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9 Attorneys for Plaintiff CHARMAINE TATE
10 As an individual and on behalf of all others similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF EL DORADO**

13 CHARMAINE TATE, as an individual and
14 on behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 PRO ENERGY SERVICES GROUP, LLC,
a Delaware Limited Liability Company;
18 and DOES 1-100, inclusive,

19 Defendants.

Case No.: 23CV0586

Assigned for All Purposes to:
Hon. Gary S. Stossberg
Dept. 9

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

Date: TBD
Time: 8:30 a.m.
Dept. 9

1 I, BRANDON BROUILLETTE, declare as follows:

2 1. I am an attorney duly licensed to practice in California and before this Court, and I
3 am a partner with Crosner Legal, P.C., counsel of record for Plaintiff Charmaine Tate in the above-
4 captioned matter. If called to testify as to the facts within, I would and could competently do so.

5 2. Attached hereto as Exhibit 1 is a true and correct, fully-executed copy of the Parties'
6 Class Action and PAGA Settlement Agreement (the "Settlement Agreement"). Attached hereto as
7 Exhibit 2 is a true and correct copy of Plaintiff Tate's PAGA notice letter to the Labor & Workforce
8 Development Agency ("LWDA") and proof of submission. Attached hereto as Exhibit 3 is a true
9 and correct copy of proof of submission of the proposed settlement to the LWDA.

10 3. Other than the Crockett matter that is being settled with this case, I am unaware of any
11 other class, representative or other collective action in any other court in this or any other jurisdiction
12 that asserts claims against similar to those asserted in this action on behalf of a class or group of
13 individuals that would include some or all of the individuals who would be Class Members or
14 Aggrieved Employees in this matter.

15 **FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

16 4. Defendant Pro Energy provides a wide range of construction support services for
17 the utility industry, and partners with companies engaged in the construction, maintenance, repair,
18 planning, design, testing, and inspection of electrical infrastructure and facilities. Plaintiff Tate
19 worked for the Defendant for approximately one month until she resigned in September of 2022.
20 Her title was 'Flagger' or traffic helper' and she was on the flag team that assisted with road
21 closures and traffic management. She was a member of the Local IBW union. She would work
22 anywhere from 6-12 hours per day, 5 days a week. Plaintiff Crockett worked for the Defendant for
23 approximately four years as a Senior Program Manager. He oversaw construction managers,
24 inspectors, and traffic control workers. In addition to hourly pay, a significant portion of his
25 weekly income was paid as "Per Diems." Unlike Plaintiff Tate, he was not a union employee.

26 5. Plaintiffs alleges several wage and hour violations by Defendant. First, they allege
27 Defendant failed to pay employees for all hours worked, and that supervisors were tasked with
28 logging hours at each job site resulting in accurate timekeeping. Plaintiff Tate also alleges she

1 sometimes was required to ride in a company van while picking up various employees from
2 different jobs sites after her shift had ended, which time she claims was not recorded or paid for.
3 Plaintiff Crockett further alleges that Pro Energy failed to include per diem payments in the
4 calculation of the “regular rate” used to determine overtime wages and, as a result, that they and
5 class members were underpaid for their overtime hours.

6 6. Plaintiffs also claim meal and rest break violations and allege Defendant did not
7 provide 1st or 2nd meal periods to Plaintiff and other flaggers who were required to eat while
8 working and 30 minutes “auto deducted” from their time. Plaintiffs similarly claim Defendant did
9 not provide Plaintiff and other flaggers with any rest periods. Lastly, Plaintiffs argued they had to
10 use their personal cell phones for work purposes such as communicating with supervisors during a
11 shift, and that they received no reimbursement.

12 7. Based on these allegations, Plaintiff Tate filed a class action complaint in April
13 2023 alleging causes of action against Defendant for unpaid minimum wages, unpaid overtime
14 wages, failure to provide meal periods, failure to provide rest periods, violations of Labor Code
15 Section 226, failure to timely pay all wages due upon separation of employment, failure to
16 reimburse for business expenses, unfair competition. On July 27, 2023, after notice to the LWDA
17 and exhausting administrative remedies, Plaintiff Tate filed an amended complaint adding a claim
18 for violations under PAGA based on the various alleged Labor Code violations identified in her
19 PAGA notice letter. Defendant produced evidence of its policies on these issues and according
20 Plaintiffs accorded them nominal value for settlement purposes. On July 21, 2023, Plaintiff
21 Crockett filed a separate class action complaint against Defendant in the Placer County Superior
22 Court, alleging causes of action against Defendant for unpaid overtime wages, violations of Labor
23 Code Section 226, and unfair competition.

