

1 BRANDON BROUILLETTE
brandon@crosnerlegal.com
2 ZACHARY M. CROSNER (SBN 272295)
Zach@crosnerlegal.com
3 JAMIE SERB (SBN 289601)
jamie@crosnerlegal.com
4 **CROSNER LEGAL, P.C.**
9440 Santa Monica Blvd., Suite 301
5 Beverly Hills, CA 90210
Telephone: 866-276-7637
6 Facsimile: 310-510-6429

7 Attorneys for Plaintiffs
Eliseo De La Torre, Jose Noriega, Nicasio
8 Andrade, and Mario Castro

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO**

12 ELISEO DE LA TORRE, JOSE NORIEGA,
13 NICASIO ANDRADE, and MARIO CASTRO,
individually and on behalf of all similarly-
situated employees,

14 Plaintiffs,

15 v.

16 UNIQUE BUILDING GROUP, INC., a
17 California Corporation; and DOES 1-100,
inclusive,

18 Defendants.
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Case No.: 37-2023- 00011128-CU-OT-CTL

Assigned for All Purposes to:
Hon. Matthew C. Braner
Dept. C-60

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

[Filed concurrently with Notice of Motion
and Motion; Memorandum of Points &
Authorities; Declarations of Eliseo De La
Torre, Jose Noriega, Nicasio Andrade, Mario
Castro, and Michael Moore; [Proposed]
Order]

Date: May 24, 2024
Time: 9:00 a.m.
Department: C-60

I, BRANDON BROUILLETTE, Declare:

2. Attached hereto as Exhibit 1 is a true and correct, fully-executed copy of the Parties' Class Action and PAGA Settlement Agreement (the "Settlement Agreement"). Attached hereto as Exhibit 2 is a true and correct copy of Plaintiff De la Torre's March 20, 2023 notice letter to the Labor & Workforce Development Agency "LWDA") and proof of submission. Attached hereto as Exhibit 3 is proof of submission of the proposed settlement to the LWDA.

FACTUAL BACKGROUND AND PROCEDURAL POSTURE

5. On March 16, 2023, Plaintiffs filed their class action complaint in San Diego Superior Court. On March 20, Plaintiff De La Torre submitted his PAGA notice to the LWDA and Defendant. Thereafter, Plaintiffs amended filed an amended adding a PAGA claim. Shortly after Plaintiff filed the action the Parties agreed to participate in early mediation. Plaintiffs' First

1 Amended Complaint include claims for unpaid minimum wages, unpaid overtime wages, failure to
2 provide meal breaks, failure to provide rest breaks, failure to furnish accurate wage statements,
3 failure to timely pay all wages due upon separation of employment, failure to reimburse business
4 expenses, unfair competition, and a PAGA claim.

5 6. UBG has at all times denied Plaintiffs' allegations and maintained its meal
6 break and payroll policies and procedures comply with California law, that it provided its
7 employees with required meal and rest breaks, that it properly tracked employee time and paid
8 Plaintiff and all other employees all wages due at the correct hourly and overtime rates.
9 Additionally, UBG strongly contends the case cannot be maintained as any kind of class or
10 representative action, arguing that to the extent class members missed meal breaks, that such
11 breaks were non-compliant, or that any unpaid "off the clock" work occurred, it was
12 intermittent and infrequent and evidence of such violations would be purely anecdotal, and
13 therefore individualized issues predominate and trial would be unmanageable.

14 7. After Plaintiffs filed their complaint, the Parties engaged in substantial meet and
15 confer discussions regarding discovery, potential law and motion, and other case management
16 issues, and ultimately agreed to attempt early mediation. Thereafter, the Parties engaged in
17 informal discovery to facilitate an exchange of information necessary to engage in a
18 meaningful mediation. Consequently, Plaintiffs' counsel reviewed payroll records, personnel
19 policies/handbooks, meal break policies, personnel files, and a random sampling of paystubs
20 and time records produced by UBG. Defendant also provided documents and information
21 reflecting the estimated total amount of workweeks and pay periods they worked, number of
22 class members, and average hourly pay rates, among other relevant data. Plaintiffs had this
23 data reviewed by a consulting expert to assist with determining potential violations rates and
24 formulating a damages model.

25 8. The Parties then engaged Louis Marlin, Esq., a highly respected mediator with
26 extensive wage and hour class action experience and, on December 15, 2023, participated in a
27 mediation with Mr. Marlin. The arms-length negotiations were hard-fought and adversarial as
28 the Parties exchanged extensive information on their legal and factual positions, and made

1 numerous offers and counter-offers. Ultimately, the Parties reached agreement on all major
2 issues to resolve the matter on both a class and PAGA basis. The Parties thereafter
3 collaboratively drafted the Settlement Agreement setting forth the full and final settlement
4 terms.

5 **THE PROPOSED SETTLEMENT TERMS**

6 9. Under the settlement, UBG will pay \$700,000.00 into a common fund, the
7 Gross Settlement Amount (“GSA”). Reasonable attorney’s fees of up to 33.33% of the GSA,
8 or \$233,333.33, actual litigation costs of up to \$17,500, a modest enhancement award of up to
9 \$10,000 each for plaintiffs, settlement administration costs of no more than \$12,500, and
10 \$60,000 for alleged civil penalties under PAGA, all will be paid from the GSA. The
11 remainder of approximately \$336,667 will be allocated among the Participating Class
12 Members based on their total weeks worked during the Class Period. No portion of the GSA
13 will revert to UBG.

14 10. The settlement provides for conditional certification of a settlement class
15 including all individuals who worked for Defendant as a non-exempt employee in California
16 during the Class Period, which runs from March 16, 2019 through March 15, 2024. For
17 mediation, the Parties estimated the Settlement Class at approximately 769 individuals.

18 11. As noted, the settlement obligates UBG to pay \$700,000 to resolve the Settlement
19 Class’s claims, inclusive of attorney’s fees and costs. At least \$336,667 from the GSA will be
20 distributed to the Participating Class Members. This is a cash settlement that does not require
21 Participating Class Members to submit a claim form to receive their settlement share. Participating
22 Class Members will receive their settlement checks automatically via First Class U.S. Mail.
23 Twenty percent of each settlement share will be allocated to wages and the remaining eighty
24 percent will be allocated to expenses, penalties and interest. UBG will pay any and all applicable
25 employer-side payroll taxes separately and in addition to the GSA. Subject to the Court’s
26 approval, any amounts not claimed (because a class member does not cash his or her settlement
27 check) will be forwarded to the California State Controller’s Unclaimed Property Fund.

28 12. Each Participating Class Member will receive a share of the Net Settlement

1 Amount based on his or her position held and total weeks worked for UBG during the Class
2 Period while employed as a non-exempt employee. Thus, each Class Member's Individual
3 Settlement Payment will be calculated using criteria typically used in determining appropriate
4 amounts of alleged unpaid wages, unpaid premium wages for missed meal breaks,
5 unreimbursed expenses, and potential statutory penalties under applicable law. These methods
6 are intended to ensure each Class Member receives a portion of the available settlement funds
7 corresponding to the relative value of his or her potential claims. The proposed allocation
8 provides a reasonable way to compensate Class Members based on the amount of time they
9 worked for Ford, and the number of instances they missed a break, were not provided
10 compensation in lieu of such missed breaks, or lost wages due to underpaid overtime. I
11 estimate the average award will be approximately \$438, and that the average PAGA award
12 will be about \$105 for the 143 "Aggrieved Employees."

13 13. Subject to the Court's approval, the Parties have agreed on Phoenix Settlement
14 Administrators ("Phoenix") as the Settlement Administrator. Phoenix is qualified and has
15 significant experience administering class action settlements, including numerous wage and
16 hour matters. Phoenix's fees will not exceed \$12,500.00. If the Court approves less than the
17 above amount, the difference will remain in the Net Settlement Amount for distribution to the
18 Participating Class Members.

