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Attorneys for Plaintiff SIMON MUNOZ, on behalf of himself, all others similarly situated, and on behalf of the general public

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SIMON MUNOZ on behalf of himself, all others similarly situated, and on behalf of the general public, Plaintiffs, v. RDO EQUIPMENT CO.; and DOES 1-100, Defendants.	Case No. 1:23-cv-00979-DAD-AC [Hon. Dale A. Drozd] **DECLARATION OF DAVID MARA, ESQ., IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT** Date: February 3, 2025 Time: 1:30 p.m. Action Filed: April 25, 2023 Action Removed: June 28, 2023 Trial Date: None Set

I, DAVID MARA, declare as follows:

1. I am President of Mara Law Firm, PC and counsel of record for Plaintiff and the putative class in this matter. I am duly admitted to practice before all the courts of the state of California. The following facts are within my personal knowledge and, if called to testify, I could and would competently testify thereto.
2. I have been practicing law in California since 2004.
3. I extensively handle employment cases which involve violations of the California Labor Code and Industrial Welfare Commission Wage Orders, such as wage and hour class actions and cases alleging violations of the Private Attorneys General Act of 2004 ("PAGA").
4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.*, San Diego Superior Court, Case No. GIC834348, which was the underlying case in the California Supreme Court's landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, in which the California Supreme Court delineated the scope of employer obligations to provide, and employee rights to receive, meal and rest periods under California law.
5. I am frequently called upon to author Amicus Curiae briefs on behalf of Consumer Attorneys of California ("CAOC"). For example, I authored the Amicus Curiae briefs on behalf of CAOC in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, (The California Supreme Court ruling that, like meal periods, employers must relieve employees of all duty and relinquish all control to satisfactorily discharge its obligation to authorize and permit rest periods.); *Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038 (The California Supreme Court ruling that the time spent on the employer's premises waiting for, and undergoing, required exit searches of packages, bags, or personal technology devices voluntarily brought to work is compensable hours worked within the meaning of the Wage Orders.); *Oliver v. Superior Court* (2021) California Court of Appeal Case No. H049185 (A brief asking the California Court of Appeal for the Sixth Appellate District to determine whether mandatory drive time of personal vehicles should be considered hours worked within the meaning of the Wage Orders' suffered or permitted test.). *Davidson v. O'Reilly Auto Enterprises, LLC* (9th Cir., 2020; Docket No. 18-56188) (a brief seeking Review *En Banc* of an order denying class certification in a wage and hour matter).

6. I am also a member of CAOC's Amicus Committee that determines the cases in which the organization will agree to provide amicus support.

7. I have also lectured as a panelist for California Employment Lawyers Association regarding a host of wage and hour issues.

8. My firm has been granted class certification in both state and federal courts.

9. I am also Plaintiff's counsel in a host of other class actions involving violations of California's wage and hour laws, many of which involve the transportation industry. For example, I have been and am involved as counsel for plaintiffs in the following sampling of class action cases involving wage and hour violations under California law: *Kenneth Cox v. 3PL Worx, et al.* (Yolo County Superior Court, Case No. CV-18-100); *Brian Davidson v. A&B Trucking Services, Inc.* (Kern County Superior Court Case No. BCV-16-102985); *Alex Vega, et al. v. Advance Beverage Co., Inc.* (Kern County Superior Court, Case No. BCV-16-100848); *Jaime Ruiz v. Altura Centers for Health* (Kern County Superior Court, Case No. BCV-19-101577); *George Zamudio v. AmeriPride Service, Inc.* (Alameda County Superior Court, Case No. RG1809666); *Richard Hendricks v. Antonini Freight Express, Inc.* (San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-6999); *Alton Davis v. Apria Healthcare Group, Inc.* (San Diego County Superior Court, Case No. 37-2014-00004724-CU-OE-CTL); *Alan Atchison v. Ashley Furniture Industries, Inc., et al.* (Central District of California, Case No. 17-cv-00528-JAK-SP); *Bernard Payton v. Atech Logistics, Inc.* (Sonoma County Superior Court, Case No. SCV 258595); *Ramon Jenkins v. Compass Group USA, Inc., et al.* (Yolo County Superior Court, Case No. CVCV-18-747); *Timothy Spikes, et al. v. Bear Trucking, Inc., et al.* (San Bernardino County Superior Court, Case No. CIVDS1715151); *Joshua Turpen v. Benjamin's Transfer Inc.* (Solano County Superior Court, Case No. FCS048845); *Cesar Mendoza v. Bi-Rite Food Service, Inc.* (San Mateo County Superior Court, Case No. 17CIV02044); *Terrance Bailey v. Blue Apron, LLC; et al.* (Northern District of California, Case No. 18-cv-07000-VC); *Jeffrey Weast v. California Aseptic Beverages, LLC* (San Bernardino County Superior Court, Case No. CIVDS1825256); *Michael Valentich v. Hub Construction Specialties, Inc.* (San Bernardino County Superior Court, Case No.

JCCPDS4893); *Jose De Jesus Ortega Velazquez v. Hunter Landscape, Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVDS1928062); *Adrian Diaz v. Keystone Automotive Operations, Inc.* (Riverside County Superior Court, Case No. RIC1817450); *Arturo Gonzalez v. NCI Group, Inc. dba NCI Building Systems* (Eastern District of California, Case No. 18-cv-00948-AWI-SKO); *Larry Perez v. The Nielsen Company (US), LLC* (Orange County Superior Court, Case No. 30-2021-01194324-CU-OE-CXC); *Erik Martinez v. Patrick Industries, Inc.* (San Bernardino County Superior Court, Case No. CIVDS2009663); *Randolph Fitch v. Shaw Industries, Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVSB2024674); *Joshua Rael v. Intercontinental Hotels Group Resources, Inc.* (Los Angeles County Superior Court, Case No. 19STCV16010); and *Aaron Romero v. Vitro Flat Glass, LLC* (Kern County Superior Court, Case No. BCV-21-101357).

10. Mara Law Firm, PC devotes a significant portion of its practice specifically to wage and hour class actions. A majority of the cases I handle are wage and hour class actions and actions filed pursuant to the Private Attorneys General Act of 2004 ("PAGA"). Ms. Vecchi solely handles wage and hour class actions and PAGA actions. Mara Law Firm, PC, has been appointed class counsel in numerous federal and state class actions. Mara Law Firm, PC, and its lawyers have handled over four hundred and fifty (450) class action and PAGA lawsuits. Mara Law Firm, PC, and its lawyers have successfully settled approximately two hundred (200) cases over a period of approximately fifteen (15) years, resulting in the recovery of millions of dollars for class members.

11. Mara Law Firm, PC, is well versed in wage and hour class action law. Specifically, Mara Law Firm, PC, has obtained class certification and has been certified as class counsel in the following cases: *Mario Norona v. B&G Delivery System, Inc.* (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald Schroeder v. YRC, Inc.; YRC Worldwide, Inc.* (Central District of California, Case No. 12-cv-01374-TJH); *John Martin v. Sysco Corporation; Sysco Central California, Inc.* (Eastern District of California, Case No. 1:16-cv-00990-DAD-SAB); *William Smith v. Werner Enterprises, Inc. d/b/a C.L. Werner, Inc.* (District of Nebraska, Case No. 8:15-cv-287); *Thomas Perez v. City of San Diego* (San Diego

County Superior Court, Case No. 37-2014-00016621-CU-OE-CTL); *Miguel Hernandez v. MJ Industries, Inc.; MJ Tank Lines, Inc.* (San Diego County Superior Court, Case No. 37-2017-00003218); *Eric Mendez v. M&N Consulting, Inc. dba A-Line Messenger Service* (San Bernardino County Superior Court, Case No. CIVDS1923624); *Denson Sales v. Professional Auto Transport, Inc. et al.* (San Bernardino County Superior Court, Case No. CIVDS2010153); *Sonny Williams v. Hansen and Adkins Auto Transport, Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVDS2020832); *Bobby Williams v. Mohsen Transport, Inc.* (San Diego County Superior Court, Case No. 37-2019-00063361-CU-OE-CTL); *Denson Sales v. United Road Services, Inc.* (Northern District of California, Case No. 19-cv-08404-JST); *Ashton Harden vs. Mushiana Transport Inc.* (Sacramento County Superior Court, Case No. 34-2021-00301950-CU-OE-GDS); *Paul Garcia, et al. v. Haralambos Beverage Co.* (Los Angeles County Superior Court, Case No. BC660723); and *Ribaldo Olvera, et al. v. American Corporate Security; American Corporate Security, Inc.* (Los Angeles County Superior Court, Case No. 21STCV16417).

12. In addition, Mara Law Firm, PC, filed and briefed class certification motions before the following cases were settled: *Alton Davis v. Apria Healthcare Group, Inc.* (San Diego County Superior Court, Case No. 37-2014-00004724); *Rick Frieri v. Sysco Corporation; Sysco San Diego, Inc.* (Southern District of California, Case No. 16-cv-1432-JLS-NLS); *Alberto Solano and Damon Randall v. Professional Auto Transport, Inc.* (San Bernardino County Superior Court, Case No. CIVDS1619020); *Richard Terry v. Hoovestol, Inc.* (Northern District of California, Case No. 3:16-cv-05183-JST); *Kristina McConville v. Renzenberger, Inc.* (Central District of California, Case No. 2:17-cv-02972-FMO-JC); and *Terrance Bailey v. Blue Apron, LLC; Blue Apron, Inc.* (Northern District of California, Case No. 3:18-cv-07000-VC).

13. Jill Vecchi is a partner at Mara Law Firm, PC. She solely handles wage and hour class actions and PAGA actions. Ms. Vecchi graduated from Santa Clara University School of Law and was admitted to practice law in California in December 2014 and received her undergraduate degree from University of California, Riverside in 2010. Ms. Vecchi has been litigating wage and hour class actions for ten (10) years and has handled over one hundred and fifty (150) class

action and PAGA lawsuits.

