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7 Attorneys for Plaintiff ANJOLIE TATE
8 on behalf of the State of California,
9 and others similarly situated and aggrieved

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ALAMEDA**

13 ANJOLIE TATE on behalf of the State of
California, and others similarly situated and
14 aggrieved,

15 Plaintiff,

16 v.

17
18 CASPER SLEEP, INC., a Delaware
Corporation; and DOES 1-100, inclusive,

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20 Defendants.
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Case No.: 23CV031523

**DECLARATION OF BRANDON
BROUILLETTE IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: September 18, 2024

Time: 3:00 p.m.

Dept.: 20

1 I, BRANDON BROUILLETTE, declare as follows:

2 1. I am an attorney duly licensed to practice in California and before this Court, and I a
3 partner with Crosner Legal, P.C., counsel of record for Plaintiff Anjolie Tate in the above-captioned
4 matter. If called to testify as to the facts within, I would and could competently do so.

5 2. Attached hereto as Exhibit 1 is a true and correct, fully-executed copy of the Parties'
6 Class Action and PAGA Settlement Agreement. Attached hereto as Exhibit 2 is a true and correct
7 copy of Plaintiff's February 10, 2023 notice letter to the Labor & Workforce Development Agency
8 and proof of submission. Attached hereto as Exhibit 3 is a true and correct of Plaintiff's proof of
9 submission of the proposed settlement to the LWDA via its online portal.

10 3. After inquiry to all other attorneys at my firm, I am unaware of any other class or
11 representative action against Defendant that would be impacted by proposed settlement in this
12 matter, or that would have any overlapping claims.

13 **BACKGROUND**

14 4. Defendant Casper is a retailer of sleep products both online and in retail locations.
15 Casper sells its products through hundreds of retailers nationwide. This case concerns the employees
16 at Casper's twelve direct retail locations in California. Plaintiff Anjolie Tate worked for Casper from
17 approximately April 2021 to April 2022, as a full-time, non- exempt, hourly employee. Plaintiff
18 worked as an assistant manager in two of Casper's retail locations in Los Angeles and Torrance,
19 California.

20 5. After exhausting administrative remedies with the Labor & Workforce Development
21 Agency ("LWDA"), on April 23, 2023, Plaintiff filed PAGA-only complaint against Defendant
22 seeking civil penalties for alleged Labor Code violations including : (1) failure to pay all wages due,
23 including minimum and overtime wages (2) failure to provide all required meal and rest breaks or
24 compensation in lieu thereof; (3) failure to reimburse business expenses, (4) failure to provide
25 accurate, itemized wage statements; and (4) failure to pay all wages due upon termination of
26 employment. Plaintiff also asserted some additional claims under PAGA, such as failure to provide
27 suitable seating and requiring employees to enter into unlawful employment agreements, and for
28 which there is no class-wide right of action such as a claim for unlawful background checks.

1 6. Casper Sleep has at all times denied Plaintiff's allegations and maintained its meal
2 and rest break and payroll policies and procedures comply with California law, that it paid
3 employees all wages due at the correct hourly rates, and provided them with required meal and rest
4 breaks or paid the required compensation for any documented meal/rest violations. Defendant also
5 contends there would be no need for any class member to use their own phone on company business
6 and therefore no reimbursement is owed. Additionally, Casper Sleep strongly contends the case
7 cannot be maintained as a representative action, arguing for example that to the extent class
8 members missed meal and/or rest breaks, or that such breaks were non-compliant, it was intermittent
9 and infrequent and evidence of such missed breaks would be anecdotal, and therefore individualized
10 issues would predominate. As with all of Plaintiff's class claims, Defendant disputed liability on the
11 additional PAGA claims for lack of seating, unlawful agreements, etc., in their entirety.

12 7. After Plaintiff filed her complaint, the Parties initiated discovery and, after meeting
13 and conferring regarding discovery, law and motion, and other case management issues, agreed to
14 attempt mediation. The Parties also agreed on a protocol for an exchange of substantial documents
15 and information before the mediation to facilitate the settlement discussions. Consequently,
16 Plaintiff's counsel reviewed payroll records, compensation plans, personnel policies/handbooks,
17 meal and rest break policies, personnel files, and Class Member paystubs and time records. Plaintiff
18 then had those records analyzed by Berger Consulting Group to look for, inter alia, violation rates
19 for missed, late and/or short meal breaks, potential damages from unpaid overtime, etc. Defendant
20 also provided data regarding the total number of putative class members, the estimated total amount
21 of workweeks and pay periods they worked, average pay rates, and information regarding other non-
22 hourly compensation, among other relevant data.

23 8. The Parties then engaged Steve Cerveris, Esq., a respected professional neutral with
24 substantial wage and hour and class action experience and, in November 2023, the Parties
25 participated in a full day mediation with Mr. Cerveris. Throughout the day, the arms-length
26 negotiations were hard-fought and adversarial as the Parties exchanged extensive information on
27 their legal and factual positions, and made numerous offers and counter-offers. After a full day of
28 negotiations, the Parties finally reached agreement on all major issues. The Parties then

1 collaboratively drafted the Class Action and PAGA Settlement Agreement (“Settlement
2 Agreement”) setting forth the settlement terms now before the Court for approval.

3
4 9. Finally, with the mediator’s assistance, the Parties agreed to settle Plaintiff’s claims
5 on both a class-wide and PAGA basis and, accordingly Plaintiff filed a first amended complaint
6 alleging class action allegations consistent with the same alleged Labor Code violations set forth
7 in the initial PAGA-only complaint.

8 **THE PROPOSED SETTLEMENT TERMS**

9 10. Under the settlement, Casper Sleep will pay \$295,000 into a common fund, the
10 Gross Settlement Amount (“GSA”). Attorney’s fees of up to \$98,333.33 (1/3 of the GSA),
11 litigation costs of up to \$12,500, settlement administration costs of no more than \$8,000, a service
12 award to Plaintiff of no more than \$10,000, and PAGA civil penalties in the amount of \$40,000,¹
13 all will be paid from the GSA. The balance of around \$136,167 will be allocated pro rata to the
14 Class Members based on their weeks worked during the Class Period. No portion of the GSA will
15 revert to Casper Sleep.

16 11. The settlement provides for conditional certification of a settlement class including
17 all persons employed by Defendant in California and classified as non-exempt who worked for
18 Defendant during the Class Period of February 10, 2022 to January 15, 2024. The Settlement Class
19 consists of about 171 individuals.

20 12. As noted, the settlement obligates Casper Sleep to pay \$295,000 to resolve the
21 Settlement Class’s claims, inclusive of attorney’s fees and costs. At least \$136,167 from the GSA
22 will be distributed to the Participating Class Members. This is a cash settlement that does not require
23 Participating Class Members to submit a claim form to receive their settlement share. Participating
24 Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty
25 percent of each settlement share will be allocated to wages and the remaining eighty percent will be
26 allocated to expenses, penalties and interest, which allocation is consistent with Casper Sleep’s
27 potential liability. Casper Sleep will pay any and all applicable employer-side payroll taxes

28 ¹ Consistent with PAGA, 75% of that sum, or \$30,000, will go to the LWDA and the remaining 25%, or \$10,000, will
be distributed pro rata to the Aggrieved Employees (as defined in the Settlement Agreement).

1 separately and in addition to the GSA. Subject to the Court's approval, any amounts not claimed
2 (because a class member does not cash their settlement check) will be forwarded to the East Bay
3 Community Law Center as the proposed *cy pres* beneficiary.

4 13. Each Participating Class Member will receive a share of the Net Settlement Amount
5 based on his or her total weeks worked in California by Casper Sleep during the Class Period while
6 employed as a non-exempt employee. Thus, each Class Member's Individual Settlement Payment
7 will be calculated using criteria typically used in determining appropriate amounts of unpaid wages,
8 unpaid premium wages for missed meal and rest breaks, unreimbursed expenses, and potential
9 statutory penalties under applicable law. These methods are intended to ensure each Class Member
10 receives a settlement award corresponding to the relative value of their potential claims. The
11 proposed allocation provides a reasonable way to compensate Class Members based on the amount
12 of time they worked for Casper Sleep in California. I currently estimate the average gross award
13 will be around \$796.00.

14 14. Subject to the Court's approval, the Parties have agreed on Phoenix Settlement
15 Administrators ("Phoenix") as the Settlement Administrator. Phoenix is qualified and has significant
16 experience administering class action settlements, including numerous wage and hour matters.
17 Phoenix's fees and costs will not exceed \$8,000.00. If the Court approves less than the above
18 amount, the difference will remain in the Net Settlement Amount for distribution to the Participating
19 Class Members.

20 15. The proposed Notice of Class Action Settlement (Exhibit A to the Settlement
21 Agreement) sets out information about this case and explains the basic settlement terms in plain
22 language. The Notice also sets forth the individualized information used to calculate Class
23 Members' Individual Settlement Payments and each Class Member's estimated settlement award.
24 The Notice likewise details the procedures for Class Members to dispute their individual
25 information, the procedure for submitting an objection to the Settlement, the procedure to request
26 exclusion, and the fact that any final judgment will bind all class members who do not opt out. In
27 sum, the Notice provides the Class Members with the information necessary to evaluate the
28 Settlement and decide to participate in, opt out of, or object to the proposed Settlement, and meets

1 all requirements imposed by the California Rules of Court. Coupled with the notice procedure,
2 the Notice provides the best notice practicable.

