

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Ashley Avery
and Proposed Class Counsel

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

ASHLEY AVERY, on behalf of herself and
all "aggrieved employees" pursuant to
Labor Code § 2698 *et seq.*,

Plaintiff,

v.

TAKLAK INC., a California corporation,
and DOES 1 through 10, inclusive,
Defendants.

CASE NO: CVCV23-00479

Assigned to the Hon. Stephen W. Berrier, Dept. 4

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT AND FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT**

Date: March 10, 2025

Time: 10:00 a.m.

Dept.: 4

Complaint Filed: May 15, 2023

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Ashley Avery (“Plaintiff”) and
4 proposed Class Counsel in this action. I have personal knowledge of the facts set forth herein and
5 if called as a witness to testify to them, I could and would do so competently.

6 **Education and Experience:**

7 2. I obtained my BS degree from the University California at Berkeley in 2003. I
8 majored in Business Administration at the Haas School of Business.

9 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
10 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
11 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my
12 studies on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

13 4. Until his retirement, I practiced law with my partner/father, Kenneth, at Gaines &
14 Gaines, APLC. My father practiced law in California for over 40 years, emphasizing litigation for
15 the vast majority of his career. Our current practice specializes in litigation, with an emphasis in
16 employment disputes like this one. Over 95% of our practice is devoted to complex employment
17 litigation.

18 5. My firm has represented employees in complex employment matters such as this
19 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
20 class counsel in dozens of class action matters since my admission to the Bar. A partial list of the
21 cases in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

22 **Factual and Procedural Background:**

23 6. On March 8, 2023, Plaintiff exhausted the pre-filing requirements of the Labor Code
24 Private Attorneys General Act of 2004 (“PAGA”).

25 7. On May 15, 2023, Plaintiff initiated her Action in the Yuba County Superior Court
26 by filing a representative action complaint, pursuant to PAGA, on behalf of herself and all
27 “aggrieved employees.”
28

1 8. As part of the approval of this Settlement, Plaintiff will file a First Amended
2 Complaint substantially in the form attached to the Settlement as **Exhibit B** which asserts claims
3 against Defendant for (1) Failure to Pay All Overtime and Sick Pay Wages Due (Labor Code §§
4 246, 510, 1194, And 1198; IWC Wage Order 7-2001); (2) Failure to Provide Rest Periods or
5 Compensation In Lieu Thereof (Labor Code § 226.7; IWC Wage Order 7-2001); (3) Failure to
6 Provide Meal Periods or Compensation In Lieu Thereof (Labor Code §§ 226.7 And 512; IWC
7 Wage Order 7-2001); (4) Knowing and Intentional Failure to Comply With Itemized Employee
8 Wage Statement Provisions (Labor Code § 226(a), (e)); (5) Failure to Timely Pay Wages Due at
9 Separation of Employment (Labor Code §§ 201-203); (6) Violation of Business And Professions
10 Code § 17200; and (7) Penalties Pursuant to Labor Code § 2699(f) for Violations of Labor Code
11 §§ 201, 202, 226(a), 226.7, 246, 510, 512, 1194, and 1198, and Pursuant to Labor Code § 2699(a)
12 for Violations of Labor Code §§ 226.3 and 558. To effectuate the class settlement of the Action,
13 Defendant does not oppose the filing of the First Amended Complaint for settlement purposes
14 only. As part of its order preliminarily approving the settlement, Plaintiff requests that the Court
15 approve the filing of the First Amended Complaint, and consents that Defendant not be required
16 to file a responsive pleading thereto.

17 9. Defendant denies any liability or wrongdoing of any kind whatsoever in connection
18 with the claims in the Action and further denies that, for any purpose other than settling this Action,
19 this Action is appropriate for class action or representative treatment.

20 10. The Class Representative contends that Defendant violated the California Labor
21 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
22 certification.

23 **Investigation and Settlement Discussions**

24 11. My office and I have conducted a thorough investigation into the facts and law
25 during the prosecution of this class action case, including the exchange of extensive informal
26 discovery, including but not limited to documents regarding Defendant's employment/workplace
27 policies in place during the applicable period and a sample of records relating to hours worked and
28 wages paid to Defendant's non-exempt employees during the relevant time periods, and the review

1 and verification of statistical data, financial data, and other facts and information provided by
2 Defendant. My office and I have also investigated the applicable law as applied to the facts
3 discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the
4 damages and other losses claimed by Plaintiff.

5 12. On January 17, 2024, the Parties participated in a full-day mediation with Jeffrey
6 Owensby, Esq., but were unable to reach a settlement of Plaintiff's wage and hour claims. After
7 exchanging and reviewing additional relevant documents and class data, on August 28, 2024, the
8 Parties participated in a full-day mediation with experienced wage and hour class action mediator
9 Judge Maria-Elena James (Ret.), which resulted in a settlement of all claims asserted in the current
10 PAGA complaint as well as class claims premised upon and arising from similar theories.

11 **Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**
12 **Litigation:**

13 13. Based on our independent investigation and evaluation, I am of the opinion that
14 settlement for the consideration and on the terms set forth in this Settlement Agreement is fair,
15 reasonable, and adequate and is in the best interest of the Settlement Class in light of all known
16 facts and circumstances, including the risk of significant delay, the risk the Settlement Class will
17 not be certified by the Court, and the defenses asserted by Defendant.

18 14. The Parties agree that the Settlement Class described herein may be certified for
19 settlement purposes only and that any motion for approval seeking, inter alia, certification of the
20 Settlement Class is for purposes of the settlement only. If for any reason the Settlement is not
21 approved, the certification will have no force or effect and will immediately be revoked. The
22 Parties further agree that certification for purposes of the settlement is in no way an admission that
23 class certification is proper under the more stringent standard applied for litigation and that
24 evidence of this Settlement Agreement is for settlement purposes only and will not be admissible
25 for any purpose in this or any other proceeding.

26 15. The parties jointly prepared the Joint Stipulation and Settlement Agreement of Class
27 Action and PAGA Claims ("Settlement", "Stipulation" or "Stip."). A true and correct copy of the
28 Settlement is attached hereto as **Exhibit B**.

1 16. Plaintiff contends that Defendant paid Class Members shift differential wages that
2 were not included in their regular rate of pay for purposes of paying them meal and rest period
3 premiums, sick pay, and overtime wages at the correct rates, in violation of Labor Code §§ 226.7,
4 246, 510, 512, 558, 1194, and 1198 and IWC Wage Order 7-2001. Defendant allegedly failed to
5 properly blend these shift differential wages and instead paid Class Members meal and rest period
6 premiums, sick pay wages, and overtime wages based only on the base hourly rate of pay, thus
7 allegedly depriving them of all wages earned, in violation of Labor Code §§ 226.7, 246, 510, 512,
8 558, and 1194. Plaintiff contends that here, when Class Members worked overtime, earned meal
9 period or other premium wages, or earned sick wages, they were paid at one and one-half times
10 the base hourly rate of pay. Plaintiff also contends that the shift differential wages earned by Class
11 Members were not discretionary within the meaning of the applicable regulation (29 U.S.C. §
12 207(e)), and accordingly, must have been included in their regular rate of pay for purposes of
13 determining their overtime pay, sick pay, and meal and rest period premiums. However, this claim
14 was minimal. My office calculated Defendant's damages for these unpaid wages claim at \$4,150
15 and PAGA civil penalty liability for this claim of \$23,200. Defendant contends that it properly
16 calculated and paid the meal and rest period premiums, sick pay, and overtime wages at issue.

17 17. Defendant allegedly failed to permit or authorize Class Members to take timely 30-
18 minute meal periods for shifts greater than 5 hours in length, in violation of Labor Code §§ 226.7
19 and 512 and IWC Wage Order 7-2001. Labor Code § 512 provides that employers may not employ
20 employees for work periods of more than five (5) hours without providing a 30-minute meal period
21 starting no later than the end of the 5th hour. Plaintiff alleges that Class Members were routinely
22 unable to take a proper meal period when they worked shifts in excess of five (5) hours in duration
23 and a second meal period when they worked shifts in excess of ten (10) hours in duration. Plaintiff
24 alleges that Defendant maintained unlawful and bare bones written meal and rest period policies.
25 Plaintiff contends that based on the wage and time data provided by Defendant through informal
26 discovery, the meal period violation rate was 33.8% and 76.4% of all pay periods during the PAGA
27 Period exhibited some form of meal period violation. My office calculated Defendant's meal
28 period damages at \$72,055 and PAGA civil penalty liability for this claim of \$95,900. Defendant

1 contends that it maintained and implemented legally compliant meal and rest period policies and
2 procedures.

3 18. Defendant allegedly failed to provide Class Members with legally compliant rest
4 periods, or premium wages of one hour's pay in lieu thereof, as required by Labor Code § 226.7
5 and IWC Wage Order 7-2001. As discussed above, Plaintiff alleged that Defendant maintained
6 unlawful written rest period policies as it did not contain the "major fraction thereof" language.
7 My office calculated Defendant's rest period damages at \$203,852 and PAGA civil penalty
8 liability for this claim of \$124,700. Defendant contends that it maintained and implemented legally
9 compliant rest period policies and procedures.

10 19. Defendant also allegedly failed to issue Class Members accurately itemized wage
11 statements. Class Members were not paid all wages due, as detailed above. As a result, the wage
12 statements issued by Defendant to Class Members fail to accurately state all gross wages earned,
13 in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2),
14 net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect
15 during the pay period and the corresponding number of hours worked at each hourly rate, in
16 violation of Labor Code § 226(a)(9). My office calculated the damages for this claim at \$110,050
17 in addition to \$124,700 in PAGA civil penalties. Defendant contends that it properly issued
18 accurate, itemized wage statements.

19 20. Defendant allegedly failed to pay Class Members all wages due upon separation of
20 employment, in violation of Labor Code §§ 201-202. As Defendant failed to pay Class Members
21 all wages due during the course of employment, as discussed above, these wages remained due
22 and owing upon separation of employment. In addition, Plaintiff alleges that she was not issued
23 her final wages on the day of her termination; instead, she was issued her several days later. My
24 office calculated statutory penalties on this claim at \$223,612, with PAGA civil penalty liability
25 of \$4,800. Defendant contends that it properly paid all wages due upon separation of employment.

26 21. The compromise reached here is fair and reasonable considering the factual and
27 legal disputes among the Parties, the defenses raised by Defendant as to class certification and the
28 merits of Plaintiff's claims, and the risk the Court would reduce or eliminate any award of

1 penalties, and the fact that Defendant has a limited ability to pay any judgment due to financial
2 constraints. Indeed, the Settlement includes an installment payment plan because of these financial
3 constraints. Defendant strongly contends that its policies and practices do not violate any laws. It
4 contends that it properly paid all wages due and that it provided for all meal and rest periods and
5 fully compensated its employees for all time worked. It further contends that the wage statements
6 it provided to its employees were fully compliant with California law.

7 22. When the costs and risks of non-certification and loss on the merits are considered,
8 I am of the opinion that the Settlement reached is clearly a favorable one.

9 23. The Settlement for each Class Member is fair, reasonable and adequate, given the
10 inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
11 litigation. The Settlement shall finally resolve all claims of the Class Members as alleged in the
12 Action.

13 **Class Certification Requirements:**

14 24. In this case, the Class Members are identifiable from Defendant's employment and
15 payroll records. Further, the Settlement Class is sufficiently numerous to warrant certification.
16 According to Defendant's records, the Class comprises approximately 71 members.

17 25. The Class Members' claims all stem from a common source: members of the
18 Settlement Class allege that Defendant violated the same Labor Code provisions in connection
19 with their employment in non-exempt positions. All members of the Class seek the same relief
20 under the same California laws (related to unpaid overtime and sick pay wages, unpaid meal and
21 rest period premiums, inaccurate or incomplete wage statements, failure to timely pay wages due
22 upon separation, and derivative claims). Under these circumstances, the commonality requirement
23 is satisfied for purposes of certifying the Settlement Class for settlement purposes.