19 14. The proposed Notice (Exhibit A to the Settlement Agreement) sets out
20 information about this case and explains the basic settlement terms in plain language. The
21 Notice also sets forth the individualized information used to calculate Class Members'
22 Individual Settlement Payments and each Class Member's estimated settlement award. The
23 Notice likewise details the procedures for Class Members to dispute their individual
24 information, the procedure for submitting an objection to the Settlement, and the procedure to
25 request exclusion. In sum, the Notice provides the Class Members with the information
26 necessary to evaluate the Settlement, provides fair opportunity to participate in, opt out of, or
27 object to the proposed Settlement, and otherwise complies with California Rules of Court
28 3.769(f) and 3.766(d). Coupled with the notice procedure, the proposed Notice provides the

1 Class with the best notice practicable.

2 15. Class Members will have forty-five (45) days to dispute the information in their
3 Notice used to calculate their settlement award, and also have 45 days to submit any
4 objections to the settlement or to request exclusion. In the event a Class Member disputes
5 their individual information, the Settlement Administrator will review the Class Member's
6 records as well as any information submitted, and make a final determination.

7 16. All Participating Class Members will be deemed to release Ford from all claims
8 alleged in the operative complaint, or that could have been brought based on the allegations in
9 the operative complaint, including PAGA claims, from March 16, 2019 through March 15,
10 2024. The release is limited to the claims that were actually pleaded or could have been
11 pleaded based on the alleged facts in the operative complaint.

12 17. The settlement provides Defendant will not oppose a request for reasonable
13 attorney's fees not to exceed 33.33% of the Gross Settlement Amount, or \$233,333.33, nor
14 will it oppose a request for reimbursement of actual litigation costs and expenses of up to
15 \$17,500.00. Defendant also will not oppose a request for an enhancement award to Plaintiffs
16 of not more than \$10,000.00 each in recognition of their time spent on this matter, the risks
17 they undertook on behalf of the class, and the benefit conferred to the class. Plaintiffs'
18 counsel will provide the Court with appropriate summaries and evidence of its efforts and time
19 records in anticipation of the Final Approval Hearing, and Plaintiffs have submitted their
20 declarations herewith. If the Court approves less than the above amounts, the difference will
21 remain in the Net Settlement Amount for distribution to the Class.

22 18. The Parties allocated \$60,000 to payment of civil penalties under PAGA for
23 such claims against UBG, as addressed in more detail below. As required by Labor Code
24 section 2699(1)(2), Plaintiffs gave notice of the settlement and preliminary approval hearing to
25 the LWDA via its online portal.

26 **The Proposed Settlement Class Should Be Conditionally Certified**

27 19. In the present matter, conditional certification is proper since this matter
28 satisfies all requirements for class certification under Code of Civil Procedure section 382.

1 First, the class is both sufficiently numerous, consisting of approximately 769 individuals, and
2 ascertainable by reference to Defendant's personnel and payroll records.

3 20. Plaintiffs all are adequate class representatives, as their claims do not conflict
4 with and are not antagonistic to the claims of other class members. Further, each of their
5 claims are typical given each is a member of the class and has claims arising from the same
6 employment practices and course of conduct giving rise to the claims of the other class
7 members.

8 21. Common questions of law and fact predominate – particularly for purposes of a
9 settlement class – as the Class Members all were subject to the same meal rest break policies,
10 the same alleged rounding policy that shorted them on hours worked, etc. Since the focus of
11 the claims against UBG concerns the legality of common policies applied uniformly to the
12 entire class, common issues predominate over individualized inquiries concerning liability.
13 UBG's alleged rounding policy is a company-wide policy applied equally and consistently to
14 all class members, and this policy is either compliant with California law or it is not.
15 Regardless of that determination, it will decide liability for all class members one way or
16 another. Similarly, whether UBG required employees to use their personal phones for work
17 without proper reimbursement raises another issue common to all class members.

18 22. Resolving this matter as a class action is superior to other available means for
19 the fair and efficient adjudication of this controversy for multiple reasons, including inter alia:
20 (a) individual joinder of all members of the class is impractical, (b) class action treatment will
21 permit a large number of similarly situated persons to resolve their common claims in a single
22 forum simultaneously, efficiently, and without unnecessary duplication of effort and expense;
23 and (c) the damages suffered by many of the individual class members are relatively small and
24 the expenses and burden of individual litigation would make it difficult or impossible for them
25 to seek redress on their own.

26 23. Prior to mediation, the parties engaged in extensive informal discovery to
27 facilitate settlement discussions. As a result, Plaintiffs reviewed documents and information
28 regarding UBG's payroll practices, pay stubs and time records for a sampling of pay periods,

meal and rest break policies, etc., and information from Defendant regarding class size and breakdown of job positions, work weeks, rates of pay, and other information used to formulate a damages model. Plaintiffs' counsel is confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class.

24. Using that data, Plaintiffs ran various calculations and estimated UBG's likely maximum exposure on the class claims at approximately \$10.5 million, including \$412,350 on the unpaid wage claims, \$2,106,750 on the meal break claims, \$4,270,330 on the rest break claims, \$409,600 on the expense reimbursement claim, \$572,000 on the wage statement claims, and \$2747,000 on the waiting time penalty claims.

25. We estimated these amounts as follows:

Unpaid Wages – Rounding/Off the Clock

1 unpaid hour/week * \$13.25 avg. minimum wage * 31,121 work weeks = \$412,350

Meal Period Violations

139,151 eligible shifts * 50% violation rate * \$30.28/hr avg wage = \$2,106,750

Rest Period Violations

141,028 eligible shifts * 100% violation rate * \$30.28/hr avg wage = \$4,270,330

Expense Reimbursement

8,192 work months * \$50/month = \$409,600

Wage Statement Violations

143 employees * \$4,000 per employee cap = \$572,000

Waiting Time Penalties

378 terminated employees * (240 hours * \$30.28/hr avg. wage = \$2,747,000

26. On the unpaid wage claims, Plaintiffs alleged Defendant rounded employee time records throughout the class period to the nearest quarter hour, resulting in an overall loss of hours worked and compensation to the Class Members during many pay periods. Plaintiffs further alleged Defendant routinely kept employees on the job site working late, after they had clocked out, to clean up and put tools away. As a result, Plaintiffs contend UBG did not pay the Class

1 Members for the actual hours worked.

2 27. In response, Defendant argued its time keeping and rounding policy is entirely
3 neutral in effect and did not deprive class members of compensable hours worked over time
4 and, accordingly, does not violate California law. Defendant also emphasized that its policies
5 strictly prohibited any off the clock work and, to the extent any such work occurred, it was
6 aberrational, against company policy, and done without the employer's knowledge. Thus, per
7 UBG, the issue is not suited for class certification since any number of individualized
8 inquiries would be required to determine if any such work occurred or if it was compensable.

9 28. On the meal and rest break claims, while UBG's written policies generally
10 appeared compliant, Plaintiff's review of the time and payroll records suggested Defendant
11 failed to keep accurate meal period records, as employees would clock in to begin their shift and
12 clock out at the end of their shift, but would not clock in and out for meal breaks. Instead, Plaintiffs
13 allege meal break times were auto-deducted to show meals were taken in a compliant fashion even
14 when they weren't. Per Plaintiffs, however, meal breaks were routinely cut short or taken late due
15 to work requirements and mandates to meet progress deadlines on each job site. For the same
16 reasons, Plaintiffs contend they were not provided with the required amount of rest breaks and
17 received at most one rest break per shift.

18 29. In response, UBG emphasized its written policies are compliant, and that it
19 provided many class members with the opportunity to take all required meal and rest breaks
20 and thus met its obligations under the law. UBG further argued its records accurately reflect
21 that employees took timely and compliant meal breaks. UBG also noted that, in light of its
22 compliant policies, whether a class member missed a meal period, received a late meal period,
23 or missed a rest break would have been aberrational and against company policy. Thus, per
24 Defendant, these issues are not amenable to class or representative treatment since their
25 resolution would require individualized inquiries as to why a break was missed or non-
26 compliant.

27 30. On the expense reimbursement claim, Plaintiffs claimed that they and the Class
28 Members regularly had to use their personal phones while on the clock and for work purposes

1 to, inter alia, communicate with supervisors, take pictures of their work, and so on. Per
2 Plaintiffs, UBG did not pay any reimbursement for use of personal phones. UBG on the other
3 hand argued that any use of personal mobile devices was unnecessary to perform the job and
4 therefore was purely for personal convenience. If so, then the expense was neither reasonable
5 nor necessary, and therefore no reimbursement was required. Labor Code § 2802.