3 16. Class Members will have sixty (60) days to dispute the information in their Notice
4 used to calculate their settlement award, and also have 60 days to submit any objections to the
5 settlement or to request exclusion. If a Class Member disputes their individual information, the
6 Settlement Administrator will review the Class Member's records and any other information
7 submitted, and make a final determination.

8 17. All Participating Class Members will release Casper Sleep from all claims alleged
9 in the operative complaint, or that could have been brought based on the factual allegations in the
10 complaint during the Class Period. The release is limited to the claims that were actually pleaded
11 or could have been pleaded based on the alleged facts in the complaint.

12 18. Defendant will not oppose a request for an enhancement award to Plaintiff of not
13 more than \$10,000.00 in recognition of her time spent on this matter, the risks she undertook on
14 behalf of the class, and the benefit conferred to the class, as addressed in her declaration filed
15 herewith. If the Court approves less than the above amount, the difference will remain in the Net
16 Settlement Amount for distribution to the Participating Class Members.

17 19. The terms of the Parties' settlement also allow Plaintiff's counsel to apply for an
18 award of attorney's fees of up to one-third of the GSA, or \$98,333.33 and reimbursement of actual
19 costs and expenses of up to \$12,500.00. At final approval, my office will submit a request for
20 attorney's fees and actual litigation costs per the terms of the Settlement Agreement and
21 applicable law, and will provide the Court with appropriate information and evidence regarding
22 hourly rates, tasks performed, and time expended on the case. If the Court approves less than the
23 above amounts, the difference will remain in the Net Settlement Amount for distribution to the
24 Participating Class Members.

25 20. As noted, the Parties allocated \$40,000 of the GSA to alleged civil penalties under
26 PAGA, and I request the Court approve that amount as fair, reasonable, and adequate, and
27 consistent with PAGA's underlying purposes. As required by Labor Code section 2699(1)(2), my
28

1 office submitted the Settlement Agreement and this motion to the LWDA via its online portal, and
2 as reflected on the accompany proof of service.

3 **CONDITIONAL CLASS CERTIFICATION**

4 21. In the present matter, conditional certification is proper since this matter satisfies
5 all requirements for class certification under Code of Civil Procedure section 382. First, the class
6 is both sufficiently numerous, consisting of approximately 171 individuals, and ascertainable by
7 reference to Defendant's personnel and payroll records.

8 22. Next, Plaintiff is an adequate class representative, as her claims do not conflict with
9 and are not antagonistic to the claims of other class members. Further, her claims are typical as
10 she is a member of the class and her claims arise from the same employment practices and course
11 of conduct giving rise to the claims of the other class members.

12 23. Common questions of law and fact predominate – particularly for purposes of a
13 settlement class – as the Class Members all were paid via substantially similar compensation plans
14 that underpaid them for overtime hours worked, and subject to the same policies that resulted in
15 missed/non-compliant meal and rest periods. Since the focus of the claims against Casper Sleep
16 concerns the legality of common policies applied uniformly to the entire class, common issues
17 predominate over individualized inquiries concerning liability. For instance, Casper Sleep's
18 compensation plans either properly paid the class members for overtime hours worked or they did
19 not. Regardless of this determination, it will decide liability for all Class Members one way or
20 another. Similarly, Defendant's meal and rest break policies either resulted in de facto violations
21 or they did not, which question can be answered for all class members.

22 24. Resolving this matter as a class action is superior to other available means for the
23 fair and efficient adjudication of this controversy for multiple reasons, including inter alia: (a)
24 individual joinder of all members of the class is impractical, (b) class action treatment will permit
25 a large number of similarly situated persons to resolve their common claims in a single forum
26 simultaneously, efficiently, and without unnecessary duplication of effort and expense; and (c) the
27 damages suffered by many of the individual class members are relatively small and the expenses
28

1 and burden of individual litigation would make it difficult or impossible for them to seek redress
2 on their own.

3 **KULLAR/DUNK FACTORS**

4 25. Prior to mediation, the Parties engaged in both formal and informal discovery to
5 facilitate settlement discussions. Plaintiff reviewed documents and information, including but not
6 limited to, regarding Casper Sleep's payroll practices, Plaintiff's pay stubs, timecards, and personnel
7 file, a class list, time and pay data for PAGA period, relevant policies, and arbitration agreements,
8 as well as information from Defendant regarding class size and breakdown, work weeks/pay periods,
9 rates of pay, and other information (extrapolated through mediation) used to formulate a damages
10 model with the assistance of a consulting expert. I am confident we obtained sufficient information
11 to understand the law and facts of this case and make an informed decision regarding the proposed
12 settlement and whether it is fair and reasonable. Through the information exchanged and analysis
13 undertaken, Plaintiff weighed the risks of continued litigation against the benefits of the proposed
14 settlement and determined settlement to be the most reasonable option.

15 26. Using that data, Plaintiff and her experts ran various calculations and estimated
16 Defendant's total class-wide liability at about \$1,333,000, as follows: about \$12,000 in unpaid
17 wages on the regular rate issue, \$66,000 on the meal break claims, \$508,000 on the rest break claims,
18 \$24,000 on the expense reimbursement claim, \$246,000 on the wage statement claim, and about
19 \$477,000 in waiting time penalties.

20 27. We calculated these amounts as follows:

21 Regular Rate Issue/Underpaid Overtime, Sick Pay, Premium Pay

22 \$11,950 as calculated by Plaintiff's expert

23 Meal Break Violations

24 16,645 shifts * 15% unique violation rate * \$26.42/avg. regular rate = \$65,964

25 Rest Break Violations

26 19,229 shifts * 100% violation rate * \$26.42/avg. regular rate = \$508,030

27 Expense Reimbursement

28 4,827 work weeks * \$5/work week = \$24,135

1 Wage Statement Violations

2 171 initial violations * \$50/violation + 2,373 subsequent violations * \$100/violation = \$245,850

3 Waiting Time Penalties

4 82 former employees * (240 hours * \$24.23/avg base hourly rate) = \$476,846

5 28. First, on the unpaid wage claims, Plaintiff first contends Casper Sleep failed to
6 correctly calculate the class members “regular rate of pay” by failing to incorporate all required
7 forms of compensation, such as commissions and bonuses, into the calculation. Here, Plaintiff
8 alleges that since Casper Sleep failed to correctly calculate the regular rate in would up
9 undercompensating employees for overtime, sick time, and break premiums. In response,
10 Defendant argued that its overtime pay policies fully compensated the class members, and further argued
11 there was very little in the way of bonus pay that would even trigger an obligation calculate the regular
12 rate.

13 29. On the meal break claims, Plaintiff focused primarily on Defendant’s alleged failure
14 to maintain a California-compliant break policy and to provide Plaintiff and the class members with
15 all required meal periods, particularly for second meal periods on shifts lasting longer than 10 hours.
16 In fact, Plaintiff’s expert’s review of the records provided by Defendant suggests that some 45% of
17 pay periods, and about 15% of all shifts, contained at least one unique meal period violation (i.e.,
18 missed, late, or short), and that over 90% of shifts of 10+ hours failed to reflect a second meal period.

19 30. Defendant’s review of records revealed a drastically different violation rate of 18%
20 (without premium pay being taken in to account) and 12% (with premium pay taken into account)
21 during the relevant time period. Defendant further noted that in many instances actually took their
22 meal break (including second meal breaks) even if not reflected on the time sheets and, accordingly,
23 class certification is not appropriate because individual inquiries would be necessary to determine
24 this question. For the same reasons, Defendant contended the claim would fail on the merits because
25 it would be difficult for Plaintiff to show Defendant’s actual or constructive knowledge that a
26 particular class member worked through a specific lunch period. Defendant also contended it
27 maintained a fully-compliant meal break policy at all times, and it always provided the class
28 members with the opportunity to take meal breaks and thus met the requirements imposed by

1 California law. Per Defendant, if individuals did not take a meal period, it was in violation of
2 company policy and, once again, a multitude of individual inquiries would be necessary to determine
3 if an individual may have missed a meal break, or take a late or short break, by personal choice or
4 for some other reason.

5 31. On the rest break claim, Plaintiff claimed Defendant's written policy failed to inform
6 employees that rest breaks had to be for a net 10 minutes to be compliant, which failure directly
7 impacted Class Member rest breaks. Thus, per Plaintiff, this failure to communicate that the rest
8 break is a *net* ten minutes resulted in non-compliant breaks. Defendant countered that it is only liable
9 if Plaintiff can prove, on a shift-by-shift basis, that Class Members actually did not take a fully-
10 compliant rest break based on Plaintiff's theory of liability advanced above. This arguably would
11 have made class certification more difficult and/or rendered trial unmanageable.

12 32. The claims for unreimbursed business expenses under Labor Code § 2802 revolved
13 around Plaintiff's allegations that Casper Sleep required its non-exempt employees to use their
14 personal cell phones for business purposes including communicating with supervisors and co-
15 workers, all without reimbursement for these business expenses. In response, Defendant argued
16 there was no need for employees to use personal phones for legitimate work purposes, and that any
17 such use would have been purely for personal convenience. Thus, per Casper Sleep, use of personal
18 phones wasn't necessary and therefore not reimbursable.

19 33. Plaintiff's claims for penalties under Labor Code §§ 203 and 226 are derivative of
20 the underlying unpaid minimum and overtime wage and meal/rest break claims and, accordingly,
21 they would essentially rise or fall with Plaintiff's success or failure on her primary claims. Further,
22 Plaintiff had to account for the discretionary nature of such awards and the "good faith" and other
23 defenses available to Defendant. Defendant also raised a good faith defense to the waiting time
24 penalties as it applies to both meal/rest periods and underpaid overtime premiums.