24 26. In this case, named Plaintiff and proposed Class Representative Ashley Avery is a
25 former non-exempt employee who worked for Defendant in the State of California during the
26 Class Period. She contends that Defendant failed to pay all overtime and sick pay wages, failed
27 to provide meal and rest periods, failed to comply with itemized employee wage statement
28 provisions, and failed to timely pay wages at the separation of employment, in violation of Labor

Code §§ 201, 202, 226(a), 226.3, 226.7, 246, 510, 512, 558, 1194, 1198, 2698, and 2699, among other Labor Code provisions. She has the same claims as those that the members of the Settlement Class would reasonably be expected to bring based on the course of conduct alleged herein.

27. Plaintiff has also demonstrated that she will aggressively and competently assert the interests of the proposed Settlement Class; she has taken an active role in the litigation and has no apparent conflicts with other class members.

Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)

28. Concurrently with the filing of this Motion, my office is transmitting the Settlement Agreement (and these approval documents) to the LWDA, in compliance with Labor Code § 2699(1)(2). Evidence of submission is attached hereto as **Exhibit C**.

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on February 10, 2025 at Westlake Village, California.


DANIEL F. GAINES

EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaidence OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

Kyung M. Finley (SBN: 262128)
Email: kyung@finleyemplaw.com
Finley Employment Law
2450 Venture Oaks Way, Suite 200
Sacramento, CA 95833
Tel: (916) 612-0326

Attorney for Defendant
Taklak Inc.

Daniel F. Gaines, Esq. (SBN: 251488)
Email: daniel@gaineslawfirm.com
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Phone: 818-703-8985

Attorneys for Plaintiff
Ashley Avery

SUPERIOR COURT OF CALIFORNIA

COUNTY OF YUBA

**ASHLEY AVERY, on behalf of herself and
all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.***

Plaintiff,

v.

**TAKLAK INC., a California corporation,
and DOES 1 through 10, inclusive.**

Defendants.

Case No.: CVCV23-00479

**JOINT STIPULATION AND
SETTLEMENT AGREEMENT OF CLASS
ACTION AND PAGA CLAIMS**

Action Filed: May 15, 2023

1 This Joint Stipulation and Settlement Agreement of Class Action and Private Attorneys
2 General Act (“PAGA”) Claims (“Stipulation of Settlement” or “Settlement”) is made and entered
3 into by and between Plaintiff Ashley Avery (hereinafter, “Class and PAGA Representative” or
4 “Plaintiff”) and on behalf of the class and aggrieved employees and Defendant TAKLAK INC.
5 (“Defendant” or “Taklak”). (Plaintiff and Defendant are hereinafter collectively referred to as
6 the “Parties”).
7

8 1. “**Action**” shall mean the action entitled *Ashley Avery v. Taklak Inc.*, Yuba County
9 Superior Court, Case No. CVCV23-00479.
10

11 2. “**Class and PAGA Representative**” or “**Plaintiff**” shall mean Plaintiff Ashley
12 Avery.
13

14 3. “**Class Counsel**” shall mean Daniel F. Gaines, Esq. of Gaines & Gaines, APLC.
15

16 4. “**Class Members**” shall mean all current and former hourly-paid or non-exempt
17 employees of Defendant, employed by Defendant in California at any time during the Class
18 Period.
19

20 5. “**Class Period**” shall mean May 15, 2019 through November 1, 2024.
21

22 6. “**Class Released Claims**” shall have the meaning ascribed to it in Paragraph 62
23 below.
24

25 7. “**Court**” shall mean the Superior Court of the State of California for the County
26 of Yuba.
27

28 8. “**Court’s Final Order and Judgment**” shall mean the Final Order Approving
Class Action and PAGA Settlement, and Judgment in a form to be agreed upon by the Parties
and approved by the Court.

9. “**Defendant’s Counsel**” shall mean Kyung M. Finley, Esq. of Finley

Employment Law.

10. “**Effective Date**” shall mean the meaning ascribed to it in Paragraph 38 below.

11. “**Enhancement Award**” shall mean the payment made to Plaintiff in her capacity as a Class and PAGA Representative, which sum is over and above her Individual Settlement Payment.

12. “**Final Approval Hearing**” shall mean the hearing where the Court shall consider, without limitations, any timely objections to the Settlement from Settlement Class Members, testimony from the Parties or their counsel, declarations regarding the claims process from the Settlement Administrator, and otherwise make a final determination regarding the fairness of the Settlement as set forth herein.

13. “**FLSA**” shall mean the Fair Labor Standards Act.

14. “**Individual Settlement Payment**” shall mean the portion of the Net Settlement Amount payable to a Settlement Class Member.

15. “**Net Settlement Amount**” or “**NSA**” shall have the meaning ascribed to it in Paragraph 42 below.

16. “**Notice of Proposed Settlement**” or “**Notice**” shall mean the Notice of Pendency of Class Action in substantially the form attached hereto as **Exhibit A** and as approved by the Court.

17. “**Original Complaint**” shall mean the complaint filed by Plaintiff in this Action on May 15, 2023.

18. “**PAGA**” shall mean the California Labor Code Private Attorneys General Act, California Labor Code secs. 2698 *et seq.*

19. “**PAGA Employee**” shall mean all persons who are Class Members who were

employed by Defendant at any time during the PAGA Period.

20. **“PAGA Employee Payments”** shall mean the payment issued to each PAGA Employee for his/her/their share of the PAGA Payment.

21. **“PAGA Letter”** shall mean the PAGA letter that Plaintiff submitted to the State of California Labor and Workforce Development Agency (“LWDA”) on March 8, 2023.

22. **“PAGA Payment”** shall mean the payment to the LWDA and the PAGA Employees in settlement of all claims for PAGA penalties.

23. **“PAGA Period”** shall mean March 8, 2022 through November 1, 2024.

24. **“Parties”** shall refer to Plaintiff and Defendant, each of whom is a “Party.

25. **“Released Parties”** collectively shall include Defendant and any of its past, present, and future direct or indirect parents, subsidiaries, predecessors, successors, and affiliates, as well as each of its or their past, present, and future owners, officers, directors, employees, partners, members, shareholders, agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendant.

26. **“Settlement Administrator”** shall mean Phoenix Settlement Administrators.

27. **“Settlement Class Members”** shall mean the individual Class Members who do not opt out of the Settlement by submitting a valid request for exclusion as described in Paragraph 55.

28. **“Workweeks”** means the number of weeks that a Class Member or PAGA Employee worked for Defendant as an hourly-paid or non-exempt employee within California during the Class Period and/or PAGA Period. Workweeks are to be calculated by the Settlement Administrator based on information provided by Defendant. Workweeks will be calculated by identifying and crediting each week where the Class Member or PAGA Employee

worked at least one (1) shift during the calendar week (from Sunday through Saturday), during the Class Period and/or the PAGA Period.

PRE-SETTLEMENT DILIGENCE

29. After exchanging and reviewing relevant documents and class data, on August 28, 2024, the Parties participated in a full-day mediation with an experienced wage and hour class action mediator Judge Maria-Elena James (Ret.), which resulted in a settlement of all claims asserted in the current PAGA complaint as well as class claims premised upon and arising from similar theories.

30. Defendant denies any liability or wrongdoing of any kind whatsoever in connection with the claims in the Action and further denies that, for any purpose other than settling this Action, this Action is appropriate for class action or representative treatment.

31. The Parties desire to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising out of or related to the allegations of this Action.

32. It is the Parties' intention that this Stipulation of Settlement shall constitute a full and complete settlement and release of all Class Released Claims and all PAGA claims (as defined in Paragraphs 62 and 63 below) against all Released Parties.

33. It is the Parties' intention that this Settlement shall not become effective until the Effective Date, as defined in Paragraph 38 below.

34. Class Counsel have conducted a thorough investigation into the facts of this Action, including an extensive review of relevant documents and data, and has diligently pursued an investigation of the Class Members' claims against Defendant. Based on its and their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendant is fair, reasonable and adequate and is in the best interest of the Class Members

1 and PAGA Employees in light of all known facts and circumstances, including the risks of
2 significant delay, the class not being certified, and the defenses asserted by Defendant.
3 Defendant and Defendant's Counsel also agree that the Settlement is in the best interests of the
4 Class Members. Counsel for the Parties further agree that the Settlement is fair, reasonable and
5 adequate with respect to civil penalties sought pursuant to PAGA.
6

7 35. The Parties agree to cooperate and take all steps necessary and appropriate to
8 consummate this Settlement in accordance with the terms of this Stipulation of Settlement.
9

10 **TERMS OF SETTLEMENT**

11 36. In consideration of the mutual covenants, promises, and agreements set forth
12 herein, the Parties agree, subject to the Court's approval, to the terms herein.

13 37. It is agreed by and between Plaintiff and Defendant that this Action and any
14 claims, demands, liabilities, penalties, damages, or causes of action of any kind whatsoever
15 claimed by Plaintiff on behalf of herself, the Class Members, and/or the PAGA Employees
16 arising out of the disputes which are the subject of this Action, be settled and compromised,
17 subject to the terms and conditions set forth in the Settlement and the Court's approval.
18

19 38. Effective Date: The Settlement embodied in this Stipulation of Settlement shall
20 become effective when all of the following events have occurred (the "Effective Date"): (i) a
21 Stipulation of Settlement has been executed by Plaintiff, Defendant, Class Counsel, and
22 Defendant's Counsel; (ii) the Court has given preliminary approval of the Settlement; (iii) the
23 Notice has been sent to the Class Members, providing them with the opportunity to object to and
24 opt out of the Settlement; (iv) the Notice has been sent to the LWDA; (v) the Court has held a
25 formal fairness hearing and entered the Court's Final Order and Judgment; and (vi) if there are
26 written objections filed prior to the formal fairness hearing which are not later withdrawn or
27
28

1 denied, the later of the following events: (A) five (5) business days after the period for filing any
2 appeal, writ, or other appellate proceeding opposing the Settlement has elapsed without any
3 appeal, writ, or other appellate proceeding having been filed; (B) if any appeal, writ, or other
4 appellate proceeding opposing the Settlement has been filed, five (5) business days after any
5 appeal, writ, or other appellate proceeding opposing the Settlement has been dismissed finally
6 and conclusively with no right to pursue further remedies or relief; (C) five (5) business days
7 after any appeal, writ, or other appellate proceeding has upheld the Court's Final Order and
8 Judgment with no right to pursue further remedies or relief. If the Court declines to approve the
9 Settlement, the entire Stipulation of Settlement is deemed void and unenforceable as if no
10 settlement of any claim was ever reached. All negotiations, statements, proceedings, and data
11 relating thereto shall be protected by California Evidence Code Section 1152 and shall be
12 without prejudice to the rights of any of the Parties.
13
14

15 39. Gross Settlement Amount: To implement the terms of the Settlement, Defendant
16 agrees to pay a maximum total amount of One Hundred Thirty Seven Thousand Five Hundred
17 Dollars and Zero Cents (\$137,500.00) (the "Gross Settlement Amount"), which includes: (a)
18 payments to Settlement Class Members (excluding any appropriate and lawfully required
19 employer-side payroll taxes owed by Defendant on such payments, which Defendant shall
20 separately be responsible for apart from the Gross Settlement Amount); (b) the Enhancement
21 Award to the Class and PAGA Representative; (c) the PAGA Payment; (d) the Settlement
22 Administrator's fees and costs, and (e) Class Counsel's approved attorneys' fees and
23 costs/expenses. In no circumstance shall Defendant be required to pay any additional monies
24 beyond the Gross Settlement Amount plus the employer-side payroll taxes.
25
26

27 40. Tax Treatment of the Gross Settlement Amount: The Parties agree that the Gross
28

Settlement Amount will qualify as a Settlement Fund pursuant to the requirements of section 468(B)(g) of the Internal Revenue Code of 1986, as amended, and section 1.468B-1. *et seq.* of the income tax regulations. Furthermore, the Settlement Administrator is hereby designated as the “Administrator” of the qualified Settlement Funds for purposes of section 1.46B-2(k) of the income tax regulations. As such, all taxes imposed on the gross income of the Gross Settlement Amount and any tax-related expenses arising from any income tax return or other reporting document that may be required by the Internal Revenue Service or any state or local taxing body will be paid from the Gross Settlement Amount.

