provided.

42. For every instance where an employer fails to provide an employee with an uninterrupted meal period in accordance to Wage Order No. 16(10), the employer shall pay the employee one hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided. 8 CAL. CODE REGS. § 11160(10)(F); see also CAL. LAB. CODE § 226.7(c).

43. At all relevant times hereto, Plaintiff and members of the Class regularly worked more than five-hour increments; however, at all times relevant hereto, Defendants, including DOES 1 through 50, failed to provide uninterrupted meal periods to Plaintiff and members of the Class as required by CAL. LAB. CODE §§ 226.7, 512 and 8 CAL. CODE REGS. § 11160(10), as further alleged herein.

44. By virtue of requiring Plaintiff and the Class to work through meal periods free form work duties, Defendants have intentionally and improperly denied statutorily mandated meal periods in violation of CAL. LAB. CODE §§ 226.7, 512, and 8 CAL. CODE REGS. § 11160(10). Plaintiff and the Class have suffered, and will continue to suffer, damages in the form of meal break premium payments in an amount according to proof, along with interest pursuant to section 3287 of the California Civil Code.

45. At all relevant times hereto, Defendant failed to provide an adequate supply of potable, water, soap, or other suitable cleansing agent and single use towels for handwashing as mandated by 8 CAL. CODE REGS. § 11160(10)(C)

46. Plaintiff and the Class are also entitled to seek and recover costs pursuant to *Cal. Civil Code* §1032, *et. seq.*

<u>FOURTH CAUSE OF ACTION</u>

(Failure to Provide Rest Periods [Cal. Labor Code §226.7, 512; 8 Cal. Code regs §11160(11)])

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

47. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this Complaint as fully set forth herein by reference.

48. *Cal. Labor Code* §226.7 provides in relevant part, as follows:

> (b) An employer shall not require an employee to work during a… rest… period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission….
>
> ***
>
> (d) A rest… period mandated pursuant to a state law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission[]…, shall be counted as hours worked, for which there shall be no deduction from wages.

49. The California Labor Code also states, in relevant part:

> If an employer fails to provide an employee a… rest… period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission[]…, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the… rest… period is not provided.

Cal. Labor Code §227.7(c).

50. Industrial Wage Order No. 16-2001 (11)(A), which is codified under 8 CAL. CODE REGS. § 11160(11)(A), requires employers to provide rest breaks that shall be counted as hours worked for which there shall be no deduction of wages.

51. 8 CAL. CODE REGS. § 11160(11)(A), also requires that an employer provide its employees with a 10-minute rest break for every four-hour increment of time worked, or major fraction thereof. *See also*, *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1029 ("[e]mployees are entitled to 10 minute rests for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on[]").

52. *Cal. Labor Code* §226.7 and 8 CAL. CODE REGS. § 11160(11)(D), further require that for every workday in which it fails to provide a rest period during any four-hour increment, the employer must pay the employee premium at a rate of an hour's pay at the employee's regular rate of pay.

53. Plaintiff and members of the Class regularly worked four-hour increments and were not provided with statutorily mandated rest breaks during their shifts. Plaintiff and members of the Class were unable to avail themselves of such breaks for various reasons, including but not limited to, the pressures from their workloads and from management.

54. By virtue of Defendants' unlawful failure to authorize, permit, and provide rest periods as required by law, Plaintiff and members of the Class have suffered, and will continue to suffer, damages in the form of rest break premium payments in an amount according to proof, along with interest pursuant to section 3287 of the California Civil Code.

55. Plaintiff and the Class are also entitled to seek and recover costs pursuant to *Cal. Civil Code* §1032, *et. seq.*

FIFTH CAUSE OF ACTION

(Failure to Provide Accurate Itemized Wage Statements [Cal. Labor Code §226, 226.3; 8 Cal. Code Regs §11160(6)])

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

56. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this Complaint as fully set forth herein by reference.

57. CAL. LAB. CODE § 226 provides that an employer shall provide its employees with accurate wage statements as follows:

> (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee…[,] (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer…[,] and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment At all times relevant hereto, the fundamental, formally established public policy of the State of California as expressed in Article I, section 8 of the California Constitution was and is that employees be free from race-based and disability-based discrimination and harassment in their employment.

58. At all times relevant herein, Defendants, including DOES 1 through 50, violated CAL. LAB. CODE § 226 in that Defendants failed to properly and accurately itemize the number of hours worked by Plaintiff and the Class at their effective regular rates of pay, including the effective overtime rates of pay.

59. By failing to pay Plaintiffs and members of the Class wages for all hours worked, including overtime compensation, Defendants have violated the requirement that the total hours worked, and all wages earned be included in the wage statements that must be provided to the Plaintiff and the Class.

60. Defendants willfully, knowingly, and intentionally failed to comply with CAL. LAB. CODE § 226 by failing to pay minimum wages, overtime compensation for hours worked in excess of forty, and by failing to provide meal breaks or paying the appropriate premium wages for missed meal breaks, as required by law, thereby causing damages to Plaintiff and the Class by failing to include all hours worked and wages earned in their wage statements. These damages, including but not limited to costs expended calculating the true hours worked and the amount of employment taxes that were not properly paid to state and federal tax authorities, are difficult to estimate. Therefore, Plaintiff elects to recover penalties on behalf of themselves and on behalf of the Class pursuant to CAL. LAB. CODE § 226 in an amount $4,000 each, and reasonable attorney's fees and costs pursuant to CAL. LAB. CODE § 226(g) and CAL. CODE CIV. PROC. § 1032, *et. seq.*

<u>SIXTH CAUSE OF ACTION</u>

(Waiting Time Penalties [Cal. Labor Code §203])

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

61. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this Complaint as fully set forth herein by reference.

62. Sections 201 and 202 of the California Labor Code require employers to pay their employees all wages due immediately upon discharge, or within seventy-two hours of resigning without notice.

63. Section 203 of the California Labor Code provides that when an employer willfully fails to make a timely payment of final wages pursuant to sections 201 and 202 of the California

Labor Code, the employer must, as a penalty, continue to pay the employee's wages at an employee's daily rate, up to thirty days.

64. Defendants, including DOES 1 through 50, willfully, knowingly, and intentionally failed to fully compensate all wages due to Plaintiff and the Class, including minimum wages, overtime, double time, and meal and rest break premiums, as further alleged herein.

65. Since Plaintiff and the members of the Class have yet to be fully compensated for all hours worked, they are entitled to waiting time penalties in the amount of their daily rate of pay up to thirty days pursuant to section 203 of the California Labor Code, in an amount according to proof, and costs pursuant to CAL. CODE CIV. PROC. § 1032, *et. seq.*

SEVENTH CAUSE OF ACTION

(Failure to Reimburse for Work-Related Expenses [Cal. Labor Code §2802, *et. seq.*; 8 Cal. Code Regs §11160(8), et. seq.])

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

66. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this Complaint as fully set forth herein by reference.

67. Section 2802(a) of the California Labor Code provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…."

68. In addition:

> All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

Id. § 2802(b). Under this section the term "necessary expenditures or losses" includes attorneys' fees. *Id.* § 2802(c).

69. Moreover, Industrial Wage Order No. 16-2001 (8)(B), which is codified under 8 CAL. CODE REGS. § 1116, "[w]hen the employer requires the use of tools or equipment or they are necessary for the performance of a job, such tools and equipment shall be provided and maintained by the employer, . . ." 8 CAL. CODE REGS. § 11160(8)(B)

70. As alleged herein, Plaintiff and the Class were required to incur necessary expenditures or losses as a direct consequence of the discharge of their duties.

71.

72. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and the Class have been damaged in an amount according to proof at trial, and they seek reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor Code § 2802(b).

73. Additionally, Plaintiffs and the Class are entitled to all available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees, including those provided in CAL. LAB. CODE § 2802(c) and CAL. CIV. CODE § 1032, *et. seq.*

EIGHTH CAUSE OF ACTION

(Unfair Competition and Unlawful Business Practices [Cal. Labor Code §17200, et. seq.])

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

74. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this Complaint as fully set forth herein by reference.

75. Each Defendant named herein is considered a "person," as that term is defined under CAL. BUS. & PROF. CODE § 17021.

76. CAL. BUS. & PROF. CODE § 17200 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.

77. Plaintiff and the members of the Class have suffered an injury-in-fact as a result of Defendants' conduct in violation of the Unfair Competition Law (CAL. BUS. & PROF. CODE § 17200 *et. seq.).* Specifically, Plaintiff and the Class have lost money and/or property as a result of Defendants' wrongful conduct. The injuries suffered by Plaintiff and the Class were directly related to Defendants' wrongful conduct.

78. At all times relevant hereto, by and through the conduct described herein, Defendants, including DOES 1 through 50, have engaged in unfair, fraudulent and unlawful practices, in violation of CAL. BUS. & PROF. CODE §§ 17200 *et. seq.*, and have thereby deprived Plaintiff and members of the Class of fundamental rights and privileges guaranteed to all employees under the California Labor Code.

79. All of the acts described herein as violations of, among other things, the California Labor Code and applicable IWC Wage Orders, are unlawful and in violation of public policy, and are immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair, unlawful, and/or fraudulent business practices in violation of CAL. BUS. & PROF. CODE §§ 17200 *et. seq.* Specifically, Defendants' unfair, unlawful, and/or fraudulent business practices include the following violations:

a. Failure to timely pay wages at the appropriate rate of pay in violation of CAL. LAB. CODE §§ 204, 510, 511, 558, 1182, 1182.12, 1194,, 1194.2, 1198, 8 CAL. CODE REGS. § 11160(3), *et. seq.*, and 8 CAL. CODE REGS. § 11160(4), *et. seq*;

b. Failure to provide meal periods as mandated by CAL. LAB. CODE §§ 226.7 and 512, and 8 CAL. CODE REGS. § 11160(10), *et. seq.*;

c. Failure to provide rest periods as mandated by CAL. LAB. CODE § 226.7, and 8 CAL. CODE REGS. § 11160 (11), *et. seq.*;

d. Waiting Time Penalties pursuant to CAL. LAB. CODE §§ 201, 202, and 203;

e. Failure to provide accurate itemized wage statements to employees in violation of CAL. LAB. CODE §§ 226 and 226.3.

f. Failure to indemnify employees pursuant to CAL. LAB. CODE § 2802 and 8 CAL. CODE REGS. § 11160 (8)(B);

80. By and through the unfair, fraudulent, and unlawful business practices described herein, Defendants, including DOES 1 through 50, have obtained valuable property, money, and services from Plaintiffs and the Class, and has deprived them of valuable rights and benefits guaranteed by the law, all to their detriment.

81. Furthermore, Plaintiff is informed and believes, and thereupon alleges, that Defendants have underreported to federal and state authorities the wages earned by Plaintiff and the members of the Class, and therefore, have underpaid state and federal taxes, employer matching funds, unemployment premiums, Social Security, Medicare and Workers' Compensation premiums. This conduct is criminal in nature and subjects Defendants to sanctions, fines, and imprisonment, and is actionable under CAL. BUS. & PROF. CODE §§ 1700, *et. seq*. and 17200 *et. seq.*

82. Plaintiff is informed and believes, and based upon that information and belief alleges, that by requiring Plaintiff and the Class to work without minimum wage compensation, or work overtime without receiving overtime compensation, and failing to provide meal and rest periods, Defendants have engaged in business within the state of California to offer its services at a lower price for the purpose of injuring competitors and/or destroying competition in violation of CAL. BUS. & PROF. CODE § 17043.

83. Pursuant to CAL. BUS. & PROF. CODE §§ 17071 and 17075, Defendants' failure to pay wages, overtime compensation, related benefits, and employment taxes, is admissible as evidence of Defendants' intent to violate Chapter 4 of the Unfair Business Trade Act.

84. Defendants' practices are unlawful, unfair, deceptive, untrue, and misleading.

85. Plaintiff is entitled to seek, and does seek, such relief as may be necessary to restore the money and property that Defendants have acquired, or of which Plaintiff and members of the Class have been deprived of, by means of the above-described unfair and unlawful business practices.

86. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to redress the injuries that they have suffered as a consequence of Defendants' unfair and unlawful business practices. As such, Defendants should be required to disgorge the unpaid moneys owed to Plaintiff and the Class.

87. Because Plaintiff seeks to enforce an important right affecting the public interest, *to wit*, the lawful payment of wages as required by law, the disgorgement of ill-gotten gains, and the restitution of unlawfully withheld wages, with interest thereon, Plaintiff requests an award of attorneys' fees, pursuant to CAL. CODE CIV. PROC. § 1021.5, and costs pursuant to CAL. CODE CIV. PROC. § 1032

NINTH CAUSE OF ACTION

(Failure to Furnish Payroll Records [Cal. Labor Code §§226(b), 226(c), 226(f), 1198.5, 1198.5(a), 1198.5(b), and 1198.5(k)])

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

88. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this Complaint as fully set forth herein by reference.

89. CAL. LAB. CODE § 226(b) states, in relevant part, that "[a]n employer… shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer." CAL. LAB. CODE § 1198.5(a) likewise states, in relevant part, that "[e]very current and former employee… has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee."

90. An employer's failure to comply with an employee's request pursuant to section 226(b) of the California Labor Code within 21 days entitles the employee to of $750 from the employer. CAL. LAB. CODE §§ 226(c) and (f).

91. An employer's failure to comply with an employee's request pursuant to section 1198.5 of the California Labor Code within 30 days entitles the employee to of $750 from the employer. CAL. LAB. CODE §§ 1198.5(b) and (k).

92. On July 20, 2022, Plaintiff sent a letter to Defendant at 647 Young St. Santa Ana, CA 92705, which based on information and belief is the address that Defendant does business, formally requesting his entire employment file, including payroll records.

93. As of the filing of this action, Defendants have ignored Plaintiff's request altogether.

94. By virtue of the foregoing, Plaintiff seeks penalties pursuant to sections 226(f) and 1198.5(b) of the California Labor Code, and injunctive relief to enforce Defendants' compliance along with an award for coasts and reasonable attorneys' fees, pursuant to sections 226(h) and 1198.5(l) of the California Labor Code.

