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13
14 KYLE NEFF and ERICK HOLMBERG,
individually and on behalf of all other similarly
15 situated employees,

16 Plaintiff,

17 vs.

18 CASTLE TIRE DISPOSAL, LLC, a Delaware
Limited Liability Company; and DOES 1 to
19 100, inclusive,

20 Defendant.
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**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

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6 individually and on behalf of similarly situated employees

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the Plaintiffs Erick Holmberg and Kyle Neff, on behalf of themselves, the Labor and
3 Workforce Development Agency, Class Members, and PAGA Members, and Defendant Castle Tire
4 Disposal, LLC. This Agreement is subject to the terms and conditions set forth below and the approval of
5 the Court.

6 **1. DEFINITIONS**

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

8 1.1 “Actions” means and includes *Kyle Neff v. Castle Tire Disposal LLC*, Sacramento County
9 Superior Court Case No. 34-2023-00336483 (“*Neff* Class Action”), filed March 20, 2023; *Kyle Neff v.*
10 *Castle Tire Disposal LLC*, Sacramento County Superior Court Case No. 23CV002828 (“*Neff* PAGA
11 Action”), filed June 6, 2023; and *Erick Holmberg vs. Castle Tire Disposal, LLC*, San Joaquin County
12 Superior Court, Case No. STK-CV-UOE-2023-0006565, (“*Holmberg* Action”), filed June 27, 2023.

13 1.2 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation
14 Regarding Class Action and PAGA Settlement and Release.

15 1.3 “Class Counsel” means Shimoda & Rodriguez Law, PC and Bibiyan Law Group, P.C.

16 1.4 “Class Member(s)” means all current and former non-exempt employees employed by
17 Defendant in California at any time during the period from March 20, 2019, through February 15, 2024.

18 1.5 “Class Release Period” means March 20, 2019, through February 15, 2024.

19 1.6 “Class Representatives” means Erick Holmberg and Kyle Neff.

20 1.7 “Class Representatives’ Released Claims” means any and all claims of any nature, known
21 or unknown, contingent or accrued, against all Released Parties, whether in tort, contract, or equity,
22 including, but not limited to, the Released Claims, and any claims arising out of or relating to any work
23 performed by Plaintiffs and/or Plaintiffs’ engagement to perform any work. This includes waiving and
24 relinquishing any and all rights and benefits that Plaintiffs may have under the law of any other state or
25 jurisdiction, or common law principle, to the same or similar effect, concerning the claims released herein.
26 Notwithstanding the foregoing or the statement of released claims in Section 6.1-6.3, Plaintiff Erick
27 Holmberg is not waiving his individual, non-wage and hour claim asserted in the *Holmberg* Action (*i.e.*
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retaliation/Violation of Labor Code Section 1102.5) as that claim is being resolved and waived through a separate individual agreement.

1.8 “Court” means the Sacramento County Superior Court.

1.9 “Defendant” means Castle Tire Disposal, LLC.

1.10 “Defendant’s Counsel” means Dorsey & Whitney LLP.

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

1.12 “Effective Date” means the Final Approval Date unless there is a timely objection lodged that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day after a signed order approving this settlement has been filed provided no appellate proceeding has been filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been finally dismissed with no material change to the terms of this settlement and there is no right to pursue further remedies or relief, whichever is later.

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

1.14 “Gross Settlement Amount” is the sum of Four Hundred Eighty Thousand Dollars (\$480,000).

1.15 “Individual Settlement Amount” means an individual Class Member’s and PAGA Members’ allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in Sections 1.17, 1.23, 5.5, and 5.8.

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

1.17 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for distribution to Class Members, as described in this Agreement, after deduction of Class Counsel’s attorney’s fees and litigation costs, Settlement Administrator Costs, the PAGA Payment, and Enhancement Payment to the Class Representatives.

1 1.18 “Notice of Settlement” means the document substantially in the form attached hereto as
2 Exhibit 1.

3 1.19 “Notice Period” means sixty (60) calendar days from the initial mailing of the Notice of
4 Settlement to Class Members and PAGA Members.

5 1.20 “Operative Complaint” means the proposed First Amended Complaint to be filed in the
6 *Neff* Class Action, attached hereto as Exhibit 2.

7 1.21 “PAGA” means Private Attorneys General Act.

8 1.22 “PAGA Members” means all current and former non-exempt employees employed by
9 Defendant in California at any time during the period from March 16, 2022, through February 15, 2024.

10 1.23 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards
11 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

12 1.24 “PAGA Release Period” means March 16, 2022, through February 15, 2024.

13 1.25 “Parties” mean Defendant and Plaintiffs.

14 1.26 “Participating Class Member” means any and all Class Members who have not made any
15 timely request to opt-out of the Settlement.

16 1.27 “Plaintiffs” means Erick Holmberg and Kyle Neff.

17 1.28 “Preliminary Approval Date” means the date a signed order granting preliminary approval
18 of this Agreement is filed with the Court.

19 1.29 “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator for the
20 benefit of the Participating Class Members and/or PAGA Members and from which the payments under
21 this Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall
22 remain the property of Defendant until the payments required under the Agreement are made.

23 1.30 “Qualifying Workweeks” are weeks worked by Class Members and/or PAGA Members
24 during the Class Release Period and/or PAGA Release Period, respectively, in California. For Class
25 Members, workweeks shall be defined as the total length of service (in days) in California during the Class
26 Release Period divided by seven. For PAGA Members workweeks shall be defined as the total length of
27 service (in days) in California during the PAGA Release Period divided by seven. The calculation of a
28 Class Member’s and/or PAGA Members’ workweeks and a determination as to whether a Class Member

and/or PAGA Members was actively employed in California in a particular workweek shall be construed from Defendant's records.

1.31 "Released Class Claims" means: all claims made in the Operative Complaint in the Action or all claims that reasonably could have been alleged based on the factual allegations contained in the Operative Complaint, including but not limited to all of the following claims for relief: (1) Failure to Pay Overtime Wages, (2) Failure to Pay Minimum Wages, (3) Failure to Provide Meal Periods, (4) Failure to Provide Rest Periods, (5) Failing to Pay Final Wages, (6) Wage Statement Violations, (7) Failure to Timely Pay Wages, (8) Failure to Indemnify, (9) Violation of Labor Code § 227.3, and (10) Unfair Competition. The period of the Released Class Claims shall extend to the limits of the Class Release Period. This release excludes the release of claims not permitted by law. The Released Class Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

1.32 "Released PAGA Claims" means all claims made in the notices Plaintiffs filed with the LWDA alleging PAGA claims or all claims that reasonably could have been alleged based on the factual allegations contained in the notices Plaintiffs filed with the LWDA. The period of the Released PAGA Claims shall extend to the limits of the PAGA Release Period. PAGA Members cannot opt out of this waiver of claims.

1.33 "Released Parties" means Defendant, as well as any related entities, and their directors, officers, members, and investors.

1.34 "Settlement Administrator" means and refers to Phoenix Class Action Administration Solutions ("Phoenix"), the third-party entity that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party administrator agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties each represent that they do not have any financial interest in the Settlement Administrator. The Parties and their counsel each represent that they do not have any financial interest in Phoenix or otherwise have a relationship with Phoenix that could create a conflict of interest.

1.35 "Settlement Administrator Costs" means the fees and expenses reasonably incurred by the Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,

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

14 **2. DESCRIPTION OF THE LITIGATION**

15 2.1 Prior to filing their respective lawsuits, Plaintiffs sent notice to the LWDA to exhaust
16 administrative remedies under the PAGA for alleged violations of the California Labor Code. Plaintiff
17 Neff sent notice on March 16, 2023, and Plaintiff Holmberg sent notice on June 16, 2023. The LWDA did
18 not respond to the notices within the statutorily required time frame and, as such, Plaintiffs became
19 authorized to act as a Private Attorney General on all alleged PAGA claims.

20 2.2 On or about March 20, 2023, Plaintiff Neff filed the *Neff* Class Action behalf of himself and
21 Class Members alleging claims for claims for (1) Failure to Pay Overtime Wages, (2) Failure to Pay
22 Minimum Wages, (3) Failure to Provide Meal Periods, (4) Failure to Provide Rest Periods, (5) Failing to
23 Pay Final Wages, (6) Wage Statement Violations, (7) Failure to Timely Pay Wages, (8) Failure to
24 Indemnify, (9) Violation of Labor Code § 227.3, and (10) Unfair Competition. On or about June 6, 2023,
25 Plaintiff Neff filed the *Neff* PAGA Action on behalf of himself and PAGA Members based on the claims
26 alleged in the March 16, 2023 notice to the LWDA.

27 2.3 On or about June 27, 2023, Plaintiff Holmberg filed the *Holmberg* Action on behalf of
28 himself and Class Members alleging class claims for claims for (1) Failure to Pay Overtime Wages, (2)

1 Failure to Pay Minimum Wages, (3) Meal Period Violations, (4) Rest Period Violations, (5) Wage
2 Statement Violations, (6) Failure to Pay Final Wages, (7) Failure to Reimburse Expenses, and (8) Unfair
3 Competition. On or about October 24, 2023, Plaintiff Holmberg filed a First Amended Complaint to add
4 a PAGA cause of action based on the violations alleged in the June 16, 2023 notice to the LWDA on behalf
5 of himself and PAGA Members.

6 2.4 Through informal discovery, Defendant and Defendant's Counsel provided Class Counsel
7 with copies of all applicable versions of its policies and procedures, employee handbooks, information on
8 Class Members including, but not limited to, Class Members' workweeks, total number of Class Members,
9 and a sample of time cards and paystubs for a randomly selected sample of Class Members.

10 2.5 On January 28, 2025, after receiving the class data, the Parties participated in a lengthy
11 mediation with private mediator Gig Kyriacou. At the conclusion of the mediation, the Parties were not
12 able to come to a resolution. However, on February 7, 2025, the Parties accepted a mediator's proposal to
13 resolve all claims asserted in the Actions. At all times, the Parties' settlement negotiations have been non-
14 collusive, adversarial, and at arm's length.

15 2.6 Discussions between Plaintiffs and Class Counsel, between counsel for the Parties,
16 document productions, extensive legal analysis, the provision of information by Defendant to Plaintiffs and
17 the detailed analysis of the records, including expert analysis, have permitted each side to assess the relative
18 merits of the claims and the defenses to those claims.

19 2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery
20 and the information exchanged to date, are more than sufficient to assess the merits of the respective
21 Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiffs, Class Counsel,
22 Defendant, and Defendant's Counsel have concluded that it is desirable that the Action be settled in a
23 manner and upon such terms and conditions set forth herein in order to avoid further expense,
24 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the
25 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.
26 Plaintiff, Class Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for the
27 consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and
28 circumstances.

1 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

2 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of
3 settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed
4 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final
5 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a
6 conditional basis. If the Effective Date does not occur, or if the Court's approval of the settlement is
7 reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall
8 be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and
9 the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California
10 Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of
11 evidence that may be applicable.

12 3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties,
13 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant
14 has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or
15 the Effective Date does not occur, Defendant does not waive, but rather expressly reserve, all rights to
16 challenge all such claims and allegations in the Action upon all procedural and factual grounds, including,
17 without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert
18 any and all other potential defenses or privileges.

19 **4. SCOPE OF THE CLASS**

20 4.1 The scope of the class of individuals encompassed under the Agreement and subject to all
21 obligations and duties required under the Agreement, shall include all Class Members as defined in Section
22 1.4 and all PAGA Members as defined in Section 1.22. However, it shall not include any Class Members
23 who submit valid and timely requests to opt-out of the Settlement, as set forth in Section 7.5.1.

24 4.2 Only Participating Class Members and PAGA Members are entitled to recover under this
25 Agreement.