6 31. On the claims under Labor Code section 226, for inaccurate wage statements,
7 Plaintiffs alleged derivative wage statement violations based on the alleged underpaid
8 overtime and meal/rest break violations, and further alleged derivative Labor Code 203
9 violations for failure to timely pay all wages due on separation of employment. Being
10 derivative, these claims accordingly are subject to the same risks and uncertainties applicable
11 to the primary claims, plus additional risks posed by the need to take into account the
12 discretionary nature of such awards and the “good faith” and other defenses available to
13 Defendant. Thus, while these claims largely are derivative of the unpaid wage claims, they
14 also are subject to additional defenses.

15 32. As far as potential PAGA liability, the allegedly aggrieved employees
16 theoretically are entitled to penalties totaling about \$5 million in civil penalties should Plaintiffs
17 prevail on all claims and establish violations of the multiple Labor Code sections at issue for
18 each and every pay period, and secure the maximum allowable penalties. As with the class
19 claims, Plaintiffs discounted the potential PAGA penalties based on UBG’s various defenses on
20 the merits and also accounted for the Court’s wide discretion to reduce such penalties, or to
21 decline to award penalties at all. Accordingly, the Parties allocated \$60,000 to PAGA penalties,
22 and Plaintiffs submit this amount is reasonable under the circumstances and in line with
23 comparable settlements in other wage and hour class actions in California. Additionally, the
24 LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able
25 to weigh in as necessary.

26 33. The settlement obviates the significant risk that this Court may find any kind of
27 class or representative resolution unachievable or deny certification of all or some of
28 Plaintiffs’ claims. Furthermore, even if Plaintiffs obtained certification of all or some of the

1 claims, continued litigation would be lengthy and expensive as the Parties pursued merits
2 discovery, a probable motion to decertify, as well as trial and possible appeals, and would
3 substantially delay any recovery by the class with no assurance of recovering significantly
4 more than the proposed settlement. While Plaintiffs are confident in the merits of these
5 claims, legitimate controversies exist regarding each one of them. Plaintiffs also recognize
6 proving the amount of wages and penalties due each Class Member would be an expensive,
7 time-consuming, and uncertain proposition.

8 34. Plaintiffs and I counsel discounted the value of the class claims consistent with
9 the risks discussed above, and carefully weighed the likelihood of the class receiving
10 substantially greater benefit if the litigation continued. We concluded – in light of these very
11 real and substantial risks – settlement on the proposed terms and without prolonged and costly
12 litigation was in the best interests of the class. The overall \$700,000 recovery represents a
13 significant percentage of Defendant’s potential exposure. Given these risks, a total recovery
14 for the class of \$700,000, which will result in average award of about \$438 per class member,
15 is a significant result well within the range of reasonableness considering all potential
16 outcomes, and it will provide direct monetary awards to all Class Members in short order.

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

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

24 37. Since being admitted to the California State Bar in 2010, my entire legal career
25 has been dedicated to protecting employee and consumer rights through the prosecution of
26 class action and representative actions filed on behalf of plaintiffs in class actions and
27 statewide representative actions. Throughout my career I have managed or co-managed more
28 than 100 class action and PAGA representative cases, from initial filing of the complaint

1 through final resolution.

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

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

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

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

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

Labor Code violations).

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

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

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

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

42. Zachary Crosner is a 2010 graduate of University of San Diego School of Law. He has some thirteen years of experience as a practicing attorney, all of which have focused on litigation of employment, labor law, consumer, and class action claims. Following graduation, he immediately began working for a nationally recognized plaintiff-side complex litigation firm, CaseyGerry, where

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

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

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

21 45. Jamie Serb is a partner with Crosner Legal and is head of the firm's Wage & Hour
22 Department. She graduated from the University of California, San Diego in 2004 and graduated from
23 California Western School of Law in 2013, and has been a member of the California Bar since 2013.
24 She gained extensive experience in wage and hour litigation, beginning work as a class action
25 attorney in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm, APLC; Turley
26 Law Firm, APLC). She has handled wage and hour class actions and PAGA lawsuits for eight years
27 and has assisted in obtaining millions of dollars for employees during her years of practice.

28 46. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour

class action settlements while serving as lead class counsel in recent years, including but not limited to a \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America, Inc.*, Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252 (Sacramento Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017 (*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a \$1.8 million wage and hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc. dba American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and hour class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160 JGB (C.D. Cal.)), a \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million wage and hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-CV-04864-YGR (N.D.Cal.)); a \$2.2 million wage and hour class action settlement in 2021 (*Ghorchian, et al. v. West Hills Hospital, et al.*, Case No. LS029737 (Los Angeles Cty. Super. Ct.)); a \$2.85 million dollar wage and hour settlement in 2021 (*Valencia v. The Original Mowbray's Tree Service, Inc.*, Case No. CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1 million wage and hour class action settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super. Ct.)), a \$1.4 million wage and hour class action settlement in 2023 in *Correa, et al. v. FedEx Supply Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.), a \$2.38 million wage and hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case No. 21STCV00925 (Los Angeles Cty. Super. Ct.); and a \$2.5 million wage and hour class action settlement in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino Cty. Super. Ct.).

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1 47. For all the foregoing reasons, I believe the settlement is fair, reasonable, and in
2 the best interests of the class.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct. Executed this 2nd day of May 2024, at Los Angeles California.

5
6 

Declarant

EXHIBIT

1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs Eliseo De La Torre, Jose Noriega, Nicasio Andrade, and Mario Castro (“Plaintiffs”) and defendant Unique Building Group, Inc (“Defendant”). The Agreement refers to Plaintiffs and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiffs’ lawsuit alleging wage and hour violations against Defendant captioned *Eliseo De La Torre, Jose Noriega, Nicasio Andrade, and Mario Castro v. Unique Building Group, Inc.; and DOES 1-100*, San Diego County Superior Court (Case No. 37-2023- 00011128-CU-OT-CTL)
- 1.2 “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means all Class Members employed during the PAGA Period.
- 1.5 “Class” means all non-exempt hourly employees, including Plaintiffs, who worked for Defendant in California during the Class Period.
- 1.6 “Class Counsel” means Brandon Brouillette, Zach Crosner, and Jamie Serb, and of Crosner Legal, PC.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, email address (if available), and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of

Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement.
- 1.12 “Class Period” means the period from March 16, 2019 through March 15, 2024.
- 1.13 “Class Representatives” means the named Plaintiffs in the operative complaint in the Action seeking Court approval to serve as Class Representatives.
- 1.14 “Class Representatives Service Payments” means the payments to the Class Representatives for initiating the Action and providing services in support of the Action.
- 1.15 “Court” means the Superior Court of California, County of San Diego.
- 1.16 “Defendant” means named Defendant Unique Building Group, Inc.
- 1.17 “Defense Counsel” means Michael Sullivan & Associates LLP.
- 1.18 “Effective Date” means 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: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19 “Final Approval” or “Final Approval Order” means the Court’s Order Granting Final Approval of the Settlement.
- 1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21 “Final Judgment” means the Judgment entered by the Court upon granting Final Approval of the Settlement.
- 1.22 “Gross Settlement Amount” means \$700,000 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments and the Administrator’s Expenses.

- 1.23 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30 “Operative Complaint” means the First Amended Class Action Complaint filed on March 16, 2023.
- 1.31 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.32 “PAGA Period” means the period from March 20, 2022 through March 15, 2024.
- 1.33 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.34 “PAGA Notice” means Plaintiffs’ December 7, 2022 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a).
- 1.35 “PAGA Penalties” means the total amount of PAGA civil penalties (\$60,000) to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$15,000) and the 75% to LWDA (\$45,000) in settlement of PAGA claims.
- 1.36 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37 “Plaintiffs” means Eliseo De La Torre, Jose Noriega, Nicasio Andrade, and Mario Castro, the named plaintiffs in the Action.

