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individual on behalf of himself and on behalf of all
others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

KOANGWOO CHOI, as an individual on
behalf of himself and on behalf of all others
similarly situated,

Plaintiff,

vs.

ALLFO ONE KOREA, LLC, a California
Limited Liability Company; ALL FO
ONE KOREA CO., LTD., a corporation;
and DOES 1-100, inclusive,

Defendants.

Case No.: 23CV412452

Assigned for All Purposes to:
Honorable Theodore C. Zayner
Department 19

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

Date: September 3, 2025
Time: 1:30 p.m.
Dept. 19

1 I, Brandon Brouillette, declare:

2 1. I am an attorney licensed to practice before all of the courts of the State of
3 California, and I am a partner with Crosner Legal, PC, counsel of record for Plaintiff Koangwoo
4 Choi in this action. I submit this declaration in support of Plaintiff's Motion for Preliminary
5 Approval. I have personal knowledge of all facts stated herein, and if called as a witness, I could
6 and would competently testify thereto.

7 2. I am unaware of any other pending lawsuits that overlap with this matter in any
8 way, including the claims alleged or the time period and class members covered.

9 3. Attached hereto as Exhibit 1 is a fully-executed, true and correct copy of the Parties'
10 Joint Stipulation of Class Action Settlement and Release ("Settlement Agreement"). Attached
11 hereto as Exhibit 2 is a true and correct copy of Plaintiff's PAGA notice letter and proof of
12 submission to the Labor & Workforce Development Agency ("LWDA"). Attached hereto as
13 Exhibit 3 is proof of submission of the operative complaint to the LWDA. Attached hereto as
14 Exhibit 4 is proof of submission of the settlement to the LWDA.

15 **FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

16 4. On March 14, 2023, Plaintiff, on behalf of himself and all others similarly
17 situated, filed a class action complaint against Defendant for several alleged violations of the
18 Labor Code and IWC Wage Orders, and filed a first amended complaint on June 1, 2023.
19 Plaintiff filed his claims on behalf of a putative class of individuals who worked for Allfo as
20 non-exempt employees in California during the relevant time period. Defendant Allfo owns and
21 operates Korean-cuisine restaurants in the Bay Area. Plaintiff Choi worked for Allfo as a server
22 at the company's 10 Butchers Korean BBQ and Bar restaurant in Sunnyvale for about 17 months
23 during 2021-22.

24 5. Plaintiff alleged that Allfo failed to pay the class all wages due by failing to pay
25 employees for mandatory monthly meetings, and for failing to pay daily overtime when
26 employees worked over 8 hours per day. Plaintiff also alleged Allfo failed to provide all required
27 meal and rest breaks on a fully compliant basis, and that class members never received an extra
28 hour of premium pay in lieu of a missed or non-compliant meal or rest break.

1 6. Based on these allegations, Plaintiff's class action complaint asserted claims for
2 damages for: (1) failure to pay all wages due, including both minimum and overtime wages (2)
3 failure to provide all required meal and rest breaks or compensation in lieu thereof; (3) failure to
4 provide accurate, itemized wage statements; (4) failure to pay all wages due upon termination of
5 employment; (5) unfair competition, and (6) violation of PAGA.

6 7. Allfo has at all times denied Plaintiff's allegations and maintained its meal and
7 rest break and payroll policies and procedures comply with California law, and that it provided
8 the class members with required meal and rest breaks. Allfo also argued it accurately tracked
9 and paid for all hours worked by its employees, including overtime hours, at the correct hourly
10 rates. Additionally, Allfo strongly contends the case cannot be maintained as any kind of class or
11 representative action, arguing that to the extent class members missed meal and/or rest breaks,
12 that such breaks were non-compliant, it would have been intermittent and infrequent and
13 evidence of such missed breaks or off the clock work would be purely anecdotal, and therefore
14 individualized issues would predominate and trial would be unmanageable.

15 8. After Plaintiff filed his complaint, the Parties met and conferred on discovery,
16 potential law and motion, and other case management issues, and ultimately agreed to attempt
17 early mediation. The Parties then engaged in extensive informal discovery to facilitate an
18 exchange of information necessary to engage in a meaningful mediation. Consequently,
19 Plaintiff's counsel reviewed payroll records, personnel policies/handbooks, meal and rest break
20 policies, personnel files, and a random sampling paystubs and time records produced by Allfo
21 for about 25% of the putative class. Defendant also provided documents reflecting its wage and
22 hour policies and practices during the class period, and data regarding the total number of
23 current and former employees, the estimated total amount of workweeks and pay periods they
24 worked, and average hourly pay rates, among other relevant data.

25 9. The Parties then engaged Steve Cerveris, Esq., a highly respected mediator with
26 extensive wage and hour class action experience and, on December 19, 2023, participated in a
27 full day mediation with Mr. Cerveris. Throughout the day, the arms-length negotiations were
28 hard-fought and adversarial as the Parties exchanged extensive information on their legal and

1 factual positions, and made numerous offers and counter-offers, but were unable to reach an
2 agreement. With the mediator's assistance, the Parties continued negotiating for several months
3 and finally were able to reach an agreement on all major issues. Thereafter, the Parties reduced
4 their tentative agreement to the Settlement Agreement now before the Court for approval.

5 **THE PROPOSED SETTLEMENT TERMS**

6 10. Under the settlement, Allfo will pay \$200,000.00 into a common fund, the Gross
7 Settlement Amount. Reasonable attorney's fees of up to 1/3 of the GSA, or \$66,666.66,
8 litigation costs of up to \$16,500, an enhancement award of up to \$10,000 to Plaintiff, settlement
9 administration costs of no more than \$9,500, and \$12,000 for PAGA civil penalties, all will be
10 paid from the Gross Settlement Amount. The remainder of approximately \$85,333 will be
11 allocated pro rata among the Participating Class Members based on the weeks worked during the
12 Class Period. No portion of the Gross Settlement Amount will revert to Allfo.

13 11. The settlement provides for conditional certification of a class including all
14 individuals who worked for Allfo as a non-exempt employee during the period of March 14,
15 2019 through the date of preliminary approval. The class consists of about 250 individuals.

16 12. As noted, Plaintiff estimates at least \$85,333 from the Gross Settlement Amount
17 will be distributed to the Participating Class Members. This is a cash settlement that does not
18 require Participating Class Members to submit a claim form to receive their settlement share.
19 Participating Class Members will receive their settlement checks automatically via First Class
20 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the
21 remaining eighty percent will be allocated to expenses, penalties and interest, which allocation is
22 consistent with Allfo's potential liability as discussed below. Allfo will pay all applicable
23 employer-side payroll taxes separately from the GSA. Subject to the Court's approval, any
24 amounts not claimed (because a class member does not cash his or her settlement check) will be
25 forwarded to East Bay Community Law Center as the proposed *cy pres* beneficiary.

26 13. Each Participating Class Member will receive a pro rata share of the Net
27 Settlement Amount based on their total weeks worked for Allfo as a non-exempt employee
28 during the Class Period. Thus, each Individual Settlement Payment will be calculated using

formulaic criteria equally applied to all Class Members in order to proportionately compensate them for the actual value of their claims relative to fellow class members. Similarly, each Class Member's Individual Settlement Payment will be calculated using criteria that would typically be used in determining appropriate amounts of unpaid wages and damages in wage and hour litigation under applicable law. These methods are intended to ensure each Class Member receives a portion of the available settlement funds corresponding to the relative value of his or her potential claims. The proposed allocation provides the most reasonable way to compensate Class Members based on the amount of time they worked for Allfo and the number of instances they were not compensated properly or may have been denied required breaks. I estimate the average award will be approximately \$341.

14. Subject to the Court's approval, the Parties have agreed on Phoenix Settlement Administrators as the Settlement Administrator. Phoenix is qualified and has significant experience administering class action settlements, including numerous wage and hour matters, and has agreed to cap its fees and costs at \$9,500. If the Court approves less than the above amount, the difference will remain in the Net Settlement Amount for distribution to the Participating Class Members.

15. The proposed Notice (Exhibit A to the Settlement Agreement) sets out information about this case and explains the basic settlement terms in plain language. It will be disseminated in English, Korean and Spanish. The Notice also sets forth the individualized information used to calculate Class Member Individual Settlement Payments and each Class Member's estimated settlement award. The Notice likewise details the procedures for Class Members to dispute their individual information, the procedure for submitting an objection to the Settlement, and the procedure to request exclusion. In sum, the Notice provides the Class Members with the information necessary to evaluate the Settlement and provides fair opportunity to participate in, opt out of, or object to the proposed Settlement. Coupled with the notice procedure, the proposed Notice provides the Settlement Class with the best notice practicable.

16. Class Members will have 60 days to dispute the information in their Notice used

1 to calculate their settlement award, and also have 60 days to submit any objections to the
2 settlement or to request exclusion. In the event a Class Member disputes their individual
3 information, the Settlement Administrator will review the Class Member's records as well as
4 any additional information submitted, and make a final determination.

5 17. All Participating Class Members will be deemed to release Defendants from all
6 claims alleged in the operative complaint, or that could have been brought based on the facts
7 asserted in the operative complaint, including PAGA claims, from July 16, 2018 through
8 December 31, 2023. The release is limited to the claims that were actually pleaded or could have
9 been pleaded based on the alleged facts in the complaint. Only Plaintiff Choi is providing a full
10 general release of claims and waiver of Civil Code section 1542.

11 18. The settlement provides Defendant will not oppose a request for attorney's fees of
12 up to 1/3 of the GSA, or \$66,666.66, nor will it oppose a request for reimbursement of litigation
13 costs and expenses of up to \$16,500.00. Defendant also will not oppose a request for an
14 enhancement award to Plaintiff of not more than \$10,000.00 in recognition of his time spent on
15 this matter, the risk he undertook on behalf of the class, and the benefit conferred to the class.
16 Plaintiff's counsel will provide the Court with appropriate summaries and evidence of their
17 efforts and time records in anticipation of the Final Approval Hearing, and Plaintiff has
18 submitted his declaration herewith. If the Court approves less than the above amounts, the
19 difference will be distributed to the Participating Class Members.

20 19. As noted, the Parties allocated \$12,000 to payment of alleged civil penalties under
21 PAGA, and Plaintiff submits that amount is fair, reasonable and adequate, and consistent with
22 PAGA's underlying purposes. As required by Labor Code section 2699(1)(2), Plaintiff gave notice
23 of the settlement and the approval hearing to the LWDA via its online portal.

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

25 20. In the present matter, conditional certification is proper since this matter satisfies
26 all requirements for class certification under Code of Civil Procedure section 382. First, the
27 class is both sufficiently numerous, consisting of at least 250 individuals, and ascertainable by
28 reference to Allfo's personnel and payroll records.

1 21. Next, Plaintiff is an adequate class representative, as his claims do not conflict
2 with and are not antagonistic to the claims of other class members. For these reasons, Plaintiff
3 contends he is an adequate class representative. Further, his claims are typical given he is a
4 member of the class and his claims arise from the same employment practices and course of
5 conduct giving rise to the claims of the other class members.

6 22. Next, common questions of law and fact predominate – particularly for purposes
7 of a settlement class – as the Class Members all were subject to the same time keeping policies
8 that allegedly shorted them on hours worked and compensation, and subject to the same meal
9 and rest break policies. Since the focus of the claims against Allfo concerns the legality of
10 common policies applied uniformly to the entire class, common issues predominate over
11 individualized inquiries concerning liability. For instance, Allfo’s alleged policy of not paying
12 daily overtime if an employee worked over 8 hours in a shift is company-wide policy applied
13 equally and consistently to all class members, and this policy is either compliant with California
14 law or it is not. Regardless of that determination, it will decide liability for the class one way or
15 another.

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

24 **The Proposed Settlement Meets the Dunk Factors and is within the Range of**
25 **Reasonableness**

26 24. Prior to mediation, the parties engaged in informal discovery to facilitate settlement
27 discussions. As a result, Plaintiff has reviewed documents and information regarding Allfo’s
28 payroll practices, a sampling of pay stubs and time records, meal and rest break policies, employee

1 handbooks, etc., and information from Defendants regarding class size and breakdown, work
2 weeks, rates of pay, and other information used to formulate a damages model. Plaintiff's counsel
3 is confident they obtained sufficient information to enable them to understand the law and facts
4 of this case and make an informed decision regarding the proposed settlement and whether it is in
5 the best interests of the class.