41. Funding of Gross Settlement Amount: Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator through four (4) Installment Payments pursuant to the “Payment Plan” as follows:

a. The First Payment shall be in the amount of Thirty-Four Thousand Three Hundred Seventy-Five Dollars and Zero Cents (\$34,375.00) and shall be made thirty (30) days after the Effective Date.

b. The Second Payment shall be in the amount of Thirty-Four Thousand Three Hundred Seventy-Five Dollars and Zero Cents (\$34,375.00) and shall be made within six (6) months after the First Payment;

c. The Third Payment shall be in the amount of Thirty-Four Thousand Three Hundred Seventy-Five Dollars and Zero Cents (\$34,375.00) and shall be made within six (6) months after the Second Payment; and

d. The Fourth Payment shall be in the amount of Thirty-Four Thousand Three Hundred Seventy-Five Dollars and Zero Cents (\$34,375.00) and shall be made within six (6) months after the Third Payment. The First Payment, Second Payment, Third Payment, and

Fourth Payment are collectively referred to as “Installment Payments” and individually as an “Installment Payment.”

In addition, Defendant shall pay the total amount owed as employer-side payroll taxes along with each Installment Payment.

Time is of the essence with respect to all terms of this Agreement. If Defendant fails to make any of the Installment Payments identified in Paragraph 41(a) through (d) on time as required herein, Defendant shall be in default of its obligations. Once Defendant is in default, Plaintiff will give written notice of the default to Defendant through Defendant’s counsel by email or letter. If the default remains uncured ten (10) business days after Defendant provides written notice, all unpaid sums shall be accelerated and shall become immediately due and owing, with interest at the legal rate, accruing from the date of any such uncured default.

The Settlement Administrator shall deposit Defendant’s Installment Payments into the QSF from which the Settlement Administrator shall have the authority to distribute money in accordance with the terms of the Settlement. The interest accrued during this time period will be distributed towards the Gross Settlement Amount.

As soon as possible, the Settlement Administrator shall provide to Defendant’s Counsel instructions for Defendant to tender the Installment Payments described above by electronic transfer to the Settlement Administrator and shall calculate and advise Defendant of the total amount owed as employer-side payroll taxes. The Parties agree that Defendant’s payment obligations with respect to each Installment Payment pursuant to the Settlement shall be met upon initiating the electronic transfer of funds to the Settlement Administrator, pursuant to its instructions. Once Defendant has made all four Installment Payments described above, Defendant will be deemed to have satisfied all terms and conditions under the Settlement, shall

1 be entitled to all protections afforded to Defendant under the Settlement, and shall have no
2 further obligations under the terms and conditions of the Settlement regardless of what occurs
3 with respect to the Installment Payments.

4 Proportionate disbursements shall be made to the Settlement Class Members, the LWDA
5 and the Settlement Administrator within ten (10) calendar days of the receipt of the Second
6 Payment and within ten (10) calendar days of the receipt of the Fourth Payment. Plaintiff shall
7 be issued her full Enhancement Award after the Settlement Administrator's receipt of the First
8 Payment. Class Counsel shall be paid a proportionate share of its fees and costs from each
9 Installment Payment upon receipt by the Settlement Administrator.
10

11 42. Allocation of the Gross Settlement Amount: Subject to Court approval and the
12 conditions specified in this Agreement, and in consideration of the mutual covenants and
13 promises set forth herein, the Parties agree that the Gross Settlement Amount shall encompass
14 the following: (1) Class Counsel's fees, costs, and expenses; (2) the Enhancement Award; (3) the
15 Settlement Administrator's fees and costs; (4) the PAGA Payment; and (5) the NSA. After the
16 deduction of the amounts approved for the Enhancement Award, the PAGA Payment, the
17 Settlement Administrator's fees and costs, and Class Counsel's fees, costs, and expenses from
18 the Gross Settlement Amount, the remainder shall be referred to as the "Net Settlement Amount"
19 or the "NSA."
20

21 a. The NSA shall be divided among the Settlement Class Members on a pro-rata
22 basis, based upon the following:
23

- 24 1. Each Settlement Class Member's total number of Workweeks during the Class
25 Period;
26
27
28

2. Divided by the combined sum of all Settlement Class Members' Workweeks during the Class Period; and

3. Multiplied by the value of the NSA.

b. Each Settlement Class Member's respective calculation of total Workweeks and estimated share of the NSA will be identified in the Notice.

c. The Parties agree that if any Settlement Class Member disputes the basis for determining the Settlement Class Member's share of the NSA, Defendant's records shall presumptively control unless the Settlement Class Member can produce documentary evidence of other Workweeks worked during the relevant time period. The Parties further agree that any dispute that cannot be resolved by Class Counsel and Defendant's counsel may be brought before the Court before or at the Final Approval Hearing.

d. To the extent that the amounts in Paragraphs 46 (Class Counsel's attorneys' fees and costs/expenses) and 47 (Enhancement Award) are not approved by the Court, such amounts will be reallocated to the NSA unless allocated otherwise by written agreement of the Parties, with the Court's approval.

e. The Parties agree that thirty percent (30%) of the NSA distributed to each Settlement Class Member will be considered wages and will be reported as such to each Settlement Class Member on an IRS Form W-2. The Parties agree that seventy percent (70%) of the NSA distributed to each Settlement Class Member will be considered penalties and interest and will be reported as such to each Settlement Class Member on an IRS Form 1099 misc., if applicable. The foregoing tax allocation shall also apply to sums paid to Plaintiff from the NSA (but not her Enhancement Award). The Parties further agree that the PAGA Employee Payments distributed to PAGA Employees shall be treated entirely as civil penalties and will be reported as

1 such to each PAGA Employee on an IRS Form 1099 misc., if applicable. For any wages, all
2 payroll taxes and other legally required withholdings will be withheld prior to distribution to
3 Settlement Class Members. All Individual Settlement Payments and PAGA Employee Payments
4 paid to Class Members and PAGA Employees will be subject to any applicable wage
5 garnishments, liens, or other legally mandated treatment as required by law.
6

7 f. Any portion of the NSA not cashed within one-hundred eighty (180) days from
8 the date of issuance of the check shall be transmitted to the State of California of the Controller
9 Unclaimed Property Fund in the name of the Settlement Class Member who did not cash his/her
10 settlement check. In such event, the Settlement Class Member will nevertheless remain bound by
11 the Settlement and the releases contained herein. The Parties agree to coordinate their efforts to
12 seek Court approval for such an escheatment process of uncashed funds. If, for some reason, the
13 Court does not approve the escheatment of uncashed funds, the Parties agree to meet and confer
14 to identify a mutually-agreeable *cy pres* recipient(s).
15

16 43. PAGA Payment: Subject to the Court's approval, up to a maximum of Ten
17 Thousand Dollars and Zero Cents (\$10,000.00) shall be allocated as the PAGA Payment to
18 resolve the PAGA claims. Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) –
19 which represents 75 percent of the PAGA Payment – shall be paid to the LWDA. Two
20 Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) – which represents 25 percent of the
21 penalties paid pursuant to PAGA – shall be distributed to the PAGA Employees as PAGA
22 Employee Payments. The PAGA Employees shall release their PAGA claims in their entirety
23 and may not opt out of or object to the PAGA release. To arrive at the PAGA Employee
24 Payments, the portion of the PAGA Payment allocated to the PAGA Employees shall be divided
25 among the PAGA Employees on a pro-rata basis, based upon the following:
26
27
28

- 1 a. Each PAGA Employee's total number of Workweeks during the PAGA Period;
- 2 b. Divided by the combined sum of all PAGA Employees' Workweeks during the
- 3 PAGA period; and
- 4 c. Multiplied by the value of the portion of the PAGA Payment allocated to the
- 5 PAGA Employees.
- 6

7 44. Individual Settlement Payments Do Not Trigger Additional Benefits: All

8 Individual Settlement Payments, PAGA Employee Payments, and the Enhancement Award shall

9 not be utilized to calculate or accrue any additional benefits under any benefit plans to which

10 Plaintiff, any Settlement Class Member, and/or any PAGA Employee may be eligible, including,

11 but not limited to: retirement plans, profit-sharing plans, bonus or incentive plans, 401(k) plans,

12 stock purchase plans, vacation plans, paid time off or PTO plans, sick leave plans, pension plans,

13 or any benefit plan whatsoever. It is the Parties' intention that the Settlement will not affect any

14 rights, contributions, or amounts, if any, to which Plaintiff, Settlement Class Members, and/or

15 PAGA Employees may be entitled under any benefit plans.

16

17 45. Settlement Administrator: The Settlement Administrator will maintain acceptable

18 electronic and physical security protocols to adequately protect and safeguard the private

19 employee information it will have access to as a result of the claims process. The fees and

20 expenses of the Settlement Administrator, which are currently estimated at approximately Seven

21 Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), will be paid out of the Gross

22 Settlement Amount. If the Settlement Administrator's total fees and expenses are higher than this

23 amount, the Parties will mutually agree on an adjustment that will also be paid out of the Gross

24 Settlement Amount. If the Settlement Administrator's total fees and expenses are lower than

25 Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), the difference between the

26

27

28

1 lower amount and the Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) shall
2 be added to the NSA.

3 46. Attorneys' Fees and Costs: Subject to the Court's approval, Class Counsel shall
4 be allowed to seek attorneys' fees which collectively shall not exceed Thirty Five Percent (35%)
5 of the Gross Settlement Amount (projected not to exceed Forty Eight Thousand One Hundred
6 Twenty Five Dollars and Zero Cents (\$48,125.00)) and reimbursement of actual costs and
7 expenses associated with Class Counsel's litigation and settlement of the Action, in an amount
8 not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00), subject to approval by the
9 Court. Attorneys' fees recovered will be paid 80% to Gaines & Gaines, APLC and 20% to Law
10 Offices of Alex P. Katofsky, APC. This fee sharing agreement will not increase the total
11 attorneys' fees charged to Plaintiff or the Class Members, and Defendant will not object to Class
12 Counsel's application for attorneys' fees and costs in these amounts. The amounts set forth
13 above will cover all work performed and all attorneys' fees and costs/expenses incurred to date
14 by Class Counsel, and all work to be performed and all attorneys' fees and costs/expenses to be
15 incurred by Class Counsel in the future in connection with the approval by the Court of the
16 Settlement and the administration of the Settlement, including but not limited to attorneys' fees
17 and costs/expenses associated with memorializing the Settlement, securing the Court's approval
18 of the Settlement, administering the Settlement, obtaining entry of a judgment terminating this
19 Action, and expenses for any experts. Should Class Counsel request a lower amount, or should
20 the Court approve a lower amount of attorneys' fees and/or costs and expenses, the difference
21 between the lower amount and the maximum amount set forth above shall be added to the NSA.
22 Class Counsel shall not be entitled to further attorneys' fees, costs, or expenses from Defendant
23 if Class Counsel elects to appeal any reduction in the requested attorneys' fees or costs/expenses
24
25
26
27
28

award. Any reduction by the Court of Class Counsel's claimed attorneys' fees and/or costs/expenses shall not be sufficient grounds to void or rescind the Settlement. The Parties shall bear their own attorneys' fees and costs/expenses, except as set forth herein.

47. Enhancement Award: Subject to the Court's approval, the Class and PAGA Representative will be paid an Enhancement Award in an amount up to a maximum of Six Thousand Dollars and Zero Cents (\$6,000.00) in recognition of Plaintiff's service as Class and PAGA Representative, which shall be paid from the Gross Settlement Amount. Defendant will not object to Class Counsel's application for Court approval of an Enhancement Award to the Plaintiff in the amount of Six Thousand Dollars and Zero Cents (\$6,000.00). It is understood that the Enhancement Award is in addition to any Individual Settlement Payment or PAGA Employee Payment to which Plaintiff is entitled. The Enhancement Award shall not be deemed wages and will be reported on an IRS Form 1099-MISC, if applicable.