26 4.3 Any person who believes that he or she is a Class Member or PAGA Member and wishes
27 to participate in the Agreement, but did not receive a Notice of Settlement because his or her name did not
28 appear on the class list provided to the Settlement Administrator prior to mailing, may submit a data request

1 to the Settlement Administrator. The data request must contain all of the following information: (a) the
2 full name and, if applicable, Social Security Number of the individual making the request; (b) the name
3 used by such employee as of the time his or her employment with Defendant ended; (c) the individual's
4 dates of employment with Defendant; and (d) a return address to which a response may be sent. Every
5 data request must be postmarked on or before the conclusion of the Notice Period or otherwise submitted
6 to the Settlement Administrator such that it is received before the conclusion of the Notice Period. Upon
7 receipt of any data requests, the Settlement Administrator shall promptly (in no event more than two
8 business days) transmit the data requests to Defendant's Counsel and request that Defendant review its
9 records.

10 4.4 If Defendant agrees that the person listed in a data request is a Class Member and/or PAGA
11 Member, the Settlement Administrator shall promptly mail a Notice of Settlement to the person who
12 submitted the data request, at the address designated for that purpose in the data request. All provisions of
13 this Agreement relating to the Notice of Settlement shall apply to Notice of Settlements sent in response to
14 data requests, and any person who submits a data request and is sent a Notice of Settlement in response
15 shall be treated by the Settlement Administrator as a Class Member and/or PAGA Member for all other
16 purposes.

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

27 **5. TERMS OF THE SETTLEMENT**

28 The Parties agree as follows:

1 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
2 Section 6, Defendant shall pay the Gross Settlement Amount (\$480,000). Funding of the Gross Settlement
3 Amount shall occur within 65 calendar days after the Effective Date to be held in trust in a QSF by the
4 Settlement Administrator. The Gross Settlement Amount includes payments to Participating Class
5 Members, PAGA Members, all attorneys' fees, costs and litigation expenses related to the Action incurred
6 to date, as well as all such fees and costs incurred in documenting the Agreement, administering the
7 Agreement (including Settlement Administrator Costs), and obtaining final approval of the Agreement, the
8 Enhancement Payment to the Class Representatives and the PAGA Payment. Any amounts necessary to
9 satisfy Defendant's tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage payments)
10 on the wage portion of payments distributed to Participating Class Members will be paid in addition to the
11 Gross Settlement Amount. There shall be no reversion to Defendant.

12 5.2 Attorney's Fees and Costs: Class Counsel will apply to the Court for attorney's fees of one-
13 third (1/3) of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount.
14 Defendant has agreed to not oppose Class Counsel's application for attorney's fees so long as it does not
15 exceed the one-third threshold. Class Counsel will also be entitled to reimbursement for advanced litigation
16 expenses not to exceed \$40,000.00, which shall be paid from the Gross Settlement Amount. Defendant
17 has agreed to not oppose Class Counsel's request for reimbursement for advanced litigation expenses so
18 long as they do not exceed the \$40,000.00 threshold. The Settlement Administrator will issue Class
19 Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that
20 the Court awards less than the requested attorney's fees and/or costs, the portion of the requested amounts
21 not awarded to Class Counsel shall be added to the Net Settlement Amount to be distributed to Participating
22 Class Members on a pro rata basis.

23 5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the
24 Gross Settlement Amount and shall not exceed \$8,250.00. The difference between any actual costs and
25 the allocated \$8,250.00 shall be added to the Net Settlement Amount to be distributed to Participating Class
26 Members on a pro rata basis.

27 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiffs, shall apply to the Court for
28 an Enhancement Payment to each of the Class Representatives in an amount not to exceed Ten Thousand

1 (\$10,000) per Plaintiff to compensate for the risks, time, and expense of their involvement in the Action
2 and securing the benefits of this Agreement for Class Members. The Enhancement Payment is in addition
3 to the Individual Settlement Amount Plaintiffs would otherwise be due under the Agreement as
4 Participating Class Members. Defendant has agreed to not oppose Class Counsel's request for an
5 Enhancement Payment to Plaintiffs so long as it does not exceed the amount stated herein. The
6 Enhancement Payment will be designated as a non-wage payment and reported on an IRS Form 1099-
7 MISC. In the event that the Court awards less than the Enhancement Payment amount requested, then any
8 portion of the requested amount not awarded to the Class Representatives shall be added to the Net
9 Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

10 5.5 PAGA Payment: Twenty Thousand (\$20,000) of the Gross Settlement Amount shall be
11 allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be
12 paid to the LWDA and Twenty-Five percent (25%) will be paid to PAGA Members on a pro rata basis as
13 described below in Section 5.8. Any amount not approved by the Court for the allocated PAGA Payment
14 shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata
15 basis.

16 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or PAGA
17 Payment allocated to Participating Class Members and/or PAGA Members that were not claimed by
18 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be
19 donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine
20 of *cy pres*. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

21 5.7 No Additional Benefits Contributions: All Individual Settlement Amounts paid to
22 Participating Class Members and PAGA Members shall be deemed to be income solely in the year in which
23 such amounts were actually received. It is expressly understood and agreed that the receipt of such
24 Individual Settlement Amounts will not entitle any Participating Class Member or PAGA Member to any
25 new or additional compensation or benefits under any company bonus or other compensation or benefit
26 plan or agreement in place during the period covered by the Agreement, nor will it entitle any Participating
27 Class Member PAGA Member to any increased retirement, 401(k) and/or 403(b) benefits or matching
28 benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual Settlement

1 Amounts provided for in this Agreement are the sole payments to be made by Defendant to the Participating
2 Class Members and PAGA Members in connection with this Agreement (notwithstanding any contrary
3 language or agreement in any benefit or compensation plan document that might have been in effect during
4 the period covered by this Agreement).

5 5.8 Pro Rata Distribution Formula: Payment to Participating Class Members and PAGA
6 Members of their Individual Settlement Amount will not require the submission of a claim form. A Net
7 Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for
8 approved attorneys' fees and costs, any Enhancement Payment to the Class Representatives, the Settlement
9 Administrator Costs, and the PAGA Payment. Each Class Member's share will be initially determined by
10 dividing their total Qualifying Workweeks within the Class Release Period by the total Qualifying
11 Workweeks of all Class Members within the Class Release Period. That fraction will then be multiplied
12 by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement
13 Amount. Any funds allocated to Class Members under this formula who timely opt out of the Settlement
14 will be redistributed to Participating Class Members on a pro rata basis, *i.e.* each Participating Class
15 Member's share will be determined by dividing their total Qualifying Workweeks within the Class Release
16 Period by the total Qualifying Workweeks of all Participating Class Members and that fraction will then
17 be multiplied by the Net Settlement Amount to arrive at the Participating Class Member's individual share
18 of the Net Settlement Amount. Each PAGA Member's share of the 25% portion of the PAGA Payment
19 will be determined by dividing their total Qualifying Workweeks within the PAGA Release Period by the
20 total Qualifying Workweeks by all PAGA Members within the PAGA Release Period. That fraction will
21 then be multiplied by the 25% portion of the PAGA Payment to arrive at the PAGA Member's individual
22 share.

23 5.9 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to
24 Participating Class Members and/or PAGA Members reflect a settlement of a dispute over claimed
25 penalties and wages. The Settlement Administrator shall calculate the employer's share of payroll taxes
26 on the amounts paid to Participating Class Members as wages as well as calculating all required
27 withholdings and deductions from said wage payments. The characterization of Individual Settlement
28 Amounts to Participating Class Members and PAGA Members are as follows:

1 5.9.1 Twenty Percent (20%) of each Participating Class Members' share of the Net
2 Settlement Amount shall be allocated for payment of disputed wages and shall be subject to required
3 employer taxes. Participating Class Members shall receive an IRS Form W-2 for reporting of this portion
4 of their Individual Settlement Amount.

5 5.9.2 Eighty Percent (80%) of each Participating Class Members' share of the Net
6 Settlement Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be
7 deducted for any taxes. This portion of the Individual Settlement Amount consists of other income, not
8 wages, for which the Participating Class Members shall receive IRS Forms 1099-MISC and 1099-INT and
9 this payment shall be divided equally among the 1099-MISC and 1099-INT designations.

10 5.9.3 The entirety (100%) of each PAGA Member's share of the 25% portion of the
11 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted
12 for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for
13 which the PAGA Members shall receive an IRS Form 1099-MISC.

14 5.10 Participating Class Members and PAGA Members shall be solely responsible for the
15 reporting and payment of their share of any federal, state and/or municipal income or other taxes on
16 payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendant's
17 Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable,
18 including the treatment of such payments as not subject to withholding or deduction for payroll and
19 employment taxes. No party has made any representation to any of the other Parties as to the taxability of
20 any payments pursuant to this Agreement, including the payments to Participating Class Members, the
21 payments to PAGA Members, the payments to Class Counsel, the payments to the Class Representatives,
22 the payroll tax liability of Defendant, or the allocation of the Net Settlement Amount or PAGA Payment
23 to wage and non-wage income as provided in this Section, or otherwise as to tax implications of any
24 provision of this Agreement.

25 5.11 No Additional Contribution by Defendant: Defendant's monetary obligation under this
26 Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on
27 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
28 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless

expressly provided otherwise herein. However, in the event this agreement is deemed null and void as described in Section 3 because the Court, in its independent determination, finds that the Agreement does not meet the standards for settlement approval, then Defendant and Plaintiffs shall be equally responsible for the costs of the Settlement Administrator incurred between the date the Agreement was executed and the date of such event.

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

5.13 Adequacy of Class Counsel and Class Representatives: The Parties agree that, for purposes of settlement only, Class Counsel and Plaintiffs are adequate representatives for Class Members and PAGA Members.

6. RELEASE

6.1 Release of Claims by Participating Class Members: Upon the Effective Date, all Participating Class Members will be deemed to fully, finally and forever release the Released Class Claims as to all Released Parties.

6.2 Release of Claims by PAGA Members: Upon the Effective Date, all PAGA Members will be deemed to fully, finally and forever release the Released PAGA Claims as to all Released Parties.

6.3 Release by Plaintiffs: Upon the Effective Date, and in addition to the releases given by Plaintiffs by virtue of their being Class Members and PAGA Members as described above, Plaintiffs release, on behalf of themselves, their heirs, spouse, executors, administrators, attorneys, agents, assigns, and any entities or businesses where Plaintiffs have a controlling ownership interest, the Class Representatives' Released Claims as to all Released Parties, or any of them, arising from their employment with Defendant, separation of employment from Defendant, and any acts that have or could have been asserted in any legal action or proceeding against Defendant, whether known or unknown, arising under any federal, state, or local law, or statute, including, *inter alia*, those arising under the California Labor Code, Fair Labor Standards Act, Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee Retirement Income Security Act, National Labor Relations Act, California Corporations Code, California Business and Professions Code, California Fair Employment and Housing Act, California

1 Constitution (all as amended), and law of contract and tort, as well as for discrimination, harassment,
2 retaliation, wrongful termination, lost wages, benefits, other employment compensation, emotional
3 distress, medical expenses, other economic and non-economic damages, attorney fees, and costs, arising
4 on or before the date of execution of the Settlement Agreement. Plaintiffs agree and represent that they are
5 aware of, and are familiar with, the provisions of California Civil Code Section 1542, which provides as
6 follows:

7 “A general release does not extend to claims that the creditor or releasing
8 party does not know or suspect to exist in his or her favor at the time of
9 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.”

10 With full awareness and understanding of the above provisions, Plaintiffs will waive and
11 relinquish any and all rights and benefits that they may have under California Civil Code Section 1542,
12 or the law of any other state or jurisdiction, or common law principle, to the same or similar effect,
13 concerning the claims released herein.