PRAYER

WHEREFORE, Plaintiff prays for judgment as follows:

A. On The First Cause Of Action:

1. For compensatory damages, including unpaid wages, and other losses in an amount according to proof;

2. For liquidated damages pursuant to CAL. LAB. CODE § 1194.2;

3. For an award of interest, including prejudgment interest at the legal rate pursuant to CAL. LAB. CODE §§ 218.6, 1194, and CAL. CIV. CODE § 3289, *et. seq.*; and

4. For reasonable attorneys' fees and costs of suit pursuant to CAL. LAB. CODE §§ 218.5, 1194, and CAL. CODE CIV. PROC. § 1032.

B. On the Second Cause of Action:

5. For compensatory damages, including lost wages, and other losses, in an amount in an amount according to proof;

6. For an award of interest, including prejudgment interest at the legal rate pursuant to CAL. LAB. CODE §§ 218.6, 1194, and CAL. CIV. CODE § 3289, *et. seq.*; and

7. For reasonable attorneys' fees and costs of suit pursuant to CAL. LAB. CODE §§ 218.5, 1194, and CAL. CODE CIV. PROC. § 1032.

C. On the Third and Fourth Causes of Action:

8. For unpaid premium payments in an amount according to proof;

9. For reasonable costs of suit pursuant to CAL. CODE CIV. PROC. § 1032; and

10. For an award of interest, including prejudgment interest at the legal rate pursuant to CAL. CIV. CODE § 3287.

D. On the Fifth Cause of Action:

11. For statutory penalties pursuant to CAL. LAB. CODE § 226;

12. 14. For attorneys' fees and costs pursuant to CAL. LAB. CODE § 226(g) and CAL. CODE CIV. PROC. § 1032, *et. seq.*

E. On the Sixth Cause of Action:

13. For statutory penalties CAL. LAB. CODE § 203;

14. For costs of suit pursuant to CAL. CODE CIV. PROC. § 1032.

F. On the Seventh Cause of Action

15. For reimbursement of all necessary expenditures, plus interest thereon pursuant to CAL. LAB. CODE § 2802(b); and

16. For costs and attorneys' fees pursuant to CAL. LAB. CODE § 2802(c) and CAL. CIV. CODE § 1032, *et. seq.*

G. On the Eighth Cause of Action:

17. That Defendants, including DOES 1 through 50, be ordered and enjoined to pay restitution and penalties to Plaintiffs due to Defendants' unlawful and/or unfair activities, pursuant to Business and Professions Code §§ 17200-05;

18. That Defendants, including DOES 1 through 50, further be enjoined to cease and desist from unlawful and/or unfair activities in violation of Business and Professions Code § 17200, *et. seq.*;

19. For costs of suit pursuant to CAL. CODE CIV. PROC. § 1032; and

20. For attorneys' fees pursuant to CAL. CODE CIV. PROC. § 1021.5.

H. On the Ninth Cause of Action:

21. For penalties in the amount of $1,500 pursuant to CAL. LAB. CODE §§ 226(f) and 1198.5(b);

22. For injunctive relief pursuant to CAL. LAB. CODE §§ 226(h) and 1198.5(l); and

23. For reasonable costs, including attorneys' fees, pursuant to CAL. LAB. CODE §§ 226(h) and 1198.5(l)

I. On Causes of Action One through Eight

24. For an order granting class certification

J On All Causes of Action:

25. For costs of suit pursuant to CAL. CODE CIV. PROC. § 1032; and

/ / /

/ / /

/ / /

/ / /

26. For other and further relief as the Court deems just and proper

DEMAND FOR JURY TRIAL

Plaintiff herey demands a trial by jury on all triable claims

Dated: February 3, 2023 LAW OFFICES OF RICHARD KIM PC

By: Richard Kim
RICHARD KIM

Attorneys for Plaintiff and the Putative Class

Exhibit C

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

EFREN LOPEZ, individually and on behalf of all others of the public similarly situated

Plaintiff,

v.

THE FISHEL COMPANY, a business entity, form unknown; and DOES 1 to 50, inclusive,

Defendants.

CLASS ACTION

Case No.: 30-2023-01305726-CU-OE-CXC
Hon. Lon F. Hurwitz
Dept. CX-103

FIRST AMENDED CLASS ACTION COMPLAINT FOR:

1. **Failure to Pay Minimum Wage (Cal. Labor Code §§1182, 1182.12, 1194, 1194.2, 1197.1, 1199 *et seq.*; §1720; 8 Cal. Code Regs §11160(4))**

2. **Failure to Pay Overtime and Double Time Compensation (Cal. Labor Code §510, 1194, 1198; 8 Cal. Code regs §11160(3)**

3. **Failure to Provide Meal Periods (Cal. Labor Code §226.7, 512; 8 Cal. Code regs §11160(10)**

4. **Failure to Provide Rest Periods (Cal. Labor Code §226.7, 512; 8 Cal. Code regs §11160(11)**

5. **Failure to Provide Accurate Itemized Wage Statements (Cal. Labor Code §226, 226.3; 8 Cal. Code Regs §11160(6)**

6. **Waiting Time Penalties (Cal. Labor Code §203)**

7. **Failure to Reimburse for Work-Related Expenses (Cal. Labor Code §2802, *et. seq.*; 8 Cal. Code Regs §11160(8), et. seq.**

8. **Unfair Competition and Unlawful Business Practices (Cal. Labor Code §17200, et. seq.)**

9. **Failure to Furnish Payroll Records (Cal. Labor Code §§226(b), 226(c), 226(f), 1198.5, 1198.5(a), 1198.5(b), and 1198.5(k)**

10. **Penalties Pursuant to the Private Attorney General Act ("PAGA") (Cal. Labor Code §2699, et. seq.)**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff Efren Lopez ("Plaintiff"), and submits this unverified First Amended Complaint ("FAC") as follows.

I.

INTRODUCTION

1. Plaintiff brings this action on behalf of himself, and all similarly situated individuals for (a) Failure to Pay Minimum Wages; (b) Failure to Pay Overtime and Double Time Compensation; (c) Failure to Provide Meal Periods; (d) Failure to Provide Rest Periods; (e) Failure to Provide Accurate Itemized wage Statements; (f) Waiting Time Penalties; (7) Failure to

Reimburse for Work-Related Expenses; (8) Unfair Competition and Unlawful Business Practices; and (9) Failure to Furnish Payroll records.

2. All allegations in this FAC are based upon information and belief except those allegations that pertain to Plaintiff named herein and his counsel. Each allegation in this FAC either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

II.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to *Cal. Code Civ. Pro.* §410.10

4. Venue is proper in this Court pursuant to *Cal. Code Civ. Pro.* §§395 and 395.5 because the facts and circumstances giving rise to this action as alleged occurred in the County of Orange.

III.

THE PARTIES

A. The Plaintiff.

5. Plaintiff is, and at all times mentioned herein was, an individual;

a. Residing in the County of Orange, State of California;

b. Who worked for Defendants, including DOES 1 through 50, as a non-exempt employee;

c. Who worked in excess of eight (8) hours in a workday and more than forty (40) hours in a workweek, bur did not receive all of minimum wages, overtime, and doublte time compensation which he was entitled;

d. Who did not receive uninterrupted rest breaks or meal periods;

e. Who was not indemnified or reimbursed for all out-of-pocket expenses;

f. Who did not receive accurate itemized wage statements;

g. Who was not paid all wages due upon termination; and

h. Who is a member of the Class as defined in below:

B. The Defendants.

6. Plaintiff is informed and believes, and based upon that information and belief alleges that Defendant the Fishel Company, is a business entity, form unknown, conducting business in the County of Orange, State of California, which:

a. Failed to pay at least minimum wages (including the prevailing wage as required) for all hours worked;

b. Failed to pay overtime and double time compensation for hours worked in excess of 9 hours in a workday and/or over forty hours in a workweek;

c. Failed to provide uninterrupted rest periods and meal periods;

d. Failed to indemnify or reimburse its employees for all out of pocket expenses;

e. Failed to provide employees with accurate itemized wage statements;

f. Failed to pay employees all wages due upon termination of their employment relationship.

IV.

THE CLASS DEFINITION

7. The members of the class (the “Class”) consists of:

All persons employed by Defendant the Fishel Company and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions who work for the Fishel Company during the time period of January 31, 2019 to the present.

V.

THE CLASS ALLEGATIONS

8. The persons who comprise the Class are so numerous that joinder of all such persons is impracticable, and the disposition of their claims will benefit the parties and the Court. Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff will fairly and adequately protect the interests of the Class that he seeks to represent. Plaintiff does not have any interests that are antagonistic to the Class that he seeks to represent. Counsel for Plaintiff are experienced, qualified, and general able to conduct complex class action litigation.

9. The Court should permit this action to be maintained as a class action pursuant to section 382 of the California Code of Civil Procedure because:

a. The questions of law and fact common to the Class predominate over any question affecting only individual members;

b. A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;

c. The members of the Class are so numerous that it is impractical to bring all members of the Class before the Court;

d. Plaintiff and the other Class members will not be able to obtain effective and economic legal redress unless this action is maintained as a class action;

e. There is a community of interest in obtaining appropriate legal and equitable relief for the legal and statutory violations andother improprieties, and in obtaining adequate compensation for the damages and injuries that Defendant's actions have inflicted upon the class;

f. There isa community of interest in ensuring that the combined assets and available insurance of Defendant is sufficient to adequately compensate the members of the Class for injuries sustained;

g. Without class certification, the prosecution of separate actions by individual members of the Class for the injuries sustained; would create a risk of:

i. Inconsistent or varying adjudicationswith respect to invidual members of the Class which would establish incompatible standards of conduct for Defendants, and/or

ii. Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible defendants.

h. Defendant has acted or refused to at on grounds generally applicable to the Class , thereby making final injunctive relief appropriate with respect to the Class as a whole.

VI.

FACTUAL ALLEGATIONS

10. Within four years preceding the initiation of this action and ongoing, Plaintiff and members of the Class were and/or are currently employed by Defendants as non-exempt employees.

11. Plaintiff is informed and believes, and thereupon alleges that Defendant required him and other members of the Class to work shifts exceeding eight (8) hours a day and/or forty

(40) hours but failed to compensate them with overtime and/or double compensation for all time worked in excess of eight (8) hours in a workday and/or forty (40) hours in any given workweek.

12. Plaintiff is informed and believes, and thereupon alleges, that it was Defendants' policy and practice to prohibit Plaintiff, and members of the Class, from having uninterrupted meal and rest periods. For each occurrence of these rest and meal period violations, Defendants failed to pay Plaintiff and members of the Class an hour premium payment at their regular rate of pay.

13. Plaintiff is further informed and believes, and thereupon further alleges, that Defendants' failed to provide members of the Class an adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing.

14. Plaintiff is further informed and believes, and thereupon alleges, that Defendants failed to compensate Plaintiff, and members of the Class at the appropriate minimum wage.

15. Plaintiff is further informed and believes, and thereupon alleges, that Defendants had Plaintiff and other members of the Class work on public works projects and failed to pay the prevailing wage as required.

16. Due to Defendants failure to properly pay its employees for all hours worked, including overtime compensation, double time compensation, and meal and rest break premiums, as a derivative result Plaintiffs and members of the Class were not provided with accurate itemized wage statements, nor were they paid all wages due upon termination. In addition, because the Plaintiffs and members of the Class were not compensated for all hours worked, their paychecks did not, and do not, accurately or correctly reflect all hours worked or the corresponding rates of pay.

VII.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. On January 19, 2023, Plaintiff electronically submitted written notice to the California Labor and Workforce Development Agency (the "LWDA" or "Agency"), pursuant to the Califonria Private Attorney General Act of 2004 ("PAGA"), setting forth his contentions and claims on behalf of himself and on behalf of those similarly situated. Copies of this letter were also mailed to Defendants named herein on January 19, 2023.

18. The Agency has failed to respond within 65 days, thereby exhausting Plaintiff's administrative remedies.

FIRST CAUSE OF ACTION

(Failure to Pay Minimum Wage [Cal. Labor Code §§1182, 1182.12, 1194, 1194.2, 1197.1, 1199 *et seq.*; §1720; 8 Cal. Code Regs §11160(4), *et. seq.*]

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

19. Plaintiff re-alleges and incorporates each and every allegation contained in each of the preceding paragraphs in this FAC and which are fully set forth herein by reference.

20. California law requires the state minimum wage to be at least equal to the federal minimum wage. *Cal. Labor Code* §1182(b)

21. Notwithstanding section 1182(b) of the California Labor Code, the minimum wage may be fixed by applicable state or local law, and the payment of a lower wage than the minimum so fixed is unlawful. *Cal. Labor Code* §1197.

22. On April 4, 2016, Governor Jerry Brown signed legislation adopting a six-step increase to the state minimum wage:

> For any employer who employees 26 or more employees, and minimum wage shall be as follows: [¶]
>
> (A) From January 1, 2017, to December 31, 2017, inclusive,-ten dollars and fifty cents ($10.50) per hour. [¶]

(B) From January 1, 2018, to December 31, 2018, inclusive,-eleven dollars ($11) per hour. [¶]

(C) From January 1, 2019, to December 31, 2019, inclusive,-twelve dollars ($12) per hour. [¶]

(D) From January 1, 2020, to December 31, 2020, inclusive,-thirteen dollars ($13) per hour. [¶]

(E) From January 1, 2021, to December 31, 2021, inclusive,-fourteen dollars ($14) per hour. [¶]

(F) From January 1, 2022, and until adjusted by subdivision (c)-fifteen dollars ($15) per hour.

Cal. Labor Code §1182.12(1)(b), *et. seq.*

23. Plaintiff is informed and believes, and thereupon alleges, that within the four years preceding the initiation of this action, Defendants, including DOES 1 through 40, both individually and in the aggregate, employed 26 or more employees, including Plaintiff and members of the Class.

24. Plaintiff and class members were not compensated for all of the hours worked.

25. Defendant worked on public works projects and were required to pay all of their employees the prevailing wage under *Cal. Labor Code* §1720.

26. Defendant failed to pay Plaintiff and members of the Class the prevailing wage.

27. By virtue of Defendant's unlawful failure to pay Plaintiff and members of the Class their respective and applicable minimum wages, as alleged herein, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown, but which exceed the jurisdictional limits of this Court, and which will be ascertained according to proof at trial.