14. On February 16, 2023, Plaintiff Munoz provided notice to the LWDA in accordance with PAGA. Plaintiff Munoz filed this matter in the action in the Stanislaus County Superior Court alleging violations under PAGA (Case No. CV-23-002243). On May 30, 2023, Plaintiff Munoz filed a First Amended Complaint withdrawing his PAGA allegations and instead asserting class claims under the Labor Code for Defendant's alleged failure to pay all straight time wages, failure to pay all overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to adopt a compliant sick pay/paid time off policy, knowing and intentional failure to comply with itemized employee wage statement provisions, failure to pay all wages due at the time of termination of employment, failure to reimburse/illegal deductions, and violation of the Unfair Competition Law.

15. Defendant removed Plaintiff Munoz's action to the United States District Court, Eastern District of California on June 29, 2023.

16. As part of this settlement, Plaintiff Munoz will file a Second Amended Complaint that adds Plaintiff Blanco as a plaintiff in the Class Action and adds a cause of action pursuant to the PAGA.

17. The Parties conducted significant investigation and discovery of the facts and law both before and after this action was filed. Through informal discovery, Defendant produced over a thousand pages of documents. These documents included policy documents that covered Class Members' employment with Defendant, such as employee handbooks. Included within these documents were Defendant's wage and hour policies, including its meal and rest period policies. Defendant also produced multiple Excel files that included employees' hire and termination dates, as well as a sampling of employees' time and pay records.

18. Plaintiffs had an expert review and analyze the sampling of time and pay records. Plaintiffs also requested, and Defendant produced, data surrounding the number of current and former employees, as well as the number of workweeks worked by Class Members during the relevant time period, to establish a potential exposure model in preparation for mediation. From this discovery, Plaintiffs and their Counsel were able to analyze Defendant's liability in this action

and prepare a realistic damage model.

19. The Parties attended two (2) mediations with respected wage and hour mediator David Rotman on July 9, 2024, and September 11, 2024. These mediations ultimately resulted in the Parties reaching a settlement, which was reduced to a Memorandum of Understanding. Thereafter, the Parties entered into a long-form Settlement Agreement. The Parties' Settlement Agreement is attached hereto as **Exhibit 1**.

20. Plaintiffs contend that Defendant does not provide employees with meal periods that conform with the law. Employers have an obligation under the law to provide employees with thirty (30) minute meal periods. Under Labor Code section 512(a), "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes . . . ." Cal. Lab. Code § 512(a). An employer "satisfies this obligation [to provide meal periods] if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so." *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040. Here, Plaintiffs contend that Defendant's time records show non-compliant meal periods.

21. In *Donohue v. AMN Services, LLC*, the California Supreme Court issued a decision, wherein it ruled that time records showing late, short, or missed meal periods raises a rebuttable presumption that the meal periods were not provided: "If time records show missed, short, or delayed meal periods with no indication of proper compensation, then a rebuttable presumption arises" that the meal periods were not provided in accordance with the law. *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 74. Plaintiffs contend that, here, the time records show non-compliant meal periods in 60% of shifts. In these shifts, under *Donohue*, Plaintiffs contend that it is presumed that meal period violations occurred.

22. Defendant asserts that its meal period policy is lawful and that it provides employees with meal periods in compliance with the law. Defendant alleges that if litigation continues it would be able to show that it advised employees of the right to take a compliant meal period. Defendant contends that employees either took a lawful meal period or knowingly and voluntarily decided

to skip the meal period or take a late or short meal period. Defendant contends that this evidence would rebut the presumption under *Donohue v. AMN Services, LLC*. Defendant also asserts that in rebutting the presumption, the Court or fact finder would have to ask each employee why their time records show a non-compliant meal period. Defendant contends that, due to this, class certification is not proper as individualized issues would predominate. Defendant also asserts that the evidence in this case shows that it paid meal period premiums in shifts in which employees were not provided with compliant meal periods so the damages calculated by Plaintiffs would be reduced.

23. If Plaintiffs were to prevail on this claim, Plaintiffs calculate that Defendant's exposure under this claim would be $4,827,758 (168,156 shifts with meal period violations x $28.71 = $4,827,758.76).

24. For the reasons just outlined, Defendant believes that the damages under this claim should be zero. Defendant asserts that its policies communicated to employees comply with the law and will thus be used to rebut the presumption that it did not provide meal periods. Thus, Defendant will argue that the instances in the time records are reflective of employee choice after Defendant has offered and provided the opportunity for lawful meal periods and Defendant does not have to "police meal breaks and ensure no work thereafter is performed." *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040. Should the factfinder side with Defendant, Plaintiffs would take nothing on their meal period claim. Given this all or none prospect, Plaintiffs had to compromise to make settlement possible.

25. Plaintiffs allege that employees are not provided with lawful rest periods. Employers have an obligation to provide employees with ten (10) minute rest periods. An employer's obligation to provide its employees with rest periods arises under the Industrial Welfare Commission Wage Orders. Wage Order 4-2001, Section 12(A) states, "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

26. In California, the ten (10) minute rest break must be a net ten (10) minutes in a suitable rest

area. The employer must show that it clearly articulates the right to a net ten (10) minutes, which means it must clearly communicate what "net" ten minutes means and that, regardless of what happens along the way to or from the rest area, employees are entitled to a full ten-minutes in the rest area. *See Bufil 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 breaks] to its employees."). Plaintiffs contend that Defendant does not provide employees with rest periods that are a net ten minutes at a suitable rest area.

27. Defendant argues that it permits and authorizes lawful rest periods. Defendant maintains that it provides employees with fifteen-minute rest periods which Defendant contends shows that employees receive a net ten-minute rest period. Defendant further contends that it informs employees that they get at least ten full, duty-free minutes of rest at a suitable rest area. Defendant contends that if litigation continues, it would provide declarations from employees which show that employees received at least at net ten minutes for rest breaks. Defendant contends that the Court would have to ask each employee whether they received full ten-minute breaks. Defendant asserts that doing so would defeat class certification.

28. If Plaintiffs were to prevail on this claim, Plaintiffs calculate that Defendant's exposure under this claim would be $7,885,316 (274,654 shifts over 3.5 hours x $28.71 = $7,885,316.34).

29. Defendant contends its rest period policy permits fifteen minutes to employees wherein employees are free of all duty and control, which necessarily means employees receive a net ten minutes in suitable rest area. Defendant claims Plaintiffs should take nothing on this claim and, if the factfinder agreed, Plaintiffs would take nothing. Although remaining confident in their position, Plaintiffs had no way of knowing how the factfinder would rule on this issue and a substantial discount had to be given to make settlement possible.

30. The law requires employers to pay overtime wages of no less than one and one-half times employees' regular rate of pay for all overtime hours worked. The regular rate of pay under the law includes all remuneration for employment paid to the employee. In *Alvarado v. Dart Container Corporation of California*, the California Supreme Court observed, "[r]egular rate of pay, which can change from pay period to pay period, includes adjustments to the straight

time rate, reflecting, among other things, shift differentials and the per hour value of any nonhourly compensation the employee has earned." *Alvarado v. Dart Container Corporation of California* (2018) 4 Cal. 5th 542, 554. Here, Plaintiffs contend that Defendant pays employees non-discretionary bonuses but fails to include these payments in employees' regular rate of pay for purposes of overtime. Defendant argues that the bonuses paid do not need to be factored into the regular rate of pay. Defendant contends that the Department of Labor has found that the particular kinds of bonuses paid by Defendant do not need to be factored into the regular rate of pay. For example, Defendant contends that referral bonuses do not need to be factored into the regular rate of pay.

31. If Plaintiffs were to prevail on this claim, Plaintiffs calculate that Defendant's exposure under this claim would be $922,214, based upon the sampling of records provided.

32. Defendant argues no damages are owed because the bonuses paid to employees do not need to be included in the regular rate of pay. If the fact finder agrees with Defendant, Plaintiffs and the Class Members would take nothing. As such, Plaintiffs had to take this into consideration.

33. Plaintiff alleges that employees are not provided with accurate itemized wage statements. Section 226(a) provides that employers must furnish an accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece rate units earned and applicable piece rate if the employee is paid on a piece rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or 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 corresponding number of hours worked at each hourly rate by the employee. Plaintiff alleges that Defendant fails to provide employees with accurate itemized wage statements because Defendant's wage statements do not meet Labor Code § 226(a)'s requirements. Plaintiff contends that Defendant's wage statements failed to accurately list the overtime rate of pay.

34. Defendant disputes this claim. Defendant argues that employees can ascertain the required

information, such as the overtime rate, using simple math. Defendant relies on cases which hold that "[w]age statements comply with § 226(a) when a plaintiff employee can ascertain the required information by performing simple math, using figures on the face of the wage statement." *Hernandez v. BCI Coca-Cola Bottling Co.* (9th Cir. 2014) 554 Fed. Appx. 661, 662 (citing *Morgan v. United Retail Inc.* (2010) 186 Cal.App.4th 1136).

35. Defendant also asserts that any violation of Labor Code § 226 was not "knowing and intentional." *See* Cal. Lab. Code § 226(e) ("An employee suffering injury as a result of a knowing and intentional failure by an employer" may recover damages") (emphasis added); *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1195 ("Some statutory penalties are imposed only if an employers' violation was 'willful' or 'knowing.' . . . [*S*]*ection 226, subdivision (e)* penalizes an employer's 'knowing and intentional' failure to provide itemized wage statements under *section 226, subdivision (a)*[.]"); *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065 ("We now conclude that if an employer reasonably and in good faith believed it was providing a complete and accurate wage statement in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage statement law."). Defendant maintains that it reasonably and in good faith believes that it was providing a complete and accurate wage statement in compliance with the law.

36. Defendant further contends that employees cannot show that they have suffered an injury because of any potential violation of Labor Code § 226. Defendant contends that employees knew to talk to their supervisor if they had any questions or concerns with their wage statements. As such, disputes exist as to whether Defendant's wage statements violated Labor Code § 226(a), whether any such violation was knowing and intentional, and whether employees suffered an injury. Defendant also relies on the case *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for the position that employees do not suffer injury under Labor Code § 226(a) so long as the wage statements correctly reflected the hours worked and the pay received even if the pay is later determined to be inaccurate.

37. If Plaintiffs were to prevail on this claim, Plaintiffs calculate that Defendant's exposure under

this claim would be $1,884,000 (471 employees within statute of limitations x $4,000 maximum penalty = $1,884,000).