- 1.38 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.39 "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval of the Settlement.
- 1.40 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.41 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.42 “Released Parties” means: Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates.
- 1.43 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.44 "Response Deadline" means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.45 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.46 “Workweek” means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

- 2.1 On March 16, 2023, Plaintiffs commenced this Action by filing a Class Action Complaint alleging causes of action against Defendant for i) recovery of unpaid minimum wages and liquidated damages; ii) recovery of unpaid overtime wages; iii) failure to provide meal breaks or compensation in lieu thereof; iv) failure to provide rest periods or compensation in lieu thereof; v) violations of Labor Code section 226; vi) failure to timely pay all wages due upon separation of employment; vii) failure to reimburse business expenses; and viii) unfair competition. On June 7, 2024, Plaintiffs filed a First Amended Class Action and PAGA representative Complaint alleging an additional cause of action against Defendant for violations of the Private Attorneys General Act of 2004, Cal. Lab. Code section 2698, et seq. Defendant denies the allegations in the Complaints, denies any failure to comply with the laws identified in in the Complaints and denies any and all liability for the causes of action alleged.

- 2.2 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 Action is not appropriate for class or representative treatment. Defendant asserts a number of defenses to the claims, and have denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. 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 Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.
- 2.3 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.4 On December 15, 2023, the Parties participated in an all-day mediation presided over by Louis Marlin of Louis Marlin Mediation which led to this Agreement to settle the Action.
- 2.5 Prior to mediation, Plaintiffs obtained, through informal discovery, timekeeping and payroll data, policy documents, the collective bargaining agreement, Plaintiffs' personnel files. Plaintiffs retained a consultant statistician to analyze the data provided. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.6 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 Plaintiff. Defendant, therefore, have agreed to settle in the manner and upon the terms set forth herein.
- 2.7 The Court has not granted class certification.
- 2.8 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1 **Gross Settlement Amount.** Except as otherwise provided by Paragraph 8 below, Defendant promises to pay \$700,000 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions

of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

3.2.1 To Plaintiffs: Class Representative Service Payment to the Class Representatives of not more than \$10,000 each (for a total of \$40,000 and in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiffs' request for a Class Representative Service Payments that does not exceed this amount. As part of the Final Approval motion, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiffs assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$233,333.33 and a Class Counsel Litigation Expenses Payment of not more than \$17,500.00 Defendant will not oppose requests for these payments provided that do not exceed these amounts. As part of the Final Approval motion, Plaintiffs and/or Class Counsel will request approval of the Class Counsel Fees Payment and Class Litigation Expenses Payment. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and

indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3 **To the Administrator:** An Administrator Expenses Payment not to exceed \$12,500 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$12,500, the Administrator will retain the remainder in the Net Settlement Amount.

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

3.2.4.1 **Tax Allocation of Individual Class Payments.** 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for [e.g., interest and penalties] (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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

3.2.5 **To the LWDA and Aggrieved Employees:** PAGA Penalties in the amount of \$60,000 to be paid from the Gross Settlement Amount, with 75% (\$45,000) allocated to the LWDA PAGA Payment and 25% (\$15,500) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$15,500) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full

responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 **Class Workweeks and Aggrieved Employee Pay Periods.** Based on a review of its records, Defendant estimates there are 769 Class Members who collectively worked a total of 34,279 Workweeks from the period between March 16, 2019 and September 22, 2023.
- 4.2 **Class Data.** Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3 **Funding of Gross Settlement Amount.** Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date.
- 4.4 **Payments from the Gross Settlement Amount.** Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1 The Administrator will issue checks for the Individual Class Payments and Individual PAGA Payments and send them to the Participating Class

Members and Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

- 4.4.2 The Administrator must conduct a Class Member Address Search for all other Participating Class Members and Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Participating Class Members and Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Participating Class Member and/or Aggrieved Employee whose original check was lost or misplaced, requested by the Participating Class Member and/or Aggrieved Employee prior to the void date.
- 4.4.3 For any Participating Class Member and/or Aggrieved Employee whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).
- 4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Participating Class Members or Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion

of the Individual Class Payments, Plaintiffs, and Class Members will release claims against all Released Parties as follows:

5.1 **Plaintiffs' Release.** Plaintiffs 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 Effective Date of 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 his employment with Defendant or the remuneration for, or termination of, such employment. ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledges that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believes to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

5.1.1 **Plaintiffs' Waiver of Rights Under California Civil Code Section 1542.** For purposes of Plaintiffs' Release, Plaintiffs expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

5.2 **Release by Participating Class Members:** All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, including, claims for (1) Unpaid Minimum Wages, Cal. Labor Code §§ 1194, 1194.2, 1197, and Industrial Welfare Commission ("IWC") Wage Order 16, (2) Unpaid Overtime, Cal. Labor Code §§ 510 and 1194, and Wage Order 16, (3) Failure to Provide Meal Breaks or properly calculate and pay meal break premiums, Cal. Labor Code §§ 226.7 and 512, and Wage Order 16, (4) Failure to Provide Rest Breaks or properly

calculate and pay rest break premiums, Cal. Labor Code § 226.7, and Wage Order 16, (5) Failure to Provide Accurate, Itemized Wage Statements, Cal. Labor Code § 226, and Wage Order 16, and (6) Failure to Pay Expense Reimbursements, Cal. Lab. Code § 2802, and Wage Order 16, and (7) Unfair Business Practices, Cal. Bus. & Prof. Code § 17200 during the Class Period. Participating Class Members' only release these claims for the duration of the Class Period. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

- 5.3 **Release by Aggrieved Employees:** All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from any and all claims for civil penalties under the Private Attorney General Act of 2004 (codified at Labor Code §2699, et seq.) that were alleged, or that reasonably could have been alleged based on the facts and allegations set forth, within the Complaint and/or Plaintiffs' March 20, 2023 notice to the LWDA, including, but not limited to: i) failure to maintain accurate records (Cal. Lab. Code § 1174); ii) failure to produce personnel records upon request ((Cal. Lab. Code §§ 226, et seq., 432 et seq., and 1198.5 et seq.); iii) statutory wage violations ((Cal. Lab. Code § 223); iv) failure to make payments (Cal. Lab. Code § 216); v) violations of labor condition standards (Cal. Lab. Code § 1198, 1199); vi) unlawful deductions (Cal. Lab. Code §§ 221-224); vii) reporting time pay violations (Industrial Welfare Commission, Wage Order 16-2001, §5); viii) seating violations (Wage Order 16-2001, §12); ix) sick leave violations (Cal. Lab. Code §§ 233-248.5); x) failure to pay all vested paid vacation time off (Cal. Lab. Code § 227.3); xi) unlawful inquiries into salary history (Cal. Lab. Code § 432, et seq.); and, xii) unlawful inquiries into criminal background (Cal. Lab. Code § 432, et seq.)

6. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

- 6.1 **Plaintiffs' Responsibilities.** Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including, but not limited to: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and

attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration from all Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. In their Declarations, Plaintiffs and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 6.2 **Responsibilities of Counsel.** Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than either 30 days after the full execution of this Agreement or the 16 court days before the hearing date; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 6.3 **Duty to Cooperate.** If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 **Selection of Administrator.** The Parties have jointly selected to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administration Services agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no

interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

- 7.2 **Employer Identification Number.** The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 **Qualified Settlement Fund.** The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 7.4 **Notice to Class Members.**
 - 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
 - 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
 - 7.4.3 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
 - 7.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

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

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Release and Aggrieved Employee Release under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 **Challenges to Calculation of Workweeks.** Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges. Successful challenges by Class Members under this provision, which result in an increase in the number of Class Workweeks and/or PAGA Pay Periods, if any, shall have no impact upon the Escalator Clause mentioned in Paragraph 8, below.

7.7 **Objections to Settlement.**

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

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

- 7.7.3 **Non-Participating Class Members** have no right to object to any of the class action components of the Settlement.
- 7.8 **Administrator Duties.** The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.
- 7.8.1 **Email Address and Toll-Free Number.** The Administrator will maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- 7.8.2 **Requests for Exclusion (Opt-outs) and Exclusion List.** The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 7.8.3 **Weekly Reports.** The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4 **Workweek and/or Pay Period Challenges.** The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5 **Administrator’s Declaration.** Not later than 14 days after the Response Deadline, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of the Class Notice, the total number of Class Notices returned as undelivered, the re-mailing of Class

Notices, attempts to locate Class Members, the total number of Requests for Exclusion from the Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

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

8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.