28. By virtue of Defendant's unlawful failure to pay Plaintiff and members of the Class their respective and applicable minimum wages, as alleged herein, Plaintiff and members of the Class are entitled to recover the unpaid balance of the full amounts of the minimum wages as applicable, including interest thereon, reasonable attorneys' fees and costs of suit. *Cal Labor Code* §1194.

29. In addition, Plaintiff an the Class are "entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon." *Cal. Labor Code* §1194.2

30. Plaintiff and the Class are also entitled to seek and recover interest, penalties, and reasonable attorneys' fees and costs pursuant to *Cal. Labor Code* §§218.5 and 1194.

SECOND CAUSE OF ACTION

(Failure to Pay Overtime and Double Time Compensation ([Cal. Labor Code §510, 1194, 1198; 8 Cal. Code regs §11160(3)]

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

31. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this FAC as fully set forth herein by reference.

32. *Cal. Labor Code* §§510, 1194, and 1198 and *Industrial Wage Order* No. 16-2001(3)(A)(1)(a), which is codified under 8 CAL. CODE REGS. § 11160(3)(A)(1)(a), as amended, provide that employees in California shall not be employed more than eight (8) hours in any workday or more than forty (40) hours in any workweek, unless they receive additional compensation beyond their regular wages in amounts specified by law. In addition, an employer must pay double the employee's regular rate of pay for all hours worked in excess of twelfth (12) hours in any workday, and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. 8 CAL. CODE REGS. § 11160(3)(A)(1)(b).

33. *Cal. Labor Code* §1194 provides that an employee who has not been paid overtime compensation as required by section 1198 may recover the unpaid balance of the full

amount of such overtime compensation, together with costs of suit, penalties, interest thereon, and attorneys' fees in a civil action.

34. Plaintiffs and members of the Class were not compensated for all hours worked. As a result, Plaintiff and members of the Class worked more than eight (8) hours in a workday, and/or more than forty (40) hours in a workweek as non-exempt employee of Defendant, including DOES 1 through 50, without receiving overtime or double time compensation.

35. At all times relevant hereto, Defendants, including DOES 1 through 50, failed to pay Plaintiff or members of the Class overtime and double time compensation for the hours he worked in excess of the maximum hours permissible by law as required by 8 CAL. CODE REGS. §11160 and *Cal. Labor Code* §§510, 1194, and 1198.

36. At no time relevant hereto were Plaintiff or members of the Class exempt from any wage and hour provision under California law, including without limitation, any statute, rule, or regulation governing the payment of overtime compensation.

37. By virtue of Defendant's unlawful failure to pay additional compensation to the Plaintiff and the Class for their overtime hours, they have suffered, and will continue to suffer, damages in the form of unpaid overtime and double time compensation subject to proof.

38. Plaintiff and the Class are also entitled to seek and recover interest, penalties, and reasonable attorney's fees and costs pursuant to *Cal. Labor Code* §128.5, 281.6, 1194, and *Cal. Civil Code* §3289, *et. seq.*

THIRD CAUSE OF ACTION

(Failure to Provide Meal Periods [Cal. Labor Code §226.7, 512; 8 Cal. Code regs §11160(10)])

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

39. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this FAC as fully set forth herein by reference.

40. *Cal. Labor Code* §512(a) provides that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. An employee who works no more than six (6) ours may waive the meal period by mutual consent.

41. INDUSTRIAL WAGE ORDER No. 16-2001 (11)(A), which is codified under 8 CAL. CODE REGS. § 11160(10)(A), states that an employer must relieve the employee of all work-related duties during meal breaks; otherwise, the employee will be considered to be "on duty," which constitutes compensable time.

42. At all times mentioned herein, Government Code section §12900, *et seq*. was in full force and effect and was binding on each of Defendants. Specifically, Government Code section 12940, subdivision (h) prohibits any employer or person from discharging or otherwise discriminating against any person because that person has opposed discrimination or harassment forbidden under the California's Fair Employment and Housing Act.

43. In addition, CAL. LAB. CODE § 226.7 provides, in relevant part, as follows:

> (b) An employer shall not require an employee to work during a meal… period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission . . .
>
> ***
>
> (c) If an employer fails to provide an employee a meal… period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission[]…, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal… period is not provided.

44. For every instance where an employer fails to provide an employee with an uninterrupted meal period in accordance to Wage Order No. 16(10), the employer shall pay the

employee one hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. 8 CAL. CODE REGS. § 11160(10)(F); see also CAL. LAB. CODE § 226.7(c).

45. At all relevant times hereto, Plaintiff and members of the Class regularly worked more than five-hour increments; however, at all times relevant hereto, Defendants, including DOES 1 through 50, failed to provide uninterrupted meal periods to Plaintiff and members of the Class as required by CAL. LAB. CODE §§ 226.7, 512 and 8 CAL. CODE REGS. § 11160(10), as further alleged herein.

46. By virtue of requiring Plaintiff and the Class to work through meal periods free form work duties, Defendants have intentionally and improperly denied statutorily mandated meal periods in violation of CAL. LAB. CODE §§ 226.7, 512, and 8 CAL. CODE REGS. § 11160(10). Plaintiff and the Class have suffered, and will continue to suffer, damages in the form of meal break premium payments in an amount according to proof, along with interest pursuant to section 3287 of the California Civil Code.

47. At all relevant times hereto, Defendant failed to provide an adequate supply of potable, water, soap, or other suitable cleansing agent and single use towels for handwashing as mandated by 8 CAL. CODE REGS. § 11160(10)(C)

48. Plaintiff and the Class are also entitled to seek and recover costs pursuant to *Cal. Civil Code* §1032, *et. seq.*

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods [Cal. Labor Code §226.7, 512; 8 Cal. Code regs §11160(11)])

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

49. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this FAC as fully set forth herein by reference.

50. *Cal. Labor Code* §226.7 provides in relevant part, as follows:

> (b) An employer shall not require an employee to work during a… rest… period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission….
>
> ***
>
> (d) A rest… period mandated pursuant to a state law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission[]…, shall be counted as hours worked, for which there shall be no deduction from wages.

51. The California Labor Code also states, in relevant part:

> If an employer fails to provide an employee a… rest… period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission[]…, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the… rest… period is not provided.

Cal. Labor Code §227.7(c).

52. Industrial Wage Order No. 16-2001 (11)(A), which is codified under 8 CAL. CODE REGS. § 11160(11)(A), requires employers to provide rest breaks that shall be counted as hours worked for which there shall be no deduction of wages.

53. 8 CAL. CODE REGS. § 11160(11)(A), also requires that an employer provide its employees with a 10-minute rest break for every four-hour increment of time worked, or major fraction thereof. *See also*, *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1029 ("[e]mployees are entitled to 10 minute rests for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on[]").

54. *Cal. Labor Code* §226.7 and 8 CAL. CODE REGS. § 11160(11)(D), further require that for every workday in which it fails to provide a rest period during any four-hour increment, the employer must pay the employee premium at a rate of an hour's pay at the employee's regular rate of pay.

55. Plaintiff and members of the Class regularly worked four-hour increments and were not provided with statutorily mandated rest breaks during their shifts. Plaintiff and members of the Class were unable to avail themselves of such breaks for various reasons, including but not limited to, the pressures from their workloads and from management.

56. By virtue of Defendants' unlawful failure to authorize, permit, and provide rest periods as required by law, Plaintiff and members of the Class have suffered, and will continue to suffer, damages in the form of rest break premium payments in an amount according to proof, along with interest pursuant to section 3287 of the California Civil Code.

57. Plaintiff and the Class are also entitled to seek and recover costs pursuant to *Cal. Civil Code* §1032, *et. seq.*

<u>FIFTH CAUSE OF ACTION</u>

(Failure to Provide Accurate Itemized Wage Statements [Cal. Labor Code §226, 226.3; 8 Cal. Code Regs §11160(6)])

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

58. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this FAC as fully set forth herein by reference.

59. CAL. LAB. CODE § 226 provides that an employer shall provide its employees with accurate wage statements as follows:

> (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft,

> or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee…[,] (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer…[,] and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment At all times relevant hereto, the fundamental, formally established public policy of the State of California as expressed in Article I, section 8 of the California Constitution was and is that employees be free from race-based and disability-based discrimination and harassment in their employment.

60. At all times relevant herein, Defendants, including DOES 1 through 50, violated CAL. LAB. CODE § 226 in that Defendants failed to properly and accurately itemize the number of hours worked by Plaintiff and the Class at their effective regular rates of pay, including the effective overtime rates of pay.

61. By failing to pay Plaintiffs and members of the Class wages for all hours worked, including overtime compensation, Defendants have violated the requirement that the total hours worked, and all wages earned be included in the wage statements that must be provided to the Plaintiff and the Class.

62. Defendants willfully, knowingly, and intentionally failed to comply with CAL. LAB. CODE § 226 by failing to pay minimum wages, overtime compensation for hours worked in excess of forty, and by failing to provide meal breaks or paying the appropriate premium wages for missed meal breaks, as required by law, thereby causing damages to Plaintiff and the Class by failing to include all hours worked and wages earned in their wage statements. These damages, including but not limited to costs expended calculating the true hours worked and the amount of employment

taxes that were not properly paid to state and federal tax authorities, are difficult to estimate. Therefore, Plaintiff elects to recover penalties on behalf of themselves and on behalf of the Class pursuant to CAL. LAB. CODE § 226 in an amount $4,000 each, and reasonable attorney's fees and costs pursuant to CAL. LAB. CODE § 226(g) and CAL. CODE CIV. PROC. § 1032, *et. seq.*

SIXTH CAUSE OF ACTION

(Waiting Time Penalties [Cal. Labor Code §203])

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

63. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this FAC as fully set forth herein by reference.

64. Sections 201 and 202 of the California Labor Code require employers to pay their employees all wages due immediately upon discharge, or within seventy-two hours of resigning without notice.

65. Section 203 of the California Labor Code provides that when an employer willfully fails to make a timely payment of final wages pursuant to sections 201 and 202 of the California Labor Code, the employer must, as a penalty, continue to pay the employee's wages at an employee's daily rate, up to thirty days.

66. Defendants, including DOES 1 through 50, willfully, knowingly, and intentionally failed to fully compensate all wages due to Plaintiff and the Class, including minimum wages, overtime, double time, and meal and rest break premiums, as further alleged herein.

67. Since Plaintiff and the members of the Class have yet to be fully compensated for all hours worked, they are entitled to waiting time penalties in the amount of their daily rate of pay up to thirty days pursuant to section 203 of the California Labor Code, in an amount according to proof, and costs pursuant to CAL. CODE CIV. PROC. § 1032, *et. seq.*

SEVENTH CAUSE OF ACTION

(Failure to Reimburse for Work-Related Expenses [Cal. Labor Code §2802, *et. seq.*; 8 Cal. Code Regs §11160(8), et. seq.])

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

68. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this FAC as fully set forth herein by reference.

69. Section 2802(a) of the California Labor Code provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…."

70. In addition:

> All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

Id. § 2802(b). Under this section the term "necessary expenditures or losses" includes attorneys' fees. *Id.* § 2802(c).

71. Moreover, Industrial Wage Order No. 16-2001 (8)(B), which is codified under 8 CAL. CODE REGS. § 1116, "[w]hen the employer requires the use of tools or equipment or they are necessary for the performance of a job, such tools and equipment shall be provided and maintained by the employer, . . ." 8 CAL. CODE REGS. § 11160(8)(B)

72. As alleged herein, Plaintiff and the Class were required to incur necessary expenditures or losses as a direct consequence of the discharge of their duties.

73.

74. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and the Class have been damaged in an amount according to proof at trial, and they seek reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor Code § 2802(b).

75. Additionally, Plaintiffs and the Class are entitled to all available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees, including those provided in CAL. LAB. CODE § 2802(c) and CAL. CIV. CODE § 1032, *et. seq.*

EIGHTH CAUSE OF ACTION

(Unfair Competition and Unlawful Business Practices [Cal. Labor Code §17200, et. seq.])

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

76. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this FAC as fully set forth herein by reference.

77. Each Defendant named herein is considered a "person," as that term is defined under CAL. BUS. & PROF. CODE § 17021.

78. CAL. BUS. & PROF. CODE § 17200 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.

79. Plaintiff and the members of the Class have suffered an injury-in-fact as a result of Defendants' conduct in violation of the Unfair Competition Law (CAL. BUS. & PROF. CODE § 17200 *et. seq.).* Specifically, Plaintiff and the Class have lost money and/or property as a result of Defendants' wrongful conduct. The injuries suffered by Plaintiff and the Class were directly related to Defendants' wrongful conduct.

80. At all times relevant hereto, by and through the conduct described herein, Defendants, including DOES 1 through 50, have engaged in unfair, fraudulent and unlawful practices, in violation of CAL. BUS. & PROF. CODE §§ 17200 *et. seq.*, and have thereby deprived Plaintiff and members of

the Class of fundamental rights and privileges guaranteed to all employees under the California Labor Code.

81. All of the acts described herein as violations of, among other things, the California Labor Code and applicable IWC Wage Orders, are unlawful and in violation of public policy, and are immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair, unlawful, and/or fraudulent business practices in violation of CAL. BUS. & PROF. CODE §§ 17200 *et. seq.* Specifically, Defendants' unfair, unlawful, and/or fraudulent business practices include the following violations:

a. Failure to timely pay wages at the appropriate rate of pay in violation of CAL. LAB. CODE §§ 204, 510, 511, 558, 1182, 1182.12, 1194,, 1194.2, 1198, 8 CAL. CODE REGS. § 11160(3), *et. seq.*, and 8 CAL. CODE REGS. § 11160(4), *et. seq*;

b. Failure to provide meal periods as mandated by CAL. LAB. CODE §§ 226.7 and 512, and 8 CAL. CODE REGS. § 11160(10), *et. seq.*;

c. Failure to provide rest periods as mandated by CAL. LAB. CODE § 226.7, and 8 CAL. CODE REGS. § 11160 (11), *et. seq.*;

d. Waiting Time Penalties pursuant to CAL. LAB. CODE §§ 201, 202, and 203;

e. Failure to provide accurate itemized wage statements to employees in violation of CAL. LAB. CODE §§ 226 and 226.3.

f. Failure to indemnify employees pursuant to CAL. LAB. CODE § 2802 and 8 CAL. CODE REGS. § 11160 (8)(B);

82. By and through the unfair, fraudulent, and unlawful business practices described herein, Defendants, including DOES 1 through 50, have obtained valuable property, money, and services from Plaintiffs and the Class, and has deprived them of valuable rights and benefits guaranteed by the law, all to their detriment.