25 34. As far as potential PAGA liability, the alleged aggrieved employees theoretically are
26 entitled to penalties totaling about \$1.15 million should Plaintiff prevail on all claims, establish
27 violations of the multiple Labor Code sections at issue, and secure the maximum penalty on all
28 issues and for all pay periods at issue. As with the class claims, Plaintiff discounted the potential

1 PAGA penalties based on Defendant's various defenses on the merits and also accounted for the
2 Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Accordingly,
3 the Parties allocated \$40,000 to PAGA penalties. I submit this amount is reasonable under the
4 circumstances and in line with comparable settlements in other wage and hour class actions in
5 California. Additionally, the LWDA has been informed of the terms of the PAGA portion of the
6 settlement, and will be able to weigh in as necessary.

7 35. Overall, Defendant raised various defenses to Plaintiff's claims on both class
8 certification and the merits that, if successful, could have negatively impacted Plaintiff's claims or
9 potentially reduced potential damages. Accordingly, Plaintiff faced significant risks going forward
10 with this litigation, and given the need to secure and maintain class certification, prevail at trial,
11 and deal with post-trial appeals, it would have taken years to realize any recovery in this action.
12 Plaintiff and counsel discounted the value of the class claims consistent with the risks discussed
13 above, and carefully weighed the likelihood of the class receiving substantially greater benefit if
14 the litigation continued. Plaintiff and counsel concluded – in light of these very real and
15 substantial risks – settlement on the proposed terms and without prolonged and costly litigation
16 was in the best interests of the class. The overall \$295,000 recovery represents a significant
17 percentage of Defendant's potential exposure and, given the multiple litigation risks addressed
18 above, a total recovery for the class of \$295,000, with an average award of some \$786 per class
19 member, is a fair result within the range of reasonableness considering all potential outcomes.

20 36. I am a graduate of Loyola Law School, Los Angeles, from which I received a *juris*
21 *doctorate* degree in 2009. Prior to attending law school, I attended the University of Southern
22 California, from which I received a *bachelors of science* in Business Administration in 2006.

23 37. I have been a Partner at Crosner Legal since February 1, 2023. Prior to joining
24 Crosner Legal, I was a Senior Associate and Team Director of a Wage and Hour Litigation Team
25 at Capstone Law APC, which I originally joined as an associate attorney in May 2016.

26 38. Since being admitted to the California State Bar in 2010, my entire legal career has
27 been dedicated to protecting employee and consumer rights through the prosecution of class action
28 and representative actions filed on behalf of plaintiffs in class actions and statewide representative

1 actions. Throughout my career I have managed or co-managed more than 100 class action and
2 PAGA representative cases, from initial filing of the complaint through final resolution.

3 39. In particular, I have served as class counsel in several certified class action cases,
4 including:

- 5 a. *Party City Wage and Hour Cases*, JCCP4781 (class counsel for certified class of non-
6 exempt hourly employees who worked for Defendants in California)
- 7 b. *Lewis v. Express Messenger Systems*, Los Angeles Superior Court Case No. BC501521
8 (class counsel for certified class of last-mile delivery drivers who were alleged to be
9 misclassified as independent contractors)
- 10 c. *Ramirez-Vivar v. Grifols Diagnostic Solutions, Inc., et al.*, Alameda County Superior
11 Court, Case No. RG21099519 (class counsel for certified classes of non-exempt hourly
12 employees who worked for Defendants in California)
- 13 d. *Jones v. LA Live*, Los Angeles County Case No. BC687908 (class counsel for certified
14 issue classes consisting of hourly employees who worked at Staples Center and Nokia
15 Theater)

16 40. The following is a representative sample of settlements in wage and hour class
17 action and PAGA representative cases in which I was listed as an attorney of record and either
18 managed, or co-managed with attorneys at my firm and other co-counsel:

- 19 e. *Cruz v. Walmart*, Los Angeles County Super. Ct. Case No. 18STCV03128 (\$15 million
20 global PAGA settlement on behalf of hourly employees statewide for alleged Labor
21 Code violations.)
- 22 f. *Vorise v. 24 Hour Fitness USA, Inc.*, Contra Costa County Super. Ct., Case No. C 15-
23 02051 (\$11 million global PAGA settlement on behalf of over 36,000 employees for
24 Labor Code violations.)
- 25 g. *Gross v. Sodexo*, Kern County Super Ct., Case No. BCV-18-101746 Capstone (\$4.75
26 million class and PAGA settlement on behalf of class of non-hourly employees for
27 Labor Code violations.)
- 28 h. *Campbell v. AEG* (\$1.8M class and PAGA settlement on behalf of group of hourly

- employees who worked at concert venues in California for alleged Labor Code violations)
- i. *Fiebelkorn v. AEG*, et al. Los Angeles Superior Court Case No. BC717337 (\$1.75M class settlement on behalf of group of hourly employees who worked at Oakland Coliseum for alleged Labor Code violations)
 - j. *Amaro v. Anaheim Arena Management*, Orange County Superior Court Case No. 30-2017-00917542 (\$2,212,500 class and PAGA settlement on behalf of group of hourly employees who worked at Honda center in Anaheim California for alleged Labor Code violations)
 - k. *Espindola v. Panda Express*, San Bernardino Superior Court Case No. CIVDS1931455 (\$3.125M class and PAGA settlement on behalf of hourly employees statewide for alleged Labor Code violations)
 - l. *Gold v. Benihana*, San Diego Court Superior Court Case No. 37-2016-00022320-CU-OE-NC (\$2.25M class and PAGA settlement on behalf of hourly employees statewide for alleged Labor Code violations)
 - m. *Party City Wage and Hour Cases*, JCCP4781 (\$6.5M class and PAGA settlement on behalf of hourly employees statewide for alleged Labor Code violations)
 - n. *Lewis v. Express Messenger Systems*, Los Angeles County Super Court Case No. BC501521 (\$10.5M class and PAGA settlement on behalf of a statewide group of independent contractor last-mile delivery drivers alleged to be misclassified)
 - o. *Flores v. Tesla*, Alameda County Superior Court Case No. RG18907072 (\$4M class and PAGA settlement on behalf of statewide group of hourly employees for alleged Labor Code violations)
 - p. *Ruiz v. Disney Stores*, San Bernardino Superior Court Case No. CIVDS2016983 (\$2M class and PAGA settlement on behalf of statewide group of hourly employees who worked at retail stores in California for alleged Labor Code violations)
 - q. *Ramirez v. Yin Management*, Sacramento County Superior Court Case No. 34-2021-00301530 (\$1.8M class and PAGA settlement on behalf of statewide group of hourly

employees who worked at Defendant's McDonald's franchises in California for alleged Labor Code violations).

- r. *Suhartono v. RRG Besh*, Los Angeles County Superior Court Case No. 19STCV22184 (\$2.25 class and PAGA settlement on behalf of statewide group of hourly employees who worked at Defendant's McDonald's franchises in California for alleged Labor Code violations).
- s. *Gomes v. Kura Sushi*, Los Angeles County Superior Court Case No. 19STCV18977 (\$1.75M class and PAGA settlement on behalf of statewide group of hourly employees who worked at Defendant's restaurants in California for alleged Labor Code violations)
- t. *Saldana v. Hydrochem*, Contra Costa Superior Court Case No. CIVMSC19-02624 (\$1.38M class and PAGA settlement on behalf of statewide group of hourly employees for alleged Labor Code violations).

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

- u. *Lopez v. Seterus, et al.*, Los Angeles Superior Court Case No. BC484297 (\$3M Class settlement on half of thousands of borrowers in California, Florida, and Texas for UCL violations premised on improper late fee collections)
- v. *McGill v. Citibank*, Riverside County Superior Court Case No. RIC 1109398 (in landmark case that established the 'McGill rule' precluding the waiver of public injunctive relief in pre-dispute arbitration agreements, negotiated confidential settlement on behalf of consumer who sued for damages and class injunctive relief stemming from marketing of credit protector plan)

42. Finally, I have been selected by my peers as a Super Lawyers 'Rising Star' every year since 2016 through 2022, which is a recognition that is provided to only 2.5% of active lawyers practicing within the State of California

43. Zachary Crosner is a 2010 graduate of University of San Diego School of Law. He has some thirteen years of experience as a practicing attorney, all of which have focused on litigation of employment, labor law, consumer, and class action claims. Following graduation, he immediately

1 began working for a nationally recognized plaintiff-side complex litigation firm, CaseyGerry, where
2 he had the fortune of working directly with past presidents of the consumer attorneys and recipients
3 of trial attorneys of the year awards. He also worked for former CAALA and CLAY trial attorney
4 of the year recipient, attorney Conal Doyle, as his sole associate attorney. During his tenure at these
5 firms, he focused on advocating for the rights of consumers and employees in class action litigation,
6 civil rights and employment litigation, catastrophic injuries, insurance bad faith, and appellate
7 litigation.

8 44. In 2013, he founded the law firm of Crosner Legal, P.C., which since its inception
9 has focused almost exclusively on wage and hour class actions and other labor and employment law
10 cases representing plaintiffs. Currently, over ninety percent (90%) of the firm's practice is dedicated
11 exclusively to the prosecution of wage and hour class actions, and the law firm is currently
12 responsible as lead counsel or co-lead counsel for prosecuting well over fifty (50) wage and hour
13 class actions and/or PAGA representative actions in both federal and state courts throughout
14 California.