14 **7. SETTLEMENT ADMINISTRATION**

15 7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible for:
16 1) receiving Class Member and PAGA Member contact information and confirming addresses are valid;
17 2) calculating estimated Individual Settlement Amounts and any and all taxes associated with the Individual
18 Settlement Amounts, including employer taxes; 3) taking appropriate steps to trace and locate any
19 individual Class Members and PAGA Member whose address or contact information as provided to the
20 Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class Members;
21 4) providing notification to the appropriate state and federal officials of this Agreement as required under
22 the law; 5) receiving, independently reviewing, and resolving any challenges (in consultation with Class
23 Counsel and Defendant’s Counsel) from Class Members or PAGA Members, including any associated
24 documentation, regarding their Qualified Workweek calculations; 6) receiving and serving on Class
25 Counsel, Defendant’s Counsel, and the Court, copies of any written objections, and/or any opt out
26 statements; 7) establishing a toll free telephone line and responding to inquiries and requests for
27 information or assistance from Class Members and/or PAGA Members; 8) maintaining a QSF; 9)
28 determining and paying the final amounts due to be paid under the Agreement after resolution of all

1 challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement Administrator Costs, PAGA
2 Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability
3 to locate Class Members or PAGA Members; 10) determining the validity of any disputes or late opt-outs
4 by previously unidentified Class Members or PAGA Members; 11) paying any residual funds from
5 uncashed checks; 12) reporting to Class Counsel and Defendant's Counsel regarding the statistics of the
6 administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of
7 forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of
8 total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable
9 Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the
10 number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes
11 received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final
12 statistics of the administration and compliance with all payment obligations under the Agreement; 14)
13 completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts to
14 Participating Class Members and PAGA Members; and 15) carrying out other related tasks as necessary to
15 effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Settlement
16 Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which
17 will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and
18 obligations contemplated by the Agreement have been fully executed.

19 7.2 Notice to Class Members and PAGA Members: The Notice of Settlement, to be mailed to
20 Class Members in English and Spanish, will provide Class Members and PAGA Members with a summary
21 of the terms and conditions of the Agreement, how to participate in the settlement, how to object to the
22 Agreement, how to dispute the individual's Qualifying Workweeks, and how to opt-out from the
23 Agreement. The Notice of Settlement will also inform Class Members and PAGA Members of the Gross
24 Settlement Amount, Net Settlement Amount, proposed attorneys' fees and costs allocations, any proposed
25 Enhancement Payments, proposed Settlement Administrator Cost allocations, proposed PAGA Payment
26 allocations, the scope of the class, the nature and extent of the released claims, dates set for a fairness
27 hearing and hearing on Class Counsels' motion for attorneys' fees and costs. The Notice of Settlement
28 shall include information regarding Class Member's and PAGA Member's estimated Individual Settlement

Amount. The Notice of Settlement will provide information on how to access electronic copies online of the Notice of Settlement, any motions for approval of the Agreement, any motions for approval of attorneys' fees and costs, and any other documents as the Court directs.

7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the first and last name, last known mailing address, last known telephone number, Social Security Number, dates worked as an hourly, non-exempt employee of Defendant in California during the Class Period and PAGA Period (if applicable), and Defendant's calculation of Workweeks during the Class Period and PAGA Period (as defined herein), which will be performed by Defendant's expert. Workweeks will be calculated in the same manner used by Defendant to calculate Workweeks for purposes of mediation. No later than fourteen (14) calendar days after receipt of such address information, the Settlement Administrator will perform a national change of address ("NCOA") search, update the addresses per the results of the NCOA search, and then mail the Notice of Settlement, substantially in the form attached as Exhibit 1, to each Class Member and PAGA Member by first-class mail, postage prepaid. The Settlement Administrator shall maintain all information received from Defendant confidential to itself, and Defendant's Counsel. However, Class Counsel shall be able to review the breakdown of Qualified Workweeks and estimated Individual Settlement Amounts for Class Members and PAGA Members prior to mailing for quality assurance provided the personal identifying information is redacted and/or omitted.

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

1 Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they
2 are active employees of Defendant. In the event the Notice of Settlement is forwarded to a new address
3 and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out,
4 a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-
5 mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are
6 followed and the Class Member does not timely and properly request to opt-out, the Class Member shall
7 be bound by all terms of the Agreement, including the releases contained in Section 6.

8 7.5 Responses to Notice of Settlement:

9 7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish to
10 exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The
11 request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or
12 she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be
13 excluded from the settlement; (c) identify the case name and number (*i.e. Neff v. Castle Tire Disposal LLC*
14 *et al*, Case No. 34-2023-00336483); (d) be signed; and (e) be post-marked no later than the conclusion of
15 the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign
16 the request to opt-out. No request to opt-out may be made on behalf of a group of Class Members. The
17 date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether
18 a request to opt-out has been timely submitted. Any Class Member who requests to opt-out of the
19 Agreement will not be entitled to any portion of the Net Settlement Amount nor will they have any right
20 to object, appeal or comment thereon. The name of any Class Member who submits a valid and timely opt
21 out request will be specifically identified in any proposed order granting final approval. Class Members
22 who fail to submit a valid and timely request to opt-out shall be bound by all terms of the Agreement and
23 any order or final judgment thereon. Regardless of whether an PAGA Member opts out of being a Class
24 Member, they will still receive their share of the PAGA Payment as PAGA Members cannot opt out of this
25 Agreement as it relates to the PAGA Payment or Released PAGA Claims.

26 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out, but who wishes
27 to object to this Agreement or otherwise to be heard concerning this Agreement, may submit a written
28 objection to the Settlement Administrator, who will promptly provide copies of the objection to Class

Counsel and Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny the Agreement, not change the terms of the Agreement. The written objection should (a) state the Class Member's full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state the reasons for the objection(s), including any supporting documentation; (d) identify the case name and number (*i.e. Neff v. Castle Tire Disposal LLC et al*, Case No. 34-2023-00336483); (e) be signed; and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. Additionally, or in the alternative to sending a written objection to the Settlement Administrator, any Class Member may appear at the final approval hearing to state their objection.

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

7.5.4 Deficient Opt-Outs, Objections, or Disputes: In the event that a deficient opt-out, objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the

1 deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure
2 the deficiency shall be the end of the Notice Period or 10 calendar days from the date of the deficiency
3 letter, whichever is later.

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

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

13 7.8 Settlement Administrator Payments to Participating Class Members, Class Counsel and
14 Plaintiff: Within seven (7) calendar days after the Effective Date and the Court's determination of the
15 amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to
16 Plaintiff, the PAGA Payment, and Settlement Administrator Costs, the Settlement Administrator shall
17 calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class
18 Members and/or PAGA Members, any applicable taxes thereon, and report the results of these calculations
19 Class Counsel and Defendant's Counsel. Defendant shall wire the Gross Settlement Amount and
20 applicable taxes necessary to fund the Settlement as described in Section 5.1 to the Settlement
21 Administrator within sixty-five (65) calendar days after the Effective Date to be held in trust in a QSF.
22 Within seven (7) calendar days after Defendant fund the settlement, the Settlement Administrator shall
23 deliver payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to
24 Plaintiff, the 75% portion of the PAGA Payment payable to the LWDA, Settlement Administrator Costs,
25 and payment to Participating Class Members and/or PAGA Members as required under this Agreement
26 and approved by Court.

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

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

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

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

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

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

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members and PAGA Members, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures

as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendant to provide Settlement Administrator with Class Member and PAGA Member information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and PAGA Member mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or PAGA Members, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund settlement	Within 65 calendar days after the Effective Date
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to PAGA Members	Within 7 calendar days after Defendant has funded the settlement
Last day for Participating Class Members and PAGA Members to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and PAGA Members

Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

9.1 Stay of *Holmberg* Action Pending Preliminary Approval: Plaintiff Holmberg and Defendant will enter into a stipulation to stay the *Holmberg* Action until preliminary approval of the Settlement in the *Neff* Class Action. Upon preliminary approval, Plaintiff Holmberg will dismiss the *Holmberg* Action without prejudice.

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

1 9.2.1 In connection with preliminary approval, Plaintiff Neff will request leave to amend
2 the complaint in the *Neff* Class Action to consolidate the claims, causes of action, and allegations from the
3 *Neff* PAGA Action and the *Holmberg* Action into the *Neff* Class Action. The Parties shall stipulate, and
4 hereby do stipulate, to providing Plaintiff Neff leave to file the proposed First Amended Complaint,
5 (Operative Complaint). For statute of limitations purposes, the claims, causes of action, and allegations
6 asserted in the *Holmberg* Action will be treated as if they were originally pled in the *Neff* Class Action on
7 June 27, 2023, the same day the *Holmberg* Action was filed. Similarly, for statute of limitations purposes,
8 the claims, causes of action, and allegations asserted in the *Neff* PAGA Action will be treated as if they
9 were originally pled in the *Neff* Class Action on June 6, 2023, the same day the *Neff* PAGA Action was
10 filed.

11 9.2.2 Defendant shall not oppose Plaintiffs' motion for approval of the proposed
12 Agreement.

13 9.2.3 The Parties shall cooperate with each other and the Settlement Administrator during
14 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
15 appropriate to assure effective communication to individual Class Members of information about their
16 rights and obligations under this Agreement.

17 9.3 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
18 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
19 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
20 Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the
21 Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results
22 of the Settlement Administrator's mailings including tracing and re-mailing efforts. The Settlement
23 Administrator declaration shall identify, by name, any Class Member who submitted a timely and valid
24 request to opt out during the Notice Period.

25 9.3.1 By way of said motion, Plaintiffs will apply for the entry of the mutually-agreed
26 upon Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment.

27 9.3.2 Following entry of the Court's order granting final approval of the Agreement, the
28 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following:

1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgement be filed, all Parties will support the final approval order on appeal or otherwise; 2) Class Counsel will assist the Settlement Administrator as needed or requested in the process of identifying and locating Participating Class Members and PAGA Members entitled to payments under the Agreement and assuring delivery of such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each other and assist the Settlement Administrator as needed or requested in completing the distribution of any residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with the Settlement Administrator, will certify to the Court completion of all payments required to be made by this Agreement.

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

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

10. MISCELLANEOUS TERMS

10.1 Defendant's Right to Withdraw Based on Opt-Outs: At its sole discretion, Defendant may terminate this settlement if more than 7% of class members opt out, and all parties shall be returned to their respective positions as of the date of execution. Defendant will be responsible for paying any settlement administrator expenses incurred to the date of the termination of the settlement. The litigation shall be stayed except for matters relating to the settlement. Defendant must exercise this right of termination, in writing, to Class Counsel, within seven (7) calendar days after the Settlement Administrator notifies the Parties of the total number of opt-outs. If the option to rescind is exercised, then any Settlement Administrator Costs shall be paid by Defendant. Defendant has represented that there approximately 9,000 workweeks during the Class Release Period. This is a material representation for Plaintiffs to enter into this Settlement. Should the qualifying workweeks increase beyond 7%, or 630 Workweeks, then the Gross Settlement Amount shall be increased proportionally by the Workweeks in excess of 9,000 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$480,000.00) by 9,000, which amounts to a Workweek value of \$53.33. Thus, for example, should there be 10,000 Workweeks in the Class Period, then the Gross

Settlement Amount shall be increased by \$53,330 ((10,000 Workweeks- 9,000 Workweeks) x \$53.33 per Workweek.)

10.2 Tax Liability. Plaintiffs, Class Counsel, Defendant, and Defendant's Counsel make no representations or warranties as to the tax consequences, treatment, or legal effect of any payments made under the Settlement Agreement, do not intend anything contained in the Settlement Agreement to constitute advice regarding taxes or taxability, nor shall anything in the Settlement Agreement be relied on as such. Plaintiffs, PAGA Group Members, and Settlement Class Members understand and agree that, except for Defendant's payment of the Employer Taxes, Plaintiffs, PAGA Group Members, and Settlement Class Members will be solely responsible for correctly characterizing any compensation received under the Settlement on his/her personal income tax returns and paying any and all taxes due for any and all amounts paid to them under the Settlement.

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

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

6 10.4 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
7 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
8 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
9 and discharged in this Agreement.

10 10.5 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
11 signing this Agreement Defendant is waiving any rights to appeal from the Court’s approval of the
12 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
13 Plaintiffs are waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

14 10.6 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
15 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
16 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

17 10.7 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment will
18 be entered according to this Agreement. The Parties stipulate and agree that the San Joaquin County
19 Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil
20 Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of the
21 Agreement after default by the other party may recover reasonable attorney’s fees and costs related thereto.