48. Tax Forms: The Settlement Administrator shall be responsible for issuing the payments and withholding all required state and federal taxes in accordance with the Settlement. The Settlement Administrator will issue IRS Forms W-2 with respect to the amounts paid as wages to the Settlement Class Members and will issue IRS Forms 1099 with respect to the amounts paid as interest and penalties to the Settlement Class Members and PAGA Employees. The Settlement Administrator will also issue IRS Forms 1099 to: (1) the Class and PAGA Representative for the Enhancement Award; and (2) Class Counsel for the amount paid for approved attorneys' fees and costs and expenses. The Settlement Administrator will be responsible for preparing these forms correctly. The Settlement Administrator shall also be responsible for submitting Defendant's share of payroll taxes to the appropriate government agencies on behalf of Defendant. Plaintiff and Class Counsel will be responsible for correctly

1 characterizing this compensation for tax purposes and for paying any taxes on the amounts
2 received.

3 49. Indemnification: Plaintiff and Class Counsel acknowledge and agree that they are
4 and will be responsible for the payment of any and all federal, state, and local taxes or penalties
5 associated with their respective allocated portions of the payments described herein and agree to
6 indemnify, defend, and hold Defendant and the Released Parties harmless from any and all
7 claims by any federal, state, or local taxing authority that Plaintiff or Class Counsel failed to pay
8 or underpaid their, his, her, or its share of taxes associated with the payments set forth in the
9 Settlement. The Parties acknowledge and agree that Class Counsel is not responsible for the
10 payment of any federal, state, and local taxes or penalties associated with payments to Plaintiff
11 and Settlement Class Members.
12
13

14 **NOTICE TO THE SETTLEMENT CLASSES**

15 50. Within twenty (20) calendar days of preliminary approval of this Settlement by
16 the Court, Defendant shall provide to the Settlement Administrator a database containing the
17 following information (“Class Member List”):
18

19 a. The full name, telephone number, and last known address and full social security
20 number of all Class Members;

21 b. The information necessary to determine the estimated settlement allocation to
22 each Class Member, including: (i) The total number of Workweeks of each Class
23 Member in California in an hourly-paid or non-exempt position within the Class Period;
24 and (ii) The total number of Workweeks of each PAGA Employee in California in an
25 hourly-paid or non-exempt position within the PAGA Period.
26

27 51. The Settlement Administrator (along with any of its agents) shall represent and
28

1 warrant that it will: (1) provide reasonable and appropriate administrative, physical and technical
2 safeguards, including a reasonable security protocol, for any personally identifiable information
3 (“PII”), which it receives from Defendant’s Counsel and/or Class Counsel; (2) not disclose the
4 PII to third parties, including agents or subcontractors, without Defendant’s consent; (3) not
5 disclose or otherwise use the PII other than to carry out its duties as set forth herein; and (4)
6 promptly provide Defendant with notice if PII is subject to unauthorized access, use, disclosure,
7 modification, or destruction. The Settlement Administrator may provide notice to both Parties if
8 the PII is subject to unauthorized access, use, disclosure, modification or destruction; however,
9 all additional communications from the Settlement Administrator regarding the scope,
10 circumstances, and substance shall be communicated solely to Defendant.
11

12
13 52. The Settlement Administrator shall send a Notice to each Class Member by first
14 class mail within ten (10) calendar days of receipt of the Class Member List. Prior to mailing the
15 Notice, the Settlement Administrator shall update the addresses of the Class Members by
16 reference to the National Change of Address Database maintained by the United States Postal
17 Service. If a Notice is returned as non-deliverable but with a forwarding address, the Settlement
18 Administrator shall resend the Notice to the forwarding address. If a Notice is returned as non-
19 deliverable with no forwarding address, the Settlement Administrator shall conduct an advanced
20 skip trace to locate the most current address of the person to whom the Notice was addressed and
21 shall resend within five (5) calendar days the Notice to any updated address. Upon completion of
22 these steps, the Parties shall be deemed to have satisfied their obligations to provide the Notice to
23 the affected Class Members.
24

25
26 53. The Settlement Administrator shall provide to the Court, concurrently with
27 Plaintiff’s Motion for Final Approval, a declaration of due diligence and proof of mailing with
28

1 regard to the mailing of the Notices.

2 54. The Settlement Administrator shall also be responsible for:

3 a. Mailing the Notice as directed by the Court;

4 b. Consulting with counsel for the Parties concerning any relevant issue, including
5 (without limitation) the estimated amounts of approximate Individual Settlement
6 Payments, PAGA Employee Payments, and the acceptance of any late or deficient
7 disputes;

8 c. Keeping track of timely and proper requests for exclusion;

9 d. Calculation of the Individual Settlement Payments, PAGA Employee Payments,
10 and the PAGA Payment to the LWDA;

11 e. Providing weekly status reports to counsel for the Parties, including: (a) the
12 number of Notices mailed (including information regarding undeliverable and/or emailed
13 Notices); (b) the number of disputes received (and sending copies of said disputes); (c)
14 the number of objections received; and, (d) the number of requests for exclusion
15 received;

16 f. Notifying Counsel for Defendant of the wiring instructions to fund the Gross
17 Settlement Amount as approved by the Court and cooperating with any security measures
18 as needed;

19 g. Distributing and paying the Enhancement Award, Individual Settlement
20 Payments, PAGA Employee Payments, the PAGA Payment to the LWDA, and fees and
21 costs awarded to Class Counsel;

22 i. Issuing tax forms and addressing employer and employee-side payroll taxes; and

23 j. Such other tasks as the Parties mutually agree or the Court orders the Settlement
24
25
26
27
28

1 Administrator to perform, including responding to questions from Class Members.

2 **REQUESTS FOR EXCLUSION**

3 55. Each Class Member shall have forty-five (45) calendar days from the mailing of
4 the Notice within which to complete and postmark a written request for exclusion, for return to
5 the Settlement Administrator. The request need not be in any particular form and will be
6 considered a valid request for exclusion so long as it communicates a clear desire by the Class
7 Member not to be included in the Settlement and/or settlement class and identifies his/her/their
8 full name, date of birth, and current address along with his/her/their signature. No requests for
9 exclusion shall be accepted if postmarked after the forty-five (45) calendar day period for the
10 filing of exclusions. Class Members are responsible to maintain a photocopy of their request for
11 exclusion, reflecting that it was submitted in a timely manner. Any disputes regarding the
12 timeliness of a request for exclusion or whether a written communication constitutes a valid
13 request that cannot be resolved between the Parties shall be determined by the Court, whose
14 determination shall be final.

15 56. Any Class Member who validly excludes himself/herself/themselves from the
16 Settlement shall not be bound by the Settlement and shall not be entitled to any portion of the
17 NSA, except that PAGA Employees will not be permitted to opt out of or object to the PAGA
18 release.

19 57. If five percent (5%) or more of the Class Members opt out of the Settlement by
20 submitting valid and timely requests for exclusion, Defendant shall have the sole and absolute
21 discretion to rescind/void the Settlement within fifteen (15) calendar days after receiving from
22 the Settlement Administrator the final list of requests for exclusion. Defendant agrees to meet
23 and confer in good faith with Class Counsel before rescinding or voiding the Settlement. If
24
25
26
27
28

1 Defendant elects to rescind/void the Settlement, Defendant shall provide written notice of such
2 rescission to Class Counsel. Such rescission shall have the same effect as a termination of the
3 Settlement for failure to satisfy a condition of settlement and the Settlement shall become null
4 and void and have no further force or effect. The Parties specifically agree not to solicit opt-outs,
5 directly or indirectly, through any means.
6

7 **OBJECTIONS TO THE SETTLEMENT**

8 58. Each Class Member shall have forty-five (45) calendar days from the mailing of
9 the Notice, or such number of days as the Court shall specify, within which to postmark an
10 objection, for return to the Settlement Administrator. Any Class Member who does not
11 affirmatively opt out of the Settlement by submitting a valid and timely request for exclusion
12 may object to the approval of the Settlement (“Objecting Class Member”). Any Class Member
13 who makes a timely request for exclusion has waived his/her right to object. The Objecting Class
14 Member shall inform the Court and the Parties in the objection of (1) the full name and current
15 address of the Objecting Class Member; (2) the specific reason(s) for the objection; and (3) shall
16 also provide any and all evidence and supporting papers (including, without limitation, all briefs,
17 written evidence, and declarations) to be considered by the Court. The Settlement Administrator
18 shall provide copies of any and all written objections from Objecting Class Members to the
19 Parties, who in turn will submit the same to the Court. Any Objecting Class Member who wishes
20 to appear at the Final Approval Hearing to be heard orally in support of, or in opposition to the
21 Settlement, must so state in the objection. Class Members shall have no right to object to the
22 PAGA release or PAGA Payment.
23
24
25

26 59. Any Class Member who fails to timely submit an objection shall be foreclosed
27 from making any objection to the Settlement or from filing an appeal of the Court’s Final Order
28

and Judgment unless otherwise ordered by the Court.

60. Counsel for the Parties shall file any response to the objections submitted by Objecting Class Members, if any, at least seven (7) calendar days before the date of the Final Approval Hearing.

61. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement or to appeal from the Court's Final Order and Judgment. Class Counsel agree that it would be a conflict of interest for them to represent any Class Members with respect to any such objections to the Settlement. The Parties will work in good faith and fair dealing to accomplish Court approval of the Settlement.

RELEASE OF CLAIMS BY CLASS AND PAGA REPRESENTATIVE, SETTLEMENT CLASS MEMBERS, AND PAGA EMPLOYEES

62. The Class Released Claims: Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and all associated employer-side payroll taxes, the claims released by the Settlement Class Members and Plaintiff will include all claims pleaded in the Original Complaint and FAC (defined below) in the Action, and which could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Action, against the Released Parties, for work performed during employment in California in an hourly-paid or non-exempt position during the Class Period, including the following:

a. The claims set forth in the Original Complaint and the FAC, specifically, (1) failure to pay overtime wages (violation of California Labor Code sections 510, 1194, and 1198), (2) failure to pay sick pay wages (violation of California Labor Code section 246), (3) failure to provide meal and rest periods and failure to pay meal and rest period premium wages (violation of California Labor sections 226.7, 512), (4) failure to timely pay all wages upon separation of

1 employment (violation of California Labor Code sections 201, 202, and 203); (5) failure to
2 provide accurate itemized wage statements (violation of California Labor Code sections 226 and
3 226.3); (6) violation of PAGA predicated on the same or similar facts and/or claims alleged in
4 the Action and or any PAGA letter sent to the LWDA by Plaintiff in or prior to the Action; and
5 (7) claims for unfair competition (violation of California Business and Professions Code section
6 17200, *et seq.*), and any claims predicated on the same or similar facts and/or claims alleged in
7 the Action, as well as any claims that could have been pled which relate to such claims or arise
8 from the same or similar facts concerning Plaintiff or the putative class, including any claims for
9 unpaid overtime or sick pay wages, untimely wage payments both during and at the end of
10 employment, non-compliant meal periods, non-compliant rest periods, non-compliant wage
11 statements, and claims for interest, penalties (including but not limited to waiting time penalties),
12 or premiums in connection therewith, as well as any claims under the California Labor Code
13 (including California Labor Code section 558) and California Industrial Welfare Commission
14 Wage Orders that were alleged or which could have been alleged under the same or similar facts,
15 allegations and/or claims pleaded in the Action;

16
17
18
19 b. Any claims for injunctive relief, declaratory relief, restitution, fraudulent business
20 practices or punitive damages alleged or which could have been alleged under the facts,
21 allegations, and/or claims pleaded in the Original Complaint or FAC filed as part of the Action;
22 and
23

24 c. Any and all other claims under California common law, the California Labor
25 Code, the Fair Labor Standards Act, California Industrial Welfare Commission Wage Orders,
26 and the California Business and Professions Code alleged in or that could have been alleged
27 under the same or similar facts, allegations and/or claims pleaded in the Action. In addition, to
28