83. Furthermore, Plaintiff is informed and believes, and thereupon alleges, that Defendants have underreported to federal and state authorities the wages earned by Plaintiff and the

members of the Class, and therefore, have underpaid state and federal taxes, employer matching funds, unemployment premiums, Social Security, Medicare and Workers' Compensation premiums. This conduct is criminal in nature and subjects Defendants to sanctions, fines, and imprisonment, and is actionable under CAL. BUS. & PROF. CODE §§ 1700, *et. seq*. and 17200 *et. seq.*

84. Plaintiff is informed and believes, and based upon that information and belief alleges, that by requiring Plaintiff and the Class to work without minimum wage compensation, or work overtime without receiving overtime compensation, and failing to provide meal and rest periods, Defendants have engaged in business within the state of California to offer its services at a lower price for the purpose of injuring competitors and/or destroying competition in violation of CAL. BUS. & PROF. CODE § 17043.

85. Pursuant to CAL. BUS. & PROF. CODE §§ 17071 and 17075, Defendants' failure to pay wages, overtime compensation, related benefits, and employment taxes, is admissible as evidence of Defendants' intent to violate Chapter 4 of the Unfair Business Trade Act.

86. Defendants' practices are unlawful, unfair, deceptive, untrue, and misleading.

87. Plaintiff is entitled to seek, and does seek, such relief as may be necessary to restore the money and property that Defendants have acquired, or of which Plaintiff and members of the Class have been deprived of, by means of the above-described unfair and unlawful business practices.

88. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to redress the injuries that they have suffered as a consequence of Defendants' unfair and unlawful business practices. As such, Defendants should be required to disgorge the unpaid moneys owed to Plaintiff and the Class.

89. Because Plaintiff seeks to enforce an important right affecting the public interest, *to wit*, the lawful payment of wages as required by law, the disgorgement of ill-gotten gains, and the restitution of unlawfully withheld wages, with interest thereon, Plaintiff requests an award of

attorneys' fees, pursuant to CAL. CODE CIV. PROC. § 1021.5, and costs pursuant to CAL. CODE CIV. PROC. § 1032

NINTH CAUSE OF ACTION

(Failure to Furnish Payroll Records [Cal. Labor Code §§226(b), 226(c), 226(f), 1198.5, 1198.5(a), 1198.5(b), and 1198.5(k)])

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

90. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this FAC as fully set forth herein by reference.

91. CAL. LAB. CODE § 226(b) states, in relevant part, that "[a]n employer… shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer." CAL. LAB. CODE § 1198.5(a) likewise states, in relevant part, that "[e]very current and former employee… has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee."

92. An employer's failure to comply with an employee's request pursuant to section 226(b) of the California Labor Code within 21 days entitles the employee to of $750 from the employer. CAL. LAB. CODE §§ 226(c) and (f).

93. An employer's failure to comply with an employee's request pursuant to section 1198.5 of the California Labor Code within 30 days entitles the employee to of $750 from the employer. CAL. LAB. CODE §§ 1198.5(b) and (k).

94. On July 20, 2022, Plaintiff sent a letter to Defendant at 647 Young St. Santa Ana, CA 92705, which based on information and belief is the address that Defendant does business, formally requesting his entire employment file, including payroll records.

95. As of the filing of this action, Defendants have ignored Plaintiff's request altogether.

96. By virtue of the foregoing, Plaintiff seeks penalties pursuant to sections 226(f) and 1198.5(b) of the California Labor Code, and injunctive relief to enforce Defendants' compliance along with an award for coasts and reasonable attorneys' fees, pursuant to sections 226(h) and 1198.5(l) of the California Labor Code.

<u>TENTH CAUSE OF ACTION</u>

(For Penalties Pursuant to Private Attorney General Act ("PAGA") [Cal. Labor Code §2699, *et. seq.*)])

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

97. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this FAC as fully set forth herein by reference.

98. The California Private Attorney General Act of 2004, codified under sections 2698-2699 of the California Labor Code, expressly establishes that any provision of the California Labor code that provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards agencies or employees for a violation of the California Labor Code. Alternatively, the civil penalties may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

99. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess the civil penalties.

100. Plaintiff and the other members of the Class are “aggrieved employees” as defined by section 2699 of the California Labor Code in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

101. Plaintiff seeks civil penalties for Defendants’ violations of the following Labor Code sections and Industrial Wage Orders:

a. Failure to compensate employees at the minimum wage and the prevailing wage in violation of *Cal. Labor Code* §§1197, 1182.12, 1194, 1194.2, 1197.1, and 1199, *et. seq.,* §1720, *et. seq.*, and *Cal. Code Regs* §11160(4),

b. Failure to timely pay wages at the appropriate rate of pay in violation of *Cal. Labor Code* §§ 510, 511, 558, 1182, 1182.12, 1194, 1194.2, 1198, 204.3, & 1194; 8 *Cal Code Regs* §11160(3), *et. seq.*

c. Failure to provide meal periods as mandated by *Cal. Labor Code* §§226.7 and 512, and 8 *Cal. Code Regs* §11160(10), *et. seq.*

d. Failure to provide rest periods as mandated by *Cal. Labor Code* §226.7 and 8 *Cal. Code Regs* §11160(11), et. seq.

e. Failure to provide employee adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing in violation of 8 *Cal. Code Regs* §11160(10)(D).

f. Failure to compensate for missed rest periods at his regular rate of pay as mandated by *Cal. Labor Code* §226.7 and 8 *Cal. Code Regs* §11160(11), et. seq.

g. Failure to provide prompt payment of wages to employees upon termination and resignation in violation of *Cal. Labor Code* §§201, 202, and 203

h. Failure to provide accurate itemized wage statements to employees in violation of *Cal. Labor Code* §§226 and 226.3 and 8 *Cal. Code Regs* §11160(6), et. seq.

i. Failure to comply with payroll reporting requirements for public works projects in violation of *Cal. Labor Code* §1776 and 8 *Cal. Code Regs* §11160(6), et. seq.

j. Failure to Reimburse for Work-Related Expenses in violation of *Cal. Labor Code* §2802, *et. seq.* and 8 *Cal. Code Regs* §11160(8), et. seq.

102. Plaintiff electronically submitted written notice to the Agency, setting forth his contentions and claims on behalf of himself and on behalf of all those similarly situated.

103. The Agency has failed to respond within the time prescribed under section 2699.3, subd. (a)(2)(A), of the California Labor Code, thereby exhausting Plaintiff's administrative remedies. Plaintiff therefore amends the existing complaint herein, as a matter of right, to add a PAGA cause of action. CAL. LAB. CODE § 2699.3(a)(2)(C).

104. Pursuant to section 2699 of the California Labor Code, Plaintiff, individually and on behalf of all aggrieved employees, requests and is entitled to recover from the Defendants wage compensation for uncompensated wages according to proof, interest, attorney's fees, and costs pursuant to CAL. LABOR CODE § 218.5, as well as all civil penalties against Defendants, including DOES1 through 50, including but not limited to:

a. Where penalties are not already specified in the applicable provision of the Calfiornia Labor Code, penalties under *Cal. Labor Code* §2699 in the amount of $100 for each aggrieved employee per pay period for initial violation, and $200 for each aggrieved employee for each aggrieved employee per pay period for each subsequent violation (See *Cal. Labor Code* §2699(f)(2));

b. Penalties under CAL. LAB. CODE § 226.3 for violations of CAL. LAB. CODE § 226, in addition to any other penalty provided by law, of two hundred fifty dollars ($250) per aggrieved employee for the first violation, and one thousand dollars ($1,000) per aggrieved employee for each subsequent violation;

c. Penalties under Title 8 of the California Code of Regulations, as set forth in the applicable Wage Order, in the amount of $50 for each aggrieved employee per pay period for an initial violation, and $100 for each aggrieved employee per pay period for each subsequent violation (*see* CAL. LAB. CODE § 558);

d. Penalties under CAL. LABOR CODE § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code, in the amount of $100 for each aggrieved employee per pay period for the initial violation, and $200 for each aggrieved employee per pay period for each subsequent violation or any willful or intentional violation, plus 25% of the wages wrongfully withheld; and

e. Any and all additional penalties and sums as provided by the California Labor Code, and/or other statutes.

105. In addition, Plaintiff seeks and is entitled to have 75% of all penalties recovered pursuant §§2699, *et. seq.* allocated to the LWDA, and 25% to the aggrieved employees.

106. Further, Plaintiff seeks and is entitled to recover reasonable attorneys' fees and costs pursuant to 2699, 218.5, 210, and 212 of the California Labor Code, and any other applicable statute, including *Cal. Code Civ. Pro.* §1032, *et. seq.*

PRAYER

WHEREFORE, Plaintiff prays for judgment as follows:

A. On The First Cause Of Action:

1. For compensatory damages, including unpaid wages, and other losses in an amount according to proof;

2. For liquidated damages pursuant to CAL. LAB. CODE § 1194.2;

3. For an award of interest, including prejudgment interest at the legal rate pursuant to CAL. LAB. CODE §§ 218.6, 1194, and CAL. CIV. CODE § 3289, *et. seq.*; and

4. For reasonable attorneys' fees and costs of suit pursuant to CAL. LAB. CODE §§ 218.5, 1194, and CAL. CODE CIV. PROC. § 1032.

B. On the Second Cause of Action:

5. For compensatory damages, including lost wages, and other losses, in an amount in an amount according to proof;

6. For an award of interest, including prejudgment interest at the legal rate pursuant to CAL. LAB. CODE §§ 218.6, 1194, and CAL. CIV. CODE § 3289, *et. seq.*; and

7. For reasonable attorneys' fees and costs of suit pursuant to CAL. LAB. CODE §§ 218.5, 1194, and CAL. CODE CIV. PROC. § 1032.

C. On the Third and Fourth Causes of Action:

8. For unpaid premium payments in an amount according to proof;

9. For reasonable costs of suit pursuant to CAL. CODE CIV. PROC. § 1032; and

10. For an award of interest, including prejudgment interest at the legal rate pursuant to CAL. CIV. CODE § 3287.

D. On the Fifth Cause of Action:

11. For statutory penalties pursuant to CAL. LAB. CODE § 226;

12. 14. For attorneys' fees and costs pursuant to CAL. LAB. CODE § 226(g) and CAL. CODE CIV. PROC. § 1032, *et. seq.*

E. On the Sixth Cause of Action:

13. For statutory penalties CAL. LAB. CODE § 203;

14. For costs of suit pursuant to CAL. CODE CIV. PROC. § 1032.

F. On the Seventh Cause of Action

15. For reimbursement of all necessary expenditures, plus interest thereon pursuant to CAL. LAB. CODE § 2802(b); and

16. For costs and attorneys' fees pursuant to CAL. LAB. CODE § 2802(c) and CAL. CIV. CODE § 1032, *et. seq.*

G. On the Eighth Cause of Action:

17. That Defendants, including DOES 1 through 50, be ordered and enjoined to pay restitution and penalties to Plaintiffs due to Defendants' unlawful and/or unfair activities, pursuant to Business and Professions Code §§ 17200-05;

18. That Defendants, including DOES 1 through 50, further be enjoined to cease and desist from unlawful and/or unfair activities in violation of Business and Professions Code § 17200, *et. seq*.;

19. For costs of suit pursuant to CAL. CODE CIV. PROC. § 1032; and

20. For attorneys' fees pursuant to CAL. CODE CIV. PROC. § 1021.5.

H. On the Ninth Cause of Action:

21. For penalties in the amount of $1,500 pursuant to CAL. LAB. CODE §§ 226(f) and 1198.5(b);

22. For injunctive relief pursuant to CAL. LAB. CODE §§ 226(h) and 1198.5(l); and

23. For reasonable costs, including attorneys' fees, pursuant to CAL. LAB. CODE §§ 226(h) and 1198.5(l)

I. On the Tenth Cause of Action:

24. Penalties pursuant to CAL. LABOR CODE § 2699(f)(2) in the amount of $100 for each aggrieved employee per pay period for the initial violation, and $200 for each aggrieved employee per pay period for each subsequent violation;

25. Penalties under CAL. LAB. CODE § 226.3 for violations of CAL. LAB. CODE § 226, in addition to any other penalty provided by law, of two hundred fifty dollars ($250) per aggrieved employee for the first violation, and one thousand dollars ($1,000) per aggrieved employee for each subsequent violation;

26. Penalties under Title 8 of the California Code of Regulations, as set forth in the applicable Wage Order, in the amount of $50 for each aggrieved employee per pay period for an initial violation, and $100 for each aggrieved employee per pay period for each subsequent violation (*see* CAL. LAB. CODE § 558);

27. Penalties under CAL. LABOR CODE § 210 in the amount of $100 for each aggrieved employee per pay period for the initial violation, and $200 for each aggrieved employee per pay period for each subsequent violation or any willful or intentional violation, plus 25% of the wages wrongfully withheld;

28. Any and all additional penalties and sums as provided by the CAL. LABOR CODE and/or other statutes; and

29. Reasonable attorney's fees and costs pursuant to sections 2699, 218.5, 210 and 212 of the California Labor Code, and any other applicable statute.