38. Defendant argues that employees can ascertain the required information, such as hours worked, using simple math and, as such, no violation of § 226 occurred. Further, Defendant also asserts that any violation of Labor Code § 226 was not "knowing and intentional." Defendant maintains that it reasonably and in good faith believes that it was providing a complete and accurate wage statement in compliance with the law. Plaintiffs had to take Defendant's positions into account in reaching a settlement and consider the possibility that the fact finder could determine that these violations were not knowing and intentional.

39. Plaintiffs allege that employees are not reimbursed for all business expenses. Under Labor Code § 2802, an employer must "indemnify its employees for expenses they necessarily incur in the discharge of their duties…" *Gattuso v. Harte-Hanks Shoppers, Inc.* (2015) 169 P.3d 889. In *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1140, it was held that § 2802 requires employers to reimburse employees who are required to use personal cell phones for work-related calls for a reasonable percentage of their cell phone bills. Plaintiffs assert that employees are required to use their personal cell phones for work purposes but are not reimbursed.

40. Defendant asserts that employees do not need to use their personal cell phones for business purposes. Defendant asserts that it provides devices for employees so they can communicate with one another. Moreover, Defendant argues that employers must only reimburse employees for "necessary expenditures" under Labor Code § 2802. As such, employees must show that they incurred the expense, the expenses were necessary to discharge their duties, and the expenses were not reimbursed. *Alvarado v. Wal-Mart Assoc., Inc.*, 2021 U.S. Dist. LEXIS 245799 *1, *14-*15 (C.D. Cal. Nov. 3, 2021). Defendant contends that there is not a necessity for employees to use their personal cell phones because Defendant provides other means of communication and Defendant does not have a policy or practice of requiring employees to use their personal cell phones. As such, Defendant disputes that employees, in fact, used their personal cell phones in discharging their duties and, to the extent any employee did use their

personal cell phone, disputes that employees were required to use their personal cell phones in discharging their work duties for Defendant.

41. If Plaintiffs were to prevail on this claim, Plaintiffs calculate that Defendant's exposure under this claim would be $496,000 (24,800 months worked by Class Members x $20 per month = $496,000).

42. Defendant contends that employees are not required to use their personal cell phones for business purposes. Defendant asserts that to the extent employees do need to communicate with each other through electronic devices, Defendant provides them with communication devices. Defendant contends that Plaintiff cannot point to any policy or practice under which employees are necessarily required to use their personal cell phones. Defendant asserts that there are no damages for this claim. Plaintiff had to consider Defendant's arguments in evaluating the settlement value of this claim.

43. Plaintiff also contends that Defendant failed to pay employees their final wages within the timeframes outlined by the law. This claim is derivative of Plaintiff's meal period, rest period, and unpaid wages claims. Should Plaintiffs' meal period, rest period, and unpaid wages claims fail, these claims would also fail.

44. Defendant contends that even if Plaintiffs were successful in their meal period, rest period, and unpaid wages claims, they would have to prove Defendant "willfully" failed to pay employees the appropriate wages due upon separation of employment. "A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due. However, a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203." Cal. Code Regs. Tit. 8 § 13520. "A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based in law or fact, which would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist." *Id.* Defendant contends that any failure to pay wages due at the separation of employment was not willful. Defendant argues that it would not be liable for waiting time penalties because a "good faith dispute" exists over the payment of those wages.

See Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.

45. If Plaintiffs were to prevail on this claim, Plaintiffs estimate that Defendant's exposure under this claim would be $1,467,655 (213 former employees x 30 days x 8 hours x $28.71 = $1,467,655.20).

46. As these damages are derivative of Plaintiffs' meal period, rest period, and unpaid wages claims, if Plaintiffs' meal period, rest period, and unpaid wages claims fail, this claim also would fail. Defendant also contends that Plaintiffs would not be able to show that this violation was willful. On this basis, Defendant contends that Plaintiffs would not be entitled to any damages for waiting time penalties. Plaintiffs had to take into consideration the possibility of the fact finder determining that this violation was not willful.

47. Plaintiff also seeks PAGA penalties. The statute of limitations for PAGA violations go back one year. Plaintiffs calculate the potential damages under Plaintiffs' PAGA claim as $6,882,400. As Plaintiffs' PAGA claims are based on the same alleged unlawful conduct as their class claims, Plaintiffs' PAGA claims are subject to the same risks on the merits.

48. The Court may reduce any PAGA penalties awarded under Section 2699, subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to Plaintiffs and the Aggrieved Employees – assuming liability is proven as to each of Plaintiffs' claims – is higher in this case where these same individuals may also be receiving money for the same unlawful conduct under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 ("Because the PAGA penalties sought are at least partially duplicative of penalties granted by the underlying Labor Code violations, *see*, *e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the potential PAGA penalties are highly uncertain."). As such, the Court may reduce any PAGA penalty amount awarded to Plaintiffs and the Aggrieved Employees.

49. Defendant also contends that Plaintiffs would not be able to "stack" violations for each alleged

violation and would only be entitled to one PAGA penalty per pay period for all violations. If this were the case, the potential damages would be reduced. This amount would still be subject to reduction by the Court for the reasons outlined above. Defendant further contends that no PAGA penalties would be awarded because it asserts it would prevail on each of Plaintiffs' claims.

50. Even if Defendant's liability is established, the Court is empowered to reduce any PAGA penalties. The likelihood of a penalty reduction is higher in this case than others, as the Court may determine that Defendant believed in good faith that it provided employees with lawful breaks, paid all overtime wages owed, and accurately itemized wage statements. Plaintiffs recognize and reasonably believe the Court could significantly reduce any PAGA penalties if Defendant was found liable for the underlying Labor Code violations.

51. Thus, not considering any of their defenses, Defendant's total potential exposure if Plaintiffs were successful in their core claims would be approximately $16,015,288 [$4,827,758 (meal period premiums) + $7,885,316 (rest period premiums) + $922,214 (unpaid overtime wages) + $1,884,000 (wage statement penalties) + $496,000 (business reimbursements) = $16,015,288]. If Plaintiffs were successful in their meal period, rest period, and unpaid wages claims, and can show that the failure to pay wages due at the termination of employment was willful, Plaintiffs and the Class Members may also be entitled to $1,467,655 in waiting time penalties. If Plaintiffs are successful, they may be entitled to $6,882,400 in PAGA penalties, subject to Court reduction. But if Defendant's appeal is successful or the Court agrees with Defendant's arguments, Plaintiffs and the Class would not be entitled to any recovery.

52. To prevail on the merits of Plaintiffs' claims, Plaintiffs will have to overcome numerous obstacles, including prevailing on Defendant's appeal and obtaining and maintaining class certification status under the rigorous standard set forth in Rule 23. While Plaintiffs believe they would be successful in obtaining class certification, there is inevitably a risk in whether or not this would happen. If granted, after class certification was obtained, Plaintiffs would have to withstand and prevail on a motion for summary judgment that Defendant will undoubtedly file. Considering the defenses discussed above, Plaintiffs had to consider the

realistic potential of recovering under each of their theories. If Plaintiffs were to win on the merits of their claims, it is likely that they would not receive the entirety of the amounts they are seeking, as some, like PAGA, are awarded pursuant to the Court's discretion. Taking these risks into consideration, the settlement amount of $2,000,000 is fair, reasonable, and adequate.

53. The preliminary approval motion and supporting documents were uploaded to the Labor Workforce Development Agency. Attached hereto as **Exhibit 2** is a confirmation received as a result of this upload.

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

MARA LAW FIRM, PC

Date: December 17, 2024

Signed: /s/ *David Mara*
David Mara, Esq.
Attorneys for Plaintiffs

Exhibit 1

JOINT STIPULATION AND SETTLEMENT AGREEMENT

This settlement agreement is made between Plaintiffs Simon Munoz ("Plaintiff Munoz") and Giancarlo Blanco ("Plaintiff Blanco") (Plaintiff Munoz and Plaintiff Blanco together, "Plaintiffs") individually and on behalf of the Class and Aggrieved Employees as defined below, and Defendant RDO Equipment Co. ("RDO" or "Defendant"). This agreement refers to Plaintiffs and Defendant collectively as "Parties," or individually as "Party." This agreement is intended to settle the class action suit designated *Simon Munoz v. RDO Equipment Co.*, United States District Court, Eastern District of California Case No. 1:23-cv-00979-DAD-AC ("Class Action") and the California Labor Code Private Attorneys General Act of 2004 representative action designated *Giancarlo Blanco v. RDO Equipment Co.*, Riverside County Superior Court Case No. CVRI2301163 ("PAGA Action") (Class Action and PAGA Action collectively, "Lawsuits").

I. DEFINITIONS

In addition to the other terms defined in this agreement, the terms below have the following meaning:

1. **Administration Costs**: The costs incurred by the Settlement Administrator to administer this Settlement, which shall not exceed $15,000. All Administration Costs shall be paid from the Gross Settlement Amount. If the actual administration costs are less than the amount allocated in this agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.

2. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled "Joint Stipulation and Settlement Agreement."

3. **Aggrieved Employees**: All current and former non-exempt, hourly employees who were employed by RDO in California at any time from February 22, 2022, through November 11, 2024.

4. **Attorneys Fee Award**: The amount of attorneys' fees approved of by the Court and awarded to Class Counsel. This amount shall not exceed thirty-five percent (35%) of the Gross Settlement Amount. The Attorneys Fee Award shall be paid from the Gross Settlement Amount. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.

5. **Amended Complaint:** As part of the settlement, and for settlement purposes only, Plaintiff Munoz will file a Second Amended Complaint that adds Plaintiff Blanco as a plaintiff in the Class Action and adds a cause of action pursuant to the PAGA. The Parties will file a joint stipulation for leave to file the Second

Amended Complaint. This Second Amended Complaint will be the "Operative Complaint" for settlement purposes.

6. **Class**: All current and former non-exempt, hourly employees who were employed by RDO in California at any time from April 25, 2019, through November 11, 2024.

7. **Class Action**: *Simon Munoz v. RDO Equipment Co.*, United States District Court, Eastern District of California Case No. 1:23-cv-00979-DAD-AC.