15 45. Mr. Crosner currently is an executive board member of the Wage and Hour
16 Committee and the Legislative Committee for the California Employment Lawyers Association; a
17 member of the Grassroots Advocacy Team for the National Employment Lawyers Association;
18 Wage and Hour Committee member and Class Action Committee member for the National Trial
19 Lawyers; a member of the American Association for Justice; and a member of the Pound Civil
20 Justice Institute. He also was selected by Super Lawyers as a "Southern California Rising Star" for
21 employment and labor law for 2018-2020.

22 46. Jamie Serb graduated from the University of California, San Diego in 2004 and
23 graduated from California Western School of Law in 2013, and has been a member of the California
24 Bar since 2013. She gained extensive experience in wage and hour litigation, beginning work as a
25 class action attorney in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm,
26 APLC; Turley Law Firm, APLC). She joined Crosner Legal on January 4, 2021 as an associate
27 attorney. She has handled wage and hour class actions and PAGA lawsuits for over six (6) years
28 and has assisted in obtaining millions of dollars for employees during her years of practice.

1 47. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
2 action settlements while serving as lead class counsel in recent years, including but not limited to a
3 \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America, Inc.*,
4 Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action settlement
5 in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252 (Sacramento
6 Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017 (*Montelone v. Ocean*
7 *Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a \$1.8 million wage and
8 hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc. dba American*
9 *Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and hour class action
10 settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160 JGB (C.D. Cal.)), a
11 \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham Vacation*
12 *Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million wage and
13 hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-CV-04864-
14 YGR (N.D.Cal.)); a \$7.25 million wage and hour class action settlement in 2020 in *Avina, et al. v.*
15 *First Alarm Security & Patrol, Inc.*, Case No. 18CV323753 (Santa Clara Cty. Super Ct.); a \$2.2
16 million wage and hour class action settlement in 2021 (*Ghorchian, et al. v. West Hills Hospital, et*
17 *al.*, Case No. LS029737 (Los Angeles Cty. Super. Ct.)); a \$2.85 million dollar wage and hour
18 settlement in 2021 (*Valencia v. The Original Mowbray's Tree Service, Inc.*, Case No.
19 CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1 million wage and hour class action
20 settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super.
21 Ct.)), a \$1.4 million wage and hour class action settlement in 2023 in *Correa, et al. v. FedEx Supply*
22 *Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.)), a \$2.38 million wage and
23 hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case No.
24 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million wage and hour class action settlement
25 in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino Cty. Super.
26 Ct.); \$1.015 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo Autism*
27 *Therapy*, Case No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a \$1.15 million wage and
28 hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*, Case No.

1 21STCV18512 (Los Angeles Cty. Super. Ct.); a \$1.5 million wage and hour class action settlement
2 in *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty. Super. Court); a \$1.3
3 million wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*, Case No.
4 20STCV06618 (Los Angeles Cty. Super. Court); a \$1.925 million wage and hour class settlement
5 in 224 in *Lo v. Cyberpower, Inc.*, Case No. 21STCV31479 (Los Angeles Cty. Super. Ct); and a
6 \$1.19 million dollar wage and hour class action settlement in 2024 in *Herrera v. Signature Flight*
7 *Support LLC*, Case No. 22STCV18367 (Los Angeles Cty. Super. Ct.).

8 48. For all the foregoing reasons, I believe the settlement is fair, reasonable, and in the
9 best interests of the class.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct. Executed this 26th day of August 2024, at Los Angeles, California.

12
13 
14 _____
15 Declarant
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EXHIBIT

1

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ANJOLIE TATE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

ANJOLIE TATE on behalf of the State of
California, and others similarly situated and
aggrieved,

Plaintiff,

v.

CASPER SLEEP, INC., a Delaware
Corporation; and DOES 1-100, inclusive,

Defendants.

Case No. **23CV031523**

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND CLASS
NOTICE**

Assigned to the Hon. Karin Schwartz
Dept.: 20

Action Filed: April 23, 2023

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Anjolie Tate Plaintiff”) and defendant Casper Sleep, Inc. (“Defendant”). The
3 Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

4 **1. DEFINITIONS.**

5 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations
6 against Defendant captioned *Anjolie Tate v. Casper Sleep, Inc.* initiated on April 18, 2023, and
7 pending in Superior Court of the State of California, County of Alameda, Case No. 23CV031523.
8 As provided in paragraph 2.5, the Action will be amended to include class claims predicated on
9 the wage and hour violations alleged in the underlying PAGA lawsuit during the PAGA Period.

10 1.2. “Administrator” means Phoenix Class Action Settlement Administration, the
11 neutral entity the Parties have agreed to appoint to administer the Settlement.

12 1.3. “Administration Expenses Payment” means the amount the Administrator will be
13 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
14 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
15 with Preliminary Approval of the Settlement.

16 1.4. “Aggrieved Employee” means person employed by Defendant in California and
17 classified as a non-exempt who worked for Defendant during the PAGA Period.

18 1.5. “Class” means all persons employed by Defendant in California and classified as
19 non-exempt who worked for Defendant during the Class Period.

20 1.6. “Class Counsel” means Brandon Brouillette, Jamie Serb, and Zachary Crosner of
21 Crosner Legal, PC.

22 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
23 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
24 expenses, respectively, incurred to prosecute the Action.

25 1.8. “Class Data” means Class Member identifying information in Defendant’s
26 possession including the Class Member’s name, last-known mailing address, Social Security
27 number, as well as the total number of Workweeks and PAGA Pay Periods by that Class Member,
28 calculated based on their time and payroll records.

1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member 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 Class Members.

1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. “Class Period” means the period from February 10, 2022, until the earlier of: (a) January 15, 2024, or (b) the date upon which the Court grants preliminary approval of the settlement date.

1.13. “Class Representative” means the named Plaintiff in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. “Court” means the Superior Court of California, County of Alameda.

1.16. “Defendant” means Casper Sleep, Inc.

1.17. “Defense Counsel” means Vandana Kapur, Stephen Franz, and Raina Singer of Davis Wright Tremaine, LLP.

1.18. “Effective Date” means the date when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for

1 filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the
2 day after the appellate court affirms the Judgment and issues a remittitur.

3 1.19. "Final Approval" means the Court's order granting final approval of the
4 Settlement.

5 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final
6 Approval of the Settlement.

7 1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final
8 Approval of the Settlement.

9 1.22. "Gross Settlement Amount" means \$295,000 which is the total amount Defendant
10 agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross
11 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments,
12 the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative
13 Service Payment and the Administrator's Expenses.

14 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share
15 of the Net Settlement Amount calculated according to the number of Workweeks worked during
16 the Class Period.

17 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of
18 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked
19 during the PAGA Period.

20 1.25. "Judgment" means the judgment entered by the Court based upon the Final
21 Approval.

22 1.26. "LWDA" means the California Labor and Workforce Development Agency, the
23 agency entitled, under Labor Code section 2699, subd.(i).

24 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the
25 LWDA under Labor Code section 2699, subd.(i).

26 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following
27 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
28 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel

1 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
2 paid to Participating Class Members as Individual Class Payments.

3 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
4 Settlement by sending the Administrator a valid and timely Request for Exclusion.

5 1.30 “PAGA” means the California Private Attorney General Act of 2004 (Labor Code
6 §§ 2698. *et seq.*).

7 1.30. “PAGA Notice” means Plaintiff’s February 10, 2023 letter to Defendant and the
8 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

9 1.31. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee
10 worked for Defendant for at least one day during the PAGA Period.

11 1.32. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from
12 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$10,000) and the 75%
13 to LWDA (\$30,000) in settlement of PAGA claims.

14 1.33. “PAGA Period” means the period from February 10, 2022, until the earlier of: (a)
15 January 15, 2024, or (b) the date upon which the Court grants preliminary approval of the
16 settlement date.

17 1.34. “Participating Class Member” means a Class Member who does not submit a valid
18 and timely Request for Exclusion from the Settlement.

19 1.35. “Plaintiff” means Anjolie Tate.

20 1.36. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval
21 of the Settlement.

22 1.37. “Released Class Claims” means the claims being released as described in
23 Paragraph 5.2 below.

24 1.38. “Released PAGA Claims” means the claims being released as described in
25 Paragraph 5.3 below.

26 1.39. “Released Parties” means: Defendant and each of its former and present
27 subsidiaries, affiliates, parents, agents, employees, members, investors, partners, owners,
28

1 directors, officers, attorneys, trustees, insurers, representatives, predecessors, successors, assigns,
2 shareholders, owners, and members.

3 1.40. "Request for Exclusion" means a Class Member's submission of a written request
4 to be excluded from the Class Settlement signed by the Class Member.

5 1.41. "Response Deadline" means 60 days after the Administrator mails Notice to Class
6 Members and Aggrieved Employees, and will be the last date on which Class Members may: (a)
7 fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or
8 her Objection to the Settlement. Class Members to whom Notice Packets are resent after having
9 been returned undeliverable to the Administrator will have an additional 14 calendar days beyond
10 the Response Deadline has expired.

11 1.42. "Settlement" means the disposition of the Action effected by this Agreement and
12 the Judgment.

13 1.43. "Workweek" means any seven-day period beginning Sunday at midnight through
14 Saturday at 11:59 p.m. during which a Class Member worked for Defendant for at least one day,
15 during the Class Period.

16 **2. RECITALS.**

17 2.1. On February 10, 2023, pursuant to Labor Code section 2699.3, subd.(a), Plaintiff
18 provided timely written notice to Defendant and the LWDA of her claim that she was entitled to
19 civil penalties under PAGA, including the specific provisions of the Labor Code she contends
20 were violated and the theories supporting her contentions.