J. On Causes of Action One through Eight

30. For an order granting class certification

K. On All Causes of Action:

31. For costs of suit pursuant to CAL. CODE CIV. PROC. § 1032; and

32. For other and further relief as the Court deems just and proper

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all triable claims

Dated: May 22, 2023

LAW OFFICES OF RICHARD KIM PC

By: Richard Kim

RICHARD KIM

Attorneys for Plaintiff and the Putative Class

Exhibit D

Department of Industrial Relations
STATE OF CALIFORNIA

PAGA NOTICE PUBLIC SEARCH - CASE DETAIL

Case Information

Case Number: LWDA-CM-930339-23
Plaintiff for PAGA Case: Efren Lopez
Filer/Attorney for PAGA Case: Richard Kim
Law Firm for PAGA Plaintiff: Law Offices of Richard Kim PC
Employer: The Fishel Company dba Team Fishel
Date Case Received:
Filer for Employer:
Employer Filer Firm:
Court Type: California Superior Courts
Court Name: Orange County Superior Court
PAGA Court Case Number: 30-2023-01305726
Violation Type:
Related BOFE Case:

Attachments

Attachment Name	Description	Date Submitted	Type
Additional Document submitted with Court Complaint on 10/04/2024 08:15:53 AM by Richard Kim	Plaintiffs Motion for PAGA approval.pdf	10/4/2024 3:16 PM	Court Complaint
Additional Document submitted with Court Complaint on 10/04/2024 08:15:53 AM by Richard Kim	Declaration of Counsel.pdf	10/4/2024 3:16 PM	Court Complaint
Amended Notice Submitted on 01/20/2023 01:37:16 PM by Richard Kim	2023.01.20 PAGA letter.pdf	1/20/2023 9:37 PM	Amended Notice
Amended Notice Submitted on 01/20/2023 01:54:14 PM by Richard Kim	2023.01.20 PAGA letter.pdf	1/20/2023 9:54 PM	Duplicate
Court Complaint Submitted on 08/23/2023 11:32:48 AM by Richard Kim	Amended Complaint.pdf	8/23/2023 6:32 PM	Court Complaint
Court Complaint Submitted on 10/04/2024 08:15:53 AM by Richard Kim	C 2023.05.23 Amended Complaint.pdf	10/4/2024 3:15 PM	Court Complaint
PAGA Notice Submitted on 01/19/2023 01:04:41 PM by Richard Kim	2023.01.19 PAGA.pdf	1/19/2023 9:04 PM	PAGA Notice
Proposed Settlement Submitted on 05/03/2024 05:28:26 PM by Richard Kim	PAGA settlement agreement final.pdf	5/4/2024 12:28 AM	Proposed Settlement
Proposed Settlement Submitted on 10/04/2024 08:05:39 AM by Richard Kim	E PAGA agreement fully executed w notice.pdf	10/4/2024 3:05 PM	Proposed Settlement

Exhibit E

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement ("Agreement") is made by and between Plaintiff Efren Lopez, on behalf of himself and alleged aggrieved employees ("Plaintiff") and Defendant The Fishel Company ("Fishel").[1] The Agreement refers to Plaintiff and Fishel collectively as "Parties," or individually as "Party."

1. **DEFINITIONS**.

1.1. "Action" means the Plaintiff's First Amended Complaint alleging wage and hour violations against Fishel captioned *Efren Lopez v. The Fishel Company* filed on May 22, 2023, Case No. 30-2023-01305726-CU-OE-CXC and pending in Superior Court of the State of California, County of Orange.

1.2. "Administrator" means ILYM, the neutral entity the Parties have agreed to appoint to administer the Settlement.

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

1.4. "Aggrieved Employee" means all current and former non-exempt employees whom Fishel employed in the State of California in the PAGA Period.

1.5. "Aggrieved Employee Data" means Aggrieved Employee identifying information in Fishel's possession including the Aggrieved Employee's name, last-known mailing address, Social Security number, and number of PAGA Pay Periods where feasible (and hire and termination dates to calculate pay periods where pay period numbers are not provided).

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

1.7. "Court" means the Superior Court of California, County of Orange.

1.8. "Defense Counsel" means P. Dustin Bodaghi of Littler Mendelson, P.C.

1.9. "Enhancement Award" shall mean any additional monetary payment provided to Plaintiff for his efforts and risks on behalf of the Aggrieved Employees in this Action.

[1] This Agreement replaces the prior settlement agreement signed by the Parties on or about April 25, 2024, which is hereby deemed null and void.

1.10. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.

1.11. "Gross Settlement Amount" means $200,000.00 which is the total amount Fishel agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the Enhancement Award to Plaintiff, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.

1.12. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the Net Settlement Amount calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.13. "Judgment" means the judgment entered by the Court based upon the Final Approval.

1.14. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.15. "LWDA PAGA Payment" means the 75% of the Net Settlement Amount paid to the LWDA under Labor Code section 2699, subd. (i).

1.16. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the Enhancement Award to Plaintiff, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. Seventy-five percent (75%) of the Net Settlement Amount will be distributed to the LWDA and the remaining twenty-five percent (25%) will be distributed to Aggrieved Employees as Individual PAGA Payments.

1.17. "Notice" means the form of notice that will be sent to each PAGA Member accompanying their Individual Settlement Payments, which shall be substantially in the form attached hereto as **Exhibit A**.

1.18. "PAGA Counsel" means Richard Kim of Law offices of Richard Kim PC, the attorneys representing the Plaintiff in the Action.

1.19. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.20. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Fishel for at least one day during the PAGA Period.

1.21. "PAGA Period" means the period from January 20, 2022 to July 6, 2024..

1.22. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.23. "PAGA Notice" means Plaintiff's PAGA letter to Fishel and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.24. "Plaintiff" means Efren Lopez, the named plaintiff in the Action.

1.25. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.

1.26. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.

1.27. "Released Parties" means: Fishel and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns subsidiaries and affiliates.

1.28. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.29. "Fishel" means named Defendant The Fishel Company.

2. RECITALS.

2.1. On January 20, 2023, Plaintiff submitted a letter to the Labor Workforce Development Agency ("LWDA") asserting various claims for penalties under PAGA against Defendant. On February 3, 2023, Plaintiff filed a class action complaint in Orange County Superior Court asserting the following causes of action: 1) Failure to Pay Minimum Wage; 2) Failure to Pay Overtime and Double Time Compensation; 3) Failure to Provide Meal Periods; 4) Failure to Provide Rest Periods; 5) Failure to Provide Accurate Itemized Wage Statements; 6) Waiting Time Penalties; 7) Failure to Reimburse for Work-Related Expenses; 8) Unfair Competition and Unlawful Business Practices; and 9) Failure to Furnish Payroll Records. On May 22, 2023, Plaintiff filed a First Amended Complaint alleging the same class action claims and adding a cause of action under the PAGA. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint."). Fishel denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged. On or about March 28, 2024, a Stipulation for Dismissal of the class claims was filed by Plaintiff.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Fishel and the LWDA by sending the PAGA Notice.

2.3. On February 14, 2024, the Parties participated in an all-day mediation presided over by Tripper Ortman, Esq., which led to this Agreement to settle the Action.

2.4. Prior to mediation and negotiating the Settlement, Plaintiff obtained, through informal discovery, available time and pay records of the Aggrieved Employees, and relevant employee policies.

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

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Fishel promises to pay $200,000.00 and no more as the Gross Settlement Amount. Fishel has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Fishel.

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

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.33% which is currently estimated to be $66,666.67 and PAGA Counsel Litigation Expenses Payment of not more than $30,000. Fishel will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Fishel harmless, and indemnifies Fishel, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. Enhancement award to Plaintiff: Plaintiff may petition the Court to approve an Enhancement Award in an amount up to Five Thousand Dollars and No Cents ($5,000.00) for Plaintiff to acknowledge his efforts on behalf of the Aggrieved Employees in this Action, including assisting in the investigation and consulting with PAGA Counsel. Defendant shall not oppose any request by PAGA Counsel for an Enhancement Award in such an amount. Any Enhancement Award approved by the Court shall be paid to Plaintiff from the Gross Settlement Amount and shall be in addition to any distribution to which he may otherwise be entitled as an Aggrieved Employee. Any Enhancement Award approved by the Court shall not be considered wages, and the Administrator shall issue to Plaintiff an IRS Form 1099 reflecting such payment. Plaintiff shall be responsible for the payment of all taxes with respect to any Enhancement Award approved by the Court and shall hold Defendant harmless from all liability with regard thereto.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed $10,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than $10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. Net Settlement Amount: Seventy-five percent (75%) of the Net Settlement Amount will be allocated to the LWDA PAGA Payment and 25% will be allocated to the Individual PAGA Payments.

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

3.2.4.1. . The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records, from January 20, 2022 to July 6, 2024, Fishel estimates there are 158 Aggrieved Employees who worked a total of 5,199 PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within 30 days, Fishel will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Fishel has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Fishel must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted

Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Fishel shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Fishel funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Notice, the Administration Expenses Payment, the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

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

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

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

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

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

5.1 Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads: A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice.

5.3 Release by PAGA Counsel:

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

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

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved

Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

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

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

7. SETTLEMENT ADMINISTRATION.

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

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

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

Regulation section 468B-1.

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

7.5 Website: The Administrator will establish and maintain and use an internet website to post information of interest to Aggrieved Employees, including the operative Complaint, the Notice, and Final Order and Judgment for at least 90 days after approval.

8. CONTINUING JURISDICTION OF THE COURT. The Parties agree that, after entry of Judgment, the Court will retain continuing and exclusive jurisdiction over the Parties, Action, and the Settlement under California Code of Civil Procedure Section 664.6 and California Rule of Court rule 3.769(h) including for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

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

9. ADDITIONAL PROVISIONS.

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

10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

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

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

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

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

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

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

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

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

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

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

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

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

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

To Plaintiff:

Richard Kim
LAW OFFICES OF RICHARD KIM PC
6131 Orangethorpe Ave., Suite 370
Buena Park, CA 90620
rkim@richkimlaw.com

To Fishel:

P. Dustin Bodaghi
LITTLER MENDELSON, PC
18565 Jamboree Rd, Suite 800
Irvine, CA 92612
DBodaghi@littler.com

10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Date: ________, 2024

Date: Oct. 3, 2024

____

Plaintiff Efren Lopez

____

The Fishel Company

By: [signature]

Its: President

Ken Katz

4872-5979-3386.2
DRAFT 10/02/24 9:41AM

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

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Date: 10/02, 2024 Date: _________, 2024

02/10/2 Efren Lopez
Efren Lopez (Oct 2, 2024 14:08 PDT)

Plaintiff Efren Lopez

The Fishel Company

By:

Its:

4872-5979-3386.2
DRAFT 10/02/24 9:41AM

Exhibit A

Efren Lopez v. The Fishel Company
Orange County Superior Court Case No. 30-2023-01305726-CU-OE-CXC

NOTICE OF PRIVATE ATTORNEY GENERAL ACT ("PAGA") SETTLEMENT[1]

THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION FROM A LAWYER. PLEASE READ THIS NOTICE CAREFULLY. YOU ARE RECEIVING MONEY IN CONNECTION WITH A COURT-APPROVED SETTLEMENT. THIS NOTICE EXPLAINS WHY YOU ARE RECEIVING MONEY AND HOW IT AFFECTS YOUR RIGHTS.

TO: All current and former non-exempt employees of The Fishel Company who worked in the State of California from January 20, 2022 through July 6, 2024.

BASIC INFORMATION

1. What is this settlement about?

This Private Attorney General Act ("PAGA") representative action (the "Action") claims that Defendant The Fishel Company ("Fishel"): (1) failed to compensate employees at the minimum wage and the prevailing wage; (2) failed to timely pay wages at the appropriate rate of pay; (3) failed to provide meal periods; (4) failed to provide rest periods; (5) failed to provide employees adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing; (6) failed to compensate for missed rest periods at the regular rate of pay; (7) failed to provide prompt payment of wages to employees upon termination and resignation; (8) failed to provide accurate itemized wage statements to employees; (9) failure to comply with payroll reporting requirements for public works projects; and (10) failed to reimburse for work-related expenses. Fishel denies all of the alleged violations and denies that it owes any penalties. The Court has not made a ruling on the merits of the case.

2. Why is this a representative action?

In a representative action, one or more persons called a Representative Plaintiff (in this case Efren Lopez) sues on behalf of certain current or former employees who appear to have similar claims. All such individuals are referred to as the "Aggrieved Employees." A court resolves the issues on behalf of all Aggrieved Employees.

3. Why is there a settlement?

The Court hearing this case did not decide in favor of the Representative Plaintiff or the Aggrieved Employees or Fishel. Instead, both sides agreed to a settlement. That way, they can avoid the

[1] Capitalized/defined terms herein that are not otherwise defined in this Notice can be found in the Private Attorneys General Act Settlement Agreement and Release on file with the Court.

cost of a trial and the Aggrieved Employees can receive compensation. The Representative Plaintiff and his lawyers think that the settlement is in the best interests of the Aggrieved Employees. Fishel denies that it engaged in any wrongdoing, but agreed to this settlement for various reasons, including to avoid the costs of protracted litigation.

WHO IS IN THE SETTLEMENT?

4. Why am I part of the settlement?

You are an Aggrieved Employee, and therefore part of the settlement, if you worked for Fishel as a non-exempt employee in the State of California any time between January 20, 2022 and July 6, 2024 (the "PAGA Period").

THE SETTLEMENT BENEFITS – WHAT YOU ARE RECEIVING AND WHY

5. What does the settlement provide and how was my payment calculated?

The settlement provides that Fishel will pay the total amount of $200,000.00, which is the Gross Settlement Amount.

The settlement primarily consists of a payment to California's Labor and Workforce Development Agency ("LWDA"), as required under PAGA statute, in the amount of seventy-five percent (75%) of the Net Settlement Amount, while the Aggrieved Employees (including you, if you meet the above definition) will receive twenty-five percent (25%) of the Net Settlement Amount, distributed pro rata based on number of pay periods worked as a non-exempt employee during the PAGA Period. That payment is currently estimated to be **[Amount]**. The Net Settlement Amount, out of which the payments to the LWDA and Aggrieved Employees will be paid, is what remains after the attorneys' fees and costs, enhancement payment to the Representative Plaintiff, and settlement administrator fees, are paid.

The settlement includes a payment to the Representative Plaintiff's attorneys for the services they have rendered and will render to the Aggrieved Employees in the Action in the amount of $66,666.67 in fees and an amount not to exceed $30,000 in costs.

The settlement also includes an enhancement payment in the amount of $5,000 to the Representative Plaintiff in recognition of his effort in obtaining the benefits of the settlement for the Aggrieved Employees and for his release of any and all claims he has or may have against Fishel.