8. **Class Counsel**: David Mara and Jill Vecchi of Mara Law Firm, PC, and Douglas Han, Shunt Tatavos-Gharajeh, and William Wilkinson of Justice Law Corporation.

9. **Class Data**: The electronic database Defendant shall deliver to the Settlement Administrator which will list the following information for each Class Member: (a) first and last name; (b) last known mailing address; (c) social security number; (d) telephone number; and (e) the total number of weeks during which the Class Member performed work during the Class Period. The Class Data shall be based on Defendant's payroll, personnel, and other business records.

10. **Class Member**: Each person eligible to participate in this Settlement who is a member of the Class as defined above.

11. **Class Notice**: The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.

12. **Class Period**: April 25, 2019, through November 11, 2024.

13. **Class Representatives:** Simon Munoz and Giancarlo Blanco.

14. **Class Representative Enhancement Payments**: The amount the Court awards to the Class Representatives which will not exceed $10,000 each (totaling $20,000). These payments shall be paid from the Gross Settlement Amount and are being offered in consideration for Plaintiffs executing a general release of claims against Defendant, a release that is broader than any Participating Class Member will provide in consideration for a settlement share. This payment is also offered in consideration for the Plaintiffs' Lawsuits in conferring a benefit upon the State of California and the Class, and the time and effort Plaintiffs put into pursuing the litigation. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.

15. **Cost Award**: The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed $50,000. The Cost Award will be paid from the Gross Settlement Amount. The Cost Award is

subject to Court approval. If the actual costs incurred are less than the amount allocated in this Agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this Agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.

16. **Counsel for Defendant:** David H. Stern, Alex E. Spjute, and Jennifer F. Delarosa of Baker & Hostetler LLP.

17. **Court**: United States District Court, Eastern District of California.

18. **Defendant**: RDO Equipment Co.

19. **Disbursement of the Settlement:** Within ten (10) calendar days after the Settlement Administrator's receipt of the Gross Settlement Amount, the Settlement Administrator shall disburse the: (a) Net Settlement Amount to the Participating Class Members; (b) Net PAGA Settlement Amount to the Aggrieved Employees; (c) Attorney Fee Award and Cost Award to Class Counsel, as approved by the Court; (d) Class Representative Enhancement Payments to the Class Representatives, as approved by the Court; (e) Administration Costs to the Settlement Administrator, as approved by the Court; and (f) LWDA Payment to the LWDA.

20. **Effective Final Settlement Date:** The date by 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: (i) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (ii) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (iii) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

21. **Employer Taxes**: Defendant's portion of payroll taxes as the Class Members' current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) owed to the appropriate local, state, and federal taxing authorities. Defendant will pay its portion of payroll taxes separate and apart from the Gross Settlement Amount.

22. **Final Judgment or Final Approval**: The final order entered by the Court approving this Agreement.

23. **Funding of Settlement:** Defendant shall wire or otherwise provide to the Settlement Administrator the Gross Settlement Amount no later seven (7) calendar days after the Effective Final Settlement Date.

24. **Gross Settlement Amount or GSA**: The total value of the Settlement is a non-reversionary $2,000,000. The Gross Settlement Amount includes, without limitation, the: (a) Net Settlement Amount to the Participating Class Members; (b) Attorneys Fee Award and Cost Award to Class Counsel, as approved by the Court; (c) Class Representative Enhancement Payments to the Class Representatives, as approved by the Court; (d) Administration Costs to the Settlement Administrator, as approved by the Court; and (e) the PAGA Payment to the LWDA and to Aggrieved Employees, as approved by the Court. Defendant's portion of payroll taxes as the Class Members' current or former employer will be paid outside of and in addition to the Gross Settlement Amount. If settlement approval takes longer than twelve (12) months (*i.e.*, if final approval is not achieved by September 11, 2025), Defendant shall add two percent (2%) to the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

25. **Individual Class Settlement Share(s)**: The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Class Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Class Settlement Share automatically, without the return of a claim form.

26. **Individual PAGA Settlement Share(s)**: Class Members will receive a pro-rated share of the Net Settlement Amount, less applicable withholdings, based on the number of workweeks they worked in California while employed by Defendant during the Class Period.

27. **LWDA**: California Labor and Workforce Development Agency ("LWDA"). The LWDA is empowered to enforce the Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*, and has delegated such authority to Plaintiffs with regard to the claim in these Lawsuits through the procedural mechanisms provided for by statute.

28. **LWDA Payment**: Refers to the seventy-five percent (75%) of the PAGA Payment (*i.e.*, $75,000) that is to be paid to the LWDA as described in this Settlement.

29. **Net PAGA Settlement Amount or NPSA:** The total amount of money for payout to Aggrieved Employees, which is the PAGA Payment less the LWDA Payment (*i.e.*, $25,000).

30. **Net Settlement Amount or NSA**: The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorneys Fee Award, Cost Award, Class Representative Enhancement Payment,

Administration Costs, and PAGA Payment. In other words, the NSA is the portion of the GSA that will be distributed to Participating Class Members. The payment of employee-side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the Individual Settlement Shares that are paid out of the Net Settlement Amount shall be reduced by the employee's tax liability for the portion of the settlement shares allocated as wages.

31. **PAGA**: The California Labor Code Private Attorneys General Act of 2004 (Labor Code section 2698 *et seq.*).

32. **PAGA Action:** *Giancarlo Blanco v. RDO Equipment Co.*, Riverside County Superior Court Case No. CVRI2301163.

33. **PAGA Data**: The electronic database Defendant shall deliver to the Settlement Administrator which will list the following information for each Aggrieved Employee: (a) first and last name; (b) last known mailing address; (c) social security number; (d) telephone number; and (e) the total number of pay periods during which the Aggrieved Employee performed work during the PAGA Period as an Aggrieved Employee. The PAGA Data shall be based on Defendant's payroll, personnel, and other business records.

34. **PAGA Payment**: $100,000 the Parties have agreed to settle the PAGA claims. Seventy-five percent (75%) of this amount, or $75,000, shall be paid to the LWDA. The remaining twenty-five percent (25%), or $25,000, shall become part of the Net PAGA Settlement Amount payable to Aggrieved Employees.

35. **PAGA Period**: February 22, 2022, through November 11, 2024.

36. **PAGA Settlement**: Refers to the settlement of claims included in the Released PAGA Claims, for which Aggrieved Employees will receive an Individual PAGA Settlement Share payment.

37. **Participating Class Members**: All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.

38. **Parties**: Plaintiff Munoz and Plaintiff Blanco on behalf of themselves, all others similarly situated, and on behalf of the general public; Defendant RDO Equipment Co.

39. **Preliminary Approval or Preliminary Approval Order**: The Court's order preliminarily approving the Class Settlement.

40. **Released Class Claims**: Each Participating Class Member shall fully release and discharge Defendant and the Released Parties from any and all claims that were pled or could have been pled based off of the facts contained in the

Operative Complaint. These are: (a) failure to pay all straight time wages; (b) failure to pay all overtime wages; (c) failure to provide meal periods; (d) failure to authorize and permit rest periods; (e) failure to adopt a compliant sick pay/paid time off policy; (f) knowing and intentional failure to comply with itemized employee wage statement provisions; (g) failure to pay all wages due at the time of termination of employment; (h) failure to reimburse/illegal deductions; and (i) violation of Unfair Competition Law. The release shall be for the Class Period.

41. **Released PAGA Claims**: Each PAGA Aggrieved Employee shall fully release and discharge Defendant and the Released Parties from any and all claims that were alleged or could have been alleged based on the claims, facts, and/or allegations contained in Operative Complaint and in the PAGA Notices submitted by Plaintiffs to the LWDA. The release shall be for the PAGA Period.

42. **Released Parties**: Defendant RDO Equipment Co. and its past or present officers, directors, employees and agents which could be jointly liable with Defendant for the claims alleged.

43. **Response Deadline**: Thirty (30) calendar days from the initial mailing of the Class Notices.

44. **Settlement Administration**: The Settlement Administrator will use the National Change of Address Database to obtain updated addresses for Class Members. The Settlement Administrator will mail the Class Notices by first class U.S. mail to all Class Members at the address resulting from the search of the National Change of Address Database. The Class Notices will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Member who does not receive notice after the steps outlined above have been taken will still be bound by the Settlement and/or judgment.

45. **Settlement Administrator**: The third party administrator agreed upon by Parties to administer this Settlement is Phoenix Settlement Administrators.

II. RECITALS

46. On February 21, 2023, Plaintiff Blanco provided notice to the LWDA in accordance with the PAGA.

On March 8, 2023, Plaintiff Blanco filed his action in the Riverside County Superior Court (Case No. CVRI2301163) alleging violations of the PAGA. Plaintiff Blanco's complaint alleges that Defendant failed to pay all minimum and overtime wages, failed to provide lawful meal and rest periods, failed to timely pay wages during employment, failed to timely pay wages at the termination of employment, failed to provide complete and accurate wage statements, and failed to reimburse for business expenses.

On February 16, 2023, Plaintiff Munoz provided notice to the LWDA in accordance with PAGA.

On April 25, 2023, Plaintiff Munoz filed this action in the Stanislaus County Superior Court alleging violations under PAGA (Case No. CV-23-002243).

On May 30, 2023, Plaintiff Munoz filed a First Amended Complaint withdrawing his PAGA allegations and instead asserting class claims under the California Labor Code for Defendant's alleged failure to pay all straight time wages, failure to pay all overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to adopt a compliant sick pay/paid time off policy, knowing and intentional failure to comply with itemized employee wage statement provisions, failure to pay all wages due at the time of termination of employment, failure to reimburse/illegal deductions, and violation of the Unfair Competition Law.

Defendant removed Plaintiff Munoz's action to the United States District Court, Eastern District of California on June 29, 2023.

The Parties scheduled a mediation with the mediator David Rotman on July 9, 2024. The case did not initially settle at mediation. On September 11, 2024, the Parties attended a second day of mediation with David Rotman, resulting in the Parties reaching a settlement, which was reduced to a Memorandum of Understanding.