6 25. Using that data, Plaintiff ran various calculations under different theories of
7 liability and estimated Allfo's maximum exposure on the class claims at approximately
8 \$1,555,885, including about \$19,515 on the unpaid minimum wage claims, \$33,570 on the
9 underpaid overtime claim, \$202,700 on the meal break claims, about \$650,000 on the rest break
10 claims, \$201,800 on the wage statement claim, and \$448,300 on the waiting time penalty claim.

11 26. We estimated these amounts as follows:

12 **Minimum Wages**

13 $1,826 \text{ work months} * 45 \text{ minutes OTC/month} * \$14.25/\text{hour avg. min. wage} = \$19,515$

14 **Overtime**

15 $3,774 \text{ underpaid OT hours} * \$17.79/\text{hour avg. rate} * 0.5 = \$33,570$

16 **Meal Breaks**

17 $31,388 \text{ eligible shifts} * 36.3\% \text{ violation rate} * \$17.79/\text{hour avg. rate} = \$202,700$

18 **Rest Breaks**

19 $36,541 \text{ eligible shifts} * 100\% \text{ violation rate} * \$17.79/\text{hour avg. rate} = \$650,000$

20 **Wage Statements**

21 $78 \text{ initial violations} * \$50/\text{violation} + 1,981 \text{ subsequent violations} * \$100/\text{violation} = \$201,800$

22 **Waiting Time Penalties**

23 $105 \text{ former employees} * (240 \text{ hours} * \$17.79/\text{hour avg. rate}) = \$448,300$

24 27. First, on the unpaid wage claims, Plaintiff alleged that Defendants failed to pay
25 employees for time attending required off the clock meetings that lasted 30-60 minutes on the
26 third Friday of every month. On the underpaid overtime claim, Plaintiff argued Defendants
27 failed to pay daily overtime when employees worked more than 8 hours per day in violation of
28 California law, instead only paying weekly overtime even though Labor Code section 510 and

1 IWC Wage Order No. 4 require employees to be paid overtime for shifts worked longer than 8
2 hours and double time for shifts worked longer than 12 hours. Here, Plaintiff alleges Defendant
3 only paid employees overtime wages if they worked more than 40 hours in a week, as required
4 by the FLSA and California law. Per Plaintiff's expert, there were at least 3,774 daily overtime
5 hours that were not compensated at the required premium rate. In response to these claims, Allfo
6 contended it accurately tracked and paid for all employee hours worked, including meeting
7 times, and noted its payroll records demonstrated that it frequently paid overtime when
8 employees worked over 8 hours per shift or over 40 hours per week.

9 28. Plaintiff also contended Defendants failed to provide all required meal and rest
10 breaks on a fully compliant basis. Here, Plaintiff claims Defendants systematically understaffed
11 their restaurants which resulted in employees routinely having their meal breaks missed, cut
12 short, interrupted, or taken late. As a result, employees would be interrupted during unpaid meal
13 breaks by patrons (such as when a server requests a bill) or by other employees who needed
14 assistance during a busy spell or had a question of another employee that was taking an unpaid
15 break. Thus, per Plaintiff, there were numerous "de facto" violations, many of which are
16 reflected in Defendants' time and pay records. Per Plaintiff's experts, the time records reviewed
17 suggest around 36.3% of shifts eligible for a meal period reflect a unique violation, including
18 missed, untimely, and short meal periods. Plaintiff further alleges the same issues plagued
19 unpaid rest breaks, and that breaks either were not provided, cut short, or interrupted by work.

20 29. Defendant denies Plaintiff's contentions, claiming it made meal and rest breaks
21 available to Class Members in compliance with California law. Defendant contends its meal and
22 rest break policies are lawful and that Class Members were frequently reminded they were
23 required to take all meal and rest breaks, and that they in fact took all required breaks. Finally,
24 Defendant argues that Plaintiff's meal and rest break claims are not susceptible to common
25 proof, as the claims would require individualized inquiry, including whether there was an
26 unlawful companywide policy, whether employees had the opportunity to take meal and rest
27 periods, whether they voluntarily chose to forego their meal and rest periods, and whether
28 Defendant ever prevented them from taking meal and rest periods. Accordingly, Defendant

1 contends these claims are vulnerable to a ruling that class treatment is not appropriate.

2 30. Plaintiff also alleged derivatively that, as a result of the above alleged violations,
3 Defendant failed to provide accurate wage statements and failed to timely pay all wages that
4 were due and owing upon separation of employment. Thus, should the primary claims fail,
5 Plaintiff's derivative claims would also fail. Defendant also contends it would not be liable for
6 waiting time penalties because a "good faith dispute" exists over the payment of past wages.
7 Further, Defendant contends Plaintiff would have to prove that Defendant "willfully" failed to
8 pay Class Members appropriate wages due upon separation of employment. Defendant contends
9 that any failure to pay wages upon separation was not willful.

10 31. As far as potential PAGA liability, the PAGA Members theoretically are entitled
11 to penalties totaling upwards of \$786,000 should Plaintiff prevail on all claims and establish
12 violations of the multiple Labor Code sections at issue. As with the class claims, Plaintiff
13 discounted the potential PAGA penalties since the Court possesses wide discretion to reduce such
14 penalties, or to decline to award penalties at all. Accordingly, the Parties allocated \$12,000 to
15 PAGA penalties, which amount Plaintiff submits is reasonable under the circumstances and in
16 line with comparable settlements in other wage and hour class actions in California. Additionally,
17 the LWDA has been informed of the terms of the PAGA portion of the settlement, and will be
18 able to weigh in as necessary.

19 32. The settlement obviates the significant risk that this Court may find any kind of
20 class resolution unachievable or might deny certification of all or some of Plaintiff's claims.
21 Furthermore, even if Plaintiffs obtained certification of all or some of the claims, continued
22 litigation would be expensive as the parties pursued merits discovery, a probable motion to
23 decertify, as well as trial and possible appeals, and would substantially delay any recovery by the
24 class with no assurance of recovering significantly more than the proposed settlement. Overall,
25 while Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each
26 cause of action. Plaintiff also recognizes proving the amount of wages and penalties due each
27 Class Member would be an expensive and uncertain proposition.

28 33. Plaintiff and counsel discounted the value of the class claims consistent with the

1 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
2 greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very
3 real and substantial risks – settlement on the proposed terms and without prolonged and costly
4 litigation was in the best interests of the class. The overall \$200,000 recovery represents a
5 significant percentage of Defendants’ potential exposure and, given the risks addressed above, a
6 total recovery for the class of \$200,000, which will result in average award of some \$341 per
7 class member, is a significant result well within the range of reasonableness considering all
8 potential outcomes, and it will provide direct monetary awards to all Class Members without
9 further delay.

10 CROSNER LEGAL’S QUALIFICATIONS

11 34. I am a graduate of Loyola Law School, Los Angeles, from which I received a
12 *juris doctorate* degree in 2009. Prior to attending law school, I attended the University of
13 Southern California, from which I received a *bachelors of science* in Business Administration in
14 2006.

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

18 36. Since being admitted to the California State Bar in 2010, my entire legal career
19 has been dedicated to protecting employee and consumer rights through the prosecution of class
20 action and representative actions filed on behalf of plaintiffs in class actions and statewide
21 representative actions. Throughout my career I have managed or co-managed more than 100
22 class action and PAGA representative cases, from initial filing of the complaint through final
23 resolution.

24 37. In particular, I have served as class counsel in several certified class action cases,
25 including:

- 26 a. *Party City Wage and Hour Cases*, JCCP4781 (class counsel for certified class of non-
27 exempt hourly employees who worked for Defendants in California)
- 28 b. *Lewis v. Express Messenger Systems*, Los Angeles Superior Court Case No.

1 BC501521 (class counsel for certified class of last-mile delivery drivers who were
2 alleged to be misclassified as independent contractors)

3 c. *Ramirez-Vivar v. Grifols Diagnostic Solutions, Inc., et al.*, Alameda County Superior
4 Court, Case No. RG21099519 (class counsel for certified classes of non-exempt
5 hourly employees who worked for Defendants in California)

6 d. *Jones v. LA Live*, Los Angeles County Case No. BC687908 (class counsel for
7 certified issue classes consisting of hourly employees who worked at Staples Center
8 and Nokia Theater)

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

12 e. *Cruz v. Walmart*, Los Angeles County Super. Ct. Case No. 18STCV03128 (\$15
13 million global PAGA settlement on behalf of hourly employees statewide for alleged
14 Labor Code violations.)

15 f. *Vorise v. 24 Hour Fitness USA, Inc.*, Contra Costa County Super. Ct., Case No. C 15-
16 02051 (\$11 million global PAGA settlement on behalf of over 36,000 employees for
17 Labor Code violations.)

18 g. *Gross v. Sodexo*, Kern County Super Ct., Case No. BCV-18-101746 Capstone (\$4.75
19 million class and PAGA settlement on behalf of class of non-hourly employees for
20 Labor Code violations.)

21 h. *Campbell v. AEG* (\$1.8M class and PAGA settlement on behalf of group of hourly
22 employees who worked at concert venues in California for alleged Labor Code
23 violations)

24 i. *Fiebelkorn v. AEG*, et al. Los Angeles Superior Court Case No. BC717337 (\$1.75M
25 class settlement on behalf of group of hourly employees who worked at Oakland
26 Coliseum for alleged Labor Code violations)

27 j. *Amaro v. Anaheim Arena Management*, Orange County Superior Court Case No. 30-
28 2017-00917542 (\$2,212,500 class and PAGA settlement on behalf of group of hourly

employees who worked at Honda center in Anaheim California for alleged Labor Code violations)

- k. *Espindola v. Panda Express*, San Bernardino Superior Court Case No. CIVDS1931455 (\$3.125M class and PAGA settlement on behalf of hourly employees statewide for alleged Labor Code violations)
- l. *Gold v. Benihana*, San Diego Court Superior Court Case No. 37-2016-00022320-CU-OE-NC (\$2.25M class and PAGA settlement on behalf of hourly employees statewide for alleged Labor Code violations)
- m. *Party City Wage and Hour Cases*, JCCP4781 (\$6.5M class and PAGA settlement on behalf of hourly employees statewide for alleged Labor Code violations)
- n. *Lewis v. Express Messenger Systems*, Los Angeles County Super Court Case No. BC501521 (\$10.5M class and PAGA settlement on behalf of a statewide group of independent contractor last-mile delivery drivers alleged to be misclassified)
- o. *Flores v. Tesla*, Alameda County Superior Court Case No. RG18907072 (\$4M class and PAGA settlement on behalf of statewide group of hourly employees for alleged Labor Code violations)
- p. *Ruiz v. Disney Stores*, San Bernardino Superior Court Case No. CIVDS2016983 (\$2M class and PAGA settlement on behalf of statewide group of hourly employees who worked at retail stores in California for alleged Labor Code violations)
- q. *Ramirez v. Yin Management*, Sacramento County Superior Court Case No. 34-2021-00301530 (\$1.8M class and PAGA settlement on behalf of statewide group of hourly employees who worked at Defendant's McDonald's franchises in California for alleged Labor Code violations).
- r. *Suhartono v. RRG Besh*, Los Angeles County Superior Court Case No. 19STCV22184 (\$2.25 class and PAGA settlement on behalf of statewide group of hourly employees who worked at Defendant's McDonald's franchises in California for alleged Labor Code violations).
- s. *Gomes v. Kura Sushi*, Los Angeles County Superior Court Case No. 19STCV18977

1 (\$1.75M class and PAGA settlement on behalf of statewide group of hourly
2 employees who worked at Defendant's restaurants in California for alleged Labor
3 Code violations)

4 t. *Saldana v. Hydrochem*, Contra Costa Superior Court Case No. CIVMSC19-02624
5 (\$1.38M class and PAGA settlement on behalf of statewide group of hourly
6 employees for alleged Labor Code violations).