24 8. Pro Energy has at all times denied Plaintiffs’ collective allegations and maintained
25 its payroll and timekeeping policies and procedures comply with California law, that it paid the
26 class members for all wages due and provided all required meal and rest breaks on a fully-
27 compliant basis. Defendant also contends there would be no need for any class member to use
28 their own phone on company business and therefore no reimbursement is owed. Additionally, Pro

1 Energy strongly contends the case cannot be maintained as a class action, arguing for example that
2 to the extent class members worked off the clock, or missed any breaks, it was intermittent and
3 infrequent and evidence of such off the clock work would be anecdotal, and therefore
4 individualized issues would predominate. Lastly, Pro Energy emphasized that, like Plaintiff Tate,
5 a significant portion of the putative class were union employees and the terms of their employment
6 controlled by the terms of the relevant Collective Bargaining Agreements. Thus, per Defendant,
7 the claims of many class members were subject to federal preemption under the Labor
8 Management Relations Act and further subject to the grievance and arbitrations procedures of the
9 CBAs.

10 9. After Plaintiffs filed their respective complaints, the Parties engaged in initial
11 written discovery and, after meeting and conferring regarding discovery, law and motion, and
12 other case management issues, agreed to attempt a global mediation. The Parties also agreed on a
13 protocol for an exchange of substantial documents and information before the mediation to
14 facilitate the settlement discussions. Consequently, Plaintiffs' counsel reviewed payroll records,
15 compensation plans, personnel policies/handbooks, personnel files, relevant CBAs, meal and rest
16 break policies, and a random sampling of Class Member paystubs and time records. Plaintiffs
17 then had those records analyzed by Berger Consulting Group to look for, inter alia, violation rates
18 for potential damages from off the clock work, violation rates for meal violations, etc. Defendant
19 also provided data regarding the total number of putative class members, the estimated total
20 amount of workweeks and pay periods they worked, average pay rates, and information regarding
21 other non-hourly compensation, among other relevant data.

22 10. The Parties then engaged Lou Marlin, Esq., a respected professional neutral with
23 substantial wage and hour and class action experience and, in April 2024, the Parties participated
24 in a full day mediation with Mr. Marlin. Throughout the day, the arms-length negotiations were
25 hard-fought and adversarial as the Parties exchanged extensive information on their legal and
26 factual positions, and made numerous offers and counter-offers. With the mediator's assistance,
27
28

1 the Parties finally reached agreement on all major issues. The Parties then collaboratively drafted
2 Settlement Agreement setting forth the settlement terms now before the Court for approval.

3 **THE PROPOSED SETTLEMENT TERMS**

4 11. Under the settlement, Pro Energy will pay \$900,000.00 into a common fund, the
5 Gross Settlement Amount (“GSA”). Reasonable attorney’s fees of up to one-third of the GSA, or
6 \$300,000.00, actual litigation costs of up to \$15,000, modest enhancement awards of up to
7 \$10,000 for each plaintiff, settlement administration costs of no more than \$17,500, and \$60,000
8 for alleged civil penalties under PAGA (consistent with PAGA, \$45,000 of that amount will go the
9 LWDA for the State’s share of the civil penalties, and the remaining \$15,000 will be distributed
10 pro rata to the Aggrieved Employees), all will be paid from the GSA. The remainder of
11 approximately \$487,500 will be allocated among the Participating Class Members based on their
12 total weeks worked during the Class Period. No portion of the GSA will revert to Pro Energy.

13 12. The settlement provides for conditional certification of a settlement class including
14 all persons employed by Pro Energy in California and classified as a non-exempt hourly employee
15 who worked for Pro Energy during the Class Period of April 20, 2019 to June 5, 2024. The
16 Settlement Class consisted of approximately 1,474 individuals.

17 13. As noted, the settlement obligates Pro Energy to pay \$900,000 to resolve the
18 Settlement Class’s claims, inclusive of attorney’s fees and costs. At least \$487,500 from the GSA
19 will be distributed to the Participating Class Members. This is a cash settlement that does not
20 require Participating Class Members to submit a claim form to receive their settlement share.
21 Participating Class Members will receive their settlement checks automatically via First Class
22 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining
23 eighty percent will be allocated to expenses, penalties and interest. Pro Energy will pay any and all
24 applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the
25 Court’s approval, any amounts not claimed (because a class member does not cash his or her
26 settlement check) will be forwarded to the California State Controller’s Unclaimed Property Fund.