The settlement includes a payment to the Settlement Administrator, ILYM, in an amount not to exceed $10,000.00 to issue this Notice and to administer the payment of the settlement funds.

Based on Fishel's records, it was determined that you worked [___] pay periods during the PAGA Period as a non-exempt hourly employee (defined as any pay periods during which you worked at least one (1) shift), and you are therefore entitled to receive [$__________] from this settlement. **Current Employees will not be retaliated against for cashing this check.**

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

You are automatically part of the settlement, which means that you cannot sue, continue to sue, or be part of any other lawsuit against Fishel or the Released Parties ((a) Fishel; (b) each of Fishel's past, present and future direct and indirect parents; (c) the respective past, present and future direct and indirect subsidiaries and affiliates of any of the foregoing; (d) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors and assigns of any of the foregoing; and (e) any individual or entity which could be jointly liable with any of the foregoing) regarding the legal issues in this case. Specifically, it means that you are releasing all claims for civil penalties under PAGA arising from the same facts and/or claims alleged in the Action, or related to claims that were pled or that could have been pled based on the facts alleged in the Action, including but not limited to: California Labor Code sections 201, 202, 203, 204.3, 210, 226, 226.3, 226.7, 510, 511, 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, the California Industrial Commission Wage Orders, and California Code of Regulations Title 8, section 11050, 11000, *et seq*., and including all claims for civil penalties under PAGA related to alleged unpaid wages, overtime or double time wages, minimum wages, timely payment of wages during employment, timely payment of wages at separation, failure to provide employees an adequate supply of portable water/soap/otherwise suitable cleaning agent and single use towels for hand washing, prevailing wages, meal periods and meal period premiums, rest break and rest break premiums, off-the-clock work, wage statements, payroll records and recordkeeping, business expense reimbursement, interest, attorneys' fees, and costs arising therefrom, during the PAGA Period and through the date the Court grants approval of the Settlement and enters the Final Judgment in this Action. No non-PAGA individual California wage and hour claims are released by this settlement.

YOUR RIGHTS AND OPTIONS AND MORE INFORMATION

7. Can I exclude myself from this settlement?

No. According to settled California law, aggrieved employees do not have the right to opt-out or exclude themselves from PAGA settlements. Therefore, you do not have a statutory right to exclude yourself from the settlement.

8. How do I get more information?

This Notice is just a summary of the proposed settlement. A complete copy of the operative Complaint, this Notice, and the Court's order granting final approval of the Settlement and Judgment are available at www.ilymgroup.com. More details are in the Private Attorneys General Act Settlement Agreement and Release that the Court has reviewed and approved. You can get a copy of that document by contacting the Settlement Administrator or Plaintiff's Counsel.

Contacting the Settlement Administrator:

ILYM Group, Inc.
P.O. Box 2031
Tustin, California 92781
(888) 250-6810

Contacting Plaintiff's Counsel:

Richard Kim
Law Offices of Richard Kim PC
6131 Orangethorpe Ave., Suite 370
Buena Park, CA 90620
rkim@richkimlaw.com
Telephone: 714-276-1122

DO NOT ADDRESS ANY QUESTIONS ABOUT THIS SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.

Exhibit F

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement ("Agreement") is made by and between Plaintiff Efren Lopez, on behalf of himself and alleged aggrieved employees ("Plaintiff") and Defendant The Fishel Company ("Fishel").[1] The Agreement refers to Plaintiff and Fishel collectively as "Parties," or individually as "Party."

1. **DEFINITIONS**.

1.1. "Action" means the Plaintiff's First Amended Complaint alleging wage and hour violations against Fishel captioned *Efren Lopez v. The Fishel Company* filed on May 22, 2023, Case No. 30-2023-01305726-CU-OE-CXC and pending in Superior Court of the State of California, County of Orange.

1.2. "Administrator" means ILYM, the neutral entity the Parties have agreed to appoint to administer the Settlement.

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

1.4. "Aggrieved Employee" means all current and former non-exempt employees whom Fishel employed in the State of California in the PAGA Period.

1.5. "Aggrieved Employee Data" means Aggrieved Employee identifying information in Fishel's possession including the Aggrieved Employee's name, last-known mailing address, Social Security number, and number of PAGA Pay Periods where feasible (and hire and termination dates to calculate pay periods where pay period numbers are not provided).

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

1.7. "Court" means the Superior Court of California, County of Orange.

1.8. "Defense Counsel" means P. Dustin Bodaghi of Littler Mendelson, P.C.

1.9. "Enhancement Award" shall mean any additional monetary payment provided to Plaintiff for his efforts and risks on behalf of the Aggrieved Employees in this Action.

[1] This Agreement replaces the prior settlement agreement signed by the Parties on or about April 25, 2024, which is hereby deemed null and void.

~~1.9.~~1.10. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.

~~1.10.~~1.11. "Gross Settlement Amount" means $200,000.00 which is the total amount Fishel agrees to pay under the Settlement~~ except as provided in Paragraph 8 below.~~. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the Enhancement Award to Plaintiff, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.

~~1.11.~~1.12. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the ~~PAGA Penalties~~Net Settlement Amount calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

~~1.12.~~1.13. "Judgment" means the judgment entered by the Court based upon the Final Approval.

~~1.13.~~1.14. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

~~1.14.~~1.15. "LWDA PAGA Payment" means the 75% of the ~~PAGA Penalties~~Net Settlement Amount paid to the LWDA under Labor Code section 2699, subd. (i).

~~1.15.~~1.16. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: ~~Individual PAGA Payments, the LWDA PAGA Payment~~the Enhancement Award to Plaintiff, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. ~~The remainder is to be paid~~Seventy-five percent (75%) of the Net Settlement Amount will be distributed to the LWDA and the remaining twenty-five percent (25%) will be distributed to Aggrieved Employees as Individual PAGA Payments.

~~1.16.~~1.17. "Notice" means the form of notice that will be sent to each PAGA Member accompanying their Individual Settlement Payments, which shall be substantially in the form attached hereto as **Exhibit A**.

~~1.17.~~1.18. "PAGA Counsel" means Richard Kim of Law offices of Richard Kim PC, the attorneys representing the Plaintiff in the Action.

~~1.18.~~1.19. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

~~1.19.~~1.20. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Fishel for at least one day during the PAGA Period.

~~1.20.~~1.21. "PAGA Period" means the period from January 20, 2022 to ~~the date the settlement is approved by the Court.~~July 6, 2024..

~~1.21.~~1.22. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

~~1.22.~~1.23. "PAGA Notice" means Plaintiff's PAGA letter to Fishel and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

~~1.23. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Net Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.~~

1.24. "Plaintiff" means Efren Lopez, the named plaintiff in the Action.

1.25. ~~"~~"Approval Order~~"~~" means the proposed Court Order Granting Approval of PAGA Settlement.

1.26. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.

1.27. "Released Parties" means: Fishel and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns subsidiaries and affiliates.

1.28. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.29. "Fishel" means named Defendant The Fishel Company.

2. **RECITALS**.

2.1. On January 20, 2023, Plaintiff submitted a letter to the Labor Workforce Development Agency ("LWDA") asserting various claims for penalties under PAGA against Defendant. On February 3, 2023, Plaintiff filed a class action complaint in Orange County Superior Court asserting the following causes of action: 1) Failure to Pay Minimum Wage; 2) Failure to Pay Overtime and Double Time Compensation; 3) Failure to Provide Meal Periods; 4) Failure to Provide Rest Periods; 5) Failure to Provide Accurate Itemized Wage Statements; 6) Waiting Time Penalties; 7) Failure to Reimburse for Work-Related Expenses; 8) Unfair Competition and Unlawful Business Practices; and 9) Failure to Furnish Payroll Records. On May 22, 2023, Plaintiff filed a First Amended Complaint alleging the same class action claims and adding a cause of action under the PAGA. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint."). Fishel denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged. On or about March 28, 2024, a Stipulation for Dismissal of the class claims was filed by Plaintiff.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to

Fishel and the LWDA by sending the PAGA Notice.

2.3. On February 14, 2024, the Parties participated in an all-day mediation presided over by Tripper Ortman, Esq., which led to this Agreement to settle the Action.

2.4. Prior to mediation and negotiating the Settlement, Plaintiff obtained, through informal discovery, available time and pay records of the Aggrieved Employees, and relevant employee policies.

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

3. MONETARY TERMS.

3.1. Gross Settlement Amount. ~~Except as otherwise provided by Paragraph 8 below,~~ Fishel promises to pay $200,000.00 and no more as the Gross Settlement Amount. Fishel has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Fishel.

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

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than ~~40~~33.33% which is currently estimated to be $~~80,000~~66,666.67 and PAGA Counsel Litigation Expenses Payment of not more than $30,000. Fishel will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Fishel harmless, and indemnifies Fishel, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. Enhancement award to Plaintiff: Plaintiff may petition the Court to approve an Enhancement Award in an amount up to Five Thousand Dollars and No Cents

($5,000.00) for Plaintiff to acknowledge his efforts on behalf of the Aggrieved Employees in this Action, including assisting in the investigation and consulting with PAGA Counsel. Defendant shall not oppose any request by PAGA Counsel for an Enhancement Award in such an amount. Any Enhancement Award approved by the Court shall be paid to Plaintiff from the Gross Settlement Amount and shall be in addition to any distribution to which he may otherwise be entitled as an Aggrieved Employee. Any Enhancement Award approved by the Court shall not be considered wages, and the Administrator shall issue to Plaintiff an IRS Form 1099 reflecting such payment. Plaintiff shall be responsible for the payment of all taxes with respect to any Enhancement Award approved by the Court and shall hold Defendant harmless from all liability with regard thereto.

~~3.2.2.~~3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed $10,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than $10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

~~3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of~~
3.2.4. ~~$80,000 to be paid from the~~ Net Settlement Amount~~, with~~ : Seventy-five percent (75~~%~~ ~~($60,000)~~%) of the Net Settlement Amount will be allocated to the LWDA PAGA Payment and 25% ~~($20,000)~~will be allocated to the Individual PAGA Payments.

~~3.2.3.1.~~ The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of ~~PAGA Penalties ($20,000)~~the Net Settlement Amount by the total number of PAGA Period Pay Periods worked

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by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

~~3.2.3.2.~~3.2.4.1. ~~If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount.~~. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records, from January 20, 2022 to ~~February 14~~July 6, 2024, Fishel estimates there are ~~171~~158 Aggrieved Employees who worked a total ~~4,748~~ of 5,199 PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within 30 days, Fishel will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Fishel has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Fishel must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Fishel shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Fishel funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Notice, the Administration Expenses Payment, the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

~~4.4.1.~~ The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement

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4.4.1. Administrator must update the recipients' mailing addresses using the National Change of Address Database.

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

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

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

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

5.1 Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads: A general release does not extend to claims that the creditor or releasing party does

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5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice.

5.3 Release by PAGA Counsel:

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

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

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

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

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

7. SETTLEMENT ADMINISTRATION.

~~7.1~~ Selection of Administrator. The Parties have jointly selected

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

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

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

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

7.5 Website: The Administrator will establish and maintain and use an internet website to post information of interest to Aggrieved Employees, including the operative Complaint, the Notice, and Final Order and Judgment for at least 90 days after approval.

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8. CONTINUING JURISDICTION OF THE COURT. The Parties agree that, after entry of Judgment, the Court will retain continuing and exclusive jurisdiction over the Parties, Action, and the Settlement ~~solely~~under California Code of Civil Procedure Section 664.6 and California Rule of Court rule 3.769(h) including for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii)

Formatted: Not Expanded by / Condensed by addressing such post-Judgment matters as are permitted by law.

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

9. ADDITIONAL PROVISIONS.

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

10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

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

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

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

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

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

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

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

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

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

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

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

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

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

To Plaintiff:

Richard Kim
LAW OFFICES OF RICHARD KIM PC
6131 Orangethorpe Ave., Suite 370
Buena Park, CA 90620
rkim@richkimlaw.com

To Fishel:

P. Dustin Bodaghi
LITTLER MENDELSON, PC
18565 Jamboree Rd, Suite 800
Irvine, CA 92612
DBodaghi@littler.com

10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Date: __________, 2024 Date: __________, 2024

______________________________ ______________________________

Plaintiff Efren Lopez	The Fishel Company
	By:
	Its:

Exhibit A

Efren Lopez v. The Fishel Company
Orange County Superior Court Case No. 30-2023-01305726-CU-OE-CXC

NOTICE OF PRIVATE ATTORNEY GENERAL ACT ("PAGA") SETTLEMENT[1]

THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION FROM A LAWYER. PLEASE READ THIS NOTICE CAREFULLY. YOU ARE RECEIVING MONEY IN CONNECTION WITH A COURT-APPROVED SETTLEMENT. THIS NOTICE EXPLAINS WHY YOU ARE RECEIVING MONEY AND HOW IT AFFECTS YOUR RIGHTS.

TO: All current and former non-exempt employees of The Fishel Company who worked in the State of California from January 20, 2022 through July 6, 2024 ~~the [date the settlement is approved by the Court]~~.

BASIC INFORMATION

1. What is this settlement about?

This Private Attorney General Act ("PAGA") representative action (the "Action") claims that Defendant The Fishel Company ("Fishel"): (1) failed to compensate employees at the minimum wage and the prevailing wage; (2) failed to timely pay wages at the appropriate rate of pay; (3) failed to provide meal periods; (4) failed to provide rest periods; (5) failed to provide employees adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing; (6) failed to compensate for missed rest periods at the regular rate of pay; (7) failed to provide prompt payment of wages to employees upon termination and resignation; (8) failed to provide accurate itemized wage statements to employees; (9) failure to comply with payroll reporting requirements for public works projects; and (10) failed to reimburse for work-related expenses. Fishel denies all of the alleged violations and denies that it owes any penalties. The Court has not made a ruling on the merits of the case.

2. Why is this a representative action?

In a representative action, one or more persons called a Representative Plaintiff (in this case Efren Lopez) sues on behalf of certain current or former employees who appear to have similar claims. All such individuals are referred to as the "Aggrieved Employees." A court resolves the issues on behalf of all Aggrieved Employees.