8.1 Based on data produced for mediation, the Parties estimated that there were approximately 769 Class Members and 34,729 Total Workweeks during the period between March 16, 2019 and September 22, 2023.

8.2 The Gross Settlement Amount was agreed upon based on the Parties' analysis of the data produced for mediation and using an estimate of 34,729 Workweeks in the Class Period. If, by the time the Settlement Administrator receives the class data, the total number of workweeks from that same time period increases by more than 10%, Plaintiffs shall have the right but not the obligation to demand a commensurate increase of the GSA from Defendant for each percentage point over 10% by which the total increases. (By way of example, an 11% increase shall entitle Plaintiff to demand from Defendant a 1% increase in the GSA). Plaintiff also retains the right, but not the obligation, to terminate this settlement if Defendant refuses such an increase to the GSA. Alternatively, Defendant has the right, if the amount of workweeks from that time period exceeds 34,729 to cut-off the workweeks for settlement purposes at 34,729.

9. **DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, by numbers or workweeks, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant 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, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point.

Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

- 10. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel as soon as practicable prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

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

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

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

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any

waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment.

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

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

12. ADDITIONAL PROVISIONS.

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

- 12.2 **Confidentiality Prior to Preliminary Approval.** Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.3 **No Solicitation.** The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.4 **Integrated Agreement.** Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 **Attorney Authorization.** Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6 **Cooperation.** The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may

become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

- 12.7 **No Prior Assignments.** The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8 **No Tax Advice.** Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9 **Modification of Agreement.** This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10 **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12 **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 **Confidentiality.** To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 **Use and Return of Class Data.** Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

- 12.15 **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 **Calendar Days.** Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 **Notice.** All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Brandon Brouillette
bbrouillette@crosnerlegal.com
Zachary Crosner
zach@crosnerlegal.com
Jamie Serb
jamie@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd., Suite 301
Beverly Hills, CA 90210

To Defendant:

Eric H. De Wames
edewames@sullivanattorneys.com
Ryan J. Carlson
rcarlson@sullivanattorneys.com
Gregory B. Wilbur
gwilbur@sullivanattorneys.com
MICHAEL SULLIVAN & ASSOCIATES, LLP
111 N. Market Street, Suite 306
San Jose, CA 95113

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

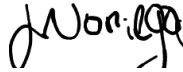
12.19 **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring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

Dated: 04 / 17 / 2024



Eliseo De La Torre

Dated: 04 / 15 / 2024



Jose Noriega

Dated: 04 / 14 / 2024



Nicasio Andrade

Dated: 04 / 17 / 2024



Mario Castro

UNIQUE BUILDING GROUP, INC.
("Defendant")

Dated: _____

By: Paul Thompson; President, Authorized agent

Dated: 04/17/2024

CROSNER LEGAL, PC



Brandon Brouillette, Esq.
Zachary Crosner, Esq.
Jamie Serb, Esq.
Attorneys for Plaintiffs and the Class

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

Dated: _____

Eliseo De La Torre

Dated: _____

Jose Noriega

Dated: _____

Nicasio Andrade

Dated: _____

Mario Castro

UNIQUE BUILDING GROUP, INC.
("Defendant")

Dated: 4/16/2024



By: Paul Thompson; President, Authorized agent

Dated: _____

CROSNER LEGAL, PC

Brandon Brouillette, Esq.
Zachary Crosner, Esq.
Jamie Serb, Esq.
Attorneys for Plaintiffs and the Class

EXHIBIT

A

CALIFORNIA SUPERIOR COURT, COUNTY OF SAN DIEGO
De La Torre, et. al v. Unique Building Group, Inc.
San Diego County Superior Court (Case No. 37-2023- 00011128-CU-OT-CTL)

NOTICE OF CLASS ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don't act.*

**YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT.
READ CAREFULLY – THIS NOTICE INFORMS YOU ABOUT YOUR LEGAL RIGHTS.**

You have received this Notice because you may be eligible to receive money from an employee class action lawsuit (“Action”) against *Unique Building Group, Inc* (“Unique Building Group” or “Defendant”) for alleged wage and hour violations. The Action was filed by former Unique Building Group employees Eliseo De La Torre, Jose Noriega, Nicasio Andrade, and Mario Castro (“Plaintiffs”) and seeks payment of (1) back wages, (2) meal and rest break premiums, (3) reimbursement for business expenses, (4) statutory penalties and other relief for a class of non-exempt employees (“Class Members”) who worked for Unique Building Group during the Class Period (March 16, 2019 through March 15, 2024); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all non-exempt employees who worked for Unique Building Group during the PAGA Period (March 20, 2022 through March 15, 2024) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Unique Building Group to fund Individual Class Payments, and (2) a PAGA Settlement requiring Unique Building Group to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

The Parties attended mediation on December 15, 2023, and subsequently reached a Settlement through a mediator subject to Court approval. Class Counsel believes that the Settlement is fair, reasonable, and adequate, and that it is in the best interests of Class Members. Defendant has decided that settlement is favorable because it avoids the time, risk, and expense of a lengthy lawsuit, and settlement immediately resolves, finally and completely, the pending and potential claims. By settling this lawsuit, Defendant does not admit, concede, or imply that it has done anything wrong or legally actionable.

The Court has not made any determination as to whether the claims advanced by Plaintiffs have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiffs or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties seek to avoid the risks and cost of a trial.

This Notice tells you of your rights to share in the proposed settlement of the Class Action (“Settlement”). There was a Preliminary Approval Hearing on **INSERT DATE OF PRELIMINARY APPROVAL HEARING**, in the San Diego County Superior Court. Judge Matthew C. Brainer determined only that the proposed settlement might be fair, adequate and reasonable and that a final determination of the issues will be made at the final approval hearing. Judge Brainer also ordered that you receive this Notice.

The Court must approve the terms of the Settlement described herein as fair, adequate, and reasonable to the Class Members. The Settlement will affect all members of the class. Because your rights may be affected by this Settlement, it is important that you read this Notice carefully. This Notice will explain the terms of the Settlement and the amount of money you may receive under the Settlement.

TABLE OF CONTENTS

1. Why Have I Received This Notice?.....	Page 2
2. How Does This Class Action Settlement Work?.....	Page 3
3. How Does This Settlement Affect My Rights?	Page 3
4. What Are My Options?.....	Page 4
5. How Much is the Settlement and What is my Estimated Settlement Payment?.....	Page 5
6. Who Are the Attorneys Representing the Parties?	Page 6
7. How do I Obtain More Information?.....	Page 6

1. Why Have I Received This Notice?

A Preliminary Approval Hearing was held on **INSERT DATE OF PRELIMINARY APPROVAL HEARING**, in Department SD-60 of the California Superior Court, County of San Diego. A Preliminary Approval Hearing is a hearing at which the Court determines whether to preliminarily approve the settlement as fair, reasonable, and adequate. The Court conditionally certified the following class for settlement purposes and directed that you receive this Notice:

All non-exempt hourly employees, including Plaintiffs, who worked for Defendant in California from March 16, 2019 through March 15, 2024.

You have been identified as a Class Member from Defendant's records. The Settlement will resolve all Class Members' Released Claims, as described below, from March 16, 2019 through March 15, 2024 (the "Class Period").

The Court will hold a Final Approval Hearing concerning the proposed settlement on **INSERT DATE OF FINAL APPROVAL HEARING** at **INSERT TIME OF FINAL APPROVAL HEARING**, before Department SD-60 of the Superior Court of California, for the County of San Diego, located at 4050 Main Street, Riverside, CA. 92501. A Final Approval Hearing is a hearing set by the Court to make a final determination on the fairness, adequacy, and reasonableness of the Settlement. At this time, the Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate and reasonable, and any final determination of those issues will be made at the Final Approval Hearing.