27 14. Each Participating Class Member will receive a share of the Net Settlement
28 Amount based on his or her position held and total weeks worked for Pro Energy during the Class

1 Period while employed as a non-exempt employee. Thus, each Class Member's Individual
2 Settlement Payment will be calculated using criteria typically used in determining appropriate
3 amounts of alleged unpaid wages, unpaid premium wages for missed meal breaks, unreimbursed
4 expenses, and potential statutory penalties under applicable law. These methods are intended to
5 ensure each Class Member receives a portion of the available settlement funds corresponding to
6 the relative value of his or her potential claims. The proposed allocation provides a reasonable way
7 to compensate Class Members based on the amount of time they worked for Pro Energy, and the
8 number of instances they missed a break, were not provided compensation in lieu of such missed
9 breaks, or lost wages due to underpaid overtime. I estimate the average class award will be
10 approximately \$330. There are approximately 869 Aggrieved Employees also eligible to receive a
11 share of the PAGA civil penalties, and their average PAGA award will be about \$17.28.

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

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

28 17. Class Members will have forty-five days to dispute the information in their Notice

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

5 18. All Participating Class Members will be deemed to release Pro Energy from all
6 claims alleged in the operative complaint, or that could have been brought based on the allegations
7 in the operative complaint, including PAGA claims, from March 21, 2018 to April 13, 2024. The
8 release is limited to the claims that were actually pleaded or could have been pleaded based on the
9 alleged facts in the operative complaint.

10 19. The settlement provides Defendant will not oppose a request for reasonable
11 attorney's fees not to exceed one-third of the Gross Settlement Amount, or \$300,000, nor will it
12 oppose a request for reimbursement of actual litigation costs and expenses of up to \$15,000.00.
13 Defendant also will not oppose a request for an enhancement award to Plaintiffs of not more than
14 \$10,000.00 each in recognition of their time spent on this matter, the risks each undertook on
15 behalf of the class, and the benefit conferred to the class. Plaintiffs' counsel will provide the
16 Court with appropriate summaries and evidence of their efforts and time records in anticipation of
17 the Final Approval Hearing, and Plaintiffs have submitted their declarations herewith. If the Court
18 approves less than the above amounts, the difference will remain in the Net Settlement Amount for
19 distribution to the Participating Class Members.

20 20. The Parties allocated \$60,000 to payment of civil penalties under PAGA for such
21 claims against Pro Energy, as addressed in more detail below, and which amount Plaintiffs submit
22 is fair, reasonable and adequate and consistent with PAGA's underlying purposes. As required by
23 Labor Code section 2699(l)(2), Plaintiffs gave notice of the settlement and preliminary approval
24 hearing to the LWDA via its online portal, and further served the LWDA with this motion.

25 **THE CLASS SHOULD BE CONDITIONALLY CERTIFIED FOR SETTLEMENT**

26 21. the class is both sufficiently numerous, consisting of approximately 1,474
27 individuals, and ascertainable by reference to Defendant's personnel and payroll records.
28

22. Plaintiffs are adequate class representatives, as their claims do not conflict with and are not antagonistic to the claims of other class members. Further, their claims are typical given each is a member of the class and their respective claims arise from the same employment practices and course of conduct giving rise to the claims of the other class members.

23. Common questions of law and fact predominate – particularly for purposes of a settlement class – as the Class Members all were subject to the same meal rest break policies, the same alleged policy that failed to include per diems in calculating the regular rate of pay, etc. Since the focus of the claims against Pro Energy concerns the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. Pro Energy’s calculation of the regular rate without accounting for per diems is company-wide policy applied equally and consistently to all class members, and this policy is either compliant with California law or it is not. Regardless of that determination, it will decide liability for all class members one way or another. Similarly, whether Pro Energy’s policy requiring employees to drive in company vehicles after clocking out resulted in unpaid off the clock work is another common question.

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

The Proposed Settlement Meets the Dunk and Kullar Factors and is within the Range of Reasonableness

25. Prior to settlement, the Parties engaged in formal and informal discovery to facilitate settlement discussions. Thus, Plaintiffs reviewed documents and information regarding Pro Energy's payroll practices, a random sampling of pay stubs and time records from class members,

1 applicable compensation plans, meal and rest break policies, etc., and information from Defendant
2 regarding class size and breakdown, work weeks/pay periods, rates of pay, and other information
3 used to formulate a damages model. Plaintiffs then had that information analyzed by a consulting
4 expert to assist in determining potential violation rates and other data used to formulate a damages
5 model. Plaintiffs' counsel are confident they obtained sufficient information to understand the law
6 and facts of this case and make an informed decision regarding the proposed settlement and whether
7 it is fair and reasonable.