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

9 u. *Lopez v. Seterus, et al.*, Los Angeles Superior Court Case No. BC484297 (\$3M Class
10 settlement on half of thousands of borrowers in California, Florida, and Texas for
11 UCL violations premised on improper late fee collections)

12 v. *McGill v. Citibank*, Riverside County Superior Court Case No. RIC 1109398 (in
13 landmark case that established the 'McGill rule' precluding the waiver of public
14 injunctive relief in pre-dispute arbitration agreements, negotiated confidential
15 settlement on behalf of consumer who sued for damages and class injunctive relief
16 stemming from marketing of credit protector plan)

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

20 41. Zach Crosner is a 2010 graduate of University San Diego School of Law and he
21 has approximately thirteen years of experience as a practicing attorney. For nearly his entire
22 career, his practice has focused on litigation of wage & hour, consumer, and privacy class
23 action and representative action claims. Following graduation he immediately began working
24 for a nationally recognized plaintiff's complex litigation firm, CaseyGerry, where he worked
25 directly with past presidents of the consumer attorneys and recipients of trial attorneys of the
26 year awards. He also worked for other firms that included former CAALA and CLAY trial
27 attorney of the year recipients. While with these firms, he advocated for the rights of
28 consumers and employees in class action litigation, civil rights and employment litigation,

1 catastrophic injuries, insurance bad faith and appellate litigation.

2 42. In 2013, he founded the law firm of Crosner Legal, P.C. which since its
3 inception has focused almost exclusively on plaintiff-side class actions lawsuits representing
4 employees, consumers and other victims. Currently, over ninety percent (95%) of his practice
5 is dedicated exclusively to the prosecution of class actions and representative action lawsuits,
6 and his law firm is currently responsible as lead counsel or co-lead counsel for prosecuting
7 over one hundred (100) active wage and hour class actions and/or PAGA representative
8 actions, as well as a multitude of consumer and privacy class actions, in both federal and state
9 courts throughout California. He has been a direct participant in over one hundred (100) class
10 action and/or representative action settlements where he has been approved as adequate lead
11 counsel.

12 43. Mr. Crosner has been selected by Super Lawyers as a “Southern California
13 Rising Star” for employment and labor law consecutively from 2018 through 2023. Super
14 Lawyers has also named me on their “Up-and-Coming 100” Southern California Rising Stars
15 List for consecutive years from 2021 through 2023. Only 2.5% of lawyers within California
16 are named a Super Lawyer Rising Star and even less are added to their Top Lists.
17 Additionally, he has been selected as a Top 40 Under 40 Civil Plaintiff Attorney by the
18 National Trial Lawyers, invitation-only organization composed of the premier trial lawyers,
19 from 2019 through 2023. He is an active participant in advocacy groups, including as an
20 executive board member of the Wage and Hour Committee and the Legislative Committee for
21 the California Employment Lawyers Association; a member of the Grassroots Advocacy Team
22 for the National Employment Lawyers Association; Wage and Hour Committee member and
23 Class Action Committee member for the National Trial Lawyers; a member of the American
24 Association for Justice; and a member of the Pound Civil Justice Institute.

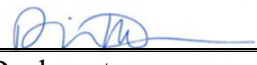
25 44. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
26 action settlements while serving as lead class counsel in recent years, including but not limited
27 to a \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North*
28 *America, Inc.*, Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class

1 action settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-
2 00190252 (Sacramento Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement
3 in 2017 (*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty.
4 Super. Ct.)), a \$1.8 million wage and hour class action settlement in 2018 (*Latham v. K.W.P.H.*
5 *Enterprises, Inc. dba American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3
6 million wage and hour class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case
7 No. 17-CV-2160 JGB (C.D. Cal.)), a \$1.5 million wage and hour settlement in 2020
8 (*Babouchian, et al. v. Wyndham Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego
9 Cty. Super. Ct.)), a \$1.15 million wage and hour class action settlement in 2020 (*Buford v.*
10 *Medical Solutions LLC*, Case No. 4:18-CV-04864-YGR (N.D.Cal.)); a \$7.25 million wage and
11 hour class action settlement in 2020 in *Avina, et al. v. First Alarm Security & Patrol, Inc.*, Case
12 No. 18CV323753 (Santa Clara Cty. Super Ct.); a \$2.2 million wage and hour class action
13 settlement in 2021 (*Ghorchian, et al. v. West Hills Hospital, et al.*, Case No. LS029737 (Los
14 Angeles Cty. Super. Ct.)); a \$2.85 million dollar wage and hour settlement in 2021 (*Valencia v.*
15 *The Original Mowbray's Tree Service, Inc.*, Case No. CIVDS1825518 (San Bernardino Cty.
16 Super. Ct.)); a \$1 million wage and hour class action settlement in 2022 (*Duong v. Loan*
17 *Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super. Ct.)), a \$1.4 million wage and
18 hour class action settlement in 2023 in *Correa, et al. v. FedEx Supply Chain, Inc.*, Case No.
19 CIVDS2023369 (San Bernardino Cty. Super. Ct.), a \$2.38 million wage and hour class action
20 settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case No. 21STCV00925 (Los
21 Angeles Cty. Super. Ct.); a \$2.5 million wage and hour class action settlement in 2023 in *Jajuga*
22 *v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino Cty. Super. Ct.); \$1.015
23 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo Autism Therapy*, Case
24 No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a \$1.15 million wage and hour PAGA
25 settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*, Case No.
26 21STCV18512 (Los Angeles Cty. Super. Ct.); a \$1.5 million wage and hour class action
27 settlement in *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty. Super.
28 Court); a \$1.3 million wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*, Case

No. 20STCV06618 (Los Angeles Cty. Super. Court); a \$1.925 million wage and hour class settlement in 224 in *Lo v. Cyberpower, Inc.*, Case No. 21STCV31479 (Los Angeles Cty. Super. Ct); a \$1.19 million dollar wage and hour class action settlement in 2024 in *Herrera v. Signature Flight Support LLC*, Case No. 22STCV18367 (Los Angeles Cty. Super. Ct.); a \$2.65 million wage and hour class action settlement in 2024 in *Shilevinatz v. Airport Terminal Services*, Case No. CIVSB2229072 (San Bernardino Cty. Super Ct.) and a \$1 million wage and hour class action settlement in 2025 in *Hernandez v YZER, LLC*, Case No. 23CV025345 (Alameda Cty. Superior Ct).

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 25th day of March 2025, at Los Angeles, California.



Declarant

EXHIBIT

1

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Attorneys for Defendants
ALLFO ONE KOREA, LLC; ALL FO ONE KOREA CO., LTD

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

KOANGWOO CHOI, as an individual on
behalf of himself and on behalf of all others
similarly situated,

Plaintiff,

vs.

ALLFO ONE KOREA, LLC, a California
Limited Liability Company; ALL FO ONE
KOREA CO., LTD., a corporation; and DOES
1-100, inclusive,

Defendants.

Case No.: 23CV412452

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE**

JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE

This Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Koangwoo Choi (“Plaintiff” or “Class Representative”), as an individual and on behalf of all others similarly situated, and Defendants ALLFO One Korea, LLC and ALL FO ONE Korea Co., Ltd. (“Defendants”) (collectively with Plaintiff, the “Parties”).

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means *Choi v. Allfo One Korea, LLC, et al.*, Case No.: 23CV412452 (Santa Clara County Superior Court).
2. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Action, and all out-of-pocket costs incurred and to be incurred by Class Counsel in the Action, including but not limited to expert/consultant fees, investigation costs, and costs associated with documenting the Settlement, providing any notices required as part of the Settlement or Court order, securing the Court’s approval of the Settlement, administering the Settlement, and obtaining entry of a Judgment terminating the Action. Class Counsel will request attorneys’ fees not in excess of one-third (1/3) of the Gross Settlement Amount, or Sixty-Six Thousand, Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$66,666.66). The Attorneys’ Fees and Costs will also mean and include the additional reimbursement of any costs and expenses associated with Class Counsel’s litigation and settlement of the Action, up to, Sixteen Thousand and Five Hundred Dollars (\$16,500.00) subject to the Court’s approval. Defendants have agreed not to oppose Class Counsel’s request for fees and reimbursement of costs as set forth above.
3. “Class Counsel” means Crosner Legal P.C.
4. “Class List” means a complete list of all Class Members that Defendants will diligently and in good faith compile from their records and provide to the Settlement Administrator within twenty (20) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in Microsoft Office Excel and will include each Class Member’s full name; most recent mailing address;

1 Social Security number; dates of employment; the respective number of Workweeks that each Class
2 Member worked during the Class Period and PAGA Period; and any other relevant information needed
3 to calculate settlement payments.

4 5. “Class Member(s)” or “Settlement Class” means all non-exempt employees, including
5 Plaintiff, who worked for Defendants during the Class Period.

6 6. “Class Period” means the period that is covered by the settlement, which is March 14,
7 2019, through the date of preliminary approval.

8 7. “Class Representative Enhancement Payment” means the amount to be paid to Plaintiff
9 in recognition of his effort and work in prosecuting the Action on behalf of Class Members and for the
10 release of those claims alleged in the operative First Amended Complaint, Released Class Claims, and
11 Released PAGA Claims, as defined below. Subject to the Court granting final approval of this
12 Settlement Agreement and subject to the exhaustion of any and all appeals, Plaintiff will request Court
13 approval of a Class Representative Enhancement Payment of up to Ten Thousand Dollars (\$10,000).

14 8. “Court” means the Santa Clara County Superior Court.

15 9. “Defendants” means Defendants ALLFO One Korea, LLC and ALL FO ONE Korea
16 Co., Ltd.

17 10. “Effective Date” means the later of: (a) the date that the deadline for seeking appellate
18 review of the trial court’s final approval of the settlement has passed without the filing of a timely appeal
19 or timely request for review, or if any timely objections are withdrawn prior to Final Approval, then the
20 date of Final Approval; or (b) if a Class Member files an objection to the Settlement, the Effective Date
21 shall be the sixty-first (61) calendar day after the date of Final Approval, provided no appeal is initiated
22 by an objector; or (c) if a timely appeal is initiated by an objector, then the Effective Date will be the date
23 of final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari),
24 resulting in final judicial approval of the Settlement.

25 11. “Final Approval” means the date on which the Court enters an order granting final
26 approval of the Settlement Agreement after the filing of an appropriate motion by Plaintiff and following
27 appropriate notice to Class Members giving Class Members an opportunity to request exclusion from the
28 class and settlement and to object to the settlement.

12. “Gross Settlement Amount” means the maximum amount Defendants shall pay in connection with this settlement. Subject to Court approval and the terms of this Agreement, the maximum Gross Settlement Amount Defendants shall be required to pay is Two-Hundred Thousand Dollars (\$200,000.00), to be paid by Defendants in full satisfaction of all Released Class Claims and Released PAGA Claims, which includes all Individual Settlement Payments, Attorneys’ Fees and Costs, the Class Representative Enhancement Payment, the PAGA Settlement Amount, and Settlement Administration Costs. This Gross Settlement Amount has been agreed to by Plaintiff and Defendants based on the aggregation of the agreed-upon settlement value of individual claims. In no event will Defendants be liable for more than the Gross Settlement Amount except as otherwise explicitly set forth herein. There will be no reversion of the Gross Settlement Amount to Defendants. Defendants will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions, which shall not be paid from the Gross Settlement Amount.

13. “Individual Settlement Payment” means each Participating Class Member’s and PAGA Member’s respective shares of the Net Settlement Fund and PAGA Fund as provided by this Settlement Agreement.

14. “Net Settlement Fund” means the portion of the Gross Settlement Amount remaining after deducting the Court-approved amounts for the Attorneys’ Fees and Costs, the Class Representative Enhancement Payment, the PAGA Settlement Amount, and Settlement Administration Costs. The Net Settlement Fund will be distributed to Participating Class Members. There will be no reversion of the Net Settlement Fund to Defendants.

15. “Notice of Objection” means a Class Member’s valid and timely written objection to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the objector’s full name, signature, address, and telephone number, (b) a written statement of all grounds for the objection accompanied by any legal support for such objection; (c) copies of any papers, briefs, or other documents upon which the objection is based; and (d) a statement whether the objector intends to appear at the final fairness hearing.

16. “Notice Packet” means the Notice of Class Action Settlement, substantially in the form attached as Exhibit A (other than formatting changes to facilitate printing by the Settlement

Administrator) along with the Spanish and Korean translation of the Notice of Class Action Settlement.

17. “PAGA Members” means all non-exempt employees, including Plaintiff, who worked for Defendants during the PAGA Period.

18. “PAGA Period” means the period from March 28, 2022 through the date of Preliminary Approval.