22 10.8 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
23 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution
24 of such other documents and the taking of such other action as may reasonably be necessary to fulfill the
25 terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
26 contemplated by this Agreement and any other efforts that may become necessary by Court order, or
27 otherwise, to effectuate this Agreement and the terms set forth herein.

1 10.9 No Admission of Liability: Neither the acceptance nor the performance by Defendant of
2 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
3 be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the
4 Complaint, the representative character of the Action, the validity of any of the claims that were or could
5 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of Defendant
6 in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by Defendant
7 of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or any other
8 person, and Defendant specifically disclaim any liability, culpability, negligence, or wrongdoing toward
9 Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this Stipulation with
10 the intention to avoid further disputes and litigation.

11 10.10 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
12 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
13 third business day after mailing by United States certified mail, return receipt requested, addressed as
14 follows:

15 To Plaintiffs and the Class:

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

22 David D. Bibiyan
23 Vedang J. Patel
24 Megan R. Lazar
25 **Bibiyan Law Group, PC**
26 1460 Westwood Blvd.
27 Los Angeles, California 90024

28 To Defendant:

 Nisha Verma
 Hannah R. Green
 Dorsey & Whitney LLP
 600 Anton Boulevard
 Costa Mesa, CA 92626

 10.11 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that

1 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
2 party or its counsel participated in the drafting of this Agreement.

3 10.12 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys
4 acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover
5 any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except
6 as expressly provided in this Agreement.

7 10.13 No Modifications: This Agreement may be amended or modified only by a written
8 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
9 discharged except by performance in accordance with its terms.

10 10.14 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
11 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and
12 to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
13 to effectuate its terms and to execute any other documents required to effectuate the terms of this
14 Agreement.

15 10.15 Class Member Signatories: Because the Action has not yet been certified, and the Class
16 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
17 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
18 may be executed on behalf of all Class Members by the Class Representatives.

19 10.16 Counterparts: This Agreement shall become effective upon its execution by all of the
20 undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement
21 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed
22 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
23 and effect of originals.

24 10.17 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
25 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the
26 rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with,
27 and governed by, the substantive laws of the State of California without giving effect to that State's choice
28 of law principles.

1 10.18 Headings and Captions: Section titles or captions contained in the Agreement are inserted
2 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
3 this Agreement, or any provision thereof.

4 10.19 No Retaliation or Discouragement: The Parties agree they will take no action that could be
5 construed as retaliation against any Class Members for participating or seeking to participate in this class
6 action settlement. The Parties will not discourage any class member from participating or seeking to
7 participate in this class action settlement. This is a material term of the Agreement and non-breaching
8 Parties will seek court intervention if this provision is breached.

9 10.20 Integrated Agreement: This Agreement sets forth the entire understanding between the
10 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
11 Each party acknowledges that there is no representation, inducement, promise or agreement which has been
12 made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which
13 is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the
14 terms of this Agreement are fully understood and voluntarily accepted by the Parties.

15 10.21 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the
16 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

17 10.22 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
18 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
19 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

20 10.23 Waiver of Compliance: No waiver of any condition or covenant contained in this
21 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
22 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

23 10.24 Confidentiality: Class Counsel agree to maintain this settlement as confidential until the
24 motion for preliminary approval is filed. Class Counsel agree not to publicize the settlement in any manner
25 that would identify Defendant as the defendant in this Action. However, nothing in this paragraph shall be
26 interpreted to alter or limit Class Counsel's ability to effectuate notice to Settlement Class Members and
27 seek approval of the Agreement.

1 10.25 Tolling of Settlement Time: The Parties agree that the period from the date that this Mediator's
2 Proposal is executed and extending so long as the Settlement has not been revoked or the Court has granted final
3 approval of the Settlement shall not count for purposes of C.C.P. § 583.310, but rather shall extend the period in
4 time in which to try the case by such time plus an additional 6 months pursuant to C.C.P. § 583.330.

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

7 **For Plaintiff:**

8 Date: 01/08/2026



Erick Holmberg II (Jan 8, 2026 11:13:38 PST)

Erick Holmberg

10 Date: _____

11 _____
12 Kyle Neff

13 **For Defendant:**

14 Date: _____

15 By: _____

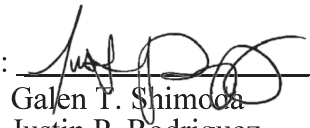
16 For Castle Tire Disposal, LLC

17 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

19 Dated: 01/08/2026

20 By: _____


21 Galen T. Shimoda

22 Justin P. Rodriguez

23 Renald Konini

24 Attorneys for Plaintiff Holmberg and
25 similarly situated employees
26
27
28

1 10.25 Tolling of Settlement Time: The Parties agree that the period from the date that this Mediator's
2 Proposal is executed and extending so long as the Settlement has not been revoked or the Court has granted final
3 approval of the Settlement shall not count for purposes of C.C.P. § 583.310, but rather shall extend the period in
4 time in which to try the case by such time plus an additional 6 months pursuant to C.C.P. § 583.330.

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

7 **For Plaintiff:**

8 Date: _____

9 _____
Erick Holmberg

10 Date: 12/10/2025

11 _____
Kyle Neff

12 Kyle Neff

13 **For Defendant:**

14 Date: _____

15 _____
By:

16 For Castle Tire Disposal, LLC

17 APPROVED AS TO FORM

18 **Shimoda & Rodriguez Law, PC**

19 Dated: _____

20 By: _____

21 Galen T. Shimoda

22 Justin P. Rodriguez

23 Renald Konini

24 Attorneys for Plaintiff Holmberg and
25 similarly situated employees

1 APPROVED AS TO FORM

Bibiyan Law Group, PC

2
3 Dated: 1/28/26

By: David Bibiyan
David D. Bibiyan
Vedang J. Patel
Attorneys for Plaintiff Neff and similarly
situated employees

4
5
6
7
8 APPROVED AS TO FORM

DORSEY & WHITNEY LLP

9
10
11 Dated: _____

By: _____
Nisha Verma
Hannah R. Green
Attorney for Defendant

1 10.25 Tolling of Settlement Time: The Parties agree that the period from the date that this Mediator's
2 Proposal is executed and extending so long as the Settlement has not been revoked or the Court has granted final
3 approval of the Settlement shall not count for purposes of C.C.P. § 583.310, but rather shall extend the period in
4 time in which to try the case by such time plus an additional 6 months pursuant to C.C.P. § 583.330.

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

7
8 **For Plaintiff:**

9 Date: _____

Erick Holmberg

11 Date: _____

Kyle Neff

13
14 **For Defendant:**

15 Date: December 31, 2025 _____

Signed by:


By: ~~Chandos Mahon~~
For Castle Tire Disposal, LLC

18 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

20 Dated: _____

By: _____
Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiff Holmberg and
similarly situated employees

1 APPROVED AS TO FORM

Bibiyan Law Group, PC

2
3 Dated: _____

By: _____

4 David D. Bibiyan
5 Vedang J. Patel
6 Attorneys for Plaintiff Neff and similarly
7 situated employees

8 APPROVED AS TO FORM

DORSEY & WHITNEY LLP

9
10
11 Dated: January 28, 2026

By: 

12 Nisha Verma
13 Hannah R. Green
14 Attorney for Defendant
15
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EXHIBIT 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

KYLE NEFF and ERICK HOLMBERG, individually and
on behalf of all other similarly situated employees,

Plaintiff,

vs.

CASTLE TIRE DISPOSAL, LLC, a Delaware Limited
Liability Company; and DOES 1 to 100, inclusive,

Defendant.

Case No. 34-2023-00336483

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

ATTENTION: All current and former non-exempt employees employed by Defendant in California at any time during the period from March 20, 2019, through February 15, 2024 (the “Class Members”).

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

You are receiving this notice pursuant to an order from the Sacramento Superior Court (“Court”) granting Plaintiffs’ motion for preliminary approval of a Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiffs Erick Holmberg and Kyle Neff (“Plaintiffs” or “Class Representatives”), and Defendant Castle Tire Disposal, LLC (“Defendant”) on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member.” Defendant’s records also indicate that you worked [REDACTED] weeks during the applicable Class Release Period, which is March 20, 2019, through February 15, 2024, which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

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

I. BACKGROUND OF THE CASE

A class action lawsuit was filed by Plaintiff Neff in Sacramento County Superior Court, Case No. 34-2023-00336483, on March 20, 2023, on behalf of himself and Class Members (“Neff Class Action”). Plaintiff Neff filed a separate lawsuit alleging a single cause of action under the Private Attorney’s General Act (“PAGA”) on June 6, 2023, in Sacramento County Superior Court, Case No. 23CV002828 (“Neff PAGA Action”). Plaintiff Holmberg filed a class action lawsuit in San Joaquin County Superior Court, Case No. STK-CV-UOE-2023-0006565, on June 27, 2023, on behalf of himself and similarly situated employees (“Holmberg Class Action”). An amended complaint was filed in the Holmberg Class Action to include a claim under the PAGA for violations of the California Labor Code on October 24, 2023. The Neff Class Action, Neff PAGA Action, and Holmberg Class Action are collectively referred to as the “Actions.” On [REDACTED], Plaintiff Neff filed a First Amended Complaint in the Neff Class Action consolidating the parties, claims, causes of action, and allegations from the Actions into a single proceeding, Sacramento County Superior Court Case No. 34-2023-00336483.

In this litigation, Plaintiffs sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of themselves, Class Members, and PAGA Members. Plaintiffs alleged that Defendant violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to provide meal periods, 4) failing to provide rest periods, 5) failing to provide accurate wage statements, 6) failing to pay final wages, 7) failing to reimburse expenses, 8) failing to maintain accurate records, 9) failing to pay all wages owed, 10) failing to provide paid sick leave, 11) untimely payment of wages, and 12) failing to pay for vested vacation time. Plaintiffs alleged these violations also caused derivative liability for unfair competition, and civil penalties under the PAGA. Defendant has denied all of Plaintiffs’ allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated

in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continues to deny all allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, as defined above. The Agreement also applies to PAGA Members, which are defined as all current and former non-exempt employees employed by Defendant in California at any time during the period from March 16, 2022, through February 15, 2024. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the Settlement and this notice is to advise Class Members of how to do so. As set forth below, PAGA Members cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. PAGA Members will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of Four Hundred Eighty Thousand Dollars (\$480,000) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorney’s fees not to exceed one-third (1/3) of the Gross Settlement Amount, attorney’s costs not to exceed \$30,000, Settlement Administrator Costs estimated not to exceed \$15,000, an Enhancement Payment to the Class Representatives’ not to exceed \$10,000 each, and \$20,000 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of weeks worked by Participating Class Members during the Class Release Period. Of the \$20,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among PAGA Members.

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

B. Individual Settlement Amounts and Allocation Between Class Members and PAGA Members

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to PAGA Members. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that the amount payable to eligible Class Members from the Net Settlement Amount will be allocated and paid as 80% for disputed interest, statutory penalties, and other non-wage damages for which an IRS Forms 1099-MISC and 1099-INT will issue and 20% for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to PAGA Members will be paid as 100% for civil penalties.

Payment to Participating Class Members and PAGA Members will not require the submission of a claim form. Each Participating Class Member’s share will be determined by dividing their total weeks worked within the Class Release Period by the total weeks worked by all Participating Class Members within the Class Release Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member’s individual share of the Net Settlement Amount. Each PAGA Member’s share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Release Period by the total weeks worked by all PAGA Members within the PAGA Release Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the PAGA Member’s individual share. The PAGA Release Period is defined as March 16, 2022, through February 15, 2024. Defendant’s records indicate that you worked [REDACTED] weeks during the applicable PAGA Release Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or PAGA Member

to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

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

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

D. Release of Claims

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

Class members who do not opt out will be deemed to have released [insert 1.31 text].

PAGA Members will be deemed to have released [insert 1.32 text].

The individuals released ("Released Parties") include [insert 1.33 text].