21 2.2. On April 23, 2023, Plaintiff filed the PAGA Action against Defendant. The PAGA
22 penalties were sought based on the following underlying claims: (1) failure to pay minimum
23 wages; (2) failure to pay overtime wages; (3) failure to provide and pay meal and rest periods; (4)
24 failure to provide complete and accurate wage statements; (5) failure to produce employment
25 records; (6) failure to maintain accurate and complete payroll and related employment records
26 failure to timely pay wages during employment; (7) failure to reimburse necessary business
27 expenses; (8) failure to provide one day's rest; (9) failure to provide and pay all sick time,
28 including supplemental paid sick leave; (10) failure to provide suitable seating; (11) failure to pay

1 vested vacation and/or paid time off; (12) failure to timely pay wages upon separation of
2 employment; (13) failure to timely pay wages during employment; (14) unlawful inquiries into
3 criminal history in violation of California law, including unlawful criminal or financial
4 background checks; and (15) unlawful employment agreements with unlawful terms or
5 provisions, including but not limited to non-solicitation clauses, non-competes, and PAGA
6 waivers

7 2.3. On November 16, 2023, the Parties participated in an all-day mediation for the
8 Action with mediator Steve Cerveris, which led to this Agreement to settle the Action.

9 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, hundreds of
10 documents relating to Defendant's policies, practices, and procedures regarding paying non-
11 exempt employees all hours worked, meal and rest period policies, payroll, timekeeping, and
12 operational policies. Plaintiff also obtained and reviewed time records, pay records, and
13 information relating to the size and scope of the Class, as well as data regarding the number of
14 weeks worked and pay periods during the Class and PAGA Period. The Parties agree that the
15 above-described investigation and evaluation, as well as the information exchanged during the
16 settlement negotiations, was sufficient to satisfy the criteria for court approval set forth in *Dunk v.*
17 *Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail,*
18 *Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

19 2.5. Pursuant to the Settlement, Plaintiff will file a Stipulation and Proposed Order to
20 File a First Amended Complaint (the "Stipulation") in the Action, seeking leave to amend the
21 Action to add: (1) class claims for the PAGA Period for all factual allegations and theories of
22 liability pled under PAGA; and (2) all factual allegations and theories of liability raised during the
23 mediation, to the extent those factual allegations and theories of liability were not already
24 included in the PAGA notice in this Action. Further, the Stipulation will require that Plaintiff
25 amend its PAGA notice to include such theories and claims. This Agreement is entered into with
26 the understanding that the First Amended Complaint will be the Operative Complaint in the
27 Action, by the time of the Preliminary Approval Hearing.

28 2.6. The Court has not granted class certification.

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

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay \$295,000 and no more as the Gross Settlement Amount (and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments). Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and Aggrieved Employee, respectively). In exchange for this payment, the Class Representative will sign a full and complete general release of all claims, known and unknown, as further detailed in paragraph 5.1 below. Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099.

1 Plaintiff assumes full responsibility and liability for employee taxes owed on the Class
2 Representative Service Payment.

3 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
4 33.33%, which is currently estimated to be \$98,333.33 and a Class Counsel Litigation Expenses
5 Payment of not more than \$12,500.00. Defendant will not oppose Plaintiff's requests for these
6 payments provided they do not exceed these amounts. Plaintiff and/or Class Counsel will request
7 approval of the Class Counsel Fees Payment and Class Litigation Expenses Payment no later than
8 sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class
9 Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts
10 requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released
11 Parties will have no liability to Class Counsel or any other Plaintiff's Counsel arising from any
12 claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses
13 Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel
14 Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility
15 and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation
16 Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute
17 or controversy regarding any division or sharing of any of these Payments.

18 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$
19 \$8,000.00 except for a showing of good cause and as approved by the Court. To the extent the
20 Administration Expenses are less or the Court approves payment less than \$8,000.00, the
21 Administrator will retain the remainder in the Net Settlement Amount.

22 3.2.4. To Each Participating Class Member: An Individual Class Payment
23 calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked
24 by all Participating Class Members during the Class Period; and (b) multiplying the result by each
25 Participating Class Member's Workweeks.

26 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each
27 Participating Class Member's Individual Class Payment will be allocated to settlement of wage
28 claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be

1 reported on an IRS W-2 Form. The remaining 80% of each Participating Class Member's
2 Individual Class Payment will be allocated to settlement of non-wage claims for, e.g., interest and
3 penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage
4 withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full
5 responsibility and liability for any taxes owed on their Individual Class Payment.

6 3.2.4.2. Effect of Non-Participating Class Members on Calculation of
7 Individual Class Payments. Non-Participating Class Members will not receive any Individual
8 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments
9 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

10 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount
11 of \$40,000 will be paid from the Gross Settlement Amount, with 75% (\$30,000) allocated to the
12 LWDA PAGA Payment and 25% (\$10,000) allocated to the Individual PAGA Payments.

13 3.2.5.1. The Administrator will calculate each Individual PAGA
14 Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
15 (\$10,000) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees
16 during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA
17 Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes
18 owed on their Individual PAGA Payment.

19 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
20 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
21 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

22 **4. SETTLEMENT FUNDING AND PAYMENTS.**

23 4.1. Class Workweeks. Defendant estimates there were 4,827 Workweeks during the
24 Class Period.

25 4.2. Class Data. Not later than fifteen (15) days after the Court grants Preliminary
26 Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the
27 form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
28 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes

1 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
2 employees who need access to the Class Data to effect and perform under this Agreement.
3 Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class
4 Data omitted class member identifying information and to provide corrected or updated Class
5 Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant
6 must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use
7 best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or
8 omitted Class Data.

9 4.3. Funding of Gross Settlement Amount. Defendant will fully fund the Gross
10 Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of
11 payroll taxes by transmitting the funds to the Administrator no later than thirty (30) days after the
12 Effective Date.

13 4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after
14 Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all
15 Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the
16 Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation
17 Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class
18 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class
19 Representative Service Payment will not precede disbursement of Individual Class Payments and
20 Individual PAGA Payments.

21 4.4.1. The Administrator will issue checks for the Individual Class Payments
22 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S.
23 Mail, postage prepaid. The face of each check will prominently state the date (not less than 180
24 days after the date of mailing) when the check will be voided. The Administrator will cancel all
25 checks not cashed by the void date. The Administrator will send checks for Individual Settlement
26 Payments to all Participating Class Members (including those for whom Class Notice was
27 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
28 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved

1 Employees (including those for whom Class Notice was returned undelivered). The
2 Administrator may send Participating Class Members a single check combining the Individual
3 Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement
4 Administrator must update the recipients' mailing addresses using the National Change of
5 Address Database.

6 4.4.2. The Administrator must conduct a Class Member Address Search for all
7 Class Members whose checks are returned undelivered without USPS forwarding addresses.
8 Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the
9 USPS forwarding address provided or to an address ascertained through the Class Member
10 Address Search. The Administrator need not take further steps to deliver checks to Class
11 Members whose re-mailed checks are returned as undelivered. The Administrator will promptly
12 send a replacement check to any Class Member whose original check was lost or misplaced,
13 requested by the Class Member prior to the void date.

14 4.4.3. For any Class Member whose Individual Class Payment check or
15 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
16 will transmit the funds represented by such checks to the Parties' selected *cy pres* recipient, East
17 Bay Community Law Center subject to the requirements of California Code of Civil Procedure
18 Section 384, subd. (b).

19 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments
20 will not obligate Defendant to confer any additional benefits or make any additional payments to
21 Class Members (such as 401(k) contributions or bonuses) beyond those specified in this
22 Agreement.

23 **5. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire
24 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of
25 the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release
26 claims against all Released Parties as follows:

27 5.1. Plaintiff's Release. In exchange for the Class Representative Service Payment,
28 Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs,

1 administrators, successors, and assigns generally, release and discharge Released Parties from any
2 and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies,
3 damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and
4 expenses of any nature whatsoever, known or unknown, suspected or unsuspected, whether in
5 tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule,
6 ordinance or regulation, including but not limited to all claims arising out of, based upon, or
7 relating to her employment with Defendant or the remuneration for, or termination of, such
8 employment ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to
9 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
10 benefits, social security benefits, or workers' compensation benefits that arose at any time.
11 Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to,
12 the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that
13 Plaintiff's Release will be and remain effective in all respects, notwithstanding such different or
14 additional facts or Plaintiff's discovery of them.

15 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542.