19. “PAGA Settlement Amount” means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) and PAGA Members in connection with Plaintiff’s claim under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”) (“PAGA Settlement”). The Parties have agreed that Twelve Thousand Dollars (\$12,000) of the Gross Settlement Amount will be allocated to the PAGA Settlement. Pursuant to PAGA, Seventy-Five Percent (75%), or Nine Thousand Dollars (\$9,000), of the PAGA Settlement Amount will be paid to the California Labor and Workforce Development Agency (“Labor and Workforce Development Agency Payment”), and Twenty-Five Percent (25%), or Three Thousand Dollars (\$3,000) (“PAGA Fund”), of the PAGA Settlement will be disbursed to PAGA Members, and regardless whether they request to be excluded from the Settlement Class. One hundred percent (100%) of the PAGA Payment is in settlement of claims for penalties, and therefore shall not be subject to wage withholdings, and shall therefore be reported on IRS Form 1099.

20. “Parties” means Plaintiff and Defendants collectively.

21. “Participating Class Members” means all Class Members who do not submit timely and valid Requests for Exclusion.

22. “Plaintiff” means Plaintiff Koangwoo Choi.

23. “Preliminary Approval” means the date on which the Court enters an order granting preliminary approval of the Settlement Agreement.

24. “Released Class Claims” means all claims, rights, demands, liabilities, and causes of action that were alleged, or reasonably could have been alleged, reasonably arising from, or related to, the same set of operative facts as those set forth in the operative First Amended Complaint during the Class Period, including but not limited to: (a) all claims for unpaid minimum wages; (b) all claims for unpaid overtime; (c) all claims for meal and rest break violations; (d) all claims for the failure to

1 reimburse for necessary business expenses; (e) all claims for the failure to timely pay wages upon
2 termination; (f) all claims for wage statement violations; and (g) all claims asserted through California
3 Business & Professions Code §§ 17200, *et seq.*

4 25. “Released PAGA Claims” means all claims for civil penalties under California Labor
5 Code §§ 2698, *et seq.*, that were brought or could reasonably have been brought based on the facts
6 alleged in Plaintiff’s LWDA letter during the PAGA Period, or as were alleged in Plaintiff’s operative
7 First Amended Complaint. The release of the Released PAGA Claims shall be effective as to all PAGA
8 Members, regardless of whether a PAGA Member submitted a request for an exclusion from the Class.

9 26. “Released Parties” means Defendants, their respective past, present, and future officers,
10 directors, shareholders, managers, partners, members, employees, attorneys, trustees, investors, agents,
11 principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their
12 respective past, present, and future successors and predecessors in interest and assigns, subsidiaries,
13 corporations, divisions, affiliates, parents and attorneys, if any.

14 27. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a
15 request to be excluded from the Settlement Class. The Request for Exclusion must: (a) set forth the
16 name, address, telephone number and last four digits of the Social Security Number of the Class
17 Member requesting exclusion; (b) be signed by the Class Member; (c) be returned to the Settlement
18 Administrator; (d) clearly state that the Class Member does not wish to be included in the Settlement;
19 and (e) be faxed or postmarked on or before the Response Deadline.

20 28. “Response Deadline” means the deadline by which Class Members must postmark or
21 fax to the Settlement Administrator Requests for Exclusion, postmark or fax disputes concerning the
22 calculation of Individual Settlement Payments, or postmark Notices of Objection to the Settlement
23 Administrator. The Response Deadline will be sixty (60) calendar days from the initial mailing of the
24 Notice Packet by the Settlement Administrator, unless the sixtieth (60) calendar day falls on a Sunday or
25 State holiday, in which case the Response Deadline will be extended to the next day on which the U.S.
26 Postal Service is open.

27 29. “Settlement Administration Costs” means the costs payable from the Gross Settlement
28 Amount to the Settlement Administrator for administering this Settlement, including, but not limited to,

printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Gross Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs will be paid from the Gross Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement. Based on an estimated Settlement Class of approximately 250 Class Members, the Settlement Administration Costs are currently estimated to be Nine Thousand Five Hundred Dollars (\$9,500.00).

30. “Settlement Administrator” means Phoenix Class Action Administration Solutions, or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

31. “Workweeks” means the number of days of employment for each Class Member during the Class Period, subtracting days on leave of absence (if any), dividing by seven (7), and rounding up to the nearest whole number. All Class Members will be credited with at least one Workweek during the Class Period, and all PAGA Members will be credited with at least one Workweek during the PAGA Period.

RECITALS

32. On March 14, 2023, Plaintiff filed a Complaint against Defendants in the Superior Court of the State of California, County of Santa Clara. On June 1, 2023, Plaintiff filed a First Amended Complaint against Defendants in the Action, wherein Plaintiff asserted claims that Defendants:

- 32(a) Failed to pay minimum wages for all hours worked;
- 32(b) Failed to pay overtime wages;
- 32(c) Failed to provide meal periods;
- 32(d) Failed to provide rest periods;
- 32(e) Failed to provide accurate wage statements;
- 32(f) Failed to provide wages when due;
- 32(g) Failed to reimburse business expenses; and

32(h) Violated California Business and Professions Code § 17200 *et seq.*

32(i) Violation of the Private Attorneys General Act of 2004

33. On December 19, 2023, the Parties participated in a mediation with Steve Cerveris. Although the mediation did not result in a settlement, with the assistance of the mediator, Plaintiff and Defendants, represented by their respective counsel, engaged in extended negotiations through the mediator and eventually agreed to settle the Action in principle.

34. This Settlement Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Settlement Agreement is intended or will be construed as an admission by Defendants that the claims in the Action of Plaintiff or the Class have merit or that Defendants bear any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this settlement only. If for any reason the settlement does not become effective, Defendants reserve the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

35. Benefits of Settlement to Plaintiffs and the Class Members. Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate Plaintiff's claims in the Action through trial and through any possible appeals. Plaintiff also has taken into account the uncertainty and risks of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendants' defenses thereto, and the difficulties in establishing damages, penalties, restitution and other relief sought in the Action. Plaintiff and Class Counsel also have taken into account Defendants' agreement to enter into a settlement that confers substantial benefits upon the Class Members and Defendants' financial condition. Based on the foregoing, Plaintiff and Class Counsel have determined that the settlement set forth in this Settlement Agreement is fair, adequate, and reasonable and is in the best interests of all Class Members.

36. Defendants' Reasons for Settlement. Defendants have concluded that any further defense of the Action would be protracted and expensive for all Parties. Substantial amounts of Defendants' time, energy, and resources have been, and unless this settlement is completed, shall

1 continue to be, devoted to the defense of the claims asserted by Plaintiff. Defendants also have taken
2 into account the risks of further litigation in reaching their decision to enter into this settlement. Even
3 though Defendants contend they are not liable for any of the claims alleged by Plaintiff in the Action,
4 Defendants have agreed, nonetheless, to settle in the manner and upon the terms set forth in this
5 Settlement Agreement and to put to rest the claims alleged in the Action. Defendants have asserted and
6 continue to assert that the claims alleged by Plaintiff have no merit and do not give rise to any liability,
7 damages, restitution, penalties or other payments. This Settlement Agreement is a compromise of
8 disputed claims. Nothing contained in this Settlement Agreement, no documents referred to herein, and
9 no action taken to carry out this Settlement Agreement, shall be construed or used as an admission by or
10 against Defendants as to the merits or lack thereof of the claims asserted in the Action. Defendants
11 contend they has complied with all applicable state, federal and local laws.

12 Based on these Recitals that are a part of this Agreement, the Parties agree, subject to the
13 Court's approval, as follows:

14 **TERMS OF AGREEMENT**

15 The Plaintiff, on behalf of himself and the Settlement Class, and Defendants agree as follows:

16 37. Funding of the Gross Settlement Amount. Defendants will make a one-time deposit of
17 the Gross Settlement Amount of Two Hundred Thousand Dollars (\$200,000) into a Qualified Settlement
18 Account to be established by the Settlement Administrator. Defendants will pay the employer's share of
19 payroll taxes separately. After the Effective Date, the Gross Settlement Amount will be used for: (a)
20 Individual Settlement Payments; (b) the Labor and Workforce Development Agency Payment; (c) the
21 Class Representative Enhancement Payment; (d) Attorneys' Fees and Costs; and (e) Settlement
22 Administration Costs. If no objection to the Settlement is made, then Defendants will deposit the Gross
23 Settlement Amount and the employer's share of payroll taxes within twenty-one (21) calendar days after
24 the Effective Date ("Funding Date"). If an objection to the Settlement is made but no appeal is filed, then
25 Defendants shall fund the Gross Settlement Amount and the amount necessary to pay Defendants' share
26 of payroll taxes within thirty (30) calendar days of the of the running of the appeal period. If an appeal is
27 filed, then Defendants shall fund the Gross Settlement Amount and the amount necessary to pay
28

1 Defendants' share of payroll taxes within thirty (30) calendar days of the date the Judgment is Final and
2 no longer subject to appeal. All of the Gross Settlement Amount will be disbursed pursuant to this
3 Settlement Agreement without the need to submit a claim form and none of the Gross Settlement
4 Amount will revert to Defendants. If this Settlement is not finally approved by the Court in full, or is
5 terminated, rescinded, canceled or fails to become effective for any reason, then no portion of the Gross
6 Settlement Amount shall be paid.

7 38. Attorneys' Fees and Costs. Defendants agree not to oppose or impede any application or
8 motion by Class Counsel for Attorneys' Fees and Costs of not more than Sixty-Six Thousand, Six
9 Hundred Sixty-Six and Sixty-Six Hundredths Dollars (\$66,666.66), plus the reimbursement of all out-of-
10 pocket costs and expenses associated with Class Counsel's litigation and settlement of the Action
11 (including expert/consultant fees, investigations costs, etc.), not to exceed Sixteen Thousand Five
12 Hundred Dollars (\$16,500.00), both of which will be paid from the Gross Settlement Amount. If the
13 Court approves Attorneys' Fees and Costs of less than this amount, the remainder will be retained in the
14 Net Settlement Fund for distribution to Participating Class Members. Payroll tax withholding and
15 deductions, if any, will not be taken from the Attorneys' Fees and Costs amount and instead one or more
16 Forms 1099 will be issued to Class Counsel with respect to those payments. Class Counsel shall be
17 solely and legally responsible to pay all applicable taxes on the Attorneys' Fees and Costs. This
18 Settlement is not conditioned upon the Court awarding Class Counsel any particular amount of
19 Attorneys' Fees or Costs.

20 39. Class Representative Enhancement Payment. In recognition of his effort and work in
21 prosecuting the Action on behalf of Class Members, Defendants agree not to oppose or impede any
22 application or motion for a Class Representative Enhancement Payment of up to Ten Thousand Dollars
23 (\$10,000). The Class Representative Enhancement Payment will be paid from the Gross Settlement
24 Amount and will be in addition to Plaintiff's Individual Settlement Payment paid pursuant to the
25 Settlement. Plaintiff will be solely and legally responsible to pay any and all applicable taxes on the Class
26 Representative Enhancement Payment. Payroll tax withholding and deductions will not be taken from
27 the Class Representative Enhancement Payment and instead a Form 1099 will be issued to the Plaintiff
28 with respect to the payment, who will assume full responsibility and liability for the taxes, penalties,

1 and/or any interest arising as a result of payment of the Class Representative Enhancement Payment.
2 Plaintiff understands and agrees that this Settlement Agreement shall remain in full force and effect even
3 if the full amount of Class Representative Enhancement Payment sought by Plaintiff is not ultimately
4 awarded by the Court. If the Court approves a Class Representative Enhancement Payment of less than
5 \$10,000, the remainder will be retained in the Net Settlement Fund for distribution to Participating Class
6 Members.

7 40. Settlement Administration Costs. The Settlement Administrator will be paid for the
8 reasonable costs of administration of the Settlement and distribution of payments from the Gross
9 Settlement Amount, which is currently estimated to be Nine Thousand Five Hundred Dollars
10 (\$9,500.00). These costs, which will be paid from the Gross Settlement Amount, will include, *inter alia*,
11 the required tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS
12 Forms, distributing Notice Packets, calculating and distributing the Gross Settlement Amount, and
13 providing necessary reports and declarations. Prior to Plaintiff filing a motion for final approval of the
14 Settlement, the Settlement Administrator shall provide the Parties with a statement detailing the
15 Settlement Administration Costs to date. The Parties agree to cooperate in the Settlement Administration
16 process and to make all reasonable efforts to control and minimize Settlement Administration Costs.