1 the extent required by law, the cashing of the settlement check by the Settlement Class Member
2 shall be deemed to be an opt-in for purposes of releasing the Released Parties from any claims
3 predicated under the FLSA that could have been alleged under the same or similar facts,
4 allegations and/or claims pleaded in the Action. The Settlement Administrator shall include a
5 legend on the settlement check stating “By cashing this check, I am opting into the settlement in
6 *Ashley Avery v. Taklak Inc. et al.*, Yuba County Superior Court, Case No. CVCV23-00479,
7 under FLSA, 29 U.S.C. § 216(b), and releasing the Class Released Claims described in the
8 Stipulation of Settlement.
9

10 d. The claims set forth in subparagraphs (a) to (c) hereinabove shall be collectively
11 referred to as the “Class Released Claims.”
12

13 63. Release of PAGA Claims: Upon the Effective Date, and subject to Defendant’s
14 full payment of the Gross Settlement Amount and all associated employer-side payroll taxes,
15 Plaintiff and the PAGA Employees hereby do and shall be deemed to have fully, finally, and
16 forever released, settled, compromised, relinquished and discharged any and all of the Released
17 Parties of and from any and all PAGA claims predicated on the facts and/or claims alleged in the
18 Action (including in the Original Complaint and FAC), the PAGA Letter, and/or any other
19 PAGA letter sent to the LWDA by Plaintiff or in any way premised in whole or in part on any of
20 the Class Released Claims set forth above in Paragraph 62 that arose at any time while employed
21 in an hourly-paid or non-exempt position in California during the PAGA Period. The PAGA
22 Employees will be issued a check for their share of the PAGA Payment and will not have the
23 opportunity to opt out of, or object to, the PAGA Payment and release of the PAGA claims set
24 forth in this Paragraph. The PAGA Employees are bound by the release of the PAGA claims
25 regardless of whether they cash or deposit their PAGA Employee Payment.
26
27
28

64. Release of Claims by Class and PAGA Representative: Upon the Effective Date, subject to Defendant's full payment of the Gross Settlement Amount and all associated employer-side payroll taxes, and as a condition of receiving any portion of her Enhancement Award, the Class and PAGA Representative, for herself only, agrees to the additional following General Release: In consideration of Defendant's promises and agreements as set forth herein, the Class and PAGA Representative hereby fully releases the Released Parties from any and all Class Released Claims and also generally releases and discharges the Released Parties from any and all any claims for wages, bonuses, severance pay, vacation pay, penalties, employment benefits, stock options, violation of any personnel policy, any claims based on discrimination, harassment, unlawful retaliation, violation of public policy, or damages of any kind whatsoever, arising out of any common law torts, contracts, express or implied, any covenant of good faith and fair dealing, any theory of wrongful discharge, any theory of negligence, any theory of retaliation, any legal restriction on any Defendant's right to terminate the employment relationship, or any federal, state, or other governmental statute, executive order, regulation or ordinance, or common law, or any other basis whatsoever, to the fullest extent provided by law. Class and PAGA Representative shall be deemed to have, and by operation of the Court's Final Order and Judgment shall have, expressly waived and relinquished to the fullest extent permitted by law the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law that purports to limit the scope of a general release. Class and PAGA Representative, for herself, has read Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING

1 **THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD**
2 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
3 **THE DEBTOR OR RELEASED PARTY.**

4 Class and PAGA Representative understands that Section 1542 gives the right not to release
5 existing claims of which she is not now aware, unless Class and PAGA Representative voluntarily
6 chooses to waive this right. Having been so apprised, Class and PAGA Representative nevertheless
7 voluntarily waives the rights described in Section 1542, and elects to assume all risks for claims
8 that now exist in her favor, known or unknown. The release of claims of Class and PAGA
9 Representative as set forth in this Paragraph is a condition precedent to enforcement of the
10 Settlement.

11
12 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL/CLASS**

13 **CERTIFICATION**

14
15 65. Pursuant to this Stipulation of Settlement, solely for purposes of settling the
16 Action and as part of the preliminary approval process, the Parties agree that Plaintiff shall file a
17 First Amended Complaint (the “First Amended Complaint” or “FAC”), in the form attached
18 hereto as **Exhibit B**, which asserts the following class claims: (1) failure to pay overtime wages
19 (violation of California Labor Code sections 510, 1194, and 1198), (2) failure to pay sick pay
20 wages (violation of California Labor Code section 246), (3) failure to provide meal and rest
21 periods and failure to pay meal and rest period premium wages (violation of California Labor
22 sections 226.7, 512), (4) failure to timely pay all wages upon separation of employment
23 (violation of California Labor Code sections 201, 202, and 203); and (5) failure to provide
24 accurate itemized wage statements (violation of California Labor Code sections 226 and 226.3),
25 as well as claims for unfair competition (violation of California Business and Professions Code
26
27
28

1 section 17200, *et seq.*) The class shall be defined as described in Paragraph 4 above.

2 66. The FAC will be deemed filed upon the Court's order granting preliminary
3 approval. Defendant shall not have any obligation to respond to the FAC, and the Parties agree
4 that Defendant shall not admit any facts or waive any defenses by not responding to FAC.
5 Should the Settlement not be approved, or should the Settlement be terminated, the FAC will be
6 null and void, and the Original Complaint will once again be the operative complaint in the
7 Action. If required by the Court in order to release claims under the FLSA, the Parties will
8 stipulate to amend the complaint to add the FLSA claim. The Parties will jointly seek an
9 immediate vacation or stay of pending dates, pending approval by the Court of this Settlement.
10

11 67. For settlement purposes only, and not for purposes of class certification should
12 the Action not be settled or for any other purpose, the Parties agree and stipulate that the class, as
13 defined in Paragraph 4 herein, may be certified in the Action. The Parties are not certifying any
14 PAGA claims. In support of this Agreement, Plaintiff will request that the Court certify, for
15 settlement purposes only, the Class as to all non-PAGA claims that have been asserted, which
16 Defendant shall not oppose or object to. However, should the Settlement not be approved or is
17 terminated, the stipulations set forth in this Paragraph 67 shall be null and void and shall not be
18 admissible for any purpose whatsoever.
19

20 68. Class Counsel shall promptly submit this Stipulation of Settlement to: (1) the
21 LWDA as requirement by California Labor Code § 2699(s)(2) and (2) the Court in support of
22 Plaintiff's Motion for Preliminary Approval and for determination by the Court as to whether the
23 proposed Settlement is within the range of possible judicial approval. Promptly upon execution
24 of this Stipulation of Settlement, Class Counsel shall apply to the Court for the entry of an order
25 substantially in the following form:
26
27
28

- 1 a. Certifying the Settlement Class as contemplated by Paragraph 67 above;
- 2 b. Approving the Notice attached hereto as **Exhibit A**;
- 3 c. Authorizing Plaintiff to file the First Amended Complaint in the form attached
- 4 hereto as **Exhibit B**;
- 5 d. Directing the mailing of the Notice by first class mail to the Class Members and
- 6 PAGA Employees;
- 7 e. Preliminarily approving the Settlement subject only to the objections of the Class
- 8 Members and final review by the Court; and
- 9 f. Scheduling the Final Approval Hearing on the question of whether the proposed
- 10 Settlement, including payment of attorneys' fees and costs and the Enhancement Award should be
- 11 finally approved as fair, reasonable and adequate as to the Settlement Class Members and for
- 12 approval of the PAGA Settlement.

13 69. The Parties will work cooperatively to mutually agree upon the form and content

14 of the Notice, as well as the Proposed Order Granting Preliminary Approval. Class Counsel will

15 provide Defendant's counsel with a draft of the Preliminary Approval papers for review at least

16 ten (10) days before filing.

17 70. The Class and PAGA Representative and Class Counsel will not make any public

18 disclosure of the Settlement until after the filing of the motion for preliminary approval of the

19 Settlement. The Class and PAGA Representative and each Class Counsel represent that they

20 have not made any such disclosure. The Class and PAGA Representative and Class Counsel

21 shall not encourage any Class Members to opt-out. Class Counsel will take all steps necessary to

22 ensure that the Class and PAGA Representative is aware of, and will encourage her to adhere to,

23 the restriction against any public disclosure of the Settlement until after the Settlement is

1 preliminarily approved by the Court. Thereafter, Class Counsel and the Class and PAGA
2 Representative agree not to publicize the terms of this Settlement with the media, including but
3 not limited to, any newspaper, journal, magazine, website and/or online reporter of settlements,
4 or publicize the fact or the terms of this Settlement on any website.

5
6 **DUTIES OF THE PARTIES FOLLOWING FINAL APPROVAL**

7 71. Following final approval by the Court of the Settlement provided for in this
8 Stipulation of Settlement, Class Counsel shall submit a proposed Final Order and Judgment with
9 input from Defendant's Counsel: Approving the Settlement, adjudging the terms thereof to be
10 fair, reasonable and adequate, and directing consummation of its terms and provisions including
11 the approval of Class Counsel's application for an award of attorneys' fees and costs and the
12 Enhancement Award to the Class and PAGA Representative. The Parties will work
13 cooperatively to mutually agree upon the form and content of the Proposed Order Granting Final
14 Approval of the Class Settlement and Approval of the PAGA Settlement and Judgment.
15

16 **VOIDING OF AGREEMENT IF SETTLEMENT NOT FINALIZED**

17
18 72. Subject to the obligations of mutual full cooperation set forth herein, either
19 Plaintiff or Defendant may terminate the Settlement if after submitting the Settlement for
20 approval to the Court, the Court declines to enter the preliminary approval order, the final
21 approval order, or judgment in substantially the form submitted by the Parties, or if the
22 Settlement as agreed does not become final because of appellate court action. The terminating
23 Party shall give to the other Party (through counsel) written notice of its decision to terminate no
24 later than fourteen (14) calendar days after receiving notice that one of the above enumerated
25 events has occurred. Termination shall have the following effects:
26

27 a. The Settlement shall be terminated and shall have no force or effect, and no Party
28

1 shall be bound by any of its terms.

2 b. Defendant shall have no obligation to make any payments to Plaintiff, any Class
3 Member, any PAGA Employee, or Class Counsel.

4 c. The preliminary approval order, final approval order, and judgment shall be
5 vacated.

6
7 d. The Settlement and all negotiations, statements, and proceedings relating thereto
8 shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their
9 respective positions prior to the Settlement.

10 e. Except as otherwise discoverable, neither the Settlement nor any ancillary
11 documents, actions, statements or filings in furtherance of the Settlement (including all matters
12 associated with the mediation) shall be admissible or offered into evidence in the Action or any
13 other action for any purpose whatsoever.
14

15 **NO PRIOR ASSIGNMENTS**

16 73. The signatories hereto hereby represent that they are fully authorized to enter into
17 this Stipulation of Settlement and bind the Parties hereto to the terms and conditions thereof.
18

19 **ESCALATOR CLAUSE**

20 74. Escalator Clause. The Gross Settlement Amount was calculated with, and is
21 premised on, the understanding that the Class Members and PAGA Employees worked
22 approximately 3,229 Workweeks during the Class Period. The Parties agree that if the total
23 number of Workweeks during the Class Period exceeds One Hundred Fifteen Percent (115%) of
24 the estimated 3,229 Workweeks (*i.e.*, exceeds 3,713 Workweeks), Defendant will
25 proportionately increase the Gross Settlement Amount commensurate with the percentage
26 increase in the number of total Workweeks beyond fifteen percent (15%). As an example, and
27
28

1 for the avoidance of doubt, if the total Workweeks increases to 2% above 3,713 Workweeks,
2 then the Gross Settlement Amount shall increase by 2%.