16 For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions,
17 rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

23 5.2. Release by Participating Class Members Who Are Aggrieved Employees: All

24 Participating Class Members, on behalf of themselves and their respective former and present
25 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
26 Parties from all claims that reasonably relate to or arise out of the factual allegations pled in the
27 Operative Complaint in this Action, including but not limited to PAGA penalties that were
28 alleged, or reasonably could have been alleged, based on the Operative Complaint and the PAGA

1 Notice; any and all claims involving any and all alleged or actual failures to timely, fully,
2 properly, or completely pay any minimum wages, regular wages, overtime premium wages,
3 double time wages, meal or rest period premium wages, or other wages owed; any and all alleged
4 or actual failures to comply with meal or rest period requirements; any and all alleged or actual
5 failures to provide proper, accurate, timely, adequately descriptive, or complete wage statements
6 or pay stubs; any and all alleged or actual failures to fully or properly reimburse or indemnify for
7 any and all employment-related expenses; any and all alleged or actual failure to provide suitable
8 seating; any and all alleged or actual failures to pay all wages, or compensation owed to a fired,
9 quitting, or otherwise departing employee; any and all alleged or actual failures to timely pay all
10 wages, or compensation owed during employment; any and all alleged or actual failures to
11 provide employees with one day of rest in accordance with California law; any and all alleged or
12 actual failures to provide notice of workplace rights and/or to provide and pay all sick time,
13 including supplemental paid sick leave, leave in accordance with California law; any and all
14 alleged or actual failures to pay vested vacation or paid time off in accordance with California
15 law; any and all alleged or actual failures to keep accurate records; any and all alleged or actual
16 unlawful deductions made from paychecks; any and all alleged or actual inquiries into criminal
17 history in violation of California law, including any actual or alleged unlawful criminal or
18 financial background checks; any and all employment agreements with unlawful terms or
19 provisions, including but not limited to non-solicitation clauses, non-competes, and PAGA
20 waivers; and any and all alleged or actual failures to pay any interest or penalties owed as a result
21 of any and all of the foregoing (the "Released Claims"). For avoidance of doubt, the Released
22 Claims include, but are not limited to, alleged or actual violations of for Labor Code sections 98,
23 201-203, 204, 210, 216, 218.5, 221-223, 225.5, 226, 226.6, 226.7, 227.3, 233, 234, 245-248.6,
24 256, 432, 432.5, 432.7, 510, 512, 551, 552, 558, 558.1, 1024.5, 1174, 1174.5, 1193.6, 1194,
25 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, 2810.5, all applicable Wage Orders, and
26 California Business & Professions Code. Plaintiff and Participating Class Members will release
27 Defendant and the Released Parties from all remedies that could be claimed in connection with
28 the Released Claims including but not limited to statutory, constitutional, contractual damages,

1 unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and
2 equitable relief. Participating Class Members do not release any other claims, including claims
3 for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
4 unemployment insurance, disability, social security, workers' compensation, or claims based on
5 facts occurring outside the PAGA Period.

6 5.3. Release by Non-Participating Class Members Who Are Aggrieved Employees: All
7 Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to
8 release, on behalf of themselves and their respective former and present representatives, agents,
9 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for
10 PAGA penalties that were alleged, or reasonably could have been alleged, based on facts stated in
11 the Operative Complaint and the PAGA Notice, including but not limited to any and all claims
12 involving any and all alleged or actual failures to timely, fully, properly, or completely pay any
13 minimum wages, regular wages, overtime premium wages, double time wages, meal or rest period
14 premium wages, or other wages owed; any and all alleged or actual failures to comply with meal
15 or rest period requirements; any and all alleged or actual failures to provide proper, accurate,
16 timely, adequately descriptive, or complete wage statements or pay stubs; any and all alleged or
17 actual failures to fully or properly reimburse or indemnify for any and all employment-related
18 expenses; any and all alleged or actual failure to provide suitable seating; any and all alleged or
19 actual failures to pay all wages, or compensation owed to a fired, quitting, or otherwise departing
20 employee; any and all alleged or actual failures to timely pay all wages, or compensation owed
21 during employment; any and all alleged or actual failures to provide employees with one day of
22 rest in accordance with California law; any and all alleged or actual failures to provide notice of
23 workplace rights and/or provide and pay all sick time, including supplemental paid sick leave,
24 leave in accordance with California law; any and all alleged or actual failures to pay vested
25 vacation or paid time off in accordance with California law; any and all alleged or actual failures
26 to keep accurate records; any and all alleged or actual unlawful deductions made from paychecks;
27 any and all alleged or actual inquiries into criminal history in violation of California law,
28 including any actual or alleged unlawful criminal or financial background checks; any and all

1 employment agreements with unlawful terms or provisions, including but not limited to non-
2 solicitation clauses, non-competes, and PAGA waivers; and any and all alleged or actual failures
3 to pay any interest or penalties owed as a result of any and all of the foregoing (the “Released
4 PAGA Claims”). For avoidance of doubt, the Released Claims include, but are not limited to,
5 alleged or actual violations of for Labor Code sections 98, 201-203, 210, 204, 216, 218.5, 221-
6 223, 225.5, 226, 226.6, 226.7, 227.3, 233, 234, 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 551,
7 552, 558, 558.1, 1024.5, 1174, 1174.5, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199,
8 2802, 2804, 2810.5, all applicable Wage Orders, and California Business & Professions Code.
9 Plaintiff and Aggrieved Employees will release Defendant and the Released Parties from all
10 remedies that could be claimed in connection with the Released PAGA Claims including but not
11 limited to statutory, constitutional, contractual damages, unpaid costs, penalties, punitive
12 damages, interest, attorneys’ fees, litigation costs, restitution, and equitable relief.

13 **6. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare
14 and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies
15 with the Court’s current checklist for Preliminary Approvals, if any.

16 6.1. Plaintiff’s Responsibilities. At least five (5) court days ahead of the filing
17 deadline, Plaintiff will prepare and deliver to Defense Counsel all documents necessary for
18 obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support,
19 of the Motion for Preliminary Approval that includes an analysis of the Settlement under
20 Dunk/Kullar and a request for approval of the PAGA Settlement under Labor Code Section 2699,
21 subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA
22 Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator
23 attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to
24 serve; competency; operative procedures for protecting the security of Class Data; amounts of
25 insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts
26 relevant to any actual or potential conflicts of interest with Class Members; and the nature and
27 extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed
28 declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts

1 relevant to any actual or potential conflicts of interest with Class Members and/or the
2 Administrator; (v) a signed declaration from Class Counsel attesting to its competency to
3 represent the Class Members; its timely transmission to the LWDA of all necessary PAGA
4 documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
5 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
6 subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class
7 Members and the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration
8 will aver that they are not aware of any other pending matter or action asserting claims that will
9 be extinguished or adversely affected by the Settlement of the Action.

10 6.2. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
11 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later
12 than thirty (30) days after the full execution of this Agreement; obtaining a prompt hearing date
13 for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the
14 Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's
15 Preliminary Approval to the Administrator.

16 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
17 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
18 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or
19 by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
20 Preliminary Approval or conditions Preliminary Approval on any material change to this
21 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the
22 Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
23 otherwise satisfy the Court's concerns.

24 7. SETTLEMENT ADMINISTRATION.

25 7.1. Selection of Administrator. The Parties have jointly selected Phoenix Class Action
26 Settlement Administration to serve as the Administrator and verified that, as a condition of
27 appointment, Phoenix Class Action Settlement Administration agrees to be bound by this
28 Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for

1 payment of Administration Expenses. The Parties and their Counsel represent that they have no
2 interest or relationship, financial or otherwise, with the Administrator other than a professional
3 relationship arising out of prior experiences administering settlements.

4 7.2. Employer Identification Number. The Administrator will have and use its own
5 Employer Identification Number for purposes of calculating payroll tax withholdings and
6 providing reports state and federal tax authorities.

7 7.3. Qualified Settlement Fund. The Administrator will establish a settlement fund that
8 meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation
9 section 468B-1.

10 7.4. Notice to Class Members.

11 7.4.1. No later than fifteen (15) days after Defendant receives notice that
12 preliminary approval has been granted, Defense Counsel is to deliver the Class Data to the
13 Administrator. No later than three (3) business days after receipt of the Class Data, the
14 Administrator will notify Class Counsel that the list has been received and state the number of
15 Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

16 7.4.2. Using best efforts to perform as soon as possible, and in no event later than
17 fourteen (14) days after receiving the Class Data, the Administrator will send to all Class
18 Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,
19 the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page
20 of the Class Notice will prominently estimate the dollar amounts of any Individual Class Payment
21 and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks
22 and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class
23 Notices, the Administrator will update Class Member addresses using the National Change of
24 Address database.

25 7.4.3. Not later than three (3) business days after the Administrator’s receipt of
26 any Class Notice returned by the USPS as undelivered, the Administrator will re-mail the Class
27 Notice using any forwarding address provided by the USPS. If the USPS does not provide a
28 forwarding address, the Administrator will conduct a Class Member Address Search, and re-mail

1 the Class Notice to the most current address obtained. The Administrator has no obligation to
2 make further attempts to locate or send Class Notice to Class Members whose Class Notice is
3 returned by the USPS a second time.

4 7.4.4. The deadlines for Class Members' written objections, Challenges to
5 Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional
6 fourteen (14) days beyond the sixty (60) days otherwise provided in the Class Notice for all Class
7 Members whose notice is re-mailed. The Administrator will inform the Class Member of the
8 extended deadline with the re-mailed Class Notice.

9 7.4.5. If the Administrator, Defendant, or Class Counsel is contacted by or
10 otherwise discovers any persons who believe they should have been included in the Class Data
11 and should have received Class Notice, the Parties will expeditiously meet and confer in person or
12 by telephone, and in good faith in an effort to agree on whether to include them as Class
13 Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
14 other Class Members, and the Administrator will send, via email or overnight delivery, a Class
15 Notice requiring them to exercise options under this Agreement not later than fourteen (14) days
16 after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

17 7.5. Requests for Exclusion (Opt-Outs).

18 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class
19 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
20 Exclusion not later than sixty (60) days after the Administrator mails the Class Notice (plus an
21 additional fourteen (14) days for Class Members whose Class Notice is re-mailed). A Request for
22 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
23 the Class Member's election to be excluded from the Settlement and includes the Class Member's
24 name, address and email address or telephone number. To be valid, a Request for Exclusion must
25 be timely faxed, emailed, or postmarked by the Response Deadline.