17 41. PAGA Settlement Amount. Subject to Court approval, the Parties agree that the amount
18 of Twelve Thousand Dollars (\$12,000) from the Gross Settlement Amount will be designated for
19 satisfaction of Plaintiff's PAGA claim. Pursuant to PAGA, Seventy-Five Percent (75%), or Nine
20 Thousand Dollars (\$9,000), of this sum will be paid to the LWDA and Twenty-Five Percent (25%), or
21 Three Thousand Dollars (\$3,000), will be paid to PAGA Members in proportion to the number of
22 Workweeks worked during the PAGA Period. If the Court approves a PAGA Settlement Amount of less
23 than \$12,000, the remainder will be retained in the Net Settlement Fund for distribution to Participating
24 Class Members. All PAGA Members will be sent their share of the PAGA Settlement Amount and will
25 be subject to the release of the Released PAGA Claims as set forth below, whether or not they opt out of
26 the settlement. One hundred percent (100%) of the PAGA Settlement Amount is in settlement of claims
27 for penalties and not be subject to wage withholdings, and shall be reported on IRS Form 1099.

28 42. No Right to Exclusion or Objections to the PAGA Settlement. Because this settlement

1 resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a Private
2 Attorney General of, and for, the State of California and the LWDA, the Parties agree that no PAGA
3 Member has the right to exclude himself or herself from the release of the Released PAGA Claims, and
4 all PAGA Members will receive their shares of the PAGA Fund. The Parties also agree that no PAGA
5 Member has the right to object to the PAGA Settlement Amount.

6 43. Net Settlement Fund. The entire Net Settlement Fund will be distributed to Participating
7 Class Members. No portion of the Net Settlement Fund will revert to or be retained by Defendants.

8 44. PAGA Fund. The entire PAGA Fund will be distributed to all PAGA Members. No
9 portion of the PAGA Fund will revert to or be retained by Defendants.

10 45. Individual Settlement Payment Calculations. Individual Settlement Payments will be
11 calculated and apportioned from the Net Settlement Fund and PAGA Fund based on the number of
12 Workweeks a Class Member worked during the Class Period and PAGA Period. The Parties recognize
13 that the Individual Settlement Payments to be paid to the Participating Class Members are for wages,
14 interest, and penalties. Specific calculations of Individual Settlement Payments will be made as follows:

15 45(a) Payments from the Net Settlement Fund. Defendants will calculate the total
16 number of Workweeks worked by each Class Member during the Class
17 Period and the aggregate total number of Workweeks worked by all Class
18 Members during the Class Period. To determine each Class Member's
19 estimated "Individual Settlement Payment" from the Net Settlement Fund,
20 the Settlement Administrator will use the following formula: The Net
21 Settlement Fund will be divided by the aggregate total number of
22 Workweeks, resulting in the "Workweek Value." Each Class Member's
23 "Individual Settlement Payment" will be calculated by multiplying each
24 individual Class Member's total number of Workweeks by the Workweek
25 Value. The Individual Settlement Payment will be reduced by any required
26 deductions for each Participating Class Member as specifically set forth
27 herein, including employee-side tax withholdings or deductions. The entire
28 Net Settlement Fund will be disbursed to all Class Members who do not

1 submit timely and valid Requests for Exclusion. If there are any valid and
2 timely Requests for Exclusion, the Settlement Administrator shall
3 proportionately increase the Individual Settlement Payment for each
4 Participating Class Member according to the number of Workweeks
5 worked, so that the amount actually distributed to the Settlement Class
6 equals 100% of the Net Settlement Fund. The Settlement Administrator's
7 determination of the eligibility for and amount of each Individual Settlement
8 Payment shall be binding upon the Class Member and the Parties, yet
9 subject to review by Class Counsel, Defendants' Counsel, and the Court. In
10 the absence of fraud or gross negligence, Defendants' records shall be
11 presumed accurate.

12 45(b) Payments from the PAGA Fund. Defendants will calculate the total number
13 of Workweeks worked by each PAGA Member during the PAGA Period
14 and the aggregate total number of Workweeks worked by all PAGA
15 Members during the PAGA Period. To determine each PAGA Member's
16 estimated "Individual Settlement Payment," the Settlement Administrator
17 will use the following formula: The PAGA Fund will be divided by the
18 aggregate total number of Workweeks, resulting in the "PAGA Workweek
19 Value." Each PAGA Member's "Individual Settlement Payment" will be
20 calculated by multiplying each individual PAGA Member's total number of
21 Workweeks by the PAGA Workweek Value. The entire PAGA Fund will
22 be disbursed to all PAGA Members. The Settlement Administrator's
23 determination of the eligibility for and amount of each PAGA Member's
24 Individual Settlement Payment shall be binding upon the PAGA Member
25 and the Parties, yet subject to review by Class Counsel, Defendants'
26 Counsel, and the Court. In the absence of fraud or gross negligence,
27 Defendants' records shall be presumed accurate.

28 46. No Credit Toward Benefit Plans. The Individual Settlement Payments made to

1 Participating Class Members under this Settlement, as well as any other payments made pursuant to this
2 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any
3 Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k)
4 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.
5 Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions,
6 or amounts to which any Class Members may be entitled under any benefit plans.

7 47. Appointment of Settlement Administrator. After obtaining a quote from mutually
8 acceptable and qualified settlement administrators, the Parties have mutually agreed to ask the Court to
9 appoint Phoenix Class Action Administration Solutions as the qualified administrator, to serve as the
10 Settlement Administrator, which, as a condition of appointment, will agree to be bound by this
11 Settlement Agreement with respect to the performance of its duties and its compensation. The
12 Settlement Administrator's duties will include (i) translating the Class Notice into Spanish; (ii) preparing,
13 printing, and mailing the Notice Packet to all Class Members; (iii) conducting a National Change of
14 Address search to update Class Member addresses before mailing the Notice Packets; (iv) re-mailing
15 Notice Packets that are returned to the Class Member's new address; (v) setting up a toll-free telephone
16 number to receive calls from Class Members; (vi) receiving and reviewing for validly completed
17 Requests for Exclusion; (vii) providing the Parties with weekly status reports about the delivery of
18 Notice Packets and receipt of completed Requests for Exclusion; (viii) calculating Individual Settlement
19 Payments; (ix) issuing the checks to effectuate the payments due under the Settlement; (x) issuing the tax
20 reports required under this Settlement; (xi) keeping the Parties timely apprised of the performance of all
21 Settlement Administrator responsibilities required by the Settlement; and (xii) otherwise administering
22 the Settlement pursuant to this Settlement Agreement. The Settlement Administrator will have the
23 authority to resolve all disputes concerning the calculation of a Participating Class Member's Individual
24 Settlement Payment, subject to the dollar limitations and calculations set forth in this Settlement
25 Agreement. The Settlement Administration Expenses, including the cost of printing and mailing the
26 Notice Packet, will be paid out of the Gross Settlement Amount.

27 The Settlement Administrator shall have its own Employer Identification Number under Internal
28 Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll

1 withholdings for taxes and shall transmit the required employers' and employees' share of the
2 withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall
3 establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under
4 US Treasury Regulation section 468B-1.

5 48. Administration Process. The Parties agree to cooperate in the administration of the
6 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in
7 administration of the Settlement. The Parties also have the right to monitor and review the administration
8 of the Settlement to verify that the monies allocated under the Settlement are distributed in the correct
9 amount, as provided for in this Settlement Agreement.

10 49. Delivery of the Class List. Within twenty (20) calendar days of Preliminary Approval,
11 Defendants will provide the Class List to the Settlement Administrator. To protect Class Members'
12 privacy rights, the Settlement Administrator must maintain the Class List in confidence, use the Class
13 List only for purposes of this Settlement and for no other purpose, and restrict access to the Class List to
14 Settlement Administrator employees who need access to the Class List to effect and perform under this
15 Settlement Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they
16 discover that the Class List omitted class member identifying information and to provide a corrected or
17 updated Class List as soon as reasonably feasible. If any or all of the Class List is unavailable to
18 Defendants, Defendants will so inform Class Counsel and the Parties will make their best efforts to
19 reconstruct or otherwise agree upon the Class List prior to when it must be submitted to the Settlement
20 Administrator.

21 50. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class
22 List from Defendants, the Settlement Administrator will mail a Notice Packet to all Class Members via
23 regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class
24 List.

25 51. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement
26 Administrator will perform a search based on the National Change of Address Database for information
27 to update and correct for any known or identifiable address changes. The Settlement Administrator shall
28 exercise its best judgment to determine the current mailing address for each Class Member. Any Notice

Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly (i.e., no later than seven (7) business days after receipt of the undelivered Notice Packet) via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved, and will then perform a single re-mailing. Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have either (a) an additional fifteen (15) calendar days from the date the Settlement Administrator re-mails the Notice Packet or (b) until the Response Deadline, whichever is later, to submit a Request for Exclusion or an objection to the Settlement.

52. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet will provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal terms; (c) the Settlement Class and PAGA Member definitions; (d) the total number of Workweeks each respective Class Member and PAGA Member worked for Defendants during the Class Period and PAGA Period; (e) each Class Member's and PAGA Member's estimated Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (f) the dates which comprise the Class Period and PAGA Period; (g) instructions on how to submit Requests for Exclusion or Notices of Objection; (h) the deadlines by which the Class Member must postmark or fax Request for Exclusions, or postmark Notices of Objection to the Settlement; and (i) the claims to be released.

If the procedures detailed in this Settlement Agreement are followed, notice to Class Members shall be deemed to have been fully satisfied, and if the intended recipient of the Notice Packet does not receive the Notice Packet, the intended recipient shall nevertheless remain a Class Member and shall be bound by all terms of the Settlement and the Judgment.

53. Disputed Information on Notice Packets. Class Members will have an opportunity to dispute the information provided in their Notice Packets. To the extent Class Members dispute their employment dates or the number of Workweeks on record, Class Members may produce evidence to the Settlement Administrator showing that such information is inaccurate. Defendants' records will be presumed correct, but the Settlement Administrator shall contact the Parties regarding the dispute and the

1 Parties will work in good faith to resolve it. All disputes must be submitted by the Response Deadline,
2 and will be decided within ten (10) business days after the Response Deadline. Any dispute as to this
3 allocation shall be resolved by the Settlement Administrator. If a Notice Packet is re-mailed less than
4 fifteen (15) days prior to the Response Deadline, the response date for disputes will be extended an
5 additional fifteen (15) days.

6 54. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the
7 requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The
8 Settlement Administrator will mail the Class Member a cure letter within three (3) business days of
9 receiving the defective submission to advise the Class Member that his or her submission is defective
10 and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have
11 until (a) the Response Deadline or (b) fifteen (15) calendar days from the date of the cure letter,
12 whichever date is later, to postmark or fax a revised Request for Exclusion. If the revised Request for
13 Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

14 55. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
15 Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the Settlement
16 Administrator within the Response Deadline. In the case of Requests for Exclusion that are mailed to the
17 Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request
18 for Exclusion has been timely submitted. If a Notice Packet is re-mailed less than fifteen (15) days prior
19 to the Response Deadline, the response date for opt-outs will be extended an additional fifteen (15) days.
20 If a question is raised about the authenticity of a signed Request for Exclusion, the Settlement
21 Administrator will have the right to demand additional proof of the Class Member's identity.

22 A Non-Participating Class Member will not participate in or be bound by the settlement and the
23 Judgment, except that a PAGA Member will still be paid their allocation of the PAGA Fund and will
24 remain bound by the release of the Released PAGA Claims regardless of their request for exclusion.
25 Defendants will remain free to contest any claim brought by any Class Member that would have been
26 barred by this Settlement Agreement, and nothing in this Settlement Agreement will constitute or be
27 construed as a waiver of any defense Defendants have or could assert against such a claim. Persons who
28 submit a Request for Exclusion shall not be permitted to file objections to the settlement or appear at the

Final Approval Hearing to voice any objections to the settlement.

55(a) Report. Not later than ten (10) calendar days after the deadline for submission of Requests for Exclusion, the Settlement Administration will provide Class Counsel and Defendant's Counsel with a complete and accurate list of all Participating Class Members and all non-Participating Class Members.