3 **PARTIES' AUTHORITY**

4 75. The signatories hereto hereby represent that they are fully authorized to enter into
5 this Stipulation of Settlement and bind the Parties hereto to the terms and conditions thereof.
6

7 **MUTUAL FULL COOPERATION**

8 76. The Parties agree to fully cooperate with each other to accomplish the terms of
9 this Stipulation of Settlement, including, but not limited to, execution of such documents and
10 taking of such action as reasonably may be necessary to implement the terms of this Stipulation
11 of Settlement. The Parties to this Stipulation of Settlement shall use their best efforts, including
12 all efforts contemplated by this Stipulation of Settlement and any other efforts that may become
13 necessary by order of the Court, or otherwise, to effectuate this Stipulation of Settlement and the
14 terms set forth herein. As soon as practicable after execution of this Stipulation of Settlement,
15 Class Counsel shall take all necessary steps to secure the Court's final approval of this
16 Stipulation of Settlement.
17
18

19 77. The Parties and their respective counsel agree that they will not attempt to
20 encourage or discourage Class Members from filing requests for exclusion.
21

22 **NO PRIOR ASSIGNMENTS**

23 78. The Parties and their respective counsel represent, covenant, and warrant that they
24 have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
25 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
26 cause of action, or right herein released and discharged except as set forth herein.
27

28 **NO ADMISSION**

1 79. Nothing contained herein, nor the consummation of this Stipulation of Settlement,
2 is to be construed or deemed an admission of liability, culpability, negligence or wrongdoing on
3 the part of Defendant. Each of the parties hereto has entered into this Stipulation of Settlement
4 solely with the intention to avoid further disputes and litigation with the attendant inconvenience
5 and expenses.

7 **BREACH AND ENFORCEMENT ACTIONS**

8 80. The Parties will jointly request that the Court retain jurisdiction pursuant to
9 California Code of Civil Procedure § 664.6 to oversee and enforce the terms of this Settlement.
10 In the event of a breach of this Settlement, the non-breaching Party shall provide notice to the
11 breaching Party and request that the breaching Party cure any alleged breach. If the breach is not
12 cured within ten (10) days of said notice, the non-breaching Party may pursue legal action or
13 other proceeding against any breaching Party to enforce the provisions of this Stipulation of
14 Settlement. In the event of such enforcement actions, the successful Party shall be entitled to
15 recover from the unsuccessful Party reasonable attorneys' fees and costs, including expert
16 witness fees incurred in connection with any enforcement actions. All such disputes shall be
17 resolved by the Court.

20 **NOTICES**

21 81. Unless otherwise specifically provided herein, all notices, demands or other
22 communications given hereunder shall be in writing and shall be deemed to have been duly
23 given as of the third (3rd) business day after mailing both electronically and by United States
24 registered or certified mail, return receipt requested, and addressed as follows:

25 **To Plaintiff, the Settlement Class Members, and Class Counsel:**

1 Daniel F. Gaines, Esq.
2 GAINES & GAINES, APLC
3 4550 East Thousand Oaks Blvd., Suite 100
4 Westlake Village, CA 91362

5 **To Defendant and Defendant's Counsel:**

6 Kyung M. Finley, Esq.
7 FINLEY EMPLOYMENT LAW
8 2450 Venture Oaks Way, Suite 200
9 Sacramento, CA 95833

10 **CONSTRUCTION**

11 82. The Parties hereto agree that the terms and conditions of this Stipulation of
12 Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, and
13 this Stipulation of Settlement shall not be construed in favor of or against any Party by reason of
14 the extent to which any Party or their counsel participated in the drafting of this Stipulation of
15 Settlement.

16 **CAPTIONS AND INTERPRETATIONS**

17 83. Paragraph titles or captions contained herein are inserted as a matter of
18 convenience and for reference, and in no way define, limit, extend or describe the scope of this
19 Stipulation of Settlement or any provision of it. Each term of this Stipulation of Settlement is
20 contractual and not merely a recital.

21 **MODIFICATION**

22 84. This Stipulation of Settlement may not be changed, altered or modified, except in
23 writing and signed by the Parties hereto and approved by the Court. This Stipulation of
24 Settlement may not be discharged except by performance in accordance with its terms or by a
25 writing signed by the Parties hereto.

1
2
3
4
5
6
7
8
9
INTEGRATION CLAUSE

85. This Stipulation of Settlement, and the Exhibits attached hereto and incorporated herein by reference, contain the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

10
11
12
13
14
BINDING ON ASSIGNS

86. This Stipulation of Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

15
16
17
18
19
20
21
CLASS MEMBER SIGNATORIES

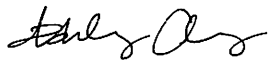
87. It is agreed that because the Class Members are so numerous, it is impossible or impractical to have each member execute this Stipulation of Settlement. The Notice, **Exhibit A** hereto, will advise the Class Members of the binding nature of the release, and the release shall have the same force and effect as if this Stipulation of Settlement were executed by each member.

22
23
24
25
26
27
28
COUNTERPARTS

88. This Stipulation of Settlement may be executed in counterparts and by facsimile or electronic signatures, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one Stipulation of Settlement binding upon and effective as to all parties.

1
2 IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this
3 Stipulation of Settlement as of the date(s) set forth below:

4 **PLAINTIFF AND CLASS REPRESENTATIVE ASHLEY AVERY**

5
6 

Dated: 12 / 17 / 2024

7
8 Ashley Avery

9 **DEFENDANT TAKLAK INC.**

10
11 

Dated: 12/19/2024

12
13 By: Karm Kalkat

14 Its: President

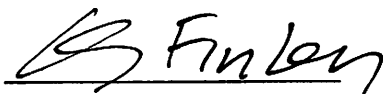
15 **APPROVED AS TO FORM AND CONTENT:**

16 **Gaines & Gaines, APLC**

17
18 
19 By: _____
20 Daniel F. Gaines, Esq.
21 Counsel for Plaintiff

Dated: 12 / 17 / 2024

22 **Finley Employment Law**

23
24 
25 By: _____
26 Kyung Finley, Esq.
27 Counsel for Defendant

Dated: 12/19/2024

EXHIBIT A

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

ASHLEY AVERY, on behalf of herself and all
“aggrieved employees” pursuant to Labor Code
§ 2698 *et seq.*

Plaintiff,

v.

TAKLAK INC., a California corporation, and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: CVCV23-00479

Assigned to the Hon. Stephen W. Berrier, Dept. 4

**NOTICE OF PENDENCY OF PROPOSED
CLASS ACTION SETTLEMENT AND
FINAL HEARING**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$137,500 to pay claims to all individuals who worked for Taklak Inc. (“Defendant”) as hourly paid or non-exempt employees in California at any time between May 15, 2019 and November 1, 2024.
- The settlement resolves a lawsuit alleging that Defendant failed to: pay all overtime and sick pay wages due; provide compliant meal and rest periods or premium compensation in lieu thereof; timely issue final wages upon separation of employment; and issue accurate and complete itemized wage statements. The settlement also resolves the claim asserting violation of California Business and Professions Code section 17200, *et seq.*, which is also alleged in the lawsuit. The settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$48,125 as attorneys’ fees and \$15,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the Gross Settlement Amount (defined below).
- Defendant denies liability and believes all appropriate wages were paid and that it otherwise complied with any Labor Code obligations. The Parties disagree on how much money could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below.
Exclude Yourself	To exclude yourself, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you may receive no money from the settlement . This is the only option that allows you to ever be part of any other lawsuit against Taklak Inc. about the legal claims that were brought in this case. However, even if you exclude yourself, you will still be a PAGA Employee subject to the PAGA settlement if you meet the definition of “PAGA Employee” below.
Object	Write to the Settlement Administrator about why you don’t like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement, as detailed below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On May 15, 2023, Plaintiff Ashley Avery (“Plaintiff”), a former employee of Taklak Inc., filed this lawsuit in the Yuba County Superior Court. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all current and former hourly paid or non-exempt California employees of Defendant at any time between May 15, 2019 and November 1, 2024 (“Class Members”) (“Class Period”). Specifically, the lawsuit alleges that members of the Class were not provided all overtime and sick pay wages due; compliant meal and rest periods or premium compensation in lieu thereof; were not timely issued final wages upon separation of employment; and were not issued accurate and complete itemized wage statements. The lawsuit also alleges a claim asserting violation of California Business and Professions Code section 17200, *et seq.* The settlement seeks recovery of wages, damages, interest, statutory and civil penalties, restitution, attorneys’ fees and costs. Defendant denies all of the material allegations in the lawsuit and denies that the Class Members are entitled to any recovery or remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.
Gaines & Gaines, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Phone: (866) 550-0855

Defendant's Attorneys

Kyung M. Finley, Esq.
Finley Employment Law
2450 Venture Oaks Way, Suite 200
Sacramento, CA 95833

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes she would have prevailed on her claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims ("Settlement" or "Settlement Agreement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiff and Plaintiff's Attorneys believe the Settlement is fair, reasonable, adequate, and in the best interests of all Class Members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all individuals who worked for Taklak Inc. as hourly-paid or non-exempt employees in California at any time between May 15, 2019 and November 1, 2024 ("Class Period"). It also encompasses PAGA Employees composed of all persons who are Class Members and who were employed by Defendant between March 8, 2022 and November 1, 2024 ("PAGA Period").

C. What does the Settlement provide?

1. Gross Settlement Amount.

The Settlement provides that Defendant will pay \$137,500 (the "Gross Settlement Amount") to settle the lawsuit.

2. Net Settlement Amount.

The "Net Settlement Amount" is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount amount is the Gross Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to

comment or objection by Participating Class Members. The Court will fix these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed \$48,125;

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$15,000;

(c) **Enhancement Award to the Class Representative** in an amount set by the Court, not to exceed \$6,000 for her service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$7,500, for administering the Settlement; and

(e) **PAGA Payment** in the total amount of \$10,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). 75% or \$7,500, shall be paid to the California Labor and Workforce Development Agency ("LWDA"). The remaining 25% or \$2,500, shall be included in the Net Settlement Amount for payment to PAGA Employees.

3. Individual Settlement Payment.

Your share of the Net Settlement Amount will be determined by the formula detailed in section E below.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and all associated employer-side payroll taxes, the claims released by the Settlement Class Members and Plaintiff will include all claims pleaded in the Original Complaint and the First Amended Complaint (the "FAC") in the Action, and which could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Action, against Defendant and any of its past, present, and future direct or indirect parents, subsidiaries, predecessors, successors, and affiliates, as well as each of its or their past, present, and future owners, officers, directors, employees, partners, members, shareholders, agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendant (the "Released Parties"), for work performed during employment in California in an hourly-paid or non-exempt position during the Class Period, including the following:

a. The claims set forth in the Original Complaint and the FAC, specifically, (1) failure to pay overtime wages (violation of California Labor Code sections 510, 1194, and 1198), (2) failure to pay sick pay wages (violation of California Labor Code section 246), (3) failure to provide meal and rest periods and failure to pay meal and rest period premium wages (violation of California Labor sections 226.7, 512), (4) failure to timely pay all wages upon separation of employment (violation of California Labor Code sections 201, 202, and 203); (5) failure to provide accurate itemized wage statements (violation of California Labor Code sections 226 and 226.3); (6) violation of PAGA predicated on the same or similar facts and/or claims alleged in the Action and or any PAGA letter sent to the LWDA by Plaintiff in or prior to the Action; and (7) claims for unfair competition (violation of California Business and Professions Code section 17200, et seq.), and any claims predicated on the same or similar facts and/or claims alleged in the Action, as well as any claims that could have been pled which relate to such claims or arise from the same or similar facts concerning Plaintiff or the putative class, including any claims for unpaid

overtime or sick pay wages, untimely wage payments both during and at the end of employment, non-compliant meal periods, non-compliant rest periods, non-compliant wage statements, and claims for interest, penalties (including but not limited to waiting time penalties), or premiums in connection therewith, as well as any claims under the California Labor Code (including California Labor Code section 558) and California Industrial Welfare Commission Wage Orders that were alleged or which could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Action;

b. Any claims for injunctive relief, declaratory relief, restitution, fraudulent business practices or punitive damages alleged or which could have been alleged under the facts, allegations, and/or claims pleaded in the Original Complaint or FAC filed as part of the Action; and

c. Any and all other claims under California common law, the California Labor Code, the Fair Labor Standards Act, California Industrial Welfare Commission Wage Orders, and the California Business and Professions Code alleged in or that could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Action. In addition, to the extent required by law, the cashing of the settlement check by the Settlement Class Member shall be deemed to be an opt-in for purposes of releasing the Released Parties from any claims predicated under the FLSA that could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Action. The Settlement Administrator shall include a legend on the settlement check stating “By cashing this check, I am opting into the settlement in *Ashley Avery v. Taklak Inc. et al.*, Yuba County Superior Court, Case No. CVCV23-00479, under FLSA, 29 U.S.C. § 216(b), and releasing the Class Released Claims described in the Stipulation of Settlement.