A. How Will I Know If the Court Changes the Date or Location of the Final Approval Hearing?

The Final Approval Hearing may be continued to another date without further notice. To determine if the Final Approval Hearing has changed, you may contact the Settlement Administrator or Class Counsel; or, you may check the online docket by entering the Case Number for the Action, *De La Torre, et. al v. Unique Building Group, Inc.*, Case No. 37-2023- 00011128-CU-OT-CTL, at the link listed below:

<https://www.sdcourt.ca.gov/sdcourt/generalinformation/accesscourtrecords>

B. If I Do Not Go to the Final Approval Hearing, How Will I Know If the Court Granted Final Approval of the Settlement and Entered Final Judgment?

You may contact the Settlement Administrator or Class Counsel to find out if the Court granted Final Approval and entered Final Judgment. If you wish to obtain a copy of the Final Judgment, it will be posted on the Settlement Administrator's website at **INSERT WEBSITE ADDRESS** and is also available on the Court's docket (see above for instructions on how to access).

2. *How Does This Class Action Settlement Work?*

In this Class Action, Plaintiffs sued on behalf of themselves and all other non-exempt employees who worked for Defendant in California at any time during the Class Period. The Settlement resolves the Released Claims of all Class Members, except for those who request exclusion from the Settlement, in the manner set forth below.

The Court must review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the Settlement documents, which explain the Settlement in greater detail. See Section 7 if you would like to obtain documents filed in this Class Action.

3. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not request exclusion from the Settlement will be bound by the Court's Final Judgment and will release the "Defendant and each of its former and present directors, officers, employees, and agents" ("Released Parties") from the Released Claims. The Released Claims are defined as:

All claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, including, claims for (1) Unpaid Minimum Wages, Cal. Labor Code §§ 1194, 1194.2, 1197, and Industrial Welfare Commission ("IWC") Wage Order 16, (2) Unpaid Overtime, Cal. Labor Code §§ 510 and 1194, and Wage Order 16, (3) Failure to Provide Meal Breaks or properly calculate and pay meal break premiums, Cal. Labor Code §§ 226.7 and 512, and Wage Order 16, (4) Failure to Provide Rest Breaks or properly calculate and pay rest break premiums, Cal. Labor Code § 226.7, and Wage Order 16, (5) Failure to Provide Accurate, Itemized Wage Statements, Cal. Labor Code § 226, and Wage Order 16, and (6) Failure to Pay Expense Reimbursements, Cal. Lab. Code § 2802, and Wage Order 16, and (7) Unfair Business Practices, Cal. Bus. & Prof. Code § 17200 during the Class Period. Participating Class Members' only release these claims for the duration of the Class Period.

If you do not request exclusion from the Settlement, you will be bound by this Release.

PAGA Released Claims

The Judgment entered by the Court upon Final Approval of the Settlement will also have res judicata effect and be final and binding upon Plaintiffs, the Aggrieved Employees, and the California Labor and Workforce Development Agency. The Aggrieved Employees include all non-exempt employees who worked for Defendant in California during the PAGA Period defined as the time period from March 20, 2022 through March 15, 2024.

If you are an Aggrieved Employee, this Settlement will release the following PAGA Released Claims, regardless of whether or not you requested exclusion from the Settlement. Upon Defendant's final payment funding the Gross Settlement Amount, Aggrieved Employees shall forever release the Released Parties from the following PAGA Released Claims for the PAGA Period. The PAGA Released Claims are defined as:

All claims for civil penalties under the Private Attorney General Act of 2004 (codified at Labor Code §2699, et seq.) that were alleged, or that reasonably could have been alleged based on the facts and allegations set forth, within the Complaint and/or Plaintiffs' March 20, 2023 notice to the LWDA, including, but not limited to: i) failure to maintain accurate records (Cal. Lab. Code § 1174); ii) failure to produce personnel records upon request ((Cal. Lab. Code §§ 226, et seq., 432 et seq., and 1198.5 et seq.); iii) statutory wage violations ((Cal. Lab. Code § 223); iv) failure to make payments (Cal. Lab. Code § 216); v) violations of labor condition standards (Cal. Lab. Code § 1198, 1199); vi) unlawful deductions (Cal. Lab. Code §§ 221-224); vii) reporting time pay violations (Industrial Welfare Commission, Wage Order 16-2001, §5); viii) seating violations

(Wage Order 16-2001, §12); ix) sick leave violations (Cal. Lab. Code §§ 233-248.5); x) failure to pay all vested paid vacation time off (Cal. Lab. Code § 227.3); xi) unlawful inquiries into salary history (Cal. Lab. Code § 432, et seq.); and, xii) unlawful inquiries into criminal background (Cal. Lab. Code § 432, et seq.)

4. What Are My Options?

The purpose of this Notice is to inform you of the proposed Settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: *Defendant will not retaliate against you in any way for either participating or not participating in this Settlement.*

DO NOTHING:	If you do nothing and the Court grants final approval of the Settlement, you will become part of this Class Action and receive an Individual Settlement Payment. You will be bound to the release of the Released Claims as defined in the Settlement and the Final Judgment. You will also give up your right to pursue the Released Claims as defined in Section No. 3 above.
OPT OUT:	With the exception of the settlement of the PAGA claims, you have the right to request exclusion from the Settlement. To do so, you must complete and timely submit the Exclusion Form included herewith or otherwise timely provide a written request to opt-out of the class Settlement via mail or fax to the Settlement Administrator at [INSERT MAILING ADDRESS AND FACSIMILE NUMBER]. To be valid, a written request for exclusion from the class settlement must: (a) be signed by you; (b) state your full name, address, telephone number and the last four digits of your social security number; and, (c) clearly request to be excluded from the class settlement. The request for exclusion must be postmarked or faxed on or before [INSERT THE RESPONSE DEADLINE]. The postmark or fax receipt date will be the exclusive means to determine whether the request for exclusion was submitted on time. Unless you timely opt out of the class settlement, you will be bound by the judgment upon final approval of the settlement, including the Release described in this Notice. You may use the enclosed Exclusion Form for the purpose of requesting exclusion. Following Final Approval of the settlement, the Court will enter Final Judgment. The Final Judgment will bind all Class Members who do not request exclusion from the Settlement on time. Even if you opt out of the class settlement, you will still receive any PAGA settlement payment to which you may be entitled as an Aggrieved Employee and will still be bound by the release of the PAGA claims.
OBJECT:	If you want to object to the Settlement and you have not requested exclusion or opted out of the Settlement, you may object to the Settlement, personally or through an attorney, by mailing or faxing your written objection to the Settlement Administrator at [INSERT MAILING ADDRESS AND FACSIMILE NUMBER]. The written objection must: (a) state your full name, address, telephone number and the last four digits of your social security number; (b) state all grounds for your objection, accompanied by any legal support; and, (c) contain your or your legal representative's

	signature. The written objection must be postmarked or faxed on or before [INSERT THE RESPONSE DEADLINE]. The postmark or fax receipt date will be the exclusive means to determine whether the written objection was submitted on time. You may use the enclosed Objection Form to submit any objections. If the Court rejects or overrules your objection, you will receive a settlement payment and be bound by the terms of the Settlement.
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5. *How Much is the Settlement and What is my Estimated Settlement Payment?*

As obligated under the Settlement, Defendant will be required to pay a total sum of \$700,000.00 (“Gross Settlement Amount”). The following payments will be deducted from the Gross Settlement Amount: (1) Class Representative Enhancement Payment to the four named Plaintiffs in an amount up to \$40,000.00 (\$10,000 ea.), for their time and efforts in the prosecution of the lawsuit and risks undertaken for the payment of attorneys’ fees and costs; (2) payment of the Settlement Administrator’s cost and fees not to exceed \$12,500.00; (3) PAGA Penalties in the amount of \$60,000.00 (\$45,000.00 to the California Labor Workforce Development Agency (“LWDA”) for its 75% portion of the PAGA Penalties and \$15,000.00 to be distributed among the Aggrieved Employees for their 25% portion of the PAGA Penalties); and (4) payment to Class Counsel in an amount not to exceed \$233,333.00 (one-third of the Gross Settlement Amount) for attorneys’ fees and an amount not to exceed \$17,500.00 for actual litigation costs. All of these payments are subject to Court approval and the Court has the discretion to award less than the amounts listed above.

A. How Are Individual Settlement Payments to Class Members Calculated?

Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.

Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$15,000.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of Pay Periods worked by each individual Aggrieved Employee.

B. What is my Estimated Individual Settlement Payment?

Based on Unique Building Group’s records, and the Parties’ current assumptions, your Individual Class Payment is estimated to be \$ [REDACTED] (less withholding) and your Individual PAGA Payment is estimated to be \$ [REDACTED]. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Unique Building Group’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Unique Building Group’s records showing that you worked [REDACTED] workweeks during the Class Period and you worked [REDACTED] pay periods during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date as set forth in section 5.C. below. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

C. My Workweek Count is Incorrect. How do I Dispute it?

If you disagree with the number of workweeks listed for you above, you may contact the Settlement Administrator and provide evidence demonstrating the number of workweeks listed above is incorrect. Your dispute must be returned by mail or fax to the Settlement Administrator at [INSERT MAILING ADDRESS AND FACSIMILE NUMBER] and postmarked on or before the [INSERT RESPONSE DEADLINE]. The postmark or fax receipt date will be the exclusive means to determine whether a shift dispute was submitted on time.

The Settlement Administrator will evaluate your evidence and make a final decision as to the number of eligible workweeks that should be used to determine your Individual Settlement Payment. Absent evidence demonstrating Defendant's records are incorrect, Defendant's records will be presumed accurate.

D. How Will my Individual Settlement Payment be Taxed?

Plaintiffs and Unique Building Group are asking the Court to approve an allocation of **20 %** of each Individual Class Payment to taxable wages ("Wage Portion") and **80 %** to penalties and interest ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Unique Building Group will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and Unique Building Group have 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 proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

E. What Happens if I do not Cash my Settlement Payment Check?

The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the payment represented by your check is sent to the Controller's Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Who Are the Attorneys Representing the Parties?

Attorneys for Plaintiff/Class Counsel	Attorneys for Defendant
CROSNER LEGAL PC Brandon Brouillette Zachary Crosner Jamie Serb 9440 Santa Monica Blvd., #301 Beverly Hills, CA 90210 Telephone: 1(866) 276-7637 Facsimile: (310) 510-6429	MICHAEL SULLIVAN & ASSOCIATES, LLP Ryan Carlson Eric H. De Warnes PO Box 85059 San Diego, CA 92186-5059 Telephone: (310) 337-4480 Facsimile: (844) 910-1850

The Court has decided that the attorneys at Crosner Legal PC are qualified to represent you and all other Class Members. You do not need to hire your own attorney because Class Counsel is working on your behalf. However, if you want your own attorney, you may hire one at your own cost.

7. *How do I Obtain More Information?*

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at [INSERT PHONE NUMBER]. Please refer to the Unique Building Group, Inc. Class Action Settlement.

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you can request copies of documents filed with the Court, free of charge, from Class Counsel or the Settlement Administrator.

You may also obtain these documents from the Court's website for a fee. Go to <https://www.sdcourt.ca.gov/sdcourt/generalinformation/accesscourtrecords>) and entering the Case Number for the Action, *De La Torre, et. al v. Unique Building Group, Inc.*, Case No. 37-2023- 00011128-CU-OT-CTL. You can also make an appointment to personally review court documents at the San Diego Hall of Justice Courthouse by calling 619-844-2700.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

EXHIBIT

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

Kiara Bramasco, Esq.
kiara@crosnerlegal.com
direct: (424) 335-5236
office: (866) 276-7637
fax: (310) 510-6429

March 20, 2023

VIA PAGA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

Timothy J. Daley
Agent For Service Of Process For:
Unique Building Group, Inc.
225 Broadway, Suite 1900
San Diego, CA 92101

Unique Building Group, Inc.
Attn: Human Resources
Department / Legal Department
9822 Waples Street
San Diego, CA 92121

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Unique Building Group, Inc.
Date: March 20, 2023
Subject: *Eliseo De La Torre v. Unique Building Group, Inc.*

Introduction

This office represents COMPLAINANT, Eliseo De La Torre (hereinafter "COMPLAINANT") in connection with COMPLAINANT's claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Unique Building Group, Inc. (hereinafter, these entities and their

managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

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

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

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

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT’s claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT’s intent to seek civil penalties against EMPLOYER. Under

Huff v. Securitas Security Services USA, Inc. (2018) 23 Cal.App.5th 745, a PAGA representative has authority to seek penalties for all known violations committed by the employer – regardless of whether the representative experienced all violations personally. *Id.* at 760-761. Moreover, under *Johnson v. Maxim Healthcare Servs., Inc.*, (2021) 66 Cal. App. 5th 924, 929, an employee may pursue a claim under PAGA even when that employee’s individual claim is time-barred.

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

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

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

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

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

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

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

General Information

EMPLOYER owns, operates, or otherwise manages a construction company, providing construction of commercial, residential, and mix-use buildings, complexes and/or campuses and other construction services to customers in California.¹ Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT worked for EMPLOYER as a framer, drywaller and/or similar title(s) and/or position(s) from on or around February 11, 2022, through on or around June 13, 2022, and was assigned to work primarily out of EMPLOYER's yard(s), facilities and/or site(s) located in San Diego, California. COMPLAINANT regularly worked at least eight (8) hours per day, at least (5) days per week. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed

¹ See <https://uniquebuildinggroup.com/> (Last visited on March 19, 2023).

and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (14) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose their salary history; (15) failed and continues to fail to provide suitable seating; and (16) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

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

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

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

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

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

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

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

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

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

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work

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

period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

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

Personnel Records

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

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

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee’s personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, COMPLAINANT, through counsel, sent multiple written requests for payroll and personnel records to EMPLOYER, on or about, including but not limited to, the following dates: January 26, 2023 and March 7, 2023. Yet, EMPLOYER failed to timely produce complete records, including but not limited to, wage statements and time records, within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

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

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code

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

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

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

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, at times, NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods were interrupted, cut short and/or worked through completely due to the need to complete assigned jobs on time, respond to work-related communications and/or complete other work tasks. Also, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently required to take any meal periods late (i.e. after working more

than five (5) hours) due to the need to complete assigned jobs on time, respond to work-related communications and/or complete other work tasks.

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

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

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

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

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

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to EMPLOYER's premises), despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

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

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

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

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

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have any sort of compliant rest period policy in practice. For example, on most, if not all shifts NON-EXEMPT AGGRIEVED EMPLOYEES worked for EMPLOYER, NON-EXEMPT AGGRIEVED EMPLOYEES were required to work through their first owed rest period and any second rest period afforded NON-EXEMPT AGGRIEVED EMPLOYEES was typically interrupted and/or otherwise legally noncompliant due to NON-EXEMPT AGGRIEVED EMPLOYEES being restricted to the premises and/or not afforded a full net ten minutes in a suitable resting area. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES' rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

Moreover, based on information and belief, EMPLOYER failed to provide any form of a third rest period on shifts lasting longer than ten hours.

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

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

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

It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages. Labor Code

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

section 222 prohibits the withholding of part of a wage. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale. Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful. Labor Code section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, "Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period..." The applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, "in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." *Cal. Lab. Code* § 1194.2.

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

Based on information and belief, EMPLOYER implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to EMPLOYER's control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed. For example, as explained below, at times, NON-EXEMPT AGGRIEVED EMPLOYEES' unpaid meal periods were interrupted and/or cut short due to the need to complete assigned jobs on time, respond to work-related communications and/or complete other work tasks, resulting in EMPLOYER's failure to pay NON-EXEMPT AGGRIEVED EMPLOYEES for all time worked and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

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

hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For example, based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to be at their assigned workstations at the start of a scheduled shift, thereby forcing NON-EXEMPT AGGRIEVED EMPLOYEES to gather work related equipment and/or safety gear prior to their scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock work. Based on information and belief, EMPLOYER also failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES for post-shift off-the-clock work, such as but not limited to, returning tools and/or equipment to EMPLOYER's facilities/locations/sites/yards, performing maintenance or cleaning-related tasks and/or completing other work tasks.