56. Escalator. If the number of employees covered by the Settlement is greater than Two Hundred Twenty Two (222), then Defendants will proportionally increase the Gross Settlement Amount according to the following formula: $\text{Proportionally Increased Gross Settlement Amount} = \text{Total Number of Employees} \div 222 \times \$200,000$.

57. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Class Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the Settlement.

58. Releases by Participating Class Members. Upon the Funding Date, and except as to such rights or claims as may be created by this Settlement Agreement, each Participating Class Member, together and individually, on their behalf and on behalf of their respective heirs, executors, administrators, agents, successors, assigns, representatives, and attorneys, shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the Released Class Claims arising during the Class Period.

59. Releases by PAGA Members. Upon the Funding Date, and except as to such rights or claims as may be created by this Settlement Agreement, each PAGA Member, together and individually, on their behalf and on behalf of their respective heirs, executors, administrators, agents, successors, assigns, representatives, and attorneys, shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the Released PAGA Claims during the PAGA Period.

60. Defendants' Right to Rescind. Defendants will have, in their sole discretion, the right to void and withdraw from the Settlement if, at any time prior to Final Approval, Ten Percent (10%) or

1 more of Class Members opt out of the settlement. Defendants must exercise this right of rescission in
2 writing to Class Counsel within fourteen (14) calendar days after the Response Deadline. If the option to
3 rescind is exercised, then Defendants will be solely responsible for all Settlement Administration Costs
4 incurred to the date of rescission. However, the Parties will have no further obligations under the
5 settlement, including any obligation by Defendants to pay the Gross Settlement Amount, or any amounts
6 that otherwise would have been owed under this Settlement Agreement,

7 61. Objection Procedures. To object to the Settlement Agreement, a Class Member may fax,
8 email, or mail a valid Notice of Objection to the Settlement Administrator on or before the Response
9 Deadline, or appear in person at the Final Approval Hearing. Class Members who fail to object either by
10 submitting a valid Notice of Objection or appearing in person at the Final Approval Hearing will be
11 deemed to have waived all objections to the Settlement and will be foreclosed from making any
12 objections, whether by appeal or otherwise, to the Settlement Agreement. At no time will any of the
13 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written
14 objections to the Settlement Agreement or appeal from the final approval order and judgment. Class
15 Counsel will not represent any Class Members with respect to any such objections to this Settlement. If a
16 Class Member timely submits both a Notice of Objection and a Request for Exclusion, the Request for
17 Exclusion will be given effect and considered valid, the Notice of Objection shall be rejected, and the
18 Class Member shall not participate in or be bound by the Settlement. Class Members who do not submit
19 written objections or appear at the Final Approval Hearing to explain their objection(s) shall be deemed
20 to have waived any objections and shall be foreclosed from making any objections (whether by appeal or
21 otherwise) to the Settlement Agreement.

22 62. Certification Reports Regarding Individual Settlement Payment Calculations. The
23 Settlement Administrator will provide Defendants' counsel and Class Counsel a weekly report that
24 certifies the number of Class Members who have submitted valid Requests for Exclusion or objections to
25 the Settlement, any re-mailings of the Notice Packet, and whether any Class Member has submitted a
26 challenge to any information contained in their Notice Packet. Additionally, the Settlement
27 Administrator will provide to counsel for both Parties any updated reports regarding the administration
28 of the Settlement Agreement as needed or requested.

63. Distribution Timing of Individual Settlement Payments. Within ten (10) calendar days of the Funding Date, the Settlement Administrator will issue payments to: (a) Participating Class Members and PAGA Members; (b) the Labor and Workforce Development Agency; (c) Plaintiff; and (d) Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the Settlement.

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

65. Certification of Completion. Upon completion of administration of the Settlement, and no later than ten days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties, which will include a final report on the disbursements of all funds from the Gross Settlement Amount.

66. Treatment of Individual Settlement Payments. All Individual Settlement Payments will be allocated as follows: (a) Twenty Percent (20%) of each Individual Settlement Payment will be allocated as wages for which IRS Forms W-2 will be issued (i.e., the "Wage Portion"); and (b) Eighty (80%) will be allocated as non-wages for which IRS Forms 1099-MISC will be issued (i.e., the "Non-Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings, and the Non-Wage Portion shall not be subject to wage withholdings.

67. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will be responsible for issuing to Plaintiff, Participating Class Members, PAGA Members, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes and penalties to the appropriate government authorities in a timely manner.

68. Tax Liability. Defendants make no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff and Participating Class Members are not relying on

1 any statement, representation, or calculation by Defendants or by the Settlement Administrator in this
2 regard. Class Members and Class Counsel understand and agree that they shall be responsible for the
3 payment of all taxes and penalties assessed on the payments specified herein, and shall hold the Parties,
4 Class Counsel, and Defendant's Counsel free and harmless from and against any claims resulting from
5 treatment of such payments as non-taxable, including the treatment of such payments as not subject to
6 withholding or deduction for payroll and employment taxes.

7 69. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
8 OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS
9 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY")
10 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
11 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES
12 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
13 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED
14 OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
15 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
16 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS
17 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
18 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
19 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
20 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
21 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
22 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
23 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
24 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
25 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER
26 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
27 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
28 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS

1 AGREEMENT.

2 70. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
3 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
4 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
5 action or right herein released and discharged in this Settlement.

6 71. Nullification of Settlement Agreement. In the event that: (a) the Court does not finally
7 approve the Settlement as provided herein; or (b) the Settlement does not become final for any other
8 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null
9 and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will
10 likewise be treated as void from the beginning, and this Settlement Agreement and any documents
11 related to it shall not be used by any Class Member or Class Counsel to support any claim or request for
12 class certification in the Action, and shall not be used in any other civil, criminal, or administrative action
13 against Defendants or any of the other Released Parties. In the event an appeal is filed from the order
14 granting final approval or Judgment, or any other appellate review is sought, administration of the
15 Settlement shall be stayed pending final resolution of the appeal or other appellate review. Any fees
16 incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from the
17 Judgment, or any other appellate review, shall be split 50/50 by Plaintiff and Defendants and paid to the
18 Settlement Administrator.

19 72. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to request
20 the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order
21 for: (a) conditional certification of the Settlement Class for settlement purposes only, (b) preliminary
22 approval of the proposed Settlement Agreement, (c) setting a date for a final fairness hearing. The
23 Preliminary Approval Order will provide for the Notice Packet to be sent to all Class Members as
24 specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this
25 Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed
26 Notice of Class Action Settlement, attached as Exhibit A. Class Counsel will be responsible for drafting
27 all documents necessary to obtain preliminary approval. The Parties agree that provisional certification of
28 the class is for settlement purposes only and is in no way an admission by Defendants in the Action or in

1 any other proceeding that class certification is proper. At the hearing on the Motion for Preliminary
2 Approval, the Parties will jointly appear and support the granting of the motion. Should the Court decline
3 to preliminarily approve material aspects of the Settlement (including but not limited to the scope of
4 release to be granted by Participating Class Members or the binding effect of the Settlement on
5 Participating Class Members), the Parties shall work together in good faith to address any concerns
6 raised by the Court and propose a revised Settlement for the Court's approval.

7 73. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
8 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the
9 Court's permission, a final fairness hearing will be conducted to determine the Final Approval of the
10 Settlement Agreement along with the amounts properly payable for: (a) Attorneys' Fees and Costs; (b)
11 the Class Representative Enhancement Payment; (c) Individual Settlement Payments; (d) the Labor and
12 Workforce Development Agency Payment; (e) all Settlement Administration Costs. The final fairness
13 hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class Counsel
14 will be responsible for drafting all documents necessary to obtain final approval. Class Counsel will also
15 be responsible for drafting the attorneys' fees and costs application to be heard at the final approval
16 hearing. If the Court does not grant final approval of the Settlement or grants final approval conditioned
17 on any material change to the Settlement (including, but not limited to, the scope of release to be granted
18 by Participating Class Members), then the Parties shall work together in good faith to address any
19 concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an
20 award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the PAGA
21 Fund, Class Representative Enhancement Payments, or the Attorneys' Fees and Costs, will not constitute
22 a material modification to the Settlement within the meaning of this paragraph.

23 Additionally, no later than ten (10) days before the date by which the Plaintiff file the motion for
24 final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the
25 Court a declaration of due diligence setting forth its compliance with its obligations under this Settlement
26 Agreement and detailing the Requests for Exclusion it received (including the numbers of valid and
27 deficient Requests) and objections received. Prior to the final approval hearing, the Settlement
28 Administrator will supplement its declaration of due diligence if any material changes occur from the

1 date of the filing of its prior declaration.

2 74. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
3 Court or after the final fairness hearing, the Parties will present the Judgment to the Court for its
4 approval. After entry of the Judgment, the Court will have continuing jurisdiction under CCP Section
5 664.6 solely for purposes of addressing: (a) the interpretation, implementation, and enforcement of the
6 terms of the Settlement and all orders and judgments entered in connection therewith, (b) Settlement
7 administration matters, and (c) such post-Judgment matters as may be appropriate under court rules or
8 applicable law or as set forth in this Settlement Agreement. Further, upon the Court's final approval of
9 the Settlement, the Settlement Administrator shall post a copy of the Judgment on its website within
10 seven (7) calendar days of entry of the Judgment.

11 75. Release by Plaintiff. Plaintiff's release will be limited to those claims alleged in the
12 operative Complaint and include the same claims released by Class Members and PAGA Members.
13 Plaintiff acknowledges that he may discover facts or law different from, or in addition to the facts or law
14 that he knows or believes to be true with respect to the claims and matters released by way of this
15 Settlement Agreement and agrees, nonetheless, that this Settlement Agreement and the releases
16 contained in it shall be and remain effective in all respects, notwithstanding such different or additional
17 facts or the discovery of them. The Parties declare and represent that they intend this Settlement
18 Agreement to be complete and not subject to any claim of mistake, and that the releases herein express
19 full and complete releases, and that they intend that the releases herein shall be final and complete.

20 76. Release by Class Counsel. Upon full funding of the Gross Settlement Amount, and
21 except as otherwise provided by this Settlement Agreement and the Judgment, Class Counsel and any
22 counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against
23 Defendants arising from or related to the Action.

24 77. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the
25 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
26 herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

27 78. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
28 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements,

1 representations, warranties, covenants or inducements may be deemed binding on the Parties. The
2 Parties expressly recognize California Civil Code Section 1625 and California Code of Civil Procedure
3 Section 1856(a), which provide that a written agreement is to be construed according to its terms and
4 may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral
5 or written representations or terms will modify, vary or contradict the terms of this Settlement
6 Agreement.

7 79. Amendment or Modification. No amendment, change, or modification to this Settlement
8 Agreement will be valid unless in writing and signed, either by the Parties or their counsel, and approved
9 by the Court.

10 80. 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 Settlement
12 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
13 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
14 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each
15 other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to
16 reach agreement on the form or content of any document needed to implement the Settlement, or on any
17 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties
18 may seek the assistance of the Court to resolve such disagreement. The Parties have cooperated in the
19 drafting and preparation of this Agreement. Hence, in any construction made of this Agreement, the
20 same shall not be construed against any of the Parties.

21 81. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
22 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

23 82. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
24 will be governed by and interpreted according to the laws of the State of California.

25 83. Execution and Counterparts. This Settlement Agreement is subject only to the execution
26 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
27 executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned
28 copies of the signature page, will be deemed to be one and the same instrument provided that counsel for

1 the Parties will exchange between themselves signed counterparts. Any executed counterpart will be
2 admissible in evidence to prove the existence and contents of this Settlement Agreement.

3 84. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
4 Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this
5 Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account
6 all relevant factors, present and potential. The Parties further acknowledge that they are each represented
7 by competent counsel and that they have had an opportunity to consult with their counsel regarding the
8 fairness and reasonableness of this Settlement.

9 85. Invalidity of Any Provision. Before declaring any provision of this Settlement
10 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
11 possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement
12 valid and enforceable.