The claims set forth in subparagraphs (a) to (c) hereinabove shall be collectively referred to as the “Class Released Claims.”

Upon the Effective Date, and subject to Defendant’s full payment of the Gross Settlement Amount and all associated employer-side payroll taxes, Plaintiff and the PAGA Employees hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all PAGA claims predicated on the facts and/or claims alleged in the Action (including in the Original Complaint and FAC), the PAGA Letter (defined as the PAGA letter that Plaintiff submitted to the LWDA on March 8, 2023), and/or any other PAGA letter sent to the LWDA by Plaintiff or in any way premised in whole or in part on any of the Class Released Claims set forth above that arose at any time while employed in an hourly-paid or non-exempt position in California during the PAGA Period. The PAGA Employees will be issued a check for their share of the PAGA Payment and will not have the opportunity to opt out of, or object to, the PAGA Payment and release of the PAGA claims set forth in this Paragraph. The PAGA Employees are bound by the release of the PAGA claims regardless of whether they cash or deposit their PAGA Employee Payment.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) shall receive an “Individual Settlement Payment,” which is distributable to each Settlement Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form) and a PAGA portion of the Individual Settlement Payment, which is distributable to each PAGA Employee regardless of whether they participate in the Settlement (PAGA Employees will receive the PAGA portion of the Individual Settlement Payment even if they exclude themselves from the Settlement).

The “Individual Settlement Payments” means the portion of the Net Settlement Amount payable to a Settlement Class Member (i.e., who does not submit a valid request for exclusion form) and each PAGA Employee (whether the PAGA Employee participates in the Class Settlement or not). As to Settlement Class Members, the class portion of the Individual Settlement Payments will be determined by taking each Settlement Class Member’s total number of Workweeks during the Class Period, divided by the combined sum of all Settlement Class Members’ Workweeks during the Class Period, and multiplied by the value of the Net Settlement Amount.

The “PAGA Employee Payments” means the payment issued to each PAGA Employee for his/her/their share of the PAGA Payment, whether they participate in the Class Settlement or not. As to PAGA Employees, the PAGA Employee Payments will be determined by taking each PAGA Employee’s total number of Workweeks during the PAGA Period, divided by the combined sum all PAGA Employees’ Workweeks during the PAGA Period, and multiplied by the value of the portion of the PAGA Payment allocated to the PAGA Employees.

“Workweeks” means the number of weeks that a Class Member or PAGA Employee worked for Defendant as an hourly-paid or non-exempt employee within California during the Class Period and/or PAGA Period. Workweeks are to be calculated by the Settlement Administrator based on information provided by Defendant. Workweeks will be calculated by identifying and crediting each week where the Class Member or PAGA Employee worked at least one (1) shift during the calendar week (from Sunday through Saturday), during the Class Period and/or the PAGA Period.

For tax purposes, the class portion of each Individual Settlement Payment will be apportioned (a) 30% as wages (reported on an IRS Form W-2 and subject to applicable payroll taxes and withholdings); and (b) 70% as penalties and interest (reported on an IRS Form 1099, if required). The PAGA Employee Payments will be apportioned 100% as penalties (reported on an IRS Form 1099, if required). All Individual Settlement Payments and PAGA Employee Payments paid to Class Members and PAGA Employees will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

Settlement Class Payment: According to the records of Defendant, you worked [REDACTED] Workweeks while employed as an hourly-paid or non-exempt employee in California from May 15, 2019 through November 1, 2024. Based on these Workweeks, you are entitled to an Individual Settlement Payment of approximately \$[REDACTED]. This amount is subject to change based on the final ruling of the Court.

PAGA Payment: According to the records of Defendant, you worked [REDACTED] Workweeks while employed as an hourly-paid or non-exempt employee in California from March 8, 2022 through November 1, 2024. Based on these Workweeks, you are entitled to a PAGA Employee Payment of approximately \$[REDACTED]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than [REDACTED]. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

F. When Will I Be Paid?

After the Court grants approval of the Settlement, you will receive your Individual Settlement Payment in two installments over approximately two years. The first installment will be issued approximately seven months after the Court grants final approval of the Settlement and the second installment will be issued approximately one year and seven months after the Court grants final approval of the Settlement.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed Settlement (the “Final Settlement Hearing”) on [REDACTED], at 8:30 a.m., in the Courtroom of Judge Stephen W. Berrier of the Yuba County Superior Court, Department 4, located at 215 Fifth Street, Suite 200, Marysville, CA 95901. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the Settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the Settlement; (iv) the amount of the attorneys’ fees and costs to be awarded to Plaintiff’s Attorneys; and (v) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed Settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than [REDACTED]. The Settlement Administrator’s address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed Settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed Settlement in writing. Any Class Member who does not affirmatively opt out of the Settlement by submitting a valid and timely request for exclusion may object to the approval of the Settlement (“Objecting Class Member”).

All written objections must include (1) the full name and current address of the Objecting Class Member; (2) the specific reason(s) for the objection; and (3) any and all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) to be considered by the Court. Any Objecting Class Member who wishes to appear at the Final Approval Hearing to be heard orally in support of, or in opposition to the Settlement, must so state in the objection. Class Members shall have no right to object to the PAGA release or PAGA Payment. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than [REDACTED].

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed Settlement except you will participate in the PAGA portion thereof and be paid a share of the PAGA settlement if you are a PAGA Employee. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completing and mailing a request for exclusion to the Settlement Administrator at the above-stated address, such that it is postmarked no later than [REDACTED].

The request to exclude yourself does not need to be in any particular form and will be considered a valid request for exclusion so long as it communicates a clear desire by the Class Member not to be included in the Settlement and/or Settlement class and identifies his/her/their full name, date of birth, and current address along with his/her/their signature. You are responsible to maintain a photocopy of your request for exclusion, reflecting that it was submitted in a timely manner. Any disputes regarding the timeliness of a request for exclusion or whether a written communication constitutes a valid request that cannot be resolved between the Parties shall be determined by the Court, whose determination shall be final. Any Class Member who validly excludes himself/herself/themselves from the Settlement shall not be bound by the Settlement and shall not be entitled to any portion of the Net Settlement Amount, except that PAGA Employees will not be permitted to opt out of or object to the PAGA release.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should review the detailed “Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims” which is on file with the Clerk of the Court. The pleadings and other records in the lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Yuba County Superior Court, located at 215 Fifth Street, Suite 200, Marysville, CA 95901.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number].

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT B

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
GAINES & GAINES, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Ashley Avery, on behalf of herself, all others similarly situated, the general public, and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

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

ASHLEY AVERY, on behalf of herself and all
“aggrieved employees” pursuant to Labor Code
§ 2698 *et seq.*,

Plaintiff,

v.

TAKLAK INC., a California corporation, and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: CVCV23-00479

Assigned to the Hon. Stephen W. Berrier, Dept. 4

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- 1. FAILURE TO PAY ALL OVERTIME
AND SICK PAY WAGES DUE (LABOR
CODE §§ 246, 510, 1194, AND 1198; IWC
WAGE ORDER 7-2001)**
- 2. FAILURE TO PROVIDE REST PERIODS
OR COMPENSATION IN LIEU THEREOF
(LABOR CODE § 226.7; IWC WAGE
ORDER 7-2001)**
- 3. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7 AND
512; IWC WAGE ORDER 7-2001)**
- 4. KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT
PROVISIONS (LABOR CODE § 226(a), (e))**
- 5. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION OF EMPLOYMENT
(LABOR CODE §§ 201-203)**
- 6. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200**
- 7. PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 226(a), 226.7, 246,
510, 512, 1194, AND 1198, AND PURSUANT**

**TO LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§ 226.3
AND 558**

DEMAND FOR JURY TRIAL

Complaint Filed: May 15, 2023

Plaintiff ASHLEY AVERY (“Plaintiff”), individually and on behalf of all similarly situated individuals (the “Class” or “Plaintiff Class”), and on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of TAKLAK INC., a California corporation, and any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”), as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all other current and former hourly-paid or non-exempt employees of Defendants, employed by Defendants in the State of California.

2. From May 15, 2019 through November 1, 2024 (the “Liability Period”), Defendants have had a consistent policy of failing to pay all overtime and sick pay wages due to Class Members (as defined below); provide legally compliant meal and rest periods or compensation in lieu thereof to Class Members; provide accurately itemized wage statements to Class Members; and timely pay wages upon separation of employment to Class Members.

3. Plaintiff, on behalf of herself and Class Members, brings this action pursuant to Labor Code §§ 201 – 203, 226(a) & (e), 226.3, 226.7, 246, 510, 512, 558, 1194, and 1198, Industrial Welfare Commission Wage Order (“Wage Order”) 7-2001, and any other applicable Wage Order seeking compensation for all unpaid wages, meal and rest period premium wages, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of herself and Class Members, and pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages due to Class Members.

5. Plaintiff, on behalf of herself and all aggrieved employees pursuant to Labor Code §§ 2698 *et seq.*, seeks penalties for Defendants' various violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiff and Class Members in Yuba County, California.

II.

PARTIES

A. Plaintiff

7. Plaintiff ASHLEY AVERY was employed by Defendants from August 2021 through February 2023 as an hourly-paid or non-exempt employee in Yuba County, California.

8. During her work with Defendants, Plaintiff was:

- a. Willfully denied the payment of all overtime and sick pay wages during the course of her employment;
- b. Willfully denied rest periods or compensation in lieu thereof;
- c. Willfully denied meal periods or compensation in lieu thereof;
- d. Willfully denied accurately itemized wage statements; and
- e. Willfully denied the timely payment of wages upon separation of her employment.

B. Defendants

9. Defendant TAKLAK INC. is a California corporation that employed Plaintiff and Class Members in Yuba County, California.

10. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

12. The Defendants named herein as DOES 1 through 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

III.

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action on behalf of herself, and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the following class composed of and defined as follows:

THE CLASS

All current and former hourly-paid or non-exempt employees of Defendants, employed by Defendants in California at any time from May 15, 2019 through November 1, 2024.

14. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify this class description with greater specificity or further division into subclasses or limitation to particular issues.

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

A. Numerosity

16. The potential members of the Class as defined are so numerous that joinder of all Class Members is impracticable. While the precise number of members of the Class has not been ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants currently employ, and during the relevant time periods employed, over 75 persons in the State of California who fall within the Class definition.

1 17. Accounting for employee turnover during the relevant period necessarily increases this
2 number. Plaintiff alleges Defendants' employment records would provide information as to the
3 number and location of members of the Class. Joinder of members of the Class is not practicable.

4 **B. Commonality**

5 18. There are questions of law and fact common to the Class that predominate over any
6 questions affecting only individual Class Members. These common questions of law and fact include,
7 without limitation:

- 8 a. Whether Plaintiff and Class Members were denied the payment of all overtime
9 and sick pay wages due, in violation of Labor Code §§ 246, 510, 1194, and
10 1198, IWC Wage Order 7-2001, and any other applicable Wage Order;
- 11 b. Whether Defendants failed to properly provide rest periods or compensation in
12 lieu thereof to Plaintiff and Class Members, in violation of Labor Code § 226.7,
13 IWC Wage Order 7-2001, and any other applicable Wage Order;
- 14 c. Whether Defendants failed to properly provide meal periods or compensation
15 in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§
16 226.7 and 512, IWC Wage Order 7-2001, and any other applicable Wage
17 Order;
- 18 d. Whether Defendants failed to provide Plaintiff and members of the Class with
19 accurately itemized wage statements, in accordance with Labor Code § 226(a)
20 and (e);
- 21 e. Whether Defendants failed to timely pay Plaintiff and certain Class Members
22 all wages due and owing at the separation of their employment, in violation of
23 Labor Code §§ 201-203; and
- 24 f. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
25 to Business & Professions Code § 17200 *et seq.*

26 **C. Typicality**

27 19. The claims of the named Plaintiff are typical of the claims of Class Members. Plaintiff
28 and Class Members sustained injuries and damages arising out of and caused by Defendants' common

1 course of conduct in violation of laws, regulations that have the force and effect of law, and statutes
2 as alleged herein.