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

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

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

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from being a Class Member if you request this by [redacted]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e. Neff v. Castle Tire Disposal LLC et al*, 34-2023-00336483); (d) be signed; and (e) be post-marked no later than [redacted]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

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

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection,

you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by submitting an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. You may submit a written objection, which should (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e. Neff v. Castle Tire Disposal LLC et al*, 34-2023-00336483); (e) be signed; and (f) be post-marked no later than [REDACTED]. Written objections must be sent to the Settlement Administrator at the address identified in Section III.B.

Additionally, or in the alternative to sending a written objection to the Settlement Administrator, you may appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

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

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 22, 720 9th Street, Sacramento, California 95814 on [REDACTED] at [REDACTED] to determine whether the Agreement should be finally approved as fair, reasonable and adequate. To join by Zoom: <https://saccourt-ca.gov.zoomgov.com/my/sscdept22>. To join by phone: (833) 568-8864 / ID 16184738886. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representatives' Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at <https://prod-portal-sacramento-ca.journaltech.com/public-portal/>. You can also contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

David D. Bibiyan
Vedang J. Patel
Megan R. Lazar
Bibiyan Law Group, PC
1460 Westwood Blvd.
Los Angeles, CA 90024
Telephone: (310) 438-5555
Fax: (310) 300-1705
On behalf of Plaintiff

Nisha Verma
Hannah R. Green
Dorsey & Whitney LLP
600 Anton Boulevard
Costa Mesa, CA 92626
Tel: (714) 800-1400
Fax: (714) 800-1499
On behalf of Defendant

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

BY ORDER OF THE COURT

EXHIBIT 2

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (Cal. Bar No. 287811)

david@tomorrowlaw.com

Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

Megan R. Lazar (SBN 315007)

megan@tomorrowlaw.com

8484 Wilshire Boulevard, Suite 500

Beverly Hills, California 90211

Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff, KYLE NEFF and
on behalf of himself and all others similarly situated

[additional counsel continued on next page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

KYLE NEFF and ERICK HOLMBERG,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

CASTLE TIRE DISPOSAL, LLC, a Delaware
limited liability company; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 34-2023-00336483

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY/REIMBURSE;
9. VIOLATION OF LABOR CODE § 227.3;
10. UNFAIR COMPETITION;
11. COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 558, 1174.5,
1197.1 and 2699

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733
5
6 Attorneys for Plaintiff ERICK HOLMBERG
individually and on behalf of similarly situated employees

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1 Plaintiffs Kyle Neff (“Plaintiff Neff”) and Erick Holmberg (“Plaintiff Holmberg”) (Plaintiff
2 Neff and Plaintiff Holmberg sometimes collectively referred to as “Plaintiffs”), as aggrieved
3 employees and similarly situated to all putative class members, allege on behalf of themselves and
4 all others similarly situated, as follows:

5 **GENERAL ALLEGATIONS**

6 **INTRODUCTION**

7 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against
8 CASTLE TIRE DISPOSAL, LLC, and any of its respective subsidiaries or affiliated companies
9 within the State of California (“CASTLE” and collectively, with DOES 1 through 100, as further
10 defined below, “Defendants”) on behalf of Plaintiffs and all other current and former non-exempt
11 California employees employed by or formerly employed by Defendants (“Class Members”).

12 2. This is also a representative action, pursuant to the Labor Code Private Attorneys
13 General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Defendants,
14 as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”),
15 on behalf of Plaintiffs and all other current and former non-exempt employees of Defendants
16 working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged
17 claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code
18 section 226, Labor Code section 227.3, Labor Code section 245, *et seq.*, Labor Code section 2802,
19 restraints on competition, whistleblowing and freedom of speech on behalf of all employees of
20 Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

21 **PARTIES**

22 **A. Plaintiffs**

23 3. Plaintiff Neff is a resident of the State of California. At all relevant times herein,
24 Plaintiff Neff is informed and believes, and based thereon alleges, that Defendants employed
25 Plaintiff Neff as a non-exempt employee, with duties that included, but were not limited to,
26 operating a forklift to move tires. Plaintiff Neff is informed and believes, and based thereon alleges,
27 that Plaintiffs Neff worked for Defendants from approximately July 2022 through approximately
28 September of 2022.

1 4. Plaintiff Holmberg is a resident of the State of California. At all relevant times
2 herein, Plaintiff Holmberg is informed and believes, and based thereon alleges, that Defendants
3 employed Plaintiff Holmberg as a non-exempt employee in various positions relating to the
4 processing of used tires. Plaintiff Holmberg is informed and believes, and based thereon alleges,
5 that Plaintiff Holmberg worked for Defendants from approximately March 16, 2021, through June
6 29, 2023.

7 **B. Defendants**

8 5. Plaintiffs are informed and believe and based thereon allege that CASTLE is, and at
9 all times relevant hereto was, a limited liability company organized and existing under and by virtue
10 of the laws of the State of Delaware and doing business in the County of Sacramento, State of
11 California. At all relevant times herein, CASTLE employed Plaintiffs and similarly situated
12 employees within the State of California

13 6. The true names and capacities, whether individual, corporate, associate, or otherwise,
14 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiffs,
15 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
16 Plaintiffs are informed and believe, and based thereon allege, that each of the defendants designated
17 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
18 Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities
19 of the defendants designated hereinafter as DOES when such identities become known. Plaintiffs
20 are informed and believe, and based thereon allege, that each defendant acted in all respects pertinent
21 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
22 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
23 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
24 include Castle, and any of their parent, subsidiary, or affiliated companies within the State of
25 California, as well as DOES 1 through 100 identified herein.

26 **JOINT LIABILITY ALLEGATIONS**

27 7. Plaintiffs are informed and believe, and based thereon allege, that all the times
28 mentioned herein, each of the Defendants was the agent, principal, employee, employer,

1 representative, joint venture or co-conspirator of each of the other defendants, either actually or
2 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
3 employment, joint venture, and conspiracy.

4 8. All of the acts and conduct described herein of each and every corporate defendant
5 were duly authorized, ordered, and directed by the respective and collective defendant corporate
6 employers, and the officers and management-level employees of said corporate employers. In
7 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
8 their said employees, agents, and representatives, and each of them; and upon completion of the
9 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
10 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
11 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
12 aforementioned corporate employees, agents and representatives.

13 9. Plaintiffs are further informed and believe, and based thereon allege, that Individual
14 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
15 provisions in violation of Labor Code section 558.1.

16 10. Plaintiffs are informed and believe, and based thereon allege, that there exists such a
17 unity of interest and ownership between Defendants, and each of them, that their individuality and
18 separateness have ceased to exist.

19 11. Plaintiffs are informed and believe, and based thereon allege that despite the
20 formation of the purported corporate existence of CASTLE, and DOES 1 through 50, inclusive (the
21 “Alter Ego Defendants”), they, and each of them, are one and the same with Individual and DOES
22 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to, the following
23 reasons:

24 A. The Alter Ego Defendants are completely dominated and controlled by the Individual
25 Defendants who personally committed the wrongful and illegal acts and violated the
26 laws as set forth in this Complaint, and who has hidden and currently hide behind the
27 Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some
28 other wrongful or inequitable purpose;

- 1 B. The Individual Defendants derive actual and significant monetary benefits by and
2 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
3 Defendants as the funding source for the Individual Defendants' own personal
4 expenditures;
- 5 C. Plaintiffs are informed and believe, and based thereon allege, that the Individual
6 Defendants and the Alter Ego Defendants, while really one and the same, were
7 segregated to appear as though separate and distinct for purposes of perpetrating a
8 fraud, circumventing a statute, or accomplishing some other wrongful or inequitable
9 purpose;
- 10 D. Plaintiffs are informed and believe, and based thereon allege, that the business affairs
11 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant
12 times mentioned herein were, so mixed and intermingled that the same cannot
13 reasonably be segregated, and the same are inextricable confusion. The Alter Ego
14 Defendants are, and at all relevant times mentioned herein were, used by the
15 Individual Defendants as mere shells and conduits for the conduct of certain of their,
16 and each of their affairs. The Alter Ego Defendants are, and at all relevant times
17 mentioned herein were, the alter egos of the Individual Defendants;
- 18 E. The recognition of the separate existence of the Individual Defendants and the Alter
19 Ego Defendants would promote injustice insofar that it would permit defendants to
20 insulate themselves from liability to Plaintiffs for violations of the Civil Code, Labor
21 Code, and other statutory violations. The corporate existence of these defendants
22 should thus be disregarded in equity and for the ends of justice because such
23 disregard is necessary to avoid fraud and injustice to Plaintiffs herein;
- 24 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
25 Defendants (and vice versa), and the fiction of their separate corporate existence
26 must be disregarded;

27 12. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
28 thereon alleges that Defendants, and each of them, are joint employers.

1 **JURISDICTION AND VENUE**

2 13. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
3 of Civil Procedure section 410.10.

4 14. Venue is proper in Sacramento County, California pursuant to Code of Civil
5 Procedure sections 392, et seq. because, among other things, Sacramento County is a county where
6 the causes of action complained of herein arose; the county in which the employment relationship
7 for Plaintiff Neff began; the county in which performance of the employment contract, or part of it,
8 between Plaintiff Neff and Defendants was due to be performed; the county in which the
9 employment contract, or part of it, between Plaintiff Neff and Defendants was actually performed;
10 and the county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged
11 herein have a direct effect on Plaintiff Neff, Class Members, and Aggrieved Employees in
12 Sacramento County, and because Defendants employed numerous Class Members and Aggrieved
13 Employees in Sacramento County.

14 15. Plaintiffs are “aggrieved employees” under PAGA, as Plaintiffs were employed by
15 Defendants during the applicable statutory period and suffered one or more of the Labor Code
16 violations set forth herein. Accordingly, Plaintiffs seek to recover civil penalties, as the term “civil
17 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
18 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* plus reasonable
19 attorneys’ fees and costs, for Plaintiffs and all other aggrieved current and former employees of
20 Defendants during the Civil Penalty Period.

21 16. Specifically, Plaintiffs seek to recover PAGA civil penalties through a representative
22 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
23 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
24 PAGA allegations described herein is not required.

25 17. During the period beginning one (1) year preceding the provision of notice to the
26 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
27 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 223,
28

225, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, *et seq.*, 256, 432, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

18. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees such as Plaintiffs, on behalf of Plaintiffs and all other aggrieved current and former employees within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section 2699.3.

19. On or around March 16, 2023, Plaintiff Neff provided written notice pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of them. Plaintiff Neff also provided Defendants, and each of them, with notice under Labor Code section 2810.3, subdivision (d) that Plaintiff Neff would seek to hold them liable for each other's wage and hour violations under Labor Code section 2810.3 on March 16, 2023, by certified mail with return receipt requested.

20. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the March 16, 2023, postmarked date of the herein-described notice sent by Plaintiff Neff to the LWDA and Defendants.

21. Plaintiff Holmberg sought permission pursuant to California Labor Code section 2699 *et seq.* to pursue PAGA claims against Defendants as a Private Attorney General on behalf of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3, Plaintiff Holmberg gave written notice via online submission to the LWDA on approximately June 16, 2023. Plaintiff Holmberg provided facts and legal bases for his claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act. Plaintiff Holmberg also submitted the \$75.00 filing fee. The June 16, 2023, notice was also sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any response to Plaintiff Holmberg's notice correspondence. Accordingly, Plaintiff Holmberg has exhausted all administrative remedies and may bring this action on behalf of himself and all similarly situated

employees, *i.e.* Aggrieved Employees. See Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005).