3. Why is there a settlement?

The Court hearing this case did not decide in favor of the Representative Plaintiff or the Aggrieved Employees or Fishel. Instead, both sides agreed to a settlement. That way, they can avoid the

[1] Capitalized/defined terms herein that are not otherwise defined in this Notice can be found in the Private Attorneys General Act Settlement Agreement and Release on file with the Court.

cost of a trial and the Aggrieved Employees can receive compensation. The Representative Plaintiff and his lawyers think that the settlement is in the best interests of the Aggrieved Employees. Fishel denies that it engaged in any wrongdoing, but agreed to this settlement for various reasons, including to avoid the costs of protracted litigation.

WHO IS IN THE SETTLEMENT?

4. Why am I part of the settlement?

You are an Aggrieved Employee, and therefore part of the settlement, if you worked for Fishel as a non-exempt employee in the State of California any time between January 20, 2022 and July 6, 2024~~[INSERT DATE]~~ (the "PAGA Period").

THE SETTLEMENT BENEFITS – WHAT YOU ARE RECEIVING AND WHY

5. What does the settlement provide and how was my payment calculated?

The settlement provides that Fishel will pay the total amount of $200,000.00, which is the Gross Settlement Amount.

The settlement primarily consists of a payment to California's Labor and Workforce Development Agency ("LWDA"), as required under PAGA statute, in the amount of seventy-five percent (75%) of the N~~n~~et ~~settlement~~ Settlement ~~fund~~Amount, while the Aggrieved Employees (including you, if you meet the above definition) will receive twenty-five percent (25%) of the Net Settlement Amount, distributed pro rata based on number of pay periods worked as a non-exempt employee during the PAGA Period. That payment is currently estimated to be **[Amount]**. The Net Settlement Amount, out of which the payments to the LWDA and Aggrieved Employees will be paid, is what remains after the attorneys' fees and costs, ~~service~~ enhancement payment to the Representative Plaintiff, and settlement administrator fees, are paid.

The settlement includes a payment to the Representative Plaintiff's attorneys for the services they have rendered and will render to the Aggrieved Employees in the Action in the amount of $~~80,000~~66,666.67 in fees and an amount not to exceed $30,000 in costs.

The settlement also includes an enhancement ~~service~~ payment in the amount of $5,000 to the Representative Plaintiff in recognition of his effort in obtaining the benefits of the settlement for the Aggrieved Employees and for his release of any and all claims he has or may have against Fishel.

The settlement includes a payment to the Settlement Administrator, ILYM, in an amount not to exceed ~~$10,000.00~~ $10,000.00 to issue this Notice and to administer the payment of the settlement funds.

Based on Fishel's records, it was determined that you worked [ ] pay periods during the PAGA Period as a non-exempt hourly employee (defined as any pay periods during which you worked at least one (1) shift), and you are therefore entitled to receive [$] from this settlement. **Current Employees will not be retaliated against for cashing this check.**

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

You are automatically part of the settlement, which means that you cannot sue, continue to sue, or be part of any other lawsuit against Fishel or the Released Parties ((a) Fishel; (b) each of Fishel's past, present and future direct and indirect parents; (c) the respective past, present and future direct and indirect subsidiaries and affiliates of any of the foregoing; (d) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors and assigns of any of the foregoing; and (e) any individual or entity which could be jointly liable with any of the foregoing) regarding the legal issues in this case. Specifically, it means that you are releasing all claims for civil penalties under PAGA arising from the same facts and/or claims alleged in the Action, or related to claims that were pled or that could have been pled based on the facts alleged in the Action, including but not limited to: California Labor Code sections 201, 202, 203, 204.3, 210, 226, 226.3, 226.7, 510, 511**,** 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802**,** the California Industrial Commission Wage Orders, and California Code of Regulations Title 8, section 11050, 11000, *et seq*., and including all claims for civil penalties under PAGA related to alleged unpaid wages, overtime or double time wages, minimum wages, timely payment of wages during employment, timely payment of wages at separation, failure to provide employees an adequate supply of portable water/soap/otherwise suitable cleaning agent and single use towels for hand washing, prevailing wages, meal periods and meal period premiums, rest break and rest break premiums, off-the-clock work, wage statements, payroll records and recordkeeping, business expense reimbursement, interest, attorneys' fees, and costs arising therefrom, during the PAGA Period and through the date the Court grants approval of the Settlement and enters the Final Judgment in this Action. No non-PAGA individual California wage and hour claims are released by this settlement.

YOUR RIGHTS AND OPTIONS AND MORE INFORMATION

7. Can I exclude myself from this settlement?

No. According to settled California law, aggrieved employees do not have the right to opt-out or exclude themselves from PAGA settlements. Therefore, you do not have a statutory right to exclude yourself from the settlement.

8. How do I get more information?

This Notice is just a summary of the proposed settlement. A complete copy of the operative Complaint, this Notice, and the Court's order granting final approval of the Settlement and Judgment are available at www.~~______~~ilymgroup.com. More details are in the Private Attorneys General Act Settlement Agreement and Release that the Court has reviewed and approved. You can get a copy of that document by contacting the Settlement Administrator or Plaintiff's Counsel.

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Contacting the Settlement Administrator:

ILYM Group, Inc.~~ADMIN NAME~~
~~ADMIN ADDRESS~~P.O. Box 2031
PC
Tustin~~XXXX~~, California 92626
(888) 250-6810~~XXXXX~~

Contacting Plaintiff's Counsel:

Richard Kim
Law Offices of Richard Kim

6131 Orangethorpe Ave., Suite 370
Buena Park, CA 90620
rkim@richkimlaw.com

Telephone: 714-276-1122

DO NOT ADDRESS ANY QUESTIONS ABOUT THIS SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.

Exhibit G

Efren Lopez v. The Fishel Company
Orange County Superior Court Case No. 30-2023-01305726-CU-OE-CXC

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BASIC INFORMATION

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This Private Attorney General Act ("PAGA") representative action (the "Action") claims that Defendant The Fishel Company ("Fishel"): (1) failed to compensate employees at the minimum wage and the prevailing wage; (2) failed to timely pay wages at the appropriate rate of pay; (3) failed to provide meal periods; (4) failed to provide rest periods; (5) failed to provide employees adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing; (6) failed to compensate for missed rest periods at the regular rate of pay; (7) failed to provide prompt payment of wages to employees upon termination and resignation; (8) failed to provide accurate itemized wage statements to employees; (9) failure to comply with payroll reporting requirements for public works projects; and (10) failed to reimburse for work-related expenses. Fishel denies all of the alleged violations and denies that it owes any penalties. The Court has not made a ruling on the merits of the case.

2. Why is this a representative action?

In a representative action, one or more persons called a Representative Plaintiff (in this case Efren Lopez) sues on behalf of certain current or former employees who appear to have similar claims. All such individuals are referred to as the "Aggrieved Employees." A court resolves the issues on behalf of all Aggrieved Employees.

3. Why is there a settlement?

The Court hearing this case did not decide in favor of the Representative Plaintiff or the Aggrieved Employees or Fishel. Instead, both sides agreed to a settlement. That way, they can avoid the

[1] Capitalized/defined terms herein that are not otherwise defined in this Notice can be found in the Private Attorneys General Act Settlement Agreement and Release on file with the Court.

cost of a trial and the Aggrieved Employees can receive compensation. The Representative Plaintiff and his lawyers think that the settlement is in the best interests of the Aggrieved Employees. Fishel denies that it engaged in any wrongdoing, but agreed to this settlement for various reasons, including to avoid the costs of protracted litigation.

WHO IS IN THE SETTLEMENT?

4. Why am I part of the settlement?

You are an Aggrieved Employee, and therefore part of the settlement, if you worked for Fishel as a non-exempt employee in the State of California any time between January 20, 2022 and July 6, 2024 (the "PAGA Period").

THE SETTLEMENT BENEFITS – WHAT YOU ARE RECEIVING AND WHY

5. What does the settlement provide and how was my payment calculated?

The settlement provides that Fishel will pay the total amount of $200,000.00, which is the Gross Settlement Amount.

The settlement primarily consists of a payment to California's Labor and Workforce Development Agency ("LWDA"), as required under PAGA statute, in the amount of seventy-five percent (75%) of the Net Settlement Amount, while the Aggrieved Employees (including you, if you meet the above definition) will receive twenty-five percent (25%) of the Net Settlement Amount, distributed pro rata based on number of pay periods worked as a non-exempt employee during the PAGA Period. That payment is currently estimated to be **[Amount]**. The Net Settlement Amount, out of which the payments to the LWDA and Aggrieved Employees will be paid, is what remains after the attorneys' fees and costs, enhancement payment to the Representative Plaintiff, and settlement administrator fees, are paid.

The settlement includes a payment to the Representative Plaintiff's attorneys for the services they have rendered and will render to the Aggrieved Employees in the Action in the amount of $66,666.67 in fees and an amount not to exceed $30,000 in costs.

The settlement also includes an enhancement payment in the amount of $5,000 to the Representative Plaintiff in recognition of his effort in obtaining the benefits of the settlement for the Aggrieved Employees and for his release of any and all claims he has or may have against Fishel.

The settlement includes a payment to the Settlement Administrator, ILYM, in an amount not to exceed $10,000.00 to issue this Notice and to administer the payment of the settlement funds.

Based on Fishel's records, it was determined that you worked [__] pay periods during the PAGA Period as a non-exempt hourly employee (defined as any pay periods during which you worked at least one (1) shift), and you are therefore entitled to receive [$__________] from this settlement. **Current Employees will not be retaliated against for cashing this check.**

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

You are automatically part of the settlement, which means that you cannot sue, continue to sue, or be part of any other lawsuit against Fishel or the Released Parties ((a) Fishel; (b) each of Fishel's past, present and future direct and indirect parents; (c) the respective past, present and future direct and indirect subsidiaries and affiliates of any of the foregoing; (d) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors and assigns of any of the foregoing; and (e) any individual or entity which could be jointly liable with any of the foregoing) regarding the legal issues in this case. Specifically, it means that you are releasing all claims for civil penalties under PAGA arising from the same facts and/or claims alleged in the Action, or related to claims that were pled or that could have been pled based on the facts alleged in the Action, including but not limited to: California Labor Code sections 201, 202, 203, 204.3, 210, 226, 226.3, 226.7, 510, 511, 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, the California Industrial Commission Wage Orders, and California Code of Regulations Title 8, section 11050, 11000, *et seq*., and including all claims for civil penalties under PAGA related to alleged unpaid wages, overtime or double time wages, minimum wages, timely payment of wages during employment, timely payment of wages at separation, failure to provide employees an adequate supply of portable water/soap/otherwise suitable cleaning agent and single use towels for hand washing, prevailing wages, meal periods and meal period premiums, rest break and rest break premiums, off-the-clock work, wage statements, payroll records and recordkeeping, business expense reimbursement, interest, attorneys' fees, and costs arising therefrom, during the PAGA Period and through the date the Court grants approval of the Settlement and enters the Final Judgment in this Action. No non-PAGA individual California wage and hour claims are released by this settlement.

YOUR RIGHTS AND OPTIONS AND MORE INFORMATION

7. Can I exclude myself from this settlement?

No. According to settled California law, aggrieved employees do not have the right to opt-out or exclude themselves from PAGA settlements. Therefore, you do not have a statutory right to exclude yourself from the settlement.

8. How do I get more information?

This Notice is just a summary of the proposed settlement. A complete copy of the operative Complaint, this Notice, and the Court's order granting final approval of the Settlement and Judgment are available at www.ilymgroup.com. More details are in the Private Attorneys General Act Settlement Agreement and Release that the Court has reviewed and approved. You can get a copy of that document by contacting the Settlement Administrator or Plaintiff's Counsel.

Contacting the Settlement Administrator:

ILYM Group, Inc.
P.O. Box 2031
Tustin, California 92781
(888) 250-6810

Contacting Plaintiff's Counsel:

Richard Kim
Law Offices of Richard Kim PC
6131 Orangethorpe Ave., Suite 370
Buena Park, CA 90620
rkim@richkimlaw.com
Telephone: 714-276-1122

DO NOT ADDRESS ANY QUESTIONS ABOUT THIS SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.

Exhibit H

Efren Lopez v. The Fishel Company
Orange County Superior Court Case No. 30-2023-01305726-CU-OE-CXC

NOTICE OF PRIVATE ATTORNEY GENERAL ACT ("PAGA") SETTLEMENT[1]

THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION FROM A LAWYER. PLEASE READ THIS NOTICE CAREFULLY. YOU ARE RECEIVING MONEY IN CONNECTION WITH A COURT-APPROVED SETTLEMENT. THIS NOTICE EXPLAINS WHY YOU ARE RECEIVING MONEY AND HOW IT AFFECTS YOUR RIGHTS.

TO: All current and former non-exempt employees of The Fishel Company who worked in the State of California from January 20, 2022 through July 6, 2024 ~~the [date the settlement is approved by the Court]~~.

BASIC INFORMATION

1. What is this settlement about?

This Private Attorney General Act ("PAGA") representative action (the "Action") claims that Defendant The Fishel Company ("Fishel"): (1) failed to compensate employees at the minimum wage and the prevailing wage; (2) failed to timely pay wages at the appropriate rate of pay; (3) failed to provide meal periods; (4) failed to provide rest periods; (5) failed to provide employees adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing; (6) failed to compensate for missed rest periods at the regular rate of pay; (7) failed to provide prompt payment of wages to employees upon termination and resignation; (8) failed to provide accurate itemized wage statements to employees; (9) failure to comply with payroll reporting requirements for public works projects; and (10) failed to reimburse for work-related expenses. Fishel denies all of the alleged violations and denies that it owes any penalties. The Court has not made a ruling on the merits of the case.

2. Why is this a representative action?

In a representative action, one or more persons called a Representative Plaintiff (in this case Efren Lopez) sues on behalf of certain current or former employees who appear to have similar claims. All such individuals are referred to as the "Aggrieved Employees." A court resolves the issues on behalf of all Aggrieved Employees.