3 **D. Adequacy of Representation**

4 20. Plaintiff will fairly and adequately represent and protect the interests of Class
5 Members. Counsel who represents Plaintiff are competent and experienced in litigating large
6 employment class actions.

7 **E. Superiority of Class Action**

8 21. A class action is superior to other available means for the fair and efficient adjudication
9 of this controversy. Individual joinder of all proposed Class Members is not practicable, and
10 questions of law and fact common to the proposed Class predominate over any questions affecting
11 only individual members of the proposed Class. Each member of the proposed Class has been
12 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

13 22. Class action treatment will allow those similarly situated persons to litigate their
14 claims in the manner that is most efficient and economical for the parties and the judicial system.
15 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
16 action that would preclude its maintenance as a class action.

17 **IV.**

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

21 **FAILURE TO PAY ALL OVERTIME AND SICK PAY WAGES DUE**

22 **(LABOR CODE §§ 246, 510, 1194, AND 1198; IWC WAGE ORDER 7-2001)**

23 23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set
24 forth herein.

25 24. During the Liability Period, Defendants failed to properly compute all non-base hourly
26 wages, including, but not limited to, shift differential wages, earned by Plaintiff and Class Members
27 into their regular rate of pay for purposes of paying them overtime wages and sick pay wages at the
28 correct rates, in violation of Labor Code §§ 246, 510, 1194, and 1198, IWC Wage Order 7-2001, and

1 any other applicable Wage Order. Defendants paid Plaintiff and Class Members various non-base
2 hourly wages, including, but not limited to, shift differential wages; however, Defendants failed to
3 properly blend these forms of pay, and instead paid Plaintiff and Class Members overtime wages and
4 sick pay wages based *only* on the base hourly rate of pay, thus depriving Plaintiff and Class Members
5 of all overtime wages and sick pay wages earned. This violates Labor Code §§ 246, 510, 1194, and
6 1198, IWC Wage Order 7-2001, and any other applicable Wage Order.

7 25. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due,
8 Plaintiff and Class Members have been deprived of wages in amounts to be determined at trial, and
9 are entitled to restitution and recovery of such amounts, plus interests thereon, attorneys' fees, and
10 costs pursuant to Labor Code § 1194.

11 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

12 **V.**

13 **SECOND CAUSE OF ACTION**

14 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

15 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

16 **(LABOR CODE § 226.7 AND IWC WAGE ORDER 7-2001)**

17 26. Plaintiff incorporates paragraphs 1 through 25 of this Complaint as though fully set
18 forth herein.

19 27. Plaintiff and Class Members are entitled to one hour of pay at their regular rate of pay
20 for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor
21 Code § 226.7, IWC Wage Order 7-2001, and any other applicable Wage Order.

22 28. During the Liability Period, Defendants failed to pay rest period premium wages to
23 Plaintiff and Class Members who were denied rest periods, in violation of Labor Code § 226.7, IWC
24 Wage Order 7-2001, and any other applicable Wage Order. Plaintiff and Class Members were
25 routinely not authorized and unable to take an off-duty, 10-minute rest period for every four (4) hours
26 of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed
27 rest period. Plaintiff and Class Members were frequently too busy to take a rest period. When they
28

1 were able to take a rest period, they were oftentimes late or cut short. This violates Labor Code §
2 226.7, IWC Wage Order 7-2001, and any other applicable Wage Order.

3 29. During the Liability Period, Defendants also failed to properly compute all non-base
4 hourly wages, including, but not limited to, shift differential wages, earned by Plaintiff and Class
5 Members into their regular rate of pay for purposes of paying them rest period premiums, in violation
6 of Labor Code § 226.7, IWC Wage Order 7-2001, and any other applicable Wage Order. Defendants
7 paid Plaintiff and Class Members various non-base hourly wages, including, but not limited to, shift
8 differential wages; however, Defendants failed to properly blend these forms of pay, and instead paid
9 Plaintiff and Class Members rest period premiums based *only* on the base hourly rate of pay, thus
10 depriving Plaintiff and Class Members of all meal and rest period premiums, in violation of Labor
11 Code § 226.7, IWC Wage Order 7-2001, and any other applicable Wage Order.

12 30. Pursuant to Labor Code § 226.7, IWC Wage Order 7-2001, and other applicable Wage
13 Orders, Plaintiff seeks the payment of all rest period premium wages which she and Class Members
14 are owed for no fewer than four years preceding the filing of this Action, according to proof.

15 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

16 **VI.**

17 **THIRD CAUSE OF ACTION**

18 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

19 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

20 **(LABOR CODE §§ 226.7 AND 512 AND IWC WAGE ORDER 7-2001)**

21 31. Plaintiff incorporates paragraphs 1 through 30 of this Complaint as though fully set
22 forth herein.

23 32. Plaintiff and Class Members are entitled to one hour of pay at their regular rate of pay
24 for each day that Defendants failed to properly provide one or more meal periods as set forth in Labor
25 Code §§ 226.7 and 512, IWC Wage Order 7-2001, and any other applicable Wage Order.

26 33. During the Liability Period, Defendants failed to pay meal period premium wages to
27 Plaintiff and Class Members who were denied meal periods, in violation of Labor Code §§ 226.7 and
28 512, IWC Wage Order 7-2001, and any other applicable Wage Order. Plaintiff and Class Members

1 were routinely denied, and not authorized to take, an uninterrupted, 30-minute meal period for every
2 shift worked that exceeded five hours in duration, and a second meal period when they worked shifts
3 greater than ten hours, but were not paid premium wages of one hour's pay for each missed meal
4 period. When they were able to take a meal period, they were oftentimes late, short, or on-duty. This
5 violates Labor Code §§ 226.7 and 512, IWC Wage Order 7-2001, and any other applicable Wage
6 Order.

7 34. During the Liability Period, Defendants failed to properly compute all non-base hourly
8 wages, including, but not limited to, shift differential wages, earned by Plaintiff and Class Members
9 into their regular rate of pay for purposes of paying them meal period premiums, in violation of Labor
10 Code §§ 226.7 and 512, IWC Wage Order 7-2001, and any other applicable Wage Order. Defendants
11 paid Plaintiff and Class Members various non-base hourly wages, including, but not limited to, shift
12 differential wages; however, Defendants failed to properly blend these forms of pay, and instead paid
13 Plaintiff and Class Members meal period premiums based *only* on the base hourly rate of pay, thus
14 depriving Plaintiff and Class Members of all meal period premiums, in violation of Labor Code §§
15 226.7 and 512, IWC Wage Order 7-2001, and any other applicable Wage Order.

16 35. Pursuant to Labor Code §§ 226.7 and 512, IWC Wage Order 7-2001, and other
17 applicable Wage Orders, Plaintiff seeks the payment of all meal period premium wages which she
18 and Class Members are owed for no fewer than four years preceding the filing of this Action,
19 according to proof.

20 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

21 VII.

22 FOURTH CAUSE OF ACTION

23 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

24 KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED

25 EMPLOYEE WAGE STATEMENT PROVISIONS

26 (LABOR CODE § 226(a), (e))

27 36. Plaintiff incorporates paragraphs 1 through 35 of this Complaint as though fully set
28 forth herein.

1 37. Section 226(a) of the California Labor Code requires Defendants to provide wage
2 statements to employees. In those wage statements, Defendants must provide an accurate itemized
3 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3)
4 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
5 rate basis, (4) all deductions, provided that all deductions made on written orders of the employee
6 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
7 for which the employee is paid, (7) the name of the employee and only the last four digits of his or
8 her social security number or an employee identification number other than a social security number,
9 (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates
10 in effect during the pay period and the corresponding number of hours worked at each hourly rate by
11 the employee. Defendants have knowingly and intentionally failed to comply with Labor Code §
12 226(a).

13 38. Defendants failed to issue Plaintiff and members of the Class wage statements that
14 fully and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Class
15 Members were not paid all wages due, as stated above. As such, the wage statements provided by
16 Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1);
17 total hours worked, in violation of Labor Code § 226(a)(2); net wages earned, in violation of Labor
18 Code § 226(a)(5); and all applicable hourly rates in effect during the pay period and the corresponding
19 number of hours worked, in violation of Labor Code § 226(a)(9).

20 39. As a consequence of Defendants' willful conduct in failing to provide Class Members
21 with accurate itemized wage statements, Plaintiff and Class Members have been injured because they
22 have not been paid all wages due and were issued wage statements which do not reflect, and fail to
23 state, all information required by Labor Code § 226(a). The missing information cannot be discerned
24 at all from the face of the wage statements themselves. As a result, Plaintiff and Class Members are
25 entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or
26 \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in
27 a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled
28 to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

VIII.

FIFTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203)

40. Plaintiff incorporates paragraphs 1 through 39 of this Complaint as though fully set forth herein.

41. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

42. Defendants paid Plaintiff and certain Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class Members were not paid all wages due and owing throughout the course of their employment, as detailed above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due and owing for the entirety of their employment. Further, when Plaintiff was terminated from her employment, she was paid her final wages many days later.

43. More than 30 days have passed since Plaintiff and certain Class Members have left Defendants' employ.

44. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiff and certain Class Members are entitled to up to 30 days' wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of employment.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

IX.

SIXTH CAUSE OF ACTION
PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
UNFAIR COMPETITION PURSUANT TO
BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

45. Plaintiff incorporates paragraphs 1 through 44 of this Complaint as though fully set forth herein.

46. This is a class action for Unfair Business Practices. Plaintiff, on her own behalf and on behalf of the general public, and on behalf of others similarly situated, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and members of the Class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

47. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

48. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices.

49. Wage and hour laws express fundamental public policies. Properly providing employees with all wages due is a fundamental public policy of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and its employees from competitors who lower their costs by failing to comply with minimum labor standards.

50. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,

1 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
2 guaranteed to all employees under law.

3 51. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
4 §17200 *et seq.* of the Business & Professions Code.

5 52. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
6 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
7 17200 *et seq.* of the Business & Professions Code.

8 53. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
9 similarly situated have been damaged in a sum as may be proven.

10 54. Unless restrained by this Court, Defendants will continue to engage in the unlawful
11 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
12 should make such orders or judgments, including the appointment of a receiver, as may be necessary
13 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
14 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
15 to, disgorgement of profits which may be necessary to restore Plaintiff and members of the Class to
16 the money Defendants have unlawfully failed to pay.

17 X.

18 **SEVENTH CAUSE OF ACTION**

19 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
20 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR**
21 **CODE §§ 201, 202, 226(a), 226.7, 246, 510, 512, 1194, AND 1198 AND PURSUANT TO**
22 **LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

23 55. Plaintiff incorporates paragraphs 1 through 54 of this Complaint as though fully set
24 forth herein.

25 56. As a result of the acts alleged above, including the Labor Code violations set forth
26 herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

27 For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties
28 and other relief in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 246, 510, 512, 1194, and 1198; and
- b. Pursuant to Labor Code § 2699(a), the penalties as authorized by Labor Code §§ 226.3 and 558.

55. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

56. On March 8, 2023, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of March 8, 2023. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the aggrieved employees she seeks to represent request relief as described below.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages pursuant to Labor Code §§ 510 and 1194 in the amount of all unpaid wages due to Plaintiff and Class Members;
2. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§ 226.7 and 512;
3. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
4. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members who are no longer employed by Defendants;
5. An award of prejudgment and post-judgment interest;
6. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;

7. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other aggrieved employees;

8. An award providing for payment of costs of suit pursuant to Labor Code §§ 226(h), 1194, 2699(k)(1), and other applicable law;

9. An award of attorneys' fees pursuant to Labor Code §§ 226(h), 1194, 2699(k)(1), and other applicable law; and

10. Such other and further relief as this Court may deem just and proper.

Dated: December 14, 2024

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: _____
DANIEL F. GAINES
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

Dated: December 14, 2024

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: DANIEL F. GAINES
Attorney for Plaintiff

EXHIBIT C