26 7.5.2. The Administrator may not reject a Request for Exclusion as invalid
27 because it fails to contain all the information specified in the Class Notice. The Administrator
28 will accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the

1 identity of the person as a Class Member and the Class Member's desire to be excluded. The
2 Administrator's determination will be final and not appealable or otherwise susceptible to
3 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
4 the Administrator may demand additional proof of the Class Member's identity. The
5 Administrator's determination of authenticity will be final and not appealable or otherwise
6 susceptible to challenge.

7 7.5.3. Every Class Member who does not submit a timely and valid Request for
8 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
9 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
10 Members' Releases under Paragraph 5.2 of this Agreement, regardless whether the Participating
11 Class Member actually receives the Class Notice or objects to the Settlement.

12 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion
13 is a Non-Participating Class Member and will not receive an Individual Class Payment or have the
14 right to object to the class action components of the Settlement. Because future PAGA claims are
15 subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who
16 are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this
17 Agreement and are eligible for an Individual PAGA Payment.

18 7.6. Challenges to Calculation of Workweeks. Each Class Member will have sixty (60)
19 days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for
20 Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks
21 and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class
22 Member may challenge the allocation by communicating with the Administrator via fax, email or
23 mail. The Administrator must encourage the challenging Class Member to submit supporting
24 documentation. In the absence of any contrary documentation, the Administrator is entitled to
25 presume that the Workweeks contained in the Class Notice are correct so long as they are
26 consistent with the Class Data. The Administrator's determination of each Class Member's
27 allocation of Workweeks and/or Pay Periods will be final and not appealable or otherwise
28 susceptible to challenge. The Administrator will promptly provide copies of all challenges to

1 calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the
2 Administrator's determination the challenges.

3 7.7. Objections to Settlement.

4 7.7.1. Only Participating Class Members may object to the class action
5 components of the Settlement and/or this Agreement, including contesting the fairness of the
6 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
7 Litigation Expenses Payment and/or Class Representative Service Payment.

8 7.7.2. Participating Class Members may send written objections to the
9 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
10 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
11 Hearing. A Participating Class Member who elects to send a written objection to the
12 Administrator must do so not later than sixty (60) days after the Administrator's mailing of the
13 Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice was
14 re-mailed).

15 7.7.3. Non-Participating Class Members have no right to object to any of the class
16 action components of the Settlement.

17 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks
18 to be performed or observed by the Administrator contained in this Agreement or otherwise.

19 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will
20 establish and maintain and use an internet website to post information of interest to Class
21 Members including the date, time, and location for the Final Approval Hearing and copies of the
22 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
23 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
24 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final
25 Approval, and the Judgment. The Administrator will also maintain and monitor an email address
26 and a toll-free telephone number to receive Class Member calls, faxes, and emails.

27 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
28 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not

1 later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion,
2 the Administrator will email a list to Class Counsel and Defense Counsel containing (a) the names
3 and other identifying information of Class Members who have timely submitted valid Requests
4 for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class
5 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
6 Exclusion from Settlement submitted (whether valid or invalid).

7 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide
8 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
9 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion
10 (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay
11 Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual
12 PAGA Payments ("Weekly Report"). The Weekly Reports must include provide the
13 Administrator's assessment of the validity of Requests for Exclusion and attach copies of all
14 Requests for Exclusion and objections received.

15 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the
16 authority to address and make final decisions consistent with the terms of this Agreement on all
17 Class Member challenges over the calculation of Workweeks and/or Pay Periods. The
18 Administrator's decision will be final and not appealable or otherwise susceptible to challenge.

19 7.8.5. Administrator's Declaration. Not later than fourteen (14) days before the
20 date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
21 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
22 for filing in Court attesting to its due diligence and compliance with all of its obligations under
23 this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices
24 returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the
25 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
26 number of written objections and attach the Exclusion List. The Administrator will supplement
27 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is
28 responsible for filing the Administrator's declaration(s) in Court.

1 7.8.6. Final Report by Settlement Administrator. Within ten (10) days after the
2 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide
3 Class Counsel and Defense Counsel with a final report detailing its disbursements by employee
4 identification number only of all payments made under this Agreement. At least fifteen (15) days
5 before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel
6 and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement
7 of all payments required under this Agreement. Class Counsel is responsible for filing the
8 Administrator's declaration in Court.

9 **8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.** Defendant has estimated
10 that the Settlement Class Members worked 4,827 weeks during the Class Period. To the extent
11 that the number of Workweeks in the Class Period is found to exceed 4,827 by more than 10%
12 (i.e. 482 weeks above and beyond the 4,827), Defendant has the option to increase the Gross
13 Settlement Amount proportionally for any Workweek above the 10%, or to set the Class Period
14 end date to a date at which the number of Workweeks reached 5,309.

15 **9. DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for
16 Exclusion exceeds 10% of the total of all Class Members, Defendant may, but is not obligated,
17 elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the
18 Settlement will be void ab initio, have no force or effect whatsoever, and that neither Party will
19 have any further obligation to perform under this Agreement; provided, however, Defendant will
20 remain responsible for paying all Settlement Administration Expenses incurred to that point.
21 Defendant must notify Class Counsel and the Court of its election to withdraw not later than
22 seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late
23 elections will have no effect.

24 **10. MOTION FOR FINAL APPROVAL.** Not later than sixteen (16) court days before the
25 calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the
26 Settlement that includes a request for approval of the PAGA settlement under Labor Code section
27 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion
28 for Final Approval"). Plaintiff will provide drafts of these documents to Defense Counsel not

1 later than five (5) court days prior to filing the Motion for Final Approval. Class Counsel and
2 Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith,
3 to resolve any disagreements concerning the Motion for Final Approval.

4 10.1. Response to Objections. Each Party retains the right to respond to any objection
5 raised by a Participating Class Member, including the right to file responsive documents in Court
6 no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or
7 accepted by the Court.

8 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
9 Approval on any material change to the Settlement (including, but not limited to, the scope of
10 release to be granted by Class Members), the Parties will expeditiously work together in good
11 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
12 Approval. The Court's decision to award less than the amounts requested for the Class
13 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses
14 Payment and/or Administrator Expenses Payment will not constitute a material modification to
15 the Agreement within the meaning of this paragraph.

16 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of
17 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
18 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
19 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

20 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
21 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
22 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
23 respective counsel, and all Participating Class Members who did not object to the Settlement as
24 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
25 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for
26 new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of
27 the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
28 Parties' obligations to perform under this Agreement will be suspended until such time as the

1 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
2 the amount of the Net Settlement Amount.

3 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
4 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
5 modification of this Agreement (including, but not limited to, the scope of release to be granted
6 by Class Members), this Agreement will be null and void. The Parties will nevertheless
7 expeditiously work together in good faith to address the appellate court's concerns and to obtain
8 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
9 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
10 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
11 will not constitute a material modification of the Judgment within the meaning of this paragraph,
12 as long as the Gross Settlement Amount remains unchanged.

13 **11. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
14 Procedure section 384, the Parties will work together in good faith to jointly submit and a
15 proposed amended judgment.

16 **12. ADDITIONAL PROVISIONS.**

17 12.1. No Admission of Liability, Class Certification or Representative Manageability for
18 Other Purposes. This Agreement represents a compromise and settlement of highly disputed
19 claims. Nothing in this Agreement is intended or should be construed as an admission by
20 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has
21 any liability for any claims asserted; nor should it be intended or construed as an admission by
22 Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class
23 certification and representative treatment is for purposes of this Settlement only. If, for any
24 reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant
25 reserves the right to contest certification of any class for any reasons, and Defendant reserves all
26 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
27 certification on any grounds available and to contest Defendant's defenses. The Settlement, this
28 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).

12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph will be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits will 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.

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

12.6. 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.

12.7. 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.

12.7.1. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant, nor Defense Counsel are providing any advice regarding taxes or taxability, nor will 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.

12.7.2. 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.

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

12.7.4. 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.

12.7.5. 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.

12.7.6. 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 will survive the execution of this Agreement.

12.7.7. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff will destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

12.7.8. 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.

12.7.9. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement will 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 will be on the first business day thereafter.

12.7.10. 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, to the other Party's respective counsel of record.

12.8. 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 will 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.

12.9. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation will 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.

Dated: 06 / 20 / 2024, 2024

ANJOLIE TATE

Anjolie Tate

Dated: 6/7/2024, 2024

CASPER SLEEP, INC.

DocuSigned by:

David Gosling

3F48E0C2C9D34C5...

By:

Title:

General Counsel

///

///

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

2 Dated: June 12, 2024

CROSNER LEGAL, PC

3 

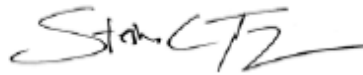
4 Brandon Brouillette, Esq.

5 Zach Crosner, Esq.

6 Attorneys for Plaintiff Anjolie Tate, on behalf of themselves
7 and all others similarly situated

8 Dated: June 7, 2024

DAVIS WRIGHT TREMAINE LLP

9 

10 Vandana Kapur, Esq.

11 Stephen Franz, Esq.

12 Raina Singer, Esq.

13 Attorneys for Defendant Casper Sleep, Inc.

EXHIBIT

2



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

Kiara Bramasco, Esq.
kiara@crosnerlegal.com
direct: (424) 335-5236
office: (310) 496-5818
fax: (310) 510-6429

February 10, 2023

VIA PAGA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

Casper Sleep, Inc.

Attn: Human Resources/ Legal Department
3 WTC, 175 Greenwich, Street, 39th Floor
New York, NY 10007

CSC Lawyers Incorporating Service
Agent for Service of Process for:

Casper Sleep, Inc.