FACTUAL BACKGROUND

22. Defendants operate a tire recycling and resale business with locations in Stockton, Clear Lake, Redding, Los Angeles, and Sacramento. Over the course of their employment Plaintiffs, Class Members, and Aggrieved Employees held various positions relating to the processing of used tires, including, but not limited to, Laborer/Material Handler, Trailer Unloader/Processing, Route Helper, and Yard Dog. At all times, Plaintiffs, Class Members, and Aggrieved Employees were paid a base hourly rate plus various non-discretionary incentives relating to the processing of tires and the type of shifts worked. For example, Plaintiffs, Class Members, and Aggrieved Employees were paid \$10 per trailer they filled with tires for resale. Plaintiffs, Class Members, and Aggrieved Employees also received yearly bonuses that Defendants labeled as profit sharing. However, the shares ultimately paid to Plaintiffs, Class Members, and Aggrieved Employees were based on factors such as attendance, quality and quantity of work, the rate of production by an employee, and the employee's continued employment. Defendants also paid shift differentials depending on the type of shift (*e.g.* day, swing, night) that employees worked. Although Defendants paid these non-discretionary amounts to Plaintiffs, Class Members, and Aggrieved Employees in addition to their base hourly rates, Defendants failed to include the value of this extra compensation when calculating Plaintiff and similarly situated employees' regular rate of pay for premium wage payments. This included the failure to pay the correct rate for overtime, meal and/or rest period premiums, and sick leave wages. There were also several occasions where Defendants simply refused to pay the incentive compensation even though Plaintiffs, Class Members, and Aggrieved Employees had performed the required tasks, such as loading the requisite amount of trailers.

23. Defendants utilized rounding when calculating Plaintiffs', Class Members', and Aggrieved Employees' hours worked. Although Defendants had the ability to, and in fact did, record the amount of time Plaintiffs, Class Members, and Aggrieved Employees worked down to the minute, it paid in increments of a quarter hour. Defendants maintained policies and procedures that prohibited Plaintiffs, Class Members, and Aggrieved Employees from clocking in prior to seven

1 minutes before the start of their shift, resulting in the systematic rounding down of Plaintiffs', Class
2 Members', and Aggrieved Employees' hours worked.

3 24. For at least four (4) years prior to the filing of this action and continuing to the
4 present, Defendants have, at times, failed to pay overtime and minimum wages to Plaintiffs, Class
5 Members, and Aggrieved Employees, or some of them, in violation of California state wage and
6 hour laws as a result of, without limitation, Plaintiffs, Class Members, and Aggrieved Employees
7 working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days
8 in a work week without being properly compensated for hours worked in excess of (8) hours per
9 day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh
10 consecutive work day in a work week by, among other things, failing to accurately track and/or pay
11 for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock,
12 including, without limitation, by requiring employees: to remain on-call, to suffer under Defendants'
13 control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock
14 out for meal periods and continue working, to don and doff uniforms and/or safety equipment off
15 the clock, to attend company meetings off the clock, to make phone calls or drive off the clock;
16 failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay,
17 meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods
18 where overtime was worked and the additional compensation was earned for the purpose of
19 calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or
20 manipulation of time entries to show less hours than actually worked, and for paying straight pay
21 instead of overtime pay, to the detriment of Plaintiffs, Class Members, and Aggrieved Employees.

22 25. For at least four (4) years prior to the filing of this Action and continuing to the
23 present, Defendants have, at times, failed to provide Plaintiffs, Class Members, and Aggrieved
24 Employees, or some of them, full, timely thirty (30) minute uninterrupted meal period for days on
25 which they worked more than five (5) hours in a work day and a second thirty (30) minute
26 uninterrupted meal period for days on which they worked in excess of ten (10) hours in a work day,
27 and failing to provide compensation for such unprovided meal periods as required by California
28 wage and hour laws. Defendants had and have a policy or practice of failing to provide Plaintiffs

1 and other Class Members and Aggrieved Employees a thirty (30) minute uninterrupted, timely, and
2 complete meal period for days on which the employee worked in excess of five (5) and ten (10)
3 hours per day without being afforded uninterrupted, timely, and complete 30-minute meal periods
4 or compensation in lieu thereof including, without limitation, by interrupting meal periods; not
5 providing timely meal periods; failing to provide first and second meal periods; providing short
6 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
7 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
8 periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during which
9 employees worked, as required by California wage and hour laws.

10 26. For at least four (4) years prior to the filing of this action and continuing to the
11 present, Defendants have, at times, failed to authorize and permit Plaintiffs, Class Members, and
12 Aggrieved Employees, or some of them, to take rest periods of at least ten (10) minutes per four (4)
13 hours worked or major fraction thereof and failed to provide compensation for such unprovided rest
14 periods as required by California wage and hour laws. At all relevant times mentioned herein,
15 Defendants had and have a policy or practice of failing to provide Plaintiffs and other Class
16 Members and Aggrieved Employees paid, uninterrupted, timely, and complete rest periods of at
17 least ten (10) minutes per four (4) hours worked or major fractions thereof, or compensation in lieu
18 thereof, including, without limitation, by failing to provide rest periods all together; requiring that
19 they be bundled together and/or with meal periods; interrupting them; requiring that employees carry
20 cellular telephones or walkie-talkies during rest periods not providing them in a timely fashion; and
21 not permitting employees to leave the premises; and/or otherwise requiring on-duty/on-call rest
22 periods, as required by California wage and hour laws.

23 27. For at least three (3) years prior to the filing of this action and continuing to the
24 present, Defendants have, at times, failed to pay Plaintiffs, Class Members, and Aggrieved
25 Employees, or some of them, the full amount of their wages owed to them upon termination and/or
26 resignation as required by Labor Code sections 201 and 202, including for, without limitation,
27 failing to pay overtime wages, minimum wages, premium wages, and vacation pay pursuant to
28 Labor Code section 227.3.

1 28. For at least one (1) year prior to the filing of this Action and continuing to the present,
2 Defendants have, at times, failed to furnish Plaintiffs, Class Members, and Aggrieved Employees,
3 or some of them, with itemized wage statements that accurately reflect gross wages earned; total
4 hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate; the name and address of the legal entity
6 that is the employer; the name and address of the entity securing the services of the farm labor
7 contractor who employed Plaintiffs, Class Members, and Aggrieved Employees; and other such
8 information as required by Labor Code section 226, subdivision (a). As a result thereof, Defendants
9 have further failed to furnish employees with an accurate calculation of gross and gross wages
10 earned, as well as gross and net wages paid.

11 29. At all relevant times mentioned herein, Defendants had and have a policy or practice
12 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
13 Plaintiffs and other Class Members and Aggrieved Employees with documents signed to obtain or
14 hold employment under Labor Code section 432, personnel records under Labor Code section
15 1198.5, and time records under Labor Code section 1174, making it difficult for Plaintiffs and other
16 Class Members and Aggrieved Employees to calculate their unpaid wages and/or premium
17 payments, to the detriment of Plaintiff sand other Class Members and Aggrieved Employees.

18 30. For at least one (1) year prior to the filing of this action and continuing to the present,
19 Defendants have, at times, failed to pay Plaintiffs, Class Members, and Aggrieved Employees, or
20 some of them, the full amount of their wages for labor performed in a timely fashion as required
21 under Labor Code section 204.

22 31. For at least three (3) years prior to the filing of this action and continuing to the
23 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
24 costs incurred in using cellular phones for work-related purposes necessary to perform work duties.
25 At all relevant times mentioned herein, Defendants have had a policy or practice of failing and
26 refusing, and continue to fail and refuse, to reimburse employees, including, without limitation,
27 Plaintiffs and other Class Members and Aggrieved Employees, with their costs incurred for driving
28 personal vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other

1 deposits, separately laundering mandatory uniforms, for the purchase of tools and safety equipment,
2 for the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence
3 of the discharge of their duties, or of their obedience to the directions of Defendants, as required by
4 Labor Code 2802. Defendants did not provide cell phones to Plaintiffs, Class Members, and
5 Aggrieved Employees. Instead, Defendants required Plaintiffs, Class Members, and Aggrieved
6 Employees to utilize their personal cell phones to maintain communication regarding the status of
7 their work, their schedules, and various other work-related communications that needed to be made
8 during the day while Plaintiffs, Class Members, and Aggrieved Employees were stationed all over
9 the processing facilities, trailers, and/or warehouses. The communications occurred throughout the
10 day and Defendants did not reimburse Plaintiffs, Class Members, and Aggrieved Employees for any
11 portion of their cell phone bills.

12 32. For at least three (3) years prior to the filing of the action and continuing to the
13 present, Defendants have, at times, failed to return interest on deposits made by Plaintiffs, Class
14 Members, and Aggrieved Employees, or some of them, for uniforms.

15 33. For at least four (4) years prior to the filing of this action and continuing to the
16 present, Defendants have had a consistent policy of failing to provide Plaintiffs and similarly
17 situated employees or former employees within the State of California with compensation at their
18 final rate of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

19 34. At all relevant times mentioned herein, Defendants have had a policy or practice of
20 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
21 Protection Act of 2011) by, among other things, failing to provide Plaintiffs and other Class
22 Members and Aggrieved Employees with the rates of pay and overtime rates of pay applicable to
23 their employment; allowances claimed as part of the minimum wage; the regular payday designated
24 by Defendants; the name, address, and telephone number of the workers' compensation insurance
25 carrier; information regarding paid sick leave; and other pertinent information required to be
26 disclosed by Defendants under Labor Code section 2810.5.

27 35. At all relevant times mentioned herein, Defendants failed to provide Plaintiffs and
28 other Class Members and Aggrieved Employees with the amount of paid sick leave required to be

1 provided pursuant to California law (including, without limitation Labor Code section 245, *et seq.*),
2 and also did not permit its use upon request as contemplated under California laws, to the detriment
3 of Plaintiffs and all other Class Members and Aggrieved Employees.

4 36. At all relevant times mentioned herein, Defendants had and have a policy or
5 practice of preventing Plaintiffs, Class Members, and/or Aggrieved Employees from using
6 or disclosing the skills, knowledge and experience they obtained at Defendants for purposes
7 of competing with Defendants, including, without limitation, preventing Employees from
8 disclosing their wages in negotiating a new job with a prospective employer, and from
9 disclosing who else works at Defendants and under what circumstances that they might be
10 receptive to an offer from a rival employer. Plaintiffs are informed and believe that this
11 policy and/or practice violates Business and Professions Code sections 17200, 16600 and
12 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor Code
13 sections 232, 232.5, and 1197.5, subdivision (k).

14 37. Defendants had and have a policy or practice of preventing Plaintiffs and/or other
15 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
16 to their managers or outside to private attorneys or government officials, among others, in violation
17 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
18 1102.5. In addition, Plaintiffs are informed and believe that Defendants' herein-described policies
19 and/or practices prevent Plaintiffs, Class Members, and/or other Aggrieved Employees from
20 disclosing information about unsafe or discriminatory working conditions, or about wage and hour
21 violations in violation of Labor Code section 232 and 232.5.

22 38. Defendants had and have a policy or practice of preventing Plaintiffs, Class
23 members, and/or other Aggrieved Employees from engaging in lawful conduct during non-work
24 hours, thus violating state statutes entitling employees to disclose wages, working conditions, and
25 illegal conduct, including, without limitation, Labor Code sections 96, subdivision (k), 98.6, 232,
26 232.5, and 1197.5, subdivision (k). Plaintiffs are informed and believe that this lawful conduct
27 includes the exercise of Plaintiffs', Class Members', and/or other Aggrieved Employee's
28 constitutional rights of freedom of speech and economic liberty

39. Plaintiff, on their own behalf and on behalf of Class Members, brings this action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1194, 1194.2, 1197, 2802, 2810.3, *et seq.*, and California Code of Regulations, Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties, failure to indemnify work-related expenses, other such provisions of California law, and reasonable attorneys' fees and costs.

40. Plaintiffs, in Plaintiffs' representative capacity, seek civil penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the California Labor Code as described above, including on behalf of Plaintiffs and other Aggrieved Employees pursuant to PAGA

41. Plaintiff, on Plaintiffs' own behalf and on behalf of Class Members, pursuant to Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as all monies owed but withheld and retained by Defendants to which Plaintiffs, Class Members, and Aggrieved Employees are entitled, as well as restitution of amounts owed.

CLASS ACTION ALLEGATIONS

42. Plaintiffs bring the First through Tenth Causes of Action on behalf of Plaintiffs and Class Members as a class action pursuant to Code of Civil Procedure section 382. Plaintiffs seek to represent a class of all current and former non-exempt employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of this lawsuit up until the time that notice of the class action is provided to Class Members.

43. Plaintiffs reserve the right under California Rule of Court rule 3.765, subdivision (b) to amend or modify the class description with greater specificity, further divide the defined class into subclasses, and to further specify or limit the issues for which certification is sought.