47. **Production of Documents.** Prior to mediation, Defendant produced documents relating to the challenged class-wide policies in the Class and PAGA matters, along with a sampling of time and wage records.

48. **Benefits of Settlement to Class Members.** Plaintiffs and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiffs and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members, as it provides a definite, present sum of money.

49. **Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant has been and, unless this Settlement is

made, will continue to be devoted to the defense of the claims asserted by Plaintiffs. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.

50. **Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Lawsuits are not appropriate for class or representative treatment. Defendant asserts a number of defenses to the claims, and denies any wrongdoing or liability arising out of any of the alleged facts or conduct in the Lawsuits. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiffs against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.

51. **Plaintiffs' Claims.** Plaintiffs assert that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiffs, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Lawsuits. If this Settlement is finally approved by the Court, the Plaintiffs, Participating Class Members, and Class Counsel will not oppose Defendant's efforts to use this Agreement to prove that Plaintiffs and Participating Class Members have resolved and are forever barred from re-litigating the claims released under this Agreement.

III. SETTLEMENT TERMS AND CONDITIONS

52. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant is obligated to pay under this Settlement Agreement is $2,000,000. The Gross Settlement Amount includes, but is not limited to, the: (a) Net Settlement Amount to the Participating Class Members; (b) Attorneys Fee Award and Cost Award to Class Counsel, as approved by the Court; (c) Class Representative Enhancement Payments to the Class Representatives, as approved by the Court; (d) Administration Costs to the Settlement Administrator, as approved by the Court; and (e) PAGA Payment to the LWDA and Aggrieved Employees, as approved by the Court. Defendant's portion of payroll taxes as the Class Members' current or former employer will be paid outside of and in addition to the Gross Settlement Amount. If settlement approval takes longer than twelve (12) months (*i.e.*, if final approval is not achieved by September 11, 2025),

Defendant shall add two percent (2%) to the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

A. **Escalator Provision**: The Gross Settlement Amount is based on RDO's representation that approximately 643 Class Members worked approximately 70,065 workweeks during the time period from April 25, 2019, through July 9, 2024. If the actual number of workweeks worked by Class Members during this same time period exceeds 77,071 workweeks (*i.e.*, increases by more than 10%), RDO agrees to increase the Gross Settlement Amount on a proportionate basis for the percentage increase over ten percent (10%). For example, an eleven percent (11%) increase would result in a one percent (1%) increase of the Gross Settlement Amount. Alternatively, if the escalator provision is triggered, Defendant shall have the option to adjust the end of the Class Period so as to have an earlier end date to limit the number of workweeks below the ten percent (10%) escalator threshold.

53. **Class Certification**. Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. The Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement.

54. **Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiffs and Class Members for purposes of this settlement only. If the settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Class Action or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.

55. **Appointment of Class Representatives.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff Munoz and Plaintiff Blanco shall be appointed as representatives for the Class.

56. **Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.

57. **Individual Class Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Class Settlement Share to each Participating Class Member.

A. **Calculation**.

i. **Individual Class Settlement Share Calculation.** Participating Class Members will receive a pro-rated share of the Net Settlement Amount, less applicable withholdings, based on the number of workweeks they worked in California while employed by Defendant during the Class Period. The formula for distribution to Participating Class Members shall be calculated as follows: (1) Defendant shall provide the Settlement Administrator with the total number of work weeks worked by all Class Members during the Class Period; (2) the Settlement Administrator shall then divide the Net Payment by the total number of work weeks resulting in a value for each work week attributable to Class Members ("Work Week Value"); and (3) the Settlement Administrator shall then take the number of work weeks worked by each Class Member and multiply it by the Work Week Value.

B. **Tax Withholdings.** Each Class Member's Individual Settlement Share will be apportioned as follows: forty percent (40%) wages and sixty percent (60%) to interest and penalties/other payments. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. Only the employee share of payroll tax withholdings shall be paid from each Class Member's Individual Settlement Share. The employer share of payroll tax withholdings shall be paid separate from and in addition to the Gross Settlement Amount.

58. **Individual PAGA Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual PAGA Settlement Share to each Aggrieved Employee.

A. **Calculation**.

i. **Individual PAGA Settlement Share Calculation.** Aggrieved Employees will receive a pro-rated share of the Net Settlement Amount, less applicable withholdings, based on the number of pay periods they worked in California while employed by Defendant during the PAGA Period. The formula for distribution to Aggrieved Employees shall be calculated as follows: (1) Defendant shall provide the Settlement Administrator with the total number of pay periods worked by all Aggrieved Employees during the PAGA Period; (2) the Settlement Administrator shall then divide the Net PAGA Settlement Amount by the total number of pay periods resulting in a value for each pay period attributable to Aggrieved Employees ("Pay Period Value"); and (3) the Settlement Administrator shall then take the number of pay periods worked by each Aggrieved Employee and multiply it by the Pay Period Value.

B. **Tax Withholdings.** Each Aggrieved Employee's Individual PAGA Settlement Share will be apportioned as one hundred percent (100%) penalties. The Individual PAGA Settlement Shares shall therefore be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

59. **Constituents of Gross Settlement Amount Disbursement.** Subject to the terms and conditions of this Agreement, the Settlement Administrator shall disburse the Gross Settlement Amount to the following:

A. **To the Named Plaintiffs:** In addition to their Individual Settlement Shares, and subject to the Court's approval, Plaintiffs will each receive up to $10,000 (totaling $20,000) in consideration for providing Defendant a General Release, a release that is broader than the claims released by Participating Class Members. The Settlement Administrator will pay the Class Representative Enhancement Payments out of the Gross Settlement Amount. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payments. An IRS Form 1099 will be issued to Plaintiffs for their Class Representative Enhancement Payments.

B. **To Class Counsel.** At the Final Approval Hearing, Class Counsel will apply to the Court for an Attorneys Fee Award not to exceed thirty-five percent (35%) of the GSA and a Cost Award not to exceed $50,000. The Settlement Administrator will pay the Court approved amounts for the Attorneys Fee Award and Cost Award out of the Gross Settlement Amount. The Settlement Administrator may purchase an annuity to utilize U.S. treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorneys Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to the Attorneys Fee Award. In the event the Court does not approve the entirety of the application for the Attorneys Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorneys Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

C. **To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each Class Member's Individual Settlement Share. Defendant's portion of payroll taxes as the current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) will be paid outside of and in addition to the GSA. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes and will forward the amount of the Participating Class Members' portion of normal payroll withholding taxes to the appropriate taxing authorities.

D. **To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed $15,000. This will be paid out of the Gross Settlement Amount. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

E. **To the LWDA and Aggrieved Employees.** The Settlement Administrator will pay $75,000 of the PAGA Payment to the LWDA. This is seventy-five percent (75%) of the $100,000 allocated to satisfy the PAGA penalties claim. The remaining twenty-five percent (25%) of the PAGA Payment (which equates to $25,000) shall become part of the Net PAGA Settlement Amount payable to Aggrieved Employees

F. **To Participating Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations. All payments to Participating Class Members and Aggrieved Employees shall be made from the Gross Settlement Amount.

60. **Appointment of Settlement Administrator.** Solely for the purposes of this Settlement, the Parties stipulate and agree that Phoenix Settlement Administrators shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for: (a) preparing, translating, printing, and mailing the Class Notice to Class Members and Aggrieved Employees; (b) performing skip traces and remailing notices to Class Members and Aggrieved Employees; (c) calling Class Members and Aggrieved Employees with undeliverable notices to obtain accurate addresses; (d) keeping

track of any objections or requests for exclusion from Class Members; (e) calculating any and all payroll tax deductions as required by law; (f) calculating each Class Member's and Aggrieved Employee's Individual Settlement Share; (g) maintaining a website which will include settlement documents; (h) providing weekly status reports to Defendant's Counsel and Class Counsel; (i) providing a due diligence declaration for submission to the Court prior to the Final Approval Hearing; (j) mailing and remailing Individual Settlement Shares to Participating Class Members and Aggrieved Employees; (k) calculating and mailing the LWDA Payment to the LWDA; (l) distributing the Attorneys Fee Award and Cost Award to Class Counsel; (m) printing and providing Participating Class Members, Aggrieved Employees, and Plaintiffs with W-2s and 1099 forms as required; (n) providing a due diligence declaration for submission to the Court upon the completion of the Settlement; (o) providing any funds remaining in the QSF as a result of uncashed checks to California Controller's Unclaimed Property Fund in the name of the Class Member; and (p) performing such other tasks as the Parties mutually agree.

A. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

61. **Procedure for Approving Settlement.**

A. **Cooperation.**

i. All Parties and their counsel shall support the Settlement and take such steps as are necessary to effectuate the Settlement.

B. **Amended Complaint.**

i. As part of the settlement, and for settlement purposes only, Plaintiff Munoz will file a Second Amended Complaint that adds Plaintiff Blanco as a plaintiff in the Class Action and adds a cause of action pursuant to the PAGA. The Parties will file a joint stipulation for leave to file the Second Amended Complaint. This Second Amended Complaint will be the "Operative Complaint" for settlement purposes.

C. **Motion for Preliminary Approval and Conditional Certification.**

i. Plaintiffs will move for an order: (1) conditionally certifying the Class for settlement purposes only; (2) granting Preliminary Approval of the Settlement; (3) setting a date for the Final Approval Hearing; and (4) approving the Class Notice.

ii. At the same time that Plaintiffs file their Motion for Preliminary Approval, Plaintiffs shall send a copy of the Agreement to the LWDA pursuant to the 2016 amendments to PAGA.

iii. At the Preliminary Approval Hearing, Class Counsel will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representatives, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval Hearing.

iv. Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement Agreement will be null and void, and the Parties will have no further obligations under it. The amounts of the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall be determined by the Court, the Court's determination on these amounts shall be final and binding, and the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement Agreement. Any order or proceeding relating to an application for the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payments shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiffs or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment.