251 Little Falls Drive
Wilmington, DE 19808

Casper Sleep, Inc.

Attn: CA Registered Agent Authorized employees:
Becky Degeorge; Koy Saechao;
Lai Saevang; Nicole Stauss; Jenn Bautista; Trudy
Desbiens; Rebecca Vang; Wendy Harris; Melissa
Dekoven; Carolyn Valle;
Kaci Ransom; Kelli Shortte; Annette Kuhlman;
Brejet Stephens; Crystal Chapman; Janette McIntyre;
Jerome Suarez; Samantha Wiltz;
Parid Kurbini
2710 Gateway Oaks Drive,
Sacramento, CA

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; and Casper Sleep, Inc.
Date: February 10, 2023
Subject: *Anjolie Tate v. Casper Sleep, Inc.*

Introduction

This office represents COMPLAINANT, Anjolie Tate (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entity and individual managing agents of said entity: Casper Sleep, Inc., hereinafter, this entity and its managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

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

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

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

to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT's claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT's intent to seek civil penalties against EMPLOYER. Under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, a PAGA representative has authority to seek penalties for all known violations committed by the employer – regardless of whether the representative experienced all violations personally. *Id.* at 760-761. Moreover, under *Johnson v. Maxim Healthcare Servs., Inc.*, (2021) 66 Cal. App. 5th 924, 929, an employee may pursue a claim under PAGA even when that employee's individual claim is time-barred.

COMPLAINANT, on behalf of COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.6, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

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

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

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

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT

at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of employer(s) who violated COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

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

General Information

EMPLOYER owns, operates or otherwise manages companies that sell sleep products online and in retail locations including but not limited to various locations throughout California. EMPLOYER sells mattresses, pillows, sheets, bedding, and bed frames, among other sleep products. Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a non-exempt store manager and/or non-exempt assistant manager and/or non-exempt store supervisor and/or similar title from in or around April 2021 through in or around April 2022. COMPLAINANT worked for EMPLOYER out of a couple of EMPLOYER's

locations including but not limited to EMPLOYER's Melrose Ave- Los Angeles, CA store location and EMPLOYER's Torrance, CA store location. COMPLAINANT regularly worked at least seven (7) to nine (9) hours per day, at least five (5) days per week. At times, COMPLAINANT worked over ten (10) or eleven (11) hours in a single shift. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked. COMPLAINANT also earned non-discretionary bonuses which EMPLOYER failed to factor into the regular rate of pay for purposes of calculating overtime and/or meal and/or rest period premium payments.

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

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

Labor Code Violations

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

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

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

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

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

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

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

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

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

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

Time and Pay Records

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

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

Personnel Records

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

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

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, COMPLAINANT sent a written request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to timely produce complete records, including but not limited to time records, within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records

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

when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

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

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

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

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

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, at times COMPLAINANT was not afforded the opportunity to take a timely uninterrupted 30-minute meal period due to the need to complete her job duties, understaffing, and/or due to the lack of relieve workers available. At other times, COMPLAINANT's supervisor asked her to clock out for a purported meal period but to continue working during the purported off-the-clock meal period, resulting in meal period violations as well as unpaid wages.

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

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal periods.

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

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

Based on information and belief, per EMPLOYER's uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break. For example, when COMPLAINANT worked more than ten hours in a shift, COMPLAINANT was not provided with a second meal period.

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal

periods (including meal periods restricted to EMPLOYER's premises), despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

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

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

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide valid meal periods,

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the

and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

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

Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the "onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to its employees.").

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER

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

did not have a compliant written rest period policy, nor did EMPLOYER have any sort of compliant rest period policy in practice. For example, COMPLAINANT was frequently unable to take compliant off-duty rest periods due to her need to complete her job duties and/or due to understaffing and/or the lack of relief workers available. Based on information and belief, at other times, COMPLAINANT was required to remain on EMPLOYER's store premises during purported rest periods and/or was required to completely skip her rest periods.

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

Moreover, based on information and belief, EMPLOYER failed to provide any form of a third rest period on shifts lasting longer than ten hours. For example, when COMPLAINANT worked more than ten hours in a shift, COMPLAINANT was not provided with any version of a third rest period.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest periods.

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); and All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law,

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

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” The applicable Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

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

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

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER’s policy and/or practice of paying according to scheduled

any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

Based on information and belief, at times, EMPLOYER's electronic employee time-keeping system malfunctioned such that NON-EXEMPT AGGRIEVED EMPLOYEES were required to either reinitiate the system prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from purported meal periods, resulting in consistent off-the-clock work and the underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking out for shifts and/or back in for meal periods. This time spent under EMPLOYER's control was not recorded and not compensated and resulted in unpaid minimum and overtime wages.

Based on information and belief, EMPLOYER's Kronos timekeeping software was hacked in 2021 and EMPLOYER failed to maintain accurate records of hours worked during pay periods following the hack and instead paid COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES based on scheduled hours worked rather than actual hours worked and/or otherwise failed to pay for all hours worked due to a failure to maintain accurate records of the total hours worked, leading to unpaid minimum and overtime wages.

Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete off-the-clock work before beginning their scheduled shift and/or after completing a scheduled shift. For example, COMPLAINANT was required to complete pre-shift and/or post shift off-the-clock work duties that were not compensated. For example, after each shift, COMPLAINANT was required to take out the store's trash after clocking out for her shift. This work time took 5-10 minutes to complete and resulted in unpaid minimum and/or overtime wages.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete off-the-clock work including but not limited to setting and/or disabling store security alarms while off-the-clock and/or locking/unlocking store locations while off-the-clock resulting in unpaid minimum and overtime wages.

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

Based on further information and belief, EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. EMPLOYER's failure to pay for all time worked by virtue of its time-rounding practices

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

EMPLOYER's failure to pay for all time worked by virtue of its time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

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

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

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

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

Namely, EMPLOYER's automatic deduction and time rounding policies and practices for meal periods and shift start times and shift end times, payment according to scheduled hours worked

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

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

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

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

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

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

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to work completed during unpaid meal periods and by failing to incorporate multiple rates of pay and/or all non-discretionary

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

remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

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

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

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

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

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

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

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

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

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

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

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, EMPLOYER violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information and belief, EMPLOYER failed to provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

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

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

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive

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

dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

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

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

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

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, wage statements issued by EMPLOYER failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

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

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

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

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by, including but not limited to, failing to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

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

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

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

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

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

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

Based on information and belief, EMPLOYER failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations. Based on information and belief, to the extent seating was available, EMPLOYER did not allow COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to sit even when it would not interfere with the performance of their duties.

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

EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, EMPLOYER failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting EMPLOYER to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁸

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

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

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

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for

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

all hours worked which resulted in the payment of less than statutorily required wages owed to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

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

Failure to Pay Vested Vacation/Paid Time Off:

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

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, EMPLOYER untimely provides

final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁹

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

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

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

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

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

Based on information and belief, EMPLOYER shifted its costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, use of their personal cell phone/data usage for work related purposes, and/or face masks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for these expenses.

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

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

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Violation of California Day of Rest Law: Under California law, every employee in California is "entitled" to "one day's rest [from labor] in seven"; and, no employer may "cause" its employees "to work more than six days in seven." *See* Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation of the foregoing sections is a misdemeanor.

Based on information and belief, EMPLOYER has and continues to have a uniform policy and practice of requiring NON-EXEMPT AGGRIEVED EMPLOYEES to work at least seven days consecutively in a workweek, in violation of including but not limited to, Labor Code Section 551. For example, at times, COMPLAINANT worked for multiple weeks without a day off. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in violation of California law, including but not limited to Labor Code Section 551.

Non-Compete/Non-Solicitation Agreements: Non-compete/non-solicitation agreements are illegal under California law. *See* California Business & Professions Code section 16600 - stating any non-compete provision between an employer and an employee, i.e., any contract that restrains a person from engaging in a profession, trade or business will not be enforceable under California law. California Labor Code section 432.5 states that it is illegal for an employer to require an employee to agree in writing to any term that the employer knows is illegal. Violations of Section 432.5 are actionable under the California Labor Code Private Attorneys' General Act ("PAGA").

Based upon information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to sign non-compete/non-solicitation agreements as a condition of hire/maintaining employment. This is illegal under California law. By having NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES sign off on the illegal non-compete/non-solicitation agreements as a condition of employment, EMPLOYER violated, inter-alia, Labor Code section 432.5 (stating that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law."). Accordingly, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

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

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

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

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

Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

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

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

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

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

Unlawful Inquires into Criminal History

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

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

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

Unlawful PAGA Waiver

Additionally, EMPLOYER violated Labor Code section 432.5 by requiring COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

An action pursuant to PAGA “...is a representative action on behalf of the state” *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and unenforceable. *See Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384 (“We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is no individual component to a PAGA action because ‘every PAGA action ... is a representative action on behalf of the state.’”)

EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to waive their right to a trial of representative claims, which constitutes a waiver of their right to trial of PAGA claims in violation of California law, which is unlawful and unenforceable under California law. By requiring

COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree, in writing, to an unlawful PAGA waiver, EMPLOYER required written agreement to an unlawful provision as a condition of employment which is a violation of labor code section 432.5.

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

Conclusion

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

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

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

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

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

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

Thank you for your attention to this matter.

Best Regards,

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

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

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

Fri, Feb 10, 2023 at 5:09 PM

2/10/2023

LWDA Case No. LWDA-CM-935391-23
Law Firm : Crosner Legal, PC
Plaintiff Name : Anjolie Tate
Employer: Casper Sleep, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT

3