13 86. Waiver of Certain Appeals. Provided that the Judgment is consistent with the terms and
14 conditions of this Settlement Agreement, Plaintiff and Participating Class Members who did not timely
15 submit an objection to the Settlement, Defendants, and their respective counsel hereby agree to: (1)
16 waive any and all rights to appeal from the Judgment, including all rights to any post-judgment
17 proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion
18 for new trial, and any extraordinary writ; and (2) stipulate to class certification for purposes of this
19 Settlement only; except, however, that Plaintiff or Class Counsel may appeal any reduction to the
20 Attorneys' Fees and Costs below the amount they request from the Court, and either party may appeal
21 any court order that materially alters the Settlement Agreement's terms. The waiver of appeal does not
22 include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment
23 proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement
24 (including making payments under the Settlement) will be suspended until such time as the appeal is
25 finally resolved and the Judgment becomes final.

26 87. Vacating, Reversal, or Material Modification of Judgment on Appeal or Review. If,
27 after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or
28 application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material

1 modification to the Settlement (including, but not limited to, the scope of release to be granted by
2 Participating Class Members), and that Court's decision is not completely reversed and the Judgment is
3 not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to
4 address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of
5 the Court not later than fourteen court days after the reviewing Court's decision vacating, reversing, or
6 materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's
7 award of the Class Representative Enhancement Payments or the Attorneys' Fees and Costs will not
8 constitute a vacation, reversal, or material modification of the Judgment within the meaning of this
9 paragraph, provided that Defendants' obligation to make payments under this Settlement will remain
10 limited by the Gross Settlement Amount.

11 88. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to
12 class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not
13 approved, the stipulation to certification will be void. The Parties further agree that certification for
14 purposes of the Settlement is not an admission that class action certification is proper under the standards
15 applied to contested certification motions and that this Settlement Agreement will not be admissible in
16 this or any other proceeding as evidence that either (a) a class action should be certified or (b) Defendants
17 are liable to Plaintiff or any Class Member, other than according to the Settlement's terms. If, for any
18 reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants
19 reserve the right to contest certification of any class for any reasons, and Defendants reserve all available
20 defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any
21 grounds available and to contest Defendants' defenses.

22 89. Non-Admission of Liability. This Settlement Agreement represents a compromise and
23 settlement of highly disputed claims. Nothing in this Settlement Agreement is intended or should be
24 construed as an admission by Defendants that any of the allegations in the Operative Complaint have
25 merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed
26 as an admission by Plaintiff that Defendants' defenses in the Action have merit. In entering into this
27 Settlement, Defendants do not admit, and specifically deny, that they violated any federal, state, or local
28 law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable

1 laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in
2 any misrepresentation or deception; or engaged in any other unlawful conduct with respect to their
3 employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the
4 negotiations connected with it, is intended to be or should be construed as an admission or concession by
5 Defendants of any such violations or failures to comply with any applicable law. Except as necessary in
6 a proceeding to enforce the terms of this Settlement, this Settlement Agreement and its terms and
7 provisions will not be offered or received as evidence in any action or proceeding to establish any
8 liability or admission on the part of Defendants or to establish the existence of any condition constituting
9 a violation of, or a non-compliance with, federal, state, local or other applicable law. The Parties have
10 entered into this settlement with the intention of avoiding further disputes and litigation with the
11 attendant inconvenience, expenses and risks.

12 89(a) Whether or not the Judgment becomes Final, neither the Settlement, this
13 Settlement Agreement, any document, statement, proceeding or conduct
14 related to the Settlement or the Settlement Agreement, nor any reports or
15 accounting of those matters, will be (i) construed as, offered or admitted in
16 evidence as, received as, or deemed to be evidence for any purpose adverse
17 to Plaintiff or Defendants or any of the Released Parties, including, but not
18 limited to, evidence of a presumption, concession, indication or admission
19 by any of the Released Parties of any liability, fault, wrongdoing, omission,
20 concession or damage; or (ii) disclosed, referred to or offered in evidence
21 against any of the Released Parties, in any further proceeding in the Action,
22 or any other civil, criminal or administrative action or proceeding except for
23 purposes of effectuating the Settlement pursuant to this Settlement
24 Agreement.

25 89(b) This section and all other provisions of this Settlement Agreement
26 notwithstanding, any and all provisions of this Settlement Agreement may
27 only be admitted in evidence and otherwise used in any and all proceedings
28 for the limited purpose of enforcing any or all terms of this Settlement

1 Agreement or defending any claims released or barred by this Settlement
2 Agreement.

3 90. No Public Comment: The Parties and their counsel agree that they will not issue any
4 press releases, initiate any contact with the press, respond to any press inquiry, or have any
5 communication with the press about the fact, amount or terms of the Settlement. Prior to the date of the
6 filing of the motion for preliminary approval, Plaintiff and Class Counsel will not initiate any contact
7 with Settlement Class Members or anyone else about the settlement, except that: (a) Class Counsel, if
8 contacted by a Class Member, may respond that a settlement has been reached and that the details will be
9 communicated in a forthcoming Court-approved notice; and (b) Plaintiff, if contacted by a Class
10 Member, may respond only that the Class Member should contact Class Counsel. If Plaintiff or Class
11 Counsel or Defendants or Defendants' Counsel receives an inquiry about the settlement from the media,
12 they may respond only after the Motion for Preliminary Approval has been filed and only by confirming
13 the accurate terms of the Settlement. This provision shall not prohibit Class Counsel from
14 communicating with Class Members after preliminary approval is granted for the sole purpose of
15 administering the Settlement. This provision also does not limit Class Counsel from complying with
16 ethical obligations or from posting court-filed documents on their website for viewing by Class Members
17 after preliminary approval. The motions for approval, the motion for attorneys' fees and the Judgment
18 shall be posted on a website as set forth in the Class Notice. Nothing in this provision shall prevent
19 Defendants or Plaintiff from making any required disclosures. If Plaintiff or Class Counsel violate this
20 paragraph, including without limitation, by making a disclosure to any non-party that (a) a settlement has
21 been reached; or (b) any of the terms of the Settlement, before the Court has preliminarily approved the
22 settlement, Defendants may rescind the settlement, rendering it null and void.

23 91. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and
24 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed,
25 they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person
26 to disclose, disseminate or publicize, any of the terms of the Settlement Agreement directly or indirectly,
27 specifically or generally, to any person, corporation, association, government agency, or other entity
28 except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this

1 Settlement Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report
2 income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response
3 to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to
4 immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such
5 information. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree not to, directly
6 or indirectly, initiate any conversation or other communication, before the filing of the Motion for
7 Preliminary Approval, any with third party regarding this Settlement Agreement or the matters giving
8 rise to this Settlement Agreement except to respond only that “the matter was resolved,” or words to that
9 effect. This paragraph does not restrict Class Counsel’s communications with Class Members in
10 accordance with Class Counsel’s ethical obligations owed to Class Members.

11 92. The Parties Will Not Encourage Class Members to Opt Out or Object. The Parties
12 separately agree that they and their respective counsel and employees will not encourage any Class
13 Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph
14 shall be construed to restrict Class Counsel’s ability to communicate with, and to advise, Class Members
15 in accordance with Class Counsel’s ethical obligations owed to Class Members.

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

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

22 95. Enforcement Actions. In the event that one or more of the Parties institutes any legal
23 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
24 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
25 entitled to recover from the unsuccessful Party or Parties reasonable attorneys’ fees and costs, including
26 expert witness fees incurred in connection with any enforcement actions.

27 96. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
28 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed

1 more strictly against one party than another merely by virtue of the fact that it may have been prepared
2 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
3 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

4 97. Representation By Counsel. The Parties acknowledge that they have been represented
5 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
6 that this Settlement Agreement has been executed with the consent and advice of counsel. Further,
7 Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

8 98. All Terms Subject to Final Court Approval. All amounts and procedures described in
9 this Settlement Agreement herein will be subject to final Court approval.

10 99. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
11 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
12 Settlement Agreement.

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

16 101. Binding Agreement. The Parties warrant that they understand and have full authority to
17 enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully
18 enforceable and binding on all Parties and all Class Members, subject to the terms and conditions hereof
19 and the Court's approval, and agree that it will be admissible and subject to disclosure in any proceeding
20 to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply
21 under federal or state law.

22 102. Binding Nature of Notice of Class Action Settlement. It is agreed that because the Class
23 Members are so numerous, it is impossible or impractical to have each Class Member execute the
24 Settlement Agreement. The Class Notice shall advise all Class Members of the binding nature of the
25 Settlement, and the release of Released Claims and shall have the same force and effect as if this
26 Settlement Agreement were executed by each Class Member.

27 103. Stay of Litigation. The Parties agree that upon the execution of this Settlement
28 Agreement the litigation shall be stayed, except to effectuate the terms of this Settlement Agreement.

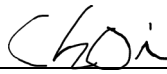
1 The Parties further agree that upon the signing of this Settlement Agreement that pursuant to CCP
2 Section 583.330 to extend the date to bring a case to trial under CCP Section 583.310 for the entire
3 period of this settlement process from the mediation with until the earlier of the Effective Date or the date
4 this Settlement Agreement shall not longer be of any force or effect.

5 104. Use and Return of Documents and Data. All originals, copies, and summaries of
6 documents and data provided to Class Counsel by Defendants in connection with the mediation or other
7 settlement negotiations in this matter may be used only with respect to this Settlement, and no other
8 purpose, and may not be used in any way that violates any existing contractual agreement, statute, or
9 rule. Within thirty days after the Defendants fully funds the Gross Settlement Amount, Class Counsel
10 will return or destroy and confirm in writing to Defendants the destruction of all such documents and
11 data.

12
13 **READ CAREFULLY BEFORE SIGNING**

14
15 **PLAINTIFF**

16 Dated: 03 / 19 / 2025


17 Koangwoo Choi

18
19 **DEFENDANTS**

20 Dated: _____

21 *Print Name of Authorized Signatory*
22 ALLFO One Korea, LLC and ALL FO ONE Korea
Co., Ltd.

23 **APPROVED AS TO FORM**

24 **CROSNER LEGAL P.C.**

25 Dated: 03/18/2025

26 By: 
Brandon Brouillette

27 Attorneys for Plaintiff Koangwoo Choi
28

1 The Parties further agree that upon the signing of this Settlement Agreement that pursuant to CCP
2 Section 583.330 to extend the date to bring a case to trial under CCP Section 583.310 for the entire
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10 will return or destroy and confirm in writing to Defendants the destruction of all such documents and
11 data.

12
13 **READ CAREFULLY BEFORE SIGNING**

14
15 **PLAINTIFF**

16 Dated: _____

Koangwoo Choi

17
18
19 **DEFENDANTS**

20 Dated: 3-24-2025

Print Name of Authorized Signatory
ALLFO One Korea, LLC and ALL FO ONE Korea
Co., Ltd.

21
22
23 **APPROVED AS TO FORM**

24 **CROSNER LEGAL P.C.**

25 Dated: _____

26 By: _____
Brandon Brouillette

27 Attorneys for Plaintiff Koangwoo Choi
28

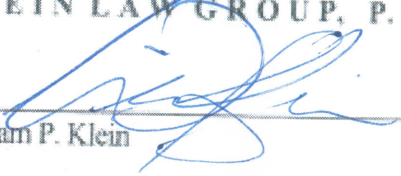
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Dated:

3/24/25

KLEIN LAW GROUP, P.C.

By:


William P. Klein

Attorneys for Defendants ALLFO One Korea, LLC
and ALL FO ONE Korea Co., Ltd.

EXHIBIT

2



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

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

March 15, 2023

VIA PAGA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

Joonho Park
Agent for Service of Process for:
Allfo One Korea, LLC
595 E El Camino Real
Sunnyvale, CA 94087

Allfo One Korea, LLC
Attn: Human Resources/ Legal Department
595 E El Camino Real
Sunnyvale, CA 94087

Kyung Sik Jung
Agent for Service of Process for:
All Fo One Korea Co., Ltd.
595 E El Camino Real
Sunnyvale, CA 94087

All Fo One Korea Co., Ltd.
Attn: Human Resources / Legal
Department
595 E El Camino Real
Sunnyvale, CA 94087

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Allfo One Korea, LLC
and All Fo One Korea Co., Ltd.
Date: March 15, 2023
Subject: *Koangwoo Choi v. Allfo One Korea, et al.*

Introduction

This office represents COMPLAINANT, Koangwoo Choi (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Allfo One Korea, LLC and All Fo One Korea Co., Ltd. (hereinafter, these entities and their managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

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

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

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

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

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

COMPLAINANT, on behalf of COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.6, 351, 353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

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

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

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

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had

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

Individual Liability Under Labor Code § 558.1

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

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

General Information

EMPLOYER owns, operates or otherwise manages a restaurant business EMPLOYER owns, operates and/or otherwise manages a venue/facilities located in Sunnyvale, California, including but not limited to a full-service restaurant and bar, operating under the name(s) 10 Butchers, 10Butchers Korean BBQ and/or 10 Butchers Korean BBQ and/or 10 Butchers Korean BBQ and Bar¹. Although EMPLOYER may operate a successful business or have a noble mission, EMPLOYER does not comply with California's labor laws.