1 44. This action has been brought and may properly be maintained as a class action under
2 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
3 of interest in the litigation and the proposed Class is easily ascertainable.

4 **A. Numerosity**

5 45. The potential Class Members as defined are so numerous that joinder of all the
6 members of the Class is impracticable. Plaintiffs are informed and believe that there are over
7 seventy-five (75) Class Members employed by Defendants within the State of California.

8 46. Accounting for employee turnover during the relevant periods necessarily increases
9 this number. Plaintiffs allege Defendants' employment records would provide information as to the
10 number and location of all Class Members. Joinder of all members of the proposed Class is not
11 practicable.

12 **B. Commonality**

13 47. There are questions of law and fact common to Class Members. These common
14 questions include, but are not limited to:

- 15 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
16 worked at a proper overtime rate of pay?
- 17 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
18 for all other time worked at the employee's regular rate of pay and a rate of pay that
19 is greater than the applicable minimum wage?
- 20 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
21 Class Members to take compliant meal periods?
- 22 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
23 with additional wages for missed or interrupted meal periods?
- 24 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
25 Class Members to take compliant rest periods?
- 26 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
27 with additional wages for missed rest periods?
- 28

- 1 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
2 Members upon termination or resignation all wages earned?
- 3 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
4 section 203?
- 5 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
6 Class Members with accurate wage statements?
- 7 J. Did Defendants fail to pay Class Members in a timely fashion as required under
8 Labor Code section 204?
- 9 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
10 losses incurred in direct consequence of the discharge of their duties or by obedience
11 to the directions of Defendants as required under Labor Code section 2802?
- 12 L. Did Defendants violate Labor Code section 227.3 by not providing Class Members
13 with compensation at their final rate of pay for vested paid vacation time?
- 14 M. Whether Defendants failed to correctly calculate the regular rate of pay for premium
15 wage purposes such as overtime, double time, meal and rest period premiums, and
16 sick leave wages.
- 17 N. Did Defendants violate the Unfair Competition Law, Business and Professions Code
18 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 19 O. Are Class Members entitled to restitution of wages under Business and Professions
20 Code section 17203?
- 21 P. Are Class Members entitled to costs and attorneys' fees?
- 22 Q. Are Class Members entitled to interest?

23 C. **Typicality**

24 48. The claims of Plaintiffs herein alleged are typical of those claims which could be
25 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
26 by each Class Member in separate actions. Plaintiffs and Class Members sustained injuries and
27 damages arising out of and caused by Defendants' common course of conduct in violation of laws
28 and regulations that have the force and effect of law and statutes as alleged herein.

[illegible]

E. Superiority of Class Action

51. Class action treatment will allow Class Members to litigate their claims in a manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

(Failure to Pay Overtime Wages – Against All Defendants)

53. At all relevant times, Plaintiffs and Class Members were employees or former employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable Wage Orders.

55. At all times relevant to this Complaint, Labor Code section 510 further provided that “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice

1 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
2 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
3 pay.”

4 56. Four (4) years prior to the filing of the Complaint in this Action through the present,
5 Plaintiffs and Class Members, at times, worked for Defendants during shifts that consisted of more
6 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
7 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
8 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
9 actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to
10 work off the clock, including, without limitation, by requiring employees to complete pre-shift tasks
11 before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
12 working, to make phone calls off the clock; failing to include all forms of remuneration, including
13 piece rate compensation, non-discretionary bonuses, incentive pay, meal allowances, and other
14 forms of remuneration into the regular rate of pay for the workweeks in which overtime was worked
15 and the additional compensation was earned for the purpose of calculating the overtime rate of pay;
16 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
17 less hours than actually worked, and for paying straight pay instead of overtime pay to the detriment
18 of Employee and other aggrieved employees, to the detriment of Plaintiffs and Class Members.

19 57. Accordingly, by requiring Plaintiffs and Class Members to, at times, work greater
20 than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays
21 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on
22 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and
23 applicable IWC Wage Orders, and California law.

24 58. As a result of the unlawful acts of Defendants, Plaintiffs and Class Members have
25 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
26 plus interest and penalties thereon, attorneys’ fees and costs, pursuant to Labor Code section 1194
27 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

1 **SECOND CAUSE OF ACTION**

2 **(Failure to Pay Minimum Wages – Against All Defendants)**

3 59. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
4 preceding paragraphs as though fully set forth hereat.

5 60. At all relevant times, Plaintiffs and Class Members were employees or former
6 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

7 61. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiffs and
8 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
9 Defendants' control.

10 62. For four (4) years prior to the filing of the Complaint in this Action through the
11 present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at
12 their regular rate of pay that is above the minimum wage; engaging, suffering, or permitting
13 employees to work off the clock, including, without limitation, by requiring employees to complete
14 pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods
15 and continue working, to make phone calls off the clock; detrimental rounding of employee time
16 entries, editing and/or manipulation of time entries to show less hours than actually worked; failing
17 to track and pay for all nonproductive time and failing to accurately track and pay for rest and
18 recovery periods that is separate and apart from any piece rare compensation, to the detriment of
19 Plaintiffs and Class Members.

20 63. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
21 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
22 for all hours worked or otherwise due.

23 64. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
24 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled
25 to recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
26 damages, reasonable attorneys' fees and costs of suit.

1 **THIRD CAUSE OF ACTION**

2 **(Failure to Provide Meal Periods – Against All Defendants)**

3 65. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
4 preceding paragraphs as though fully set forth hereat.

5 66. At all relevant times, Plaintiffs and Class Members were employees or former
6 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

7 67. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
8 employ an employee for a work period of more than five (5) hours without a timely meal break of
9 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
10 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
11 per day without providing the employee with a second timely meal period of not less than thirty (30)
12 minutes in which the employee is relieved of all of his or her duties.

13 68. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
14 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
15 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
16 of compensation for each workday that the meal period is not provided.

17 69. For four (4) years prior to the filing of the Complaint in this Action through the
18 present, Plaintiffs and Class Members were, at times, not provided complete, timely 30-minute,
19 duty-free uninterrupted meal periods every five hours of work without waiving the right to take
20 them, as permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay
21 at the Class Member's regular rate of compensation on the occasions that Class Members were not
22 provided compliant meal periods.

23 70. By their failure to provide Plaintiffs and Class Members compliant meal periods as
24 contemplated by Labor Code section 512, among other California authorities, and failing, at times,
25 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
26 violated the provisions of Labor Code section 512 and applicable Wage Orders.

71. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

72. Plaintiffs and Class Members are entitled to recover the full amount of their unpaid additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods – Against All Defendants)

73. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

74. At all relevant times, Plaintiffs and Class Members were employees or former employees of Defendants covered by applicable Wage Orders.

75. California law and applicable Wage Orders require that employers "authorize and permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be provided thirty (30) minutes of paid rest period.

76. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

77. For four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiffs and Class Members were, at times, not authorized or permitted to take complete, timely 10-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class

1 Member's regular rate of compensation on the occasions that Class Members were not authorized
2 or permitted to take compliant rest periods.

3 78. By their failure, at times, to authorize and permit Plaintiffs and Class Members to
4 take rest periods contemplated by California law, and one (1) additional hour of pay at the
5 employee's regular rate of compensation for such unprovided rest periods, as alleged above,
6 Defendants willfully violated the provisions of Labor Code section 226.7 and applicable Wage
7 Orders.

8 79. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
9 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
10 owed for rest periods that they were not authorized or permitted to take.

11 80. Plaintiffs and Class Members are entitled to recover the full amount of their unpaid
12 additional pay for unprovided compliant rest periods, in amounts to be determined at trial, plus
13 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
14 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

15 **FIFTH CAUSE OF ACTION**

16 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

17 81. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
18 preceding paragraphs as though fully set forth hereat.

19 82. At all relevant times, Plaintiffs and Class Members were employees or former
20 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
21 Wage Orders.

22 83. Pursuant to Labor Code sections 201 and 202, Plaintiffs and Class Members were
23 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
24 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
25 discharge immediately upon termination. Class Members who resigned were entitled to payment
26 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
27 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
28 unpaid at the time of resignation.

84. Plaintiffs are informed and believes and based thereon allege, that in the three (3) years before the filing of the Complaint in this Action through the present, Defendants, due to the failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiffs and Class Members all wages earned prior to resignation or termination in accordance with Labor Code sections 201 or 202.

85. Plaintiffs are informed and believe Defendants' failure, at times, to pay Plaintiffs and Class Members all wages earned prior to termination or resignation in accordance with Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiffs and Class Members at the time of termination in accordance with Labor Code sections 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination or resignation..

86. Pursuant to Labor Code section 203, Plaintiffs and Class Members are entitled to waiting time penalties from the date their earned and unpaid wages were due, upon termination or resignation, until paid, up to a maximum of thirty (30) days.

87. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned prior to termination or resignation.

88. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover waiting time penalties, interest, and their costs of suit, as well.

SIXTH CAUSE OF ACTION

(Failure to Provide Accurate Wage Statements – Against All Defendants)

89. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

90. At all relevant times, Plaintiffs and Class Members were employees or former employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

1 91. Pursuant to Labor Code section 226, subdivision (a), Plaintiffs and Class Members
2 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
3 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
4 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate; and the name and address of the legal entity that is the
6 employer; and the name and address of the entity securing the services of the farm labor contractor
7 who employed Plaintiffs and Class Members, among other things. Further, Labor Code section
8 226.2 requires that wage statements also include the total compensation earned for piece rate work
9 performed, total compensation for nonproductive work performed, total compensation for rest and
10 recovery periods, the total hours of nonproductive time worked and the rate of pay therefore, the
11 total hours of rest and recovery periods taken and the rate of pay therefore, the total amount of
12 overtime wages earned, and the proper overtime rate(s) of pay.

13 92. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed
14 to provide Plaintiffs and Class Members accurate itemized wage statements pursuant to Labor Code
15 sections 226, subdivision (a) and 226.2, subdivisions (a)(2)(A-B) on each and every wage statement
16 that should have been provided, including by failing to itemize and/or pay all nonproductive time
17 and rest and recovery time for each.

18 93. Plaintiffs are informed and believe, and based thereon allege, that in the one (1) year
19 before the filing of the Complaint in this Action through the present, Defendants failed to comply
20 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
21 failure, at times, to furnish Plaintiffs and Class Members with accurate itemized statements that
22 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
23 all applicable hourly rates in effect during the pay period and the corresponding number of hours
24 worked at each hourly rate; applicable piece rates in effect during the pay period and the
25 corresponding number of pieces earned; the name and address of the legal entity that is the employer;
26 name and address of the entity securing the services of the farm labor contractor who employed
27 Plaintiffs and Class Members; the total hours of compensable rest and recovery periods; the total
28 hours of nonproductive time, and other such information as required by Labor Code sections 226,

1 subdivision (a) and 226.2. Defendants' failure to, at times, provide Plaintiffs and Class Members
2 with accurate wage statements was knowing, intentional, and willful. Defendants had the ability to
3 provide Plaintiffs and the other Class Members with accurate wage statements, but, at times,
4 willfully provided wage statements that Defendants knew were not accurate.

5 94. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
6 suffered injury. The absence of accurate information on Class Members' wage statements at times
7 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
8 mathematical computations to determine the amount of wages owed; causes difficulty and expense
9 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
10 about wages and amounts deducted from wages to state and federal governmental agencies, among
11 other things.

12 95. Pursuant to Labor Code section 226, subdivision (e), Plaintiffs and Class Members
13 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
14 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent
15 pay period, not to exceed an aggregate \$4,000.00 per employee.

16 96. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
17 Procedure section 1032, Civil Code section 3287, Plaintiffs and Class Members are entitled to
18 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
19 attorneys' fees, and costs of suit.

20 **SEVENTH CAUSE OF ACTION**

21 **(Failure to Timely Pay Wages During Employment – Against All Defendants)**

22 97. Plaintiffs reallege each and every allegation set forth in the preceding paragraphs and
23 incorporate each by reference as though fully set forth hereat.