D. **Notice to Class Members and Aggrieved Employees.** After the Court enters its Preliminary Approval Order, every Class Member and Aggrieved Employee will be provided with the Class Notice in accordance with the following procedure:

i. **Delivery of Class and PAGA Data.** Within ten (10) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list the Class and PAGA Data. If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will use the National Change of Address Database to obtain updated addresses for Class Members. The Class Data and PAGA Data shall be based on Defendant's payroll, personnel, and other business records. The Settlement Administrator shall maintain the Class and PAGA Data and all information contained within the Class and PAGA Data as private and confidential.

ii. **Preparation of Class Notices.** Based on the information in the Class and PAGA Data and the settlement share formulae set forth herein, the Settlement Administrator shall promptly calculate the estimated Individual Settlement Share and Individual PAGA Settlement Share for every Class Member and Aggrieved Employee, to be included in the individualized Class Notices to be sent to that Class Member and/or Aggrieved Employee. The Settlement Administrator shall prepare and mail a spreadsheet setting forth those calculations to Class Counsel and Defense Counsel no fewer than five (5) calendar days before mailing the Class Notices to Class Members and Aggrieved Employees. The Class Notices will inform each Class Member of his/her right to do nothing, dispute the number of work weeks worked, opt out of the Settlement, or object to the Settlement. The Class Notices will also inform Class Members that if they first request exclusion from the Settlement and then object, the objections would not be considered valid. In addition, if the Class Members object and then request exclusion from the Class Settlement, the Class Members would be deemed to have waived their objection.

iii. **Mailing of Class Notices.** Within ten (10) calendar days after receipt of the Class and PAGA Data, the Settlement Administrator will mail via first-class regular U.S. Mail the Class Notice in English and Spanish to all identified Class Members and Aggrieved Employees using the mailing address information provided by Defendant and the results of the search of the National Change of Address Database.

iv. **Returned Notices.** If a Class Notice is returned because of an incorrect address, within five (5) calendar days from receipt of the returned notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail, performing address searches for all mail returned without a forwarding address, and promptly re-mailing to Class Members for whom new addresses are found.

v. **Weekly Status Reports.** The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Notices mailed, the number of Notices returned as undeliverable, the number of Notices re-mailed, and the number of requests for exclusion or objections received.

vi. **Settlement Administrator's Declaration.** No later than fourteen (14) calendar days after the Response Deadline, or on a date mutually agreed upon by the Parties and the Settlement Administrator, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel at the same time as the final approval motion is filed. Before the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

E. **Objections to Settlement.** The Class Notice will provide that the Class Members who wish to object to the Settlement must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline. The timeframe to submit an objection will not be increased for returned mailings.

a. **Format.** Any Objections shall state: (i) the objecting person's full name, address, and telephone number; (ii) the words "Notice of Objection" or "Formal Objection;" (iii) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (iv) list identifying witness(es) the objector may call to testify at the Final Approval Hearing; and (v) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing.

b. **Notice of Intent to Appear.** Objecting Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel. Objecting Class Members are permitted to appear regardless of whether they submitted a written objection.

F. **Request for Exclusion from the Settlement ("Opt-Out").** The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a written request for exclusion. The written request for exclusion must: (a) state the Class Member's name, address, telephone number, and the last four digits of the Class Member's social security number or employee identification number; (b) state the Class Member's intention to exclude themselves from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than the Response Deadline.

i. **Effect of "Opt-Out".** Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share or any benefit of this Settlement. If the Class Member is also an Aggrieved Employee as defined in this Agreement, he or she will still receive an Individual PAGA Settlement Share payment as approved by the Court. Aggrieved Employees have no right to opt-out of the PAGA Settlement.

ii. **Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity. Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Class Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent judgment, regardless of whether he or she has objected to the Settlement. The determination by the Settlement Administrator shall be final and binding.

iii. **Report.** No later than five (5) business days after the Response Deadline, the Settlement Administrator will provide the Parties with an accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.

iv. **Defendant's Option to Terminate.** If the number of valid requests for exclusion exceeds ten percent (10%) of the total of all Class Members, RDO may, but is not obligated, elect to withdraw from the settlement. The Parties agree that, if RDO withdraws, the settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement, provided that RDO will remain responsible for paying all settlement administration expenses incurred to that point.

G. **Class Member and Aggrieved Employee Disputes.** If a Class Member or Aggrieved Employee who receives a Class Notice wishes to dispute the number of work weeks listed on the Class Notice, the Class Member or Aggrieved Employee may notify the Settlement Administrator by mail or telephone no later than the Response Deadline and should produce any available supporting evidence, such as wage statements, offers of employment, termination letters, and/or other employment records, to the Settlement Administrator. The documentation should provide evidence of the dates the Class Member or Aggrieved Employee contends he or she worked for Defendant during the Class or PAGA Period. The Settlement Administrator shall then provide the documentation provided by the Class Member or Aggrieved Employee to Defendant. Defendant shall review its records, the documentation provided by the Class Member or Aggrieved Employee, and shall provide information to the Settlement Administrator in response to any such disputed claim. Defendant's records shall be presumed to be determinative, but the Settlement Administrator shall evaluate the evidence submitted by the Class Member or Aggrieved Employee and make the decision as to which dates should be applied. The determination by the Settlement Administrator shall be final and binding.

H. **No Solicitation of Objection or Requests for Exclusion.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

I. **Settlement Website.** The Settlement Administrator shall establish a website to host documents relevant to this lawsuit and the proposed settlement. Such documents shall include the operative complaint, this Agreement, and Class Notice.

J. **Motion for Final Approval.**

i. Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorneys Fee Award; (2) the Cost Award; (3) Administrative

Costs; (4) the Class Representative Enhancement Payments; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Class and PAGA Claims of the Participating Class Members and LWDA.

ii. If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Should this occur, the Parties agree they shall be equally responsible for the Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiffs and Class Counsel for the Class Representative Enhancement Payments, Attorneys Fee Award, Cost Award, and Administration Costs award will not constitute a material modification to the Settlement within the meaning of this paragraph.

iii. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under Court rules and applicable law.

K. **Waiver of Right to Appeal.** Provided that the judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.

L. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing Court vacates, reverses, or modifies the judgment such that there is a material modification to the Settlement Agreement, and that Court's decision is not completely reversed and the judgment is not fully affirmed on review by a higher Court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.

M. **Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiffs, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

i. **Funding the Settlement**: Defendant shall wire or otherwise provide to the Settlement Administrator the Gross Settlement no later than seven (7) calendar days after the Effective Final Settlement Date.

ii. **Disbursement**: Within ten (10) calendar days after the Defendant funds the Settlement, the Settlement Administrator shall disburse the: (1) Net Settlement Amount to the Participating Class Members; (2) Net PAGA Settlement Amount to the Aggrieved Employees; (3) Attorney Fee Award and Cost Award to Class Counsel, as approved by the Court; (4) Class Representative Enhancement Payments to the Class Representatives, as approved by the Court; (5) Administration Costs to the Settlement Administrator, as approved by the Court; (6) LWDA Payment to the LWDA; and (7) Defendant's portion of payroll taxes as the Class Members' current or former employer.

iii. **Qualified Settlement Fund or QSF**: The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations section 1.4168B-1, 26 C.F.R. section 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. section 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

N. **Settlement Administrator's Final Report.** Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds. The Parties shall file this declaration with the Court. The Settlement Administrator will provide any supplemental declaration required by the Court or the Parties.

O. **Uncashed Checks.** Participating Class Members and Aggrieved Employees must cash or deposit their settlement checks within one hundred eighty (180) calendar days after the checks are mailed to them.

i. **Reminder Postcard.** If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) calendar days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.

ii. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those checks remaining un-cashed shall be sent to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure section 384, subdivision (b).

P. **Defendant's Legal Fees.** Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in the Lawsuits outside of the Gross Settlement Amount.

62. **Release of Class Claims.** As of the Effective Final Settlement Date, Participating Class Members shall release the Released Parties from the Released Class Claims. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Class Claims.

63. **Release of PAGA Claims.** As of the Effective Final Settlement Date, Aggrieved Employees shall release the Released Parties from the Released PAGA Claims. Aggrieved Employees agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released PAGA Claims.

64. **Plaintiffs' Release of Claims and General Release.** As of the Effective Final Settlement Date and in exchange for the Class Representative Enhancement Payments, Plaintiffs shall provide a general release of claims for themselves and their respective spouse, heirs, successors and assigns, forever release the

Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time through the date of their signatures on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for, or termination of, such employment. Plaintiffs' Release of Claims and General Release also includes a waiver of Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

This release excludes any release of any claims not permitted to be released by law. In consideration for providing Defendant with this general release, Defendant agrees to provide a neutral reference (dates of employment and last position held) in response to inquiries by prospective employers of Plaintiffs.

65. **Miscellaneous Terms**

A. **No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Lawsuits, or that but for the Settlement, a Class should be certified in the Class Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and the Parties' willingness to settle the Lawsuits will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).

B. **No Effect on Employee Benefits.** The Class Representative Enhancement Payments and/or Individual Settlement Shares paid to Plaintiffs and Participating Class Members and/or Aggrieved Employees shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiffs or the Participating Class Members or Aggrieved Employees. The Parties agree that any Class Representative Enhancement Payments and/or Individual Settlement Share paid to Plaintiffs or the Participating Class Members and/or Aggrieved Employees under the terms of this Agreement do not represent any modification of Plaintiffs' or Participating Class Members' and/or Aggrieved Employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Enhancement Payments shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.

C. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibit will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibit, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibit.

D. **Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiffs and Defendant to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

E. **Exhibit and Headings.** The terms of this Agreement include the terms set forth in the exhibit. Any exhibit to this Agreement are an integral part of the Settlement and must be approved substantially as written. The headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

F. **Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Lawsuits in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the Court.

G. **Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.

H. **Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.

I. **No Prior Assignment.** Plaintiffs hereby represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.

J. **Applicable Law.** All terms and conditions of this Agreement and its exhibit will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

K. **Fair, Adequate, and Reasonable Settlement.** The Parties and their counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Lawsuits and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

L. **No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members and Aggrieved Employees will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members and Aggrieved Employees shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that if any taxing body determines that additional taxes are due from any Class Member or Aggrieved Employee, such Class Member assumes all responsibility for the payment of such taxes.

M. **Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.

N. **Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

O. **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.

P. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 10/9/2024 **SIMON MUNOZ**

Signed by:
D2931581FC6644F...