¹ See <https://www.10butchers.net/> (Last visited on March 14, 2023)

COMPLAINANT was employed by EMPLOYER as a non-exempt EMPLOYEE. COMPLAINANT worked for EMPLOYER as a server and/or similar title(s) from in or around March 2021 through on or around October 6, 2022, at EMPLOYER's restaurant venue/facilities located in Sunnyvale, California, which operated/operates under the name(s) 10 Butchers, 10Butchers Korean BBQ and/or 10 Butchers Korean BBQ and/or 10 Butchers Korean BBQ and Bar. COMPLAINANT regularly worked at five- and one-half hours (5 ½) to nine (9) hours per day, at least five (5) to six (6) days per week. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked. COMPLAINANT also earned tips.

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

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

Labor Code Violations

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

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

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

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

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

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

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

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

Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

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

Time and Pay Records

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

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

Personnel Records

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

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

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, COMPLAINANT sent a written request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to timely produce complete records within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

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

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

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

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

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

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-

minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES had their meal periods interrupted and/or cut short and/or were forced to take them late (i.e. after working more than five (5) hours) due to the need to assist customers, prepare food, clean and/or perform other work tasks.

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

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

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

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

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

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

Moreover, based on information and belief, EMPLOYER failed to keep accurate records of the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, to the extent meal period were recorded,

EMPLOYER illegally rounded the start and end times of purported meal periods resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

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

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

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

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

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

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

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

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have any sort of compliant rest period policy in practice. For example, COMPLAINANT consistently had to work through part or all of his rest periods due to the need to assist customers and/or complete other work tasks. In fact, COMPLAINANT was rarely, if ever, afforded a ten-minute, off duty, rest period during the relevant period. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES’ rest periods were interrupted, cut short, on duty, restricted to work premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due

to commentary from supervisors/managers pressuring them to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

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

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

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

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

It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages. Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale. Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful. Labor Code section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” The applicable Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

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

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

depriving COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER's policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For example, at least once per month, EMPLOYER required COMPLAINANT to participate in work-related meetings off-the-clock. Each off-the-clock work meeting lasted at least approximately thirty to sixty minutes. EMPLOYER did not compensate COMPLAINANT at all for the time he was required to spend in these mandated work meetings that occurred at least once per month, resulting in the failure to compensate COMPLAINANT for all time worked, and the significant underpayment of wages owed to COMPLAINANT. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also required to participate in work-related meetings and/or complete other work tasks off the clock, resulting in the EMPLOYER's failure to pay NON-EXEMPT AGGRIEVED EMPLOYEES for all time worked and the underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Also, based on information and belief, EMPLOYER required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to arrive at work at least five (5) to ten (10) minutes prior to the start of their scheduled shift start times, to perform off-the-clock work tasks so as to be ready to work at the start of their scheduled shift start times. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not compensated for time spent starting/preparing, retrieving and/or cleaning equipment, time spent bestowing personal items in employee lockers and/or storage area and/or time spent donning protective equipment/safety gear and/or uniforms/work clothing (e.g., gloves, hairnets, aprons, hats, and/or face masks).

Based on information and belief, EMPLOYER did not compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for time spent donning and doffing protective equipment/safety gear and/or uniforms/work clothing (e.g., gloves, hairnets, aprons, hats, and/or face masks) during meal periods, before the start of a scheduled shift, and/or after completing a scheduled shift, resulting in off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also pressured to complete at least some of their work tasks off-the-clock in order to meet EMPLOYER's goals and expectations. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also required to complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or messages they received to their personal phones and were required to respond to, including but not limited to, communications from supervisors regarding scheduling and/or other work tasks, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Moreover, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES who opened their work location(s) were required to first unlock the doors, turn on all the lights in the restaurant/facility and/or deactivate

the alarm before clocking in for work, resulting in pre-shift off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on further information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES in charge of closing their location(s) were required to first clock out for their shifts before enabling the alarm, turning off all the lights in the facility and/or locking the doors. This resulted in additional off-the-clock post-shift work that was not compensated and resulted in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

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

Based on further information and belief, EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. For example, EMPLOYER's pay records and/or wage statements issued to COMPLAINANT evidence time rounding to the at least the nearest quarter, half and/or whole hour. For instance, EMPLOYER's pay records and/or wage statement for COMPLAINANT for pay date January 21, 2022 shows precisely 80.00 regular hours worked; EMPLOYER's pay records and/or wage statement for COMPLAINANT for pay date February 18, 2022 shows exactly 79.00 regular hours worked; EMPLOYER's pay records and/or wage statement for COMPLAINANT for pay date March 4, 2022 shows precisely 80.00 regular hours worked; EMPLOYER's pay records and/or wage statement for COMPLAINANT for pay date April 15, 2022 shows precisely 80.00 regular hours worked; EMPLOYER's pay records and/or wage statement for COMPLAINANT for pay date May 13, 2022 also shows precisely 80.00 regular hours worked. Based on information and belief, EMPLOYER rounded COMPLAINANT's hours worked to at least the nearest quarter, half and/or whole hour during most if not all pay periods during the relevant period, resulting in the underpayment of wages owed to COMPLAINANT. Based on further information, EMPLOYER also rounded other NON-EXEMPT AGGRIEVED EMPLOYEES total hours worked to at least the nearest quarter, half and/or whole hour, during most if not all pay periods during the relevant period, resulting in the substantial underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER's failure to pay for all time worked by virtue of its time-rounding practices resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

EMPLOYER's failure to pay for all time worked by virtue of its time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages

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

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

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

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

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

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

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

Based on information and belief, EMPLOYER failed and continues to fail to pay premium wage rate for all hours worked beyond eight (8) hours in a day and/or beyond forty (40) hours in a week. Based on information and belief, EMPLOYER failed and continues to fail to pay premium wage rates for all hours worked beyond eight (8) hours in a workday and/or beyond forty (40) hours in a workweek. For example, EMPLOYER failed to pay COMPLAINANT wages including but not limited to, all overtime wages, for hours worked, including but not limited to, all recorded hours worked in excess of eight (8) hours in a workday and/or over forty hours in a workweek.

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

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

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

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

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last

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

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

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

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

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

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

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

failed to display the proper overtime rate(s) for each hour of overtime worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

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

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

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

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

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

Reporting Time Pay Violations:

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

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours

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

nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage. (B) If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting

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

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

Failure to Provide Suitable Resting Facilities: Per Section 13 of all applicable IWC Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

EMPLOYER's restaurant/locations is of such a layout and design, that there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. EMPLOYER could have provided NON-EXEMPT AGGRIEVED EMPLOYEES with a resting facility within the restaurant with reasonable or no modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. an adequate breakroom). As a result, NON-EXEMPT AGGRIEVED EMPLOYEES were forced to adjust to areas not conducive to resting, including but not limited to leaning up against the restaurant wall.

EMPLOYER did not provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable resting facilities during their hours of work, particularly during meal and/or rest periods. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not allowed to sit in the restaurant during working hours, including but not limited to, during rest periods, nor were they provided with a break room and/or adequate break room. Moreover, EMPLOYER did not inform NON-EXEMPT AGGRIEVED EMPLOYEES of their rights to suitable resting facilities under California law.

EMPLOYER's failure to provide suitable resting facilities to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continues to violate the applicable Wage Order, including but not limited to IWC Wage Order 5-2001, section 13(B) and the California Labor Code, including but not limited to section 1198.

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

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

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

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

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

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

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

EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, EMPLOYER failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting EMPLOYER to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁹

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

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

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

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

Violation of Labor Code section 351 and 353: Labor Code Section 351 prohibits employers and their agents from sharing in or keeping any portion of a gratuity left for or given to one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353 mandates employers keep accurate records of all gratuities received.

Based on information and belief, EMPLOYER failed to ensure that NON-EXEMPT AGGRIEVED EMPLOYEES fully received the gratuities left for them by patrons, in that EMPLOYER and its agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor Code Section 351. For example, at times EMPLOYER kept some portion of the tips to which COMPLAINANT was entitled claiming deduction of tax from the tips. Based on further information and belief, EMPLOYER also failed/fails to keep accurate records of all tips received, in violation of Labor Code Section 353.

Based on information and belief, EMPLOYER has a policy and/or practice of intentionally withholding and/or interfering with NON-EXEMPT AGGRIEVED EMPLOYEES' and/or EXEMPT AGGRIEVED EMPLOYEES' earned tips by withholding portions of their tips by including but not limited to, claiming tax deductions and/or otherwise unlawfully withholding such earned tips, in violation of California law, including but not limited to, Labor Code sections 221 and/or 351.

Pursuant to PAGA, EMPLOYER is liable for penalties of \$100 per pay period payable to each NON-EXEMPT AGGRIEVED EMPLOYEE for the first violation of Labor Code Section 351 and 353 they experienced within the statutory period, and \$200 per pay period for each additional violation.

Unlawful Deductions: Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee." Based on information and belief EMPLOYER made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES paychecks, including but not limited to, from paychecks of employees correctly classified as exempt, during the relevant period, including but not limited to, deducting wages for purported overpayments from previous pay periods and/or unlawfully deducting from wages earned tips claiming tax deductions and/or unlawfully deducting customer credit card processing fees or costs charged to EMPLOYER from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT

AGGRIEVED EMPLOYEES' final paychecks. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects EMPLOYER to civil penalties under Labor Code Section 2699. For example, based on information and belief, EMPLOYER has a policy and/or practice of intentionally withholding and/or interfering with NON-EXEMPT AGGRIEVED EMPLOYEES' and/or EXEMPT AGGRIEVED EMPLOYEES' earned tips by withholding portions of their tips by including but not limited to, claiming tax deductions and/or otherwise unlawfully withholding such earned tips, in violation of California law, including but not limited to, Labor Code sections 221 and/or 351.

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

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

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

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

Failure to Pay Vested Vacation/Paid Time Off:

California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and belief, EMPLOYER had and continues to have a uniform policy and practice of failing to allow NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off to NON-EXEMPT

AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

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

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

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES’ final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates. For example, EMPLOYER did not furnish COMPLAINANT with his final paycheck until at least three days following COMPLAINANT’s termination, and COMPLAINANT’s late final paycheck was devoid of all wages owed, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

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

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

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

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

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

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

Based on information and belief, EMPLOYER shifted its costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, purchase and/or maintenance of uniforms/work clothing/shoes/protective/safety gear and/or the use of NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ personal mobile phone and data usage for work related purposes including but not limited to receiving and responding to work related messages and/or phone calls. For example, EMPLOYER required COMPLAINANT to purchase and maintain his own uniforms/work clothing, including but not limited to, pants/slacks, socks and shoes of a particular brand and/or specified color as mandated by EMPLOYER, but COMPLAINANT was not reimbursed by EMPLOYER in any way for the expenses he incurred in connection therewith.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for

work related purposes and/or the cost of purchasing and/or maintaining work uniforms/clothing.

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

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

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

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

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

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

requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

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

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

Unlawful Inquires into Criminal History

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

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

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

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

Conclusion

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

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

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

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

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

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

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink, appearing to read "Kiara Bramasco". The signature is fluid and cursive, with the first name "Kiara" being more prominent than the last name "Bramasco".

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

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

Wed, Mar 15, 2023 at 10:39 AM

3/15/2023

LWDA Case No. LWDA-CM-942112-23
Law Firm : Crosner Legal, PC
Plaintiff Name : Koangwoo Choi
Employer: Allfo One Korea, LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT

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Jessica Ball <jessica@crosnerlegal.com>

Thank you for your Court Complaint Submission.

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
To: jessica@crosnerlegal.com

Thu, Sep 21, 2023 at 12:40 PM

09/21/2023 12:40:14 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Complaint

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT

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