3. Why is there a settlement?

The Court hearing this case did not decide in favor of the Representative Plaintiff or the Aggrieved Employees or Fishel. Instead, both sides agreed to a settlement. That way, they can avoid the

[1] Capitalized/defined terms herein that are not otherwise defined in this Notice can be found in the Private Attorneys General Act Settlement Agreement and Release on file with the Court.

cost of a trial and the Aggrieved Employees can receive compensation. The Representative Plaintiff and his lawyers think that the settlement is in the best interests of the Aggrieved Employees. Fishel denies that it engaged in any wrongdoing, but agreed to this settlement for various reasons, including to avoid the costs of protracted litigation.

WHO IS IN THE SETTLEMENT?

4. Why am I part of the settlement?

You are an Aggrieved Employee, and therefore part of the settlement, if you worked for Fishel as a non-exempt employee in the State of California any time between January 20, 2022 and July 6, 2024~~[INSERT DATE]~~ (the "PAGA Period").

THE SETTLEMENT BENEFITS – WHAT YOU ARE RECEIVING AND WHY

5. What does the settlement provide and how was my payment calculated?

The settlement provides that Fishel will pay the total amount of $200,000.00, which is the Gross Settlement Amount.

The settlement primarily consists of a payment to California's Labor and Workforce Development Agency ("LWDA"), as required under PAGA statute, in the amount of seventy-five percent (75%) of the N~~n~~et ~~settlement~~ Settlement ~~fund~~Amount, while the Aggrieved Employees (including you, if you meet the above definition) will receive twenty-five percent (25%) of the Net Settlement Amount, distributed pro rata based on number of pay periods worked as a non-exempt employee during the PAGA Period. That payment is currently estimated to be **[Amount]**. The Net Settlement Amount, out of which the payments to the LWDA and Aggrieved Employees will be paid, is what remains after the attorneys' fees and costs, ~~service~~ enhancement payment to the Representative Plaintiff, and settlement administrator fees, are paid.

The settlement includes a payment to the Representative Plaintiff's attorneys for the services they have rendered and will render to the Aggrieved Employees in the Action in the amount of $~~80,000~~66,666.67 in fees and an amount not to exceed $30,000 in costs.

The settlement also includes an enhancement ~~service~~ payment in the amount of $5,000 to the Representative Plaintiff in recognition of his effort in obtaining the benefits of the settlement for the Aggrieved Employees and for his release of any and all claims he has or may have against Fishel.

The settlement includes a payment to the Settlement Administrator, ILYM, in an amount not to exceed ~~$10,000.00~~ $10,000.00 to issue this Notice and to administer the payment of the settlement funds.

Based on Fishel's records, it was determined that you worked [ ] pay periods during the PAGA Period as a non-exempt hourly employee (defined as any pay periods during which you worked at least one (1) shift), and you are therefore entitled to receive [$] from this settlement. **Current Employees will not be retaliated against for cashing this check.**

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

You are automatically part of the settlement, which means that you cannot sue, continue to sue, or be part of any other lawsuit against Fishel or the Released Parties ((a) Fishel; (b) each of Fishel's past, present and future direct and indirect parents; (c) the respective past, present and future direct and indirect subsidiaries and affiliates of any of the foregoing; (d) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors and assigns of any of the foregoing; and (e) any individual or entity which could be jointly liable with any of the foregoing) regarding the legal issues in this case. Specifically, it means that you are releasing all claims for civil penalties under PAGA arising from the same facts and/or claims alleged in the Action, or related to claims that were pled or that could have been pled based on the facts alleged in the Action, including but not limited to: California Labor Code sections 201, 202, 203, 204.3, 210, 226, 226.3, 226.7, 510, 511**,** 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802**,** the California Industrial Commission Wage Orders, and California Code of Regulations Title 8, section 11050, 11000, *et seq*., and including all claims for civil penalties under PAGA related to alleged unpaid wages, overtime or double time wages, minimum wages, timely payment of wages during employment, timely payment of wages at separation, failure to provide employees an adequate supply of portable water/soap/otherwise suitable cleaning agent and single use towels for hand washing, prevailing wages, meal periods and meal period premiums, rest break and rest break premiums, off-the-clock work, wage statements, payroll records and recordkeeping, business expense reimbursement, interest, attorneys' fees, and costs arising therefrom, during the PAGA Period and through the date the Court grants approval of the Settlement and enters the Final Judgment in this Action. No non-PAGA individual California wage and hour claims are released by this settlement.

YOUR RIGHTS AND OPTIONS AND MORE INFORMATION

7. Can I exclude myself from this settlement?

No. According to settled California law, aggrieved employees do not have the right to opt-out or exclude themselves from PAGA settlements. Therefore, you do not have a statutory right to exclude yourself from the settlement.

8. How do I get more information?

This Notice is just a summary of the proposed settlement. A complete copy of the operative Complaint, this Notice, and the Court's order granting final approval of the Settlement and Judgment are available at www.ilymgroup.com. More details are in the Private Attorneys General Act Settlement Agreement and Release that the Court has reviewed and approved. You can get a copy of that document by contacting the Settlement Administrator or Plaintiff's Counsel.

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Contacting the Settlement Administrator:

ILYM Group, Inc.~~ADMIN NAME~~
~~ADMIN ADDRESS~~P.O. Box 2031
PC
Tustin~~XXXX~~, California 92626
(888) 250-6810~~XXXXX~~

Contacting Plaintiff's Counsel:

Richard Kim
Law Offices of Richard Kim
6131 Orangethorpe Ave., Suite 370
Buena Park, CA 90620
rkim@richkimlaw.com

Telephone: 714-276-1122

DO NOT ADDRESS ANY QUESTIONS ABOUT THIS SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.

Exhibit I

Case Name: Lopez v. The Fishel Company
Wednesday, October 2, 2024

Requesting Attorneys Name:	Richard Kim
E-Mail:	rkim@richkimlaw.com
ILYM Contact:	Lisa Mullins
E-Mail:	Lisa@ilymgroup.com
Contact Number:	714.878.8836

Estimate For Administrative Solutions: PAGA

KEY ASSUMPTIONS	
Total Number of Aggreived Employees	**171**
Estimated Percentage of Remails	**15%**
Certified Spanish Translation	**Yes**
ILYM Group Static Website	**Yes**
NCOA	**Yes**
Case Duration (Years)	**1**

Summary Estimate: ILYM Group Fees & Expenses

Case Startup:	$1,891.66
Distribution (Includes EIN, Bank Acct * /QSF Setup):	$2,838.34
Case Conclusion:	$570.00
Estimated ILYM Fees & Expenses:	**$5,300.00**

ILYM GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Lopez v. The Fishel Company

Wednesday, October 2, 2024

Requesting Attorneys Name: Richard Kim

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - *Import and Formatting of Data**	Hourly	$150.00	1	$150.00
Project Manager (Case notification and maintenance)	Hourly	$120.00	1	$120.00
Certified Spanish Translation	Flat Fee	$750.00	1	$750.00
ILYM Group Static Website	Flat Fee	$750.00	1	$750.00
NCOA	Flat Rate	$50.00	1	$50.00
Toll-Free Call Center	Flat Rate	$71.66	1	$71.66
			Subtotal	**$1,891.66**
DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	$150.00	2	$300.00
Account Reconciliation & Distribution Reporting	Hourly	$125.00	2	$250.00
Notice, Check, Stub & Release - (including 1099)	Per Check	$1.50	171	$256.50
USPS First Class 1oz Postage	Per Piece	$0.64	171	$109.44
Remails (Forward/Skip Trace Undeliverables)	Per Piece	$2.00	34	$68.40
Reminder Postcard for Uncashed Checks	Per Piece	$0.90	60	$54.00
Preparation of Taxes	Hourly	$150.00	2	$300.00
Annual Filing of Tax Return	Per Year	$1,500.00	1	$1,500.00
			Subtotal	**$2,838.34**
CASE CONCLUSION				
Data Manager Final Reporting	Hourly	$100.00	1	$100.00
Process Unclaimed Funds	Flat Fee	$350.00	1	$350.00
Declaration	Hourly	$120.00	1	$120.00
			Subtotal	**$570.00**

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ $150.00 per hour.*

**Additional Bank fees may apply*

Estimated ILYM Fees & Expenses: $5,300.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Clients instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

Exhibit J

LAW OFFICES OF RICHARD KIM PC **Lopez v. Fishel Company Expenses**

Date	Subject	Payee	Amount
2/7/2023	First Appearance filing fee - Complex	OC Superior Court	$1,435.00
7/28/2023	Mediation Fee	Ortman Mediation	$13,000.00
2/11/2024	Expert Witness - PAGA exposure analysis	Briscoe Economics Group	$6,960.00
	Total		**$21,395.00**

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

Superior Court of California, County of Orange

751 W. Santa Ana Blvd
Santa Ana, CA 92701

E-Filing Transaction #: 21267888

PAYMENT RECEIPT

Receipt #: 13003908

Clerk ID: gramirez **Transaction No:** 13175802 **Transaction Date:** 02/07/2023 **Transaction Time:** 07:50:56 AM

Case Number	Fee Type	Qty	Fee Amount$	Balance Due	Amount Paid	Remaining Balance
30-2023-01305726-CU-OE-CXC	194 - Complaint or other 1st paper	1	$435.00	$435.00	$435.00	$0.00
30-2023-01305726-CU-OE-CXC	34 - Complex Case Fee - Plaintiff	1	$1,000.00	$1,000.00	$1,000.00	$0.00
				Sales Tax:	$0.00	
				Total:	**$1,435.00**	**Total Rem. Bal:**

E-Filing : - OneLegal

E-Filing: $1,435.00

Total Amount Tendered: $1,435.00

Change Due: **$0.00**

Balance: **$0.00**

A $45 fee may be charged for each returned check, electronic funds transfer or credit card payment.

COPY

Mailing Address:
5100-B1 Clayton Road #368
Concord, California 94521
(510) 707-6400
www.ortmanmediation.com

Invoice No. 2916
Mediation Date: February 14, 2024
Case Name: Efren Lopez, et al. vs. The Fishel Company

July 28, 2023

INVOICE SUMMARY

Law Offices of Richard Kim PC $13,000.00

The Fishel Company $13,000.00
(Defense: If this invoice is paid by the Employer, please pay the Employer's portion ONLY – NOT the total amount of the invoice.)

Total Fees (combined amongst all parties) $26,000.00

PAYMENT DUE: November 16, 2023

Please return **THIS COPY** with your **PAYMENT** and **INVOICE NUMBER** on Payment.
IF PAYING BY WIRE TRANSFER/ACH, please reference case name and invoice number.
OUR TAX ID NUMBER IS: 82-1691801

PAYMENT BY CHECK SHOULD BE SENT TO (Please note our new mailing address):

Ortman Mediation, Inc.
5100-B1 Clayton Road #368
Concord, California 94521-3165

PAYMENT BY WIRE TRANSFER/ACH SHOULD BE MADE AS FOLLOWS:

Bank Name: Citibank
Account Name: Ortman Mediation, Inc.
Account Number: 208211201
ABA Wire Payment/Routing Number: 321171184
Swift Code: CITIUS33

INVOICE

Briscoe Economics Group, Inc.
2999 Douglas Blvd., STE 180
Roseville, CA 95661
United States

Invoice # 2060
Date: 02/11/2024
Due On: 03/12/2024

Richard Kim
Law Offices of Richard Kim PC
6131 Orangethorpe Ave Suite 370
Buena Park, California 90620

Lopez v The Fishel Company

Type	Date	Notes	Quantity	Rate	Total
Service	01/18/2024	Review/analyze documents/data	0.20	$450.00	$90.00
Service	01/22/2024	Review/analyze documents/data	0.60	$450.00	$270.00
Service	01/22/2024	Prepare time data analysis, shift analysis	5.30	$390.00	$2,067.00
Service	01/23/2024	Prepare exposure analysis	0.10	$450.00	$45.00
Service	01/25/2024	Analyze data	2.30	$390.00	$897.00
Service	01/26/2024	Prepare exposure analysis	0.20	$450.00	$90.00
Service	01/31/2024	Prepare exposure analysis	1.50	$450.00	$675.00
Service	01/31/2024	Prepare time data analysis, shift analysis	2.30	$390.00	$897.00
Service	02/01/2024	Review/analyze documents/data	0.30	$450.00	$135.00
Service	02/02/2024	Prepare time data analysis, shift analysis	0.40	$390.00	$156.00
Service	02/04/2024	Prepare exposure analysis	1.10	$450.00	$495.00
Service	02/05/2024	Prepare exposure analysis, telecon	0.80	$450.00	$360.00
Service	02/05/2024	Prepare time data analysis, shift analysis, telecon/ meeting	1.20	$390.00	$468.00
Service	02/06/2024	Prepare exposure analysis	0.70	$450.00	$315.00
				Total	**$6,960.00**

Please make all amounts payable to: Briscoe Economics Group, Inc.

Federal Tax ID Number: 81-3793020

Payment is due within 30 days. A late payment fee may be charged at 1.0% per month on any unpaid amount past the payment terms.

Exhibit K

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county of Orange, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 6131 Orangethorpe Ave., Suite 370, Buena Park, CA 90620

On the date listed below, I served the following:

MOTION FOR FINAL APPROVAL OF SETTLEMENT PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT OF 2004; DECLARATION OF RICHARD KIM

On the following person(s) in this action:

Labor and Workforce Development Agency
800 Capital Mall, Suite 5000
Sacramento, CA 95814

[ ] BY MAIL: By sealing the envelope and placing it for collection and mailing with postage fully prepared in accordance with ordinary business practices.

[X] BY ELECTRONIC SUBMISSION: I caused the document to be uploaded onto LWDA PAGA website.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: October 4, 2024

Richard Kim
RICHARD KIM

Exhibit L

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county of Orange, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 6131 Orangethorpe Ave., Suite 370, Buena Park, CA 90620

On the date listed below, I served the following:

SUPPLEMENTAL BRIEF IN SUPPORT MOTION FOR FINAL APPROVAL OF SETTLEMENT PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT OF 2004; SUPPLEMENTAL DECLARATION OF RICHARD KIM

On the following person(s) in this action:

Labor and Workforce Development Agency
800 Capital Mall, Suite 5000
Sacramento, CA 95814

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Dated: October 4, 2024

Richard Kim
RICHARD KIM