Based on information and belief, EMPLOYER did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all time spent donning and doffing personal protective equipment, safety equipment and/or uniforms/work clothing (e.g., reflective vests, gloves, and/or face masks) during meal periods, rest periods, before the start of a scheduled shift, and after completing a scheduled shift.

Based on information and belief, EMPLOYER required/requires NON-EXEMPT AGGRIEVED EMPLOYEES to travel between EMPLOYER's yards, facilities/locations and/or between job sites without compensating NON-EXEMPT AGGRIEVED EMPLOYEES for the travel time, resulting in off-the-clock work and the underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also pressured to complete at least some of their work tasks off-the-clock in order to meet EMPLOYER's goals and expectations. On information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also required to complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or messages they received to their personal phones and were required to respond to, including but not limited to, communications from supervisors regarding scheduling and/or other work tasks, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

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

Moreover, based on information and belief, EMPLOYER had and continue to have a policy and practice of unlawfully deducting wages from NON-EXEMPT AGGRIEVED EMPLOYEES' paychecks, such as, but not limited to, unlawful deductions for business expenses, fees for purported overpayments from prior pay periods, negligently damaged property and/or fees for costs incurred in connection with any money/payroll card EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to use to receive compensation and/or other fines and/or fees/costs,

resulting in violations of California wage and hour laws, including but not limited to, Labor Code sections 224 and 1197.

Based on further information and belief, EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. For example, based on information and belief, EMPLOYER's wage statements and/or pay records for NON-EXEMPT AGGRIEVED EMPLOYEES evidence rounding to at least the nearest quarter hour. Based on information and belief, EMPLOYER rounded to at least the nearest quarter hour, NON-EXEMPT AGGRIEVED EMPLOYEES' total hours worked during most if not all pay periods, resulting in the consistent underpayment of wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER's failure to pay for all time worked by virtue of its time-rounding practices resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

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

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

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

⁵ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

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

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

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

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

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

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

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §3(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the

Reporting Time Pay Violations:

Section 5 of all applicable IWC Wage Orders, including, IWC Wage Order No. 16 provides as follows:

(A) All employer-mandated travel that occurs after the first location where the employee's presence is required by the employer shall be compensated at the employee's regular rate of pay or, if applicable, the premium rate that may be required by the provisions of Labor Code Section 510 and Section 3, Hours and Days of work, above.

(B) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage. (C) If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting

NON-EXEMPT EMPLOYEES were not paid reporting time wages in accordance with California law, including but not limited to the applicable IWC Wage Order, including but not limited to, IWC Wage Order No. 5. For example, at times, NON-EXEMPT AGGRIEVED EMPLOYEES reported to work for their scheduled shift but were sent home and/or were not put to work and were not paid their owed reporting time pay wages in accordance with California law.

Based on further information and belief, as described above, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to travel between EMPLOYER's locations, facilities, and/or yards without compensating NON-EXEMPT AGGRIEVED EMPLOYEES for the travel time, in violation of California's minimum wage laws, overtime wage laws, and all applicable IWC Wage Orders, including but not limited to, section 5. Based on information and belief, EMPLOYER also failed to compensate other NON-EXEMPT AGGRIEVED EMPLOYEES for all employer-mandated travel required after arriving at their first assigned location at their regular rate(s) of pay, in violation of California law, including but not limited to, IWC Wage Order 16, Section 5(A).

Based on information and belief, EMPLOYER has a policy and practice of failing to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California law, including but not limited to, the applicable IWC Wage Order, Section 5. EMPLOYER's failure to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continues to violate the applicable Wage Order, including but not limited to IWC Wage Order 16-2001, section 5(A)-(C) and the California Labor Code, including but not limited to section 1198.

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

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

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

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

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

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

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

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing

containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

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

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

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

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

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

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

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

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁷

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

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

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

⁷ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

Based on information and belief, wage statements issued by EMPLOYER failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE is being paid.

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

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

Based on information and belief, wage statements issued by EMPLOYER failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9). For example, as described herein, based on information and belief, EMPLOYER failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by NON-EXEMPT AGGRIEVED EMPLOYEES.

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

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

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁸

⁸ See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

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

Seating Violations: Per section 12 of the applicable wage order, “[w]here practicable and consistent with applicable industry-wide standards, all working employees shall be provided with suitable seats when the nature of the process and the work performed reasonably permits the use of seats.”

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

Based on information and belief, EMPLOYER failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

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

EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, EMPLOYER failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 12 of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting EMPLOYER to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁹

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage

⁹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”).

Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

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

Unlawful Deductions: Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee." Based on information and belief EMPLOYER made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES paychecks, including but not limited to, from paychecks of employees correctly classified as exempt, during the relevant period, including but not limited to deducting costs of uniforms and/or other business costs and/or deducting wages for purported overpayments from previous pay periods and/or unlawfully deducting wages for negligently damaged property and/or deducting costs advanced by EMPLOYER from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES' final paychecks. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects EMPLOYER to civil penalties under Labor Code Section 2699.

Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEES and each EXEMPT AGGRIEVED EMPLOYEES, for each pay period during which the statute provisions were violated. See Lab. Code §225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee").

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

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

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

Failure to Pay Vested Vacation/Paid Time Off:

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

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

Based on information and belief, EMPLOYER failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, EMPLOYER untimely provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

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

Moreover, EMPLOYER failed to timely provide all owed wages immediately upon discharge of employment. For example, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES experienced breaks in their employment caused by EMPLOYER whereby NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES would not be called in for work for longer than a single pay period due to including but not limited to EMPLOYER's lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet, EMPLOYER failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹⁰

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

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

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

¹⁰ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

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

Based on information and belief, EMPLOYER shifted its costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, uniforms/work clothing/personal protective/safety gear, the use of NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES' personal mobile phone, internet and/or data usage for work related purposes, including but not limited to, to receive and respond to work related messages and/or phone calls.

Additionally, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the business use of their personal vehicles, including mileage, wear and tear, and gas when they were required to drive between job sites, and/or use their personal vehicles in carrying out the duties assigned by EMPLOYER. For example, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES to use their personal vehicles to drive between job sites and/or use their personal vehicles for other work purposes including but not limited to transporting tools, without providing any and/or full reimbursement for the vehicle-related expenses incurred in connection therewith. As such, EMPLOYER failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at the legally mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

Based on information and belief, EMPLOYER also failed to reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for parking expenses they incurred as a direct consequence of the performance of their job duties.

Based on information and belief, EMPLOYER failed to reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for expenses associated with having to purchase and/or maintain their own hand tools and/or equipment required to perform their assigned job duties.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of purchasing and/or maintaining work uniforms/clothing/shoes and/or protective gear.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work related purposes and/or the cost of purchasing and/or maintaining work uniforms/clothing.

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

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

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

Unlawful Inquiries into Salary History

Labor code section 432.3 provides in part "(b) An employer shall not, orally or in writing, personally or through an agent, seek salary history information, including compensation and benefits, about an applicant for employment." Based on information and belief, EMPLOYER has a policy and/or practice of unlawfully asking NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to reveal their salary history when applying for employment with EMPLOYER. For example, when COMPLAINANT applied for employment with EMPLOYER, COMPLAINANT was required to fill out an application that requested, among other things, the following information: Name and address of former employer, length of former employment relationship, and the "starting/beginning" and "final/ending" "hourly rate/salary" of the former employment relationship. Based on information and belief, EMPLOYER required other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose the same or similar information, in violation of Labor Code section 432.3.

Moreover, by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose prior salary information in a written application for employment, EMPLOYER violated Labor Code section 432.5 by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose their salary history as a condition of obtaining employment with EMPLOYER, in violation of California law.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

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

to, unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of, including but not limited to, Labor Code section 432.5.

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

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

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

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

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

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

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

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

Unlawful Inquires into Criminal History

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

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

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

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

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys’

fees, and costs. The civil penalties COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

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

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

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

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

Kiara Bramasco
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 866.276.7637
Fax: 310.510.6429
Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

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

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

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

Mon, Mar 20, 2023 at 1:56 PM

3/20/2023

LWDA Case No. LWDA-CM-943192-23
Law Firm : Crosner Legal, PC
Plaintiff Name : Eliseo De La Torre
Employer: Unique Building Group
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT

3