Dated: ______________ **GIANCARLO BLANCO**

____

Dated: ______________ **RDO EQUIPMENT CO.**

____
Name:
Title:

APPROVED AS TO FORM:

Dated: 10/9/2024 **MARA LAW FIRM, PC**

DocuSigned by:
David Mara
4579A5166C10447...

David Mara, Esq.
Jill Vecchi, Esq.
Attorneys for Plaintiffs and the Proposed Class/Aggrieved Employees

Dated: ______________ **JUSTICE LAW CORPORATION**

____
Douglas Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
William Wilkinson, Esq.
Attorneys for Plaintiffs and the Proposed Class/Aggrieved Employees

Dated: ______________ **BAKER & HOSTETLER LLP**

____
David H. Stern, Esq.
Alex E. Spjute, Esq.
Jennifer F. Delarosa, Esq.
Attorneys for Defendant RDO Equipment Co.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: ______________ **SIMON MUNOZ**

____

Dated: 10/17/2024 **GIANCARLO BLANCO**

Giancarlo R Blanco
____

Dated: ______________ **RDO EQUIPMENT CO.**

____
Name:
Title:

APPROVED AS TO FORM:

Dated: ______________ **MARA LAW FIRM, PC**

____
David Mara, Esq.
Jill Vecchi, Esq.
Attorneys for Plaintiffs and the Proposed Class/Aggrieved Employees

Dated: October 29, 2024 **JUSTICE LAW CORPORATION**

D. Han
____
Douglas Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
William Wilkinson, Esq.
Attorneys for Plaintiffs and the Proposed Class/Aggrieved Employees

Dated: ______________ **BAKER & HOSTETLER LLP**

____
David H. Stern, Esq.
Alex E. Spjute, Esq.
Jennifer F. Delarosa, Esq.
Attorneys for Defendant RDO Equipment Co.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: ____________ **SIMON MUNOZ**

____

Dated: ____________ **GIANCARLO BLANCO**

____

Dated: October 31, 2024 **RDO EQUIPMENT CO.**

____
Name: Parker J. Noah
Title: Secretary

APPROVED AS TO FORM:

Dated: ____________ **MARA LAW FIRM, PC**

____
David Mara, Esq.
Jill Vecchi, Esq.
Attorneys for Plaintiffs and the Proposed Class/Aggrieved Employees

Dated: ____________ **JUSTICE LAW CORPORATION**

____
Douglas Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
William Wilkinson, Esq.
Attorneys for Plaintiffs and the Proposed Class/Aggrieved Employees

Dated: 11/11/24 **BAKER & HOSTETLER LLP**

____
David H. Stern, Esq.
Alex E. Spjute, Esq.
Jennifer F. Delarosa, Esq.
Attorneys for Defendant RDO Equipment Co.

Exhibit A

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE

Simon Munoz v. RDO Equipment Co. (Case Number 1:23-cv-00979-DAD-AC)

The United States District Court, Eastern District of California authorized this Class Notice. Read it carefully! It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit ("Action") against RDO Equipment Co. ("RDO") for alleged wage and hour violations. The Action was filed by Plaintiffs Simon Munoz and Giancarlo Blanco ("Plaintiffs"), former employees of RDO. The Action seeks payment of:

(1) Unpaid wages for a class of current and former non-exempt, hourly employees who were employed by RDO in California at any time from April 25, 2019, through November 11, 2024 ("Class," "Class Members," "Class Period"); and

(2) Penalties under the Private Attorneys General Act of 2004 ("PAGA") for all current and former non-exempt, hourly employees who were employed by RDO in California at any time from February 22, 2022, through November 11, 2024 ("Aggrieved Employees" and "PAGA Period").

The settlement has two main parts: (1) class portion of the Settlement requiring RDO to fund Individual Class Settlement Shares; and (2) PAGA portion of the Settlement requiring RDO to fund Individual PAGA Settlement Shares.

Based on RDO's records, your portion of the class settlement, referred to as your "Individual Class Settlement Share" is estimated to be about $______ (less withholding) and your portion of the PAGA settlement, referred to as your "Individual PAGA Settlement Share" is estimated to be about $______. The actual amount you may receive likely will be different and will depend on several factors. (If no amount is stated for your Individual PAGA Settlement Share, then according to RDO's records, you are not eligible for an Individual PAGA Settlement Share under the settlement because you didn't work during the PAGA Period.)

The above estimates are based on RDO's records showing you worked ______ workweeks during the Class Period and worked ______ pay periods during the PAGA Period. If you believe you worked more workweeks during the Class Period and/or worked more pay periods during the PAGA Period, you can submit a challenge by the deadline date. See Section IV of this Class Notice.

The Court has already preliminarily approved the settlement and approved this Class Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Class Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the settlement and how much of the settlement will be paid to Plaintiffs and Plaintiffs' attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires RDO to make payments under the settlement and requires Class Members and Aggrieved Employees to release certain claims against RDO.

If you worked for RDO during the Class Period and/or PAGA Period, you have two (2) basic options under the settlement:

1. **Do Nothing**. You don't have to do anything to participate in the settlement and be eligible for an Individual Class Settlement Share and/or Individual PAGA Settlement Share. As a Class Member who does not submit a valid and timely request for exclusion ("Participating Class Member"), you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against RDO.

2. **Opt Out of the Class Portion of the Settlement**. You can exclude yourself from the class portion of the Settlement (opt out) by submitting a written request for exclusion or otherwise notifying the Settlement Administrator in writing. If you opt out of the settlement, you will not receive an Individual Class Settlement Share but will preserve your right to personally pursue Class Period wage claims against RDO. If you are an Aggrieved Employee, you remain eligible for an Individual PAGA Settlement Share. You cannot opt out of the PAGA portion of the settlement and will be bound by the release of PAGA penalty claims even if you opt out of the class claims.

RDO won't retaliate against you for any actions you take with respect to the settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Settlement Share and Individual PAGA Settlement Share (if any). In exchange, you will give up your right to assert the wage claims against RDO covered by this settlement (Released Claims).
You Can Opt Out of the Class Portion of the Settlement but not the PAGA Portion of the Settlement **The Opt Out Deadline is ____________**	If you don't want to fully participate in the settlement, you can opt out of the class portion of the Settlement by sending the Settlement Administrator a written request for exclusion. Once excluded, you will be a non-Participating Class Member and will no longer be eligible for an Individual Class Settlement Share. This means that you will not receive any money under the settlement as a Class Member. Non-Participating Class Members cannot object to any portion of the settlement. See Section VI of this Class Notice. You cannot opt out of the PAGA portion of the settlement. RDO must pay Individual PAGA Settlement Shares to all Aggrieved Employees, and the Aggrieved Employees will be bound by the PAGA portion of the release (defined below).
Participating Class Members Can Object to the Class Portion of the Settlement but not the PAGA Portion of the Settlement **Written Objections Must be Submitted by ____________**	If you do not opt out, you may write to the Settlement Administrator about why you object to the settlement, and they will forward your concerns to counsel which will then be provided to the Court. If the Court approves the settlement despite your objection, you will still be bound by the settlement. See Section VII of this Class Notice.

You Can Participate in the ______ Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on ______. You don't have to attend, but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone, or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section VIII of this Class Notice.
You Can Challenge the Calculation of Your Workweeks and/or Pay Periods **Written Challenges Must be Submitted by ______**	The amount of your Individual Class Settlement Share and PAGA Payment (if any) depend on how many workweeks you worked during the Class Period and pay periods you worked during the PAGA Period respectively. The number of workweeks you worked during the Class Period and pay periods you worked during the PAGA Period according to RDO's records is stated on the first page of this Class Notice. See Section IV of this Class Notice.

I. WHAT IS THE ACTION ABOUT?

The Action alleges that RDO violated California labor laws by failing to correctly: (1) pay straight time wages; (2) pay overtime wages; (3) provide meal periods; (4) authorize and permit rest periods; (5) adopt a compliant sick pay/paid time off policy; (6) comply with itemized employee wage statement provisions; (7) pay all wages due at termination of employment; (8) reimburse business expenses/illegal deductions; and (9) comply with the requirements of Business & Professions Code section 17200. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties on behalf of the State of California under Labor Code section 2698 (PAGA). Plaintiffs are represented by attorneys Douglas Han, Shunt Tatavos-Gharajeh, and William Wilkinson of Justice Law Corporation and David Mara and Jill Vecchi of Mara Law Firm, PC.

RDO strongly denies violating any laws or failing to pay any wages and RDO contends it always complied with all applicable laws. The Court has not made any findings as to the allegations or whether any violations occurred.

II. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

The Court has made no determination on the merits of the allegations. In the meantime, the Parties hired an experienced, neutral mediator to resolve the Action by negotiating a settlement rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful following two full days of mediation and a mediator's proposal. By signing the Joint Stipulation and Settlement Agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, the Parties have negotiated a settlement that is subject to the Court's Final Approval. Both sides agree the settlement is a compromise of disputed claims. By agreeing to settle, RDO does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Agreement is a good deal for you because: (1) RDO agreed to pay a fair, reasonable, and adequate amount considering the strength of the claims and risks and uncertainties of continued litigation; and (2) Agreement is in the best interests of the Class Members and Aggrieved Employees. The Court has preliminarily approved the Agreement as fair, reasonable, and adequate, authorized this Class Notice, and scheduled a hearing to determine Final Approval.

III. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. RDO Will Pay $2,000,000 as the Gross Settlement Amount. RDO agreed to deposit the Gross Settlement Amount into an account controlled by the Settlement Administrator of the Agreement. The Settlement Administrator will use the Gross Settlement Amount to pay all amounts that are due under this Settlement, including the Attorney Fee Award, Cost Award, Class Representative Enhancement Payments, Administration Costs, Individual Class Settlement Shares, Individual PAGA Settlement Shares, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA").

   a. Assuming the Court grants Final Approval, RDO shall wire or otherwise provide to the Settlement Administrator the Gross Settlement no later than seven (7) calendar days after the Effective Final Settlement Date. Within ten (10) calendar days after RDO funds the Settlement, the Settlement Administrator shall disburse the settlement payments to the appropriate entities and persons.

   b. "Effective Date" means the date by when both of the following have occurred: (i) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (i) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (1) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (2) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (3) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

2. Court Approved Deductions from Gross Settlement Amount. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following payments to be made from the Gross Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

   a. Up to thirty-five percent (35%) of the Gross Settlement Amount to Class Counsel as their Attorney Fee Award and up to $50,000 as their Cost Award. To date, Class Counsel have worked and incurred expenses on the Action without payment.

   b. Up to $10,000 to each Plaintiff (totaling $20,000) as the Class Representative Enhancement Payments for filing the Action, working with Class Counsel, and effectively representing the Class. The Class Representative Enhancement Payments will be the only money Plaintiffs will receive other than their Individual Class Settlement Share and any Individual PAGA Settlement Share.

c. Up to $15,000 to the Settlement Administrator as the Administration Costs for services administering the Agreement.

d. Up to $75,000 will be paid to the LWDA as the State of California's share of the PAGA settlement.

e. Up to $25,000 will be paid to the Aggrieved Employees as their Individual PAGA Settlement Shares based on their pay periods worked during the PAGA Period.

3. Right to Object. Participating Class Members have the right to object to any of these payments. Class Members who opt out can only object to the PAGA Payment. The Court will consider all objections.

4. Net Settlement Amount. After making the above distributions in amounts approved by the Court, the Settlement Administrator will distribute the rest of the Gross Settlement Amount ("Net Settlement Amount") by making out Individual Class Settlement Shares to Participating Class Members based on their workweeks worked during the Class Period.

5. Taxes Owed on Payments to Class Members. The Parties are asking the Court to approve an allocation of forty percent (40%) of each Individual Class Settlement Share to the settlement of wage claims ("Wage Portion") sixty percent (60%) of each Individual Class Settlement Share to the settlement of claims for interest and penalties/other payments ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS Form W-2. The Individual PAGA Settlement Shares are counted as penalties rather than wages for tax purposes. The Settlement Administrator will report the Individual PAGA Settlement Shares and Non-Wage Portions of the Individual Class Settlement Shares on IRS Form 1099.

   a. While the Parties agreed to these allocations, neither side is giving you any advice on whether your payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the Agreement. You should consult a tax advisor if you have any questions about the tax consequences of the settlement.

6. Need to Promptly Cash Payment Checks. The face of each check shall state checks that are not cashed within one hundred eighty (180) calendar days after the date of mailing will be voided. The Settlement Administrator will cancel all checks not cashed by the void date. For any Class Member whose Individual Class Settlement Share check or Individual PAGA Settlement Share check is uncashed and cancelled after the void date, the Settlement Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member. If the monies represented by your check is sent to the California Controller's Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

7. Request for exclusion from the Class Portion of the Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the class portion of the Settlement, unless you notify the Settlement Administrator in writing that you wish to opt out. Excluded Class Members will not receive Individual Class Settlement Shares but will preserve their rights to personally pursue wage and hour claims against RDO.

    a. You cannot opt out of the PAGA portion of the Settlement. Class Members who exclude themselves from the class portion of the Settlement remain eligible for Individual PAGA Settlement Shares and are required to give up their right to assert PAGA claims against RDO based on the PAGA Period facts alleged in the Action.

8. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Agreement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. The Parties agreed, in either case, the Agreement will be void: (a) RDO will not pay any money; and (b) Class Members will not release any claims against RDO.

9. Settlement Administrator. The Court has appointed Phoenix Settlement Administrators ("Settlement Administrator") to send this Class Notice, calculate and make payments, and process Class Members' request for exclusion. The Settlement Administrator will also decide Class Member and Aggrieved Employee challenges over workweeks and pay periods, mail and remail settlement checks and tax forms, and perform other tasks necessary to administer the Agreement. The Settlement Administrator's contact information is contained in Section IX of this Class Notice.

10. Participating Class Members' Release. As of the Effective Final Settlement Date, Participating Class Members shall release the Released Parties from the Released Class Claims. This means each Participating Class Member shall fully release and discharge Defendant and the Released Parties from any and all claims that were pled or could have been pled based off of the facts contained in the Operative Complaint. These are: (a) failure to pay all straight time wages; (b) failure to pay all overtime wages; (c) failure to provide meal periods; (d) failure to authorize and permit rest periods; (e) failure to adopt a compliant sick pay/paid time off policy; (f) knowing and intentional failure to comply with itemized employee wage statement provisions; (g) failure to pay all wages due at the time of termination of employment; (h) failure to reimburse/illegal deductions; and (i) violation of Unfair Competition Law. The release shall be for the Class Period.

11. Aggrieved Employees' Release. As of the Effective Final Settlement Date, Aggrieved Employees shall release the Released Parties from the Released PAGA Claims. Each PAGA Aggrieved Employee shall fully release and discharge Defendant and the Released Parties from any and all claims that were alleged or could have been alleged based on the claims, facts, and/or allegations contained in Operative Complaint and in the PAGA Notices submitted by Plaintiffs to the LWDA. The release shall be for the PAGA Period.

12. Released Parties. The Released Parties are defined as RDO and its past or present officers, directors, employees and agents which could be jointly liable with Defendant for the claims alleged.

IV. HOW WILL THE SETTLEMENT ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Settlement Shares. The Settlement Administrator will calculate Individual Class Settlement Shares using the following formula: (a) Defendant shall provide the Settlement Administrator with the total number of work weeks worked by all Class Members during the Class Period; (b) the Settlement Administrator shall then divide the Net Payment by the total number of work weeks resulting in a value for each work week attributable to Class Members ("Work Week Value"); and (c) the Settlement Administrator shall then take the number of work weeks worked by each Class Member and multiply it by the Work Week Value.

2. Individual PAGA Settlement Shares. The Settlement Administrator will calculate Individual PAGA Settlement Shares by using the following formula: (a) Defendant shall provide the Settlement Administrator with the total number of pay periods worked by all Aggrieved Employees during the PAGA Period; (b) the Settlement Administrator shall then divide the Net PAGA Settlement Amount by the total number of pay periods resulting in a value for each pay period attributable to Aggrieved Employees ("Pay Period Value"); and (c) the Settlement Administrator shall then take the number of pay periods worked by each Aggrieved Employee and multiply it by the Pay Period Value.

3. Workweek and Pay Period Challenges. The number of workweeks you worked during the Class Period and the number of pay periods you worked during the PAGA Period, as reflected in RDO's records, are stated on the first page of this Class Notice. You have until ________________ to challenge the number of workweeks and pay periods credited to you. You can submit your challenge by signing and sending a letter to the Settlement Administrator via mail. Section IX of this Class Notice has the Settlement Administrator's contact information.

    a. You need to support your challenge by sending copies of pay stubs or other records. The Settlement Administrator will accept RDO's calculation of workweeks and pay periods based on RDO's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Settlement Administrator will resolve workweek and pay period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defense Counsel. The Settlement Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

V. HOW WILL I GET PAID?

1. Participating Class Members. The Settlement Administrator will mail a single check to every Participating Class Member, including those who also qualify as Aggrieved Employees. The single check will combine Individual Class Settlement Share and Individual PAGA Settlement Share.

2. Non-Participating Class Members. The Settlement Administrator will mail a single Individual PAGA Settlement Share check to every Aggrieved Employee who opts out of the class portion of the Settlement.

3. **Your check will be sent to the same address as this Class Notice. If you change your address, be sure to notify the Settlement Administrator as soon as possible. Section IX of this Class Notice has the Settlement Administrator's contact information**.

VI. HOW DO I OPT OUT OF THE CLASS PORTION OF THE SETTLEMENT?

Submit a written and signed letter with your full name with a simple statement that you do not want to participate in the Agreement. The Settlement Administrator will exclude you based on any writing communicating your request be excluded. The written request for exclusion must: (1) state your name, address, telephone number, and last four digits of your social security number or employee identification number; (2) state your intention to exclude yourself from or opt-out of the Settlement; (3) be addressed to the Settlement Administrator; (4) be signed by you or your lawful representative; and (5) be postmarked no later than ____________. Section IX of the Class Notice has the Settlement Administrator's contact information.

VII. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Agreement. A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Attorney Fee Award, Cost Award, and Class Representative Enhancement Payments may wish to object. The deadline for sending written objections to the Settlement Administrator is Phoenix Settlement Administrators. Any objections shall state: (1) your full name, address, and telephone number; (2) the words "Notice of Objection" or "Formal Objection;" (3) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (4) list identifying witness(es) you may call to testify at the Final Approval Hearing; and (5) provide true and correct copies of any exhibit(s) you intend to offer at the Final Approval Hearing. Section IX of this Class Notice has the Settlement Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. Participating Class Members do not need to submit a written objection to the Settlement Administrator to be heard at the Final Approval Hearing. Finally, the Court will hear and consider objections to the PAGA portion of the Settlement. See Section VIII of this Class Notice for specifics regarding the Final Approval Hearing.

VIII. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _______________ at ________ in Department __ of the Eastern District of California located at ________. At the Final Approval Hearing, the judge will decide whether to grant Final Approval of the Agreement and how much of the Gross Settlement Amount will be paid to Class Counsel, Plaintiff, and Settlement Administrator. The Court will invite comments from objectors, Class Counsel, and Defense Counsel before deciding.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Settlement Administrator's website _____________________________ beforehand or contact Class

IX. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything the Parties have promised to do. The easiest way to read the Agreement, Judgment, or any other settlement documents is to go to Settlement Administrator's website at ___________________________. You can also telephone or send an email to Class Counsel or the Settlement Administrator using the contact information listed below.

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Settlement, which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Settlement, may be examined https://pacer.uscourts.gov/file-case/court-cmecf-lookup/court/CAEDC, or you may contact Class Counsel or the Settlement Administrator.

PLEASE DO NOT TELEPHONE THE COURT OR RDO'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT.

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Settlement Administrator: Phoenix Settlement Administrators
[MAILING ADDRESS]
[TELEPHONE NUMBER]
[EMAIL]

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Settlement Administrator will replace it if you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the California Controller's Unclaimed Property Fund at https://www.sco.ca.gov/search_upd.html for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Settlement Administrator if you move or otherwise change your mailing address.

Exhibit 2