24 98. At all relevant times, Plaintiffs and Class Members were employees or former
25 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

26 99. Labor Code section 204 provides that "[l]abor performed between the 1st and 15th
27 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
28 during which the labor was performed, and labor performed between the 16th and the last day,

1 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
2 month.”

3 100. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
4 independent and apart from, any other penalty provided in this article, every person who fails to pay
5 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
6 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
7 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
8 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
9 percent of the amount unlawfully withheld.”

10 101. Plaintiffs are informed and believe, and based thereon allege, that in the one (1) year
11 before the filing of the Complaint in this Action through the present, Defendants employed policies
12 and practices that resulted in, at times, not paying Plaintiffs and Class Members in accordance with
13 Labor Code section 204.

14 102. Pursuant to Labor Code section 210, Plaintiffs and Class Members are entitled to
15 recover penalties for Defendants’ violations of Labor Code section 204, in the amount of one
16 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200)
17 for each subsequent violation in connection with each payment that was made in violation of Labor
18 Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

19 103. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
20 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recovery of
21 penalties, interest, and their costs of suit, as well.

22 **EIGHTH CAUSE OF ACTION**

23 **(Violation of Labor Code § 2802 – Against All Defendants)**

24 104. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
25 preceding paragraphs as though fully set forth hereat.

26 105. At all relevant times, Plaintiffs and Class Members were employees or former
27 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.
28

106. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties . . .”

107. For three (3) years prior to the filing of the Complaint in this Action through the present, Defendants required Plaintiffs and Class Members, or some of them, to incur, at times, necessary expenditures or losses in direct consequence of the discharge of their duties or at the obedience to the directions of Defendants that included, without limitation: purchasing and using cellular phones for work-related purposes.

108. During that time period, Plaintiffs are informed and believe, and based thereon allege that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiffs and Class Members for those losses and/or expenditures.

109. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have suffered damages in an amount subject to proof, to the extent they were not reimbursed for the herein-described losses and/or expenditures.

110. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and costs of suit.

NINTH CAUSE OF ACTION

(Violation of Labor Code § 227.3 – Against All Defendants)

111. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

112. According to Labor Code section 227.3, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served.

1 113. Plaintiffs are informed and believe, and based thereon allege that, at all times relevant
2 hereto, Defendants promulgated and maintained a uniform policy providing for paid vacations, and
3 that Plaintiffs' employment contract with Defendants included paid vacations.

4 114. For at least four (4) years prior to the filing of this action and continuing to the
5 present, Defendants have had a consistent policy of failing to provide Plaintiffs and similarly
6 situated employees or former employees within the State of California with compensation at their
7 final rate of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

8 115. As a proximate result of Defendants' failure to pay vested vacation at the final rate
9 of Plaintiffs and Class Members upon their resignation or termination, Defendants violated Labor
10 Code section 227.3, entitling Plaintiffs and Class Members to all vested and unused vacation pay at
11 their final rate of pay, as set out in Defendants' policy or the contract of employment between
12 Plaintiffs and Class Members, on the one hand, and Defendants, on the other hand.

13 116. As a further proximate result of Defendants' above-described acts and/or omissions,
14 Plaintiffs and Class Members are entitled to recover reasonable attorneys' fees, costs of suit and
15 prejudgment interest.

16 **TENTH CAUSE OF ACTION**

17 **(Unfair Competition – Against All Defendants)**

18 117. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
19 preceding paragraphs as though fully set forth hereat.

20 118. Plaintiffs are informed and believe, and based thereon allege, that the unlawful
21 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
22 and Professions Code section 17200. Due to their unlawful business practices in violation of the
23 Labor Code, Defendants have gained a competitive advantage over other comparable companies
24 doing business in the State of California that comply with their obligations to compensate employees
25 in accordance with the Labor Code.

26 119. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and Class
27 Members have suffered injury in fact and lost money or property.

120. Pursuant to Business and Professions Code section 17203, Plaintiffs and Class Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as restitution of all wages and other monies owed to them under the Labor Code, including interest thereon, in which they had a property interest and which Defendants nevertheless failed to pay them and instead withheld and retained for themselves. Restitution of the money owed to Plaintiffs and Class Members is necessary to prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor Code.

121. Plaintiffs and Class Members are entitled to costs of suit under Code of Civil Procedure section 1032 and interest under Civil Code section 3287.

ELEVENTH CAUSE OF ACTION

(Civil Penalties Under the Private Attorneys' General Act (2004) – Against All Defendants)

122. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the preceding paragraphs as though fully set forth hereat.

Civil Penalties Under Labor Code § 210

123. At all relevant times herein, Labor Code section 204, requires and required that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

124. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated 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, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

1 125. At all relevant times herein, Defendants have had a consistent policy or practice of
2 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
3 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
4 Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of Labor
5 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
6 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
7 for each subsequent violation in connection with each payment that was made in violation of Labor
8 Code section 204.

9 Civil Penalties Under Labor Code § 226.3

10 126. Defendants had and have a policy or practice of failing to comply with Labor Code
11 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
12 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
13 wages earned; the name and address of each employer with whom they have been placed to work;
14 all applicable hourly rates in effect during the pay period and the corresponding number of hours
15 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal
16 entity securing the employer's services if the employer is a farm labor contractor; and other such
17 information as required by Labor Code section 226, subdivision (a).

18 127. Labor Code section 226.3 states that "[a]ny employer who violates subdivision (a)
19 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
20 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
21 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
22 deduction statement or fails to keep the records required in subdivision (a) of Section 226."

23 128. Labor Code section 226.3 further provides that "[t]he civil penalties provided for in
24 this section are in addition to any other penalty provided by law."

25 129. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
26 and have a policy or practice of failing to furnish non-exempt employees, including, without
27 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
28 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the

1 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
2 name of the employer and/or the name and address of the legal entity securing the employer's
3 services if the employer is a farm labor contractor; and other such information as required by Labor
4 Code section 226, subdivision (a).

5 130. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
6 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
7 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
8 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
9 period for each subsequent violation.

10 Violation of Labor Code § 558

11 131. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other person
12 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
13 hours and days of work in any of the Industrial Welfare Commission" shall be subject to a civil
14 penalty as follows:

- 15 A. For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
16 pay period for which the employee was underpaid in addition to an amount sufficient
17 to recover underpaid wages;
- 18 B. For each subsequent violation, one hundred dollars (\$100) for each underpaid
19 employee for each pay period for which the employee was underpaid in addition to
20 an amount sufficient to recover underpaid wages;
- 21 C. Wages recovered pursuant to this section shall be paid to the affected employee.

22 132. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
23 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
24 causing Plaintiff and other Aggrieved Employees not to: be paid with the rates of pay and overtime
25 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
26 regular payday designated by employer, the name of the employer, including any "doing business
27 as" names used, the name, address, and telephone number of the workers' compensation insurance
28 carrier, information regarding paid sick leave, and other pertinent information.

133. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

Violation of Labor Code § 1174.5

134. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required every person employing labor in California to “[a]llow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation that they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of the person.”

135. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required every person employing labor in California to “[k]eep a record showing the names and addresses of all employees employed and the ages of all minors.”

136. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required every person employing labor in California to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

137. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any

1 member of the commission or employees of the division to inspect records pursuant to subdivision
2 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

3 138. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
4 willfully failed to keep adequate or accurate time records including wage statements and similar
5 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
6 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
7 under Labor Code section 1174.

8 139. As a direct and proximate result of the herein-described Labor Code violations,
9 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
10 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five
11 hundred dollars (\$500) per violation per Aggrieved Employee.

12 Violation of Labor Code § 1197.1

13 140. Pursuant to Labor Code section 1197.1, subdivision (a): "Any employer or other
14 person acting either individually or as an officer, agent, or employee of another person, who pays
15 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
16 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
17 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
18 Section 203 as follows:

19 A. For any initial violation that is intentionally committed, one hundred dollars (\$100)
20 for each underpaid employee for each pay period for which the employee is
21 underpaid. This amount shall be in addition to an amount sufficient to recover
22 underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable
23 penalties imposed pursuant to Section 203.

24 B. For each subsequent violation for the same specific offense, two hundred fifty dollars
25 (\$250) for each underpaid employee for each pay period for which the employee is
26 underpaid regardless of whether the initial violation is intentionally committed. This
27 amount shall be in addition to an amount sufficient to recover underpaid wages,
28

1 liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed
2 pursuant to Section 203.

3 C. Wages, liquidated damages, and any applicable penalties imposed pursuant to
4 Section 203, recovered pursuant to this section shall be paid to the affected
5 employee.”

6 141. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
7 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
8 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ minimum wages for all
9 hours worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
10 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
11 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
12 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock,
13 entitling Plaintiff and other aggrieved Employees to actual and liquidated damages.

14 142. As a direct and proximate result of the herein-described Labor Code violations,
15 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
16 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
17 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
18 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
19 subsequent violation.

20 Civil Penalties Under Labor Code § 2699

21 143. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
22 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
23 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
24 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
25 action brought by an aggrieved employee on behalf of himself or herself and other current or former
26 employees pursuant to the procedures specified in Labor Code section 2699.3.

27 144. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
28 Code except those for which a civil penalty is specifically provided, the established civil penalty for

1 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
2 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
3 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
4 employee per pay period for each subsequent violation.

5 145. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
6 each of them, violated the Labor Code sections described herein, including, without limitation, for
7 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
8 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
9 name of the employer, including “doing business as” names used, the name, address, and telephone
10 number of the workers’ compensation insurance carrier, information regarding paid sick leave, and
11 other pertinent information required to be disclosed by Defendants under Labor Code section
12 2810.5, failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick
13 leave required to be provided pursuant to California and local laws.

14 146. Moreover, Plaintiff and other Aggrieved Employees within the State of California
15 whom he seeks to represent are entitled to an award of reasonable attorneys’ fees and costs in
16 connection with their herein-described claims for civil penalties.

17 **DEMAND FOR JURY TRIAL**

18 147. Plaintiffs demands a trial by jury on all causes of action contained herein.

19 **PRAYER**

20 WHEREFORE, on behalf of Plaintiffs, Class Members, and Aggrieved Employees,
21 Plaintiffs prays for judgment against Defendants as follows:

- 22 A. An order certifying this case as a Class Action;
23 B. An Order appointing Plaintiffs as Class representative and appointing their counsel
24 as class counsel;
25 C. Damages for all wages earned and owed, including minimum and overtime wages,
26 under Labor Code sections 510, 1194, 1197 and 1199;
27 D. Liquidated damages pursuant to Labor Code section 1194.2;
28

- 1 E. Damages for unpaid premium wages from missed meal and rest periods under,
2 among other Labor Code sections, 512 and 226.7;
- 3 F. Penalties for inaccurate wage statements under Labor Code sections 226,
4 subdivision (e) and 226.2;
- 5 G. Waiting time penalties under Labor Code sections 203;
- 6 H. Penalties to timely pay wages under Labor Code section 210;
- 7 I. Damages under Labor Code sections 227.3 and 2802;
- 8 J. Preliminary and permanent injunctions prohibiting Defendants from further
9 violating the California Labor Code and requiring the establishment of appropriate
10 and effective means to prevent future violations;
- 11 K. Restitution of wages and benefits due which were acquired by means of any unfair
12 business practice, according to proof;
- 13 L. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
14 1174.5, 1197.1, and 2699;
- 15 M. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
16 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 17 N. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 18 O. For attorneys' fees in prosecuting this action;
- 19 P. For costs of suit incurred herein; and
- 20 Q. For such other and further relief as the Court deems just and proper.

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22 Dated: March 15, 2023

BIBIYAN LAW GROUP, P.C.

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24 BY: _____

25 DAVID D. BIBIYAN

JEFFREY D. KLEIN

26 JEAN H. POWER

27 Attorneys for Plaintiffs KYLE NEFF on behalf of
28 himself and all others similarly situated

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Dated: January 8, 2026

Shimoda & Rodriguez Law, PC

By: _____
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Justin P. Rodriguez
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