8 26. Using that data, Plaintiff ran various calculations and estimated Defendants'
9 theoretical maximum exposure on the class claims at about \$32.719 million. More specifically, the
10 theoretical maximum includes approximately \$920,300 in unpaid wages due to alleged off the clock
11 work, about \$3,736,800 in underpaid overtime based on the alleged regular rate issue, around
12 \$4,432,800 for alleged meal break violations, about \$276,300 for alleged rest break violations, about
13 \$11,294,500 on the expense reimbursement claims, \$694,500 for alleged expense reimbursement,
14 approximately \$3,106,050, on the wage statement claims, and waiting time penalties of about
15 \$8,534,300

16 27. We calculated these amounts as follows:

17 Unpaid Wages/Off the Clock

18 69,450 unpaid hours (assume 1 hour per week) * \$13.25 avg. min. wage = \$920,212

19 Underpaid Overtime/Regular Rate

20 \$3,736,800 per Plaintiffs' experts

21 Meal Period Violations

22 259,520 eligible shifts * 53.8% unique violation rate * \$42.74/ hour avg. rate of pay = \$5,967,434

23 less \$1,534,670 in meal period premium paid = \$4,432,764

24 Rest Break Violations

25 264,260 eligible shifts * 100% violation rate * \$42.74 avg. rate of pay = \$11,294,470

26 Expense Reimbursement

27 69,450 work weeks * \$10/week = \$694,500

28 Wage Statement Violations

1 869 initial violations * \$50/ violation * 30,627 subsequent violations * \$100 per violation =
2 \$3,106,050

3 Waiting Time Penalties

4 832 former employees * (240 hours * \$42.74/hr avg. wage) = \$8,534,320

5 28. Plaintiffs contend they and class members worked “off the clock” when they would
6 travel in company vehicles after clocking out of their shift. In response, Defendants countered that
7 it accurately tracked employee time and paid class members all wages due as required under
8 applicable law. Defendant further argued it had a strict policy against off the clock work and
9 therefore if any such work occurred it was aberrational and against company policy, and done
10 without employer knowledge or consent. For the same reasons, Pro Energy argued it would require
11 individualized inquiries to determine what alleged “off the clock” work occurred and whether such
12 work was potentially compensable, and therefore class certification would not be appropriate on the
13 claim. On the underpaid overtime claim, Plaintiffs allege Pro Energy failed to include certain per
14 diem payments in the calculation of the employee’s “regular rate” of pay then used to determine the
15 correct overtime rate. In response, Defendant argued it accurately accounted for, calculated and paid
16 all overtime hours at the correct rates of pay in accordance with the applicable CBAs and applicable
17 law.

18 29. Plaintiffs next contend Defendant failed to provide legally compliant meal and rest
19 breaks, and that Defendant essentially had an “auto deduct” policy where 30 minutes of time was
20 deducted from employee hours worked regardless of whether they received a fully-compliant
21 lunch or not. Plaintiffs further argued that lunch breaks frequently were not compliant, and that
22 employees had to work through some or all of their meal breaks, meal breaks started late, and that
23 second meal periods were not always provided on shifts over 10 hours. For similar reasons,
24 Plaintiffs argued they and the class members did not receive required rest breaks either.

25 30. Defendant deny Plaintiffs’ contentions, claiming it made meal and rest breaks
26 available to Class Members in compliance with California law and the CBAs, and noted it paid
27 thousands in meal period premium payments for documented violations. Pro Energy argued its meal
28 and rest break policies are lawful and that Class Members were frequently reminded they were

1 required to take all meal and rest breaks. Defendants also contend that time records demonstrate that
2 Class Members took duty-free, timely meal and rest breaks. Defendants further contend the meal
3 and rest break policies and practices comported with the flexibility the *Brinker* court held was
4 integral to California’s meal and rest period requirements. Finally, Defendants argued that Plaintiffs’
5 meal and rest break claims are not susceptible to common proof, as the claims would require
6 individualized inquiries, including whether there was an unlawful companywide policy, whether
7 employees had the opportunity to take meal and rest periods, whether they voluntarily chose to
8 forego their meal and rest periods, and whether Defendants ever prevented them from taking meal
9 and rest periods. Accordingly, Pro Energy contends these claims are vulnerable to a ruling that class
10 treatment is not appropriate.

11 31. In the expense reimbursement claim, Plaintiffs claim they and other class members
12 regularly were required to use personal phones while working to, inter alia, communicate with
13 supervisors and each other. In response, Defendant argued it provided employees with access to all
14 electronics needed to perform their job duties and, accordingly, if employees used their personal
15 phones it was purely for their own convenience rather than business necessity and therefore would
16 not be reimbursable.

17 32. As a result of the above alleged violations, Plaintiffs allege Defendants failed to
18 provide accurate wage statements and failed to timely pay all wages that were due and owing upon
19 separation of employment. In response to these derivative claims, Defendants emphasized that,
20 should the primary claims fail, Plaintiffs’ claim for wage statement violations and waiting time
21 penalties would also fail. Defendants further argued they would not be liable for waiting time
22 penalties because a “good faith dispute” exists over the payment of past wages. Further,
23 Defendants contend Plaintiffs would have to prove Defendants “willfully” failed to pay Class
24 Members appropriate wages due upon separation of employment.

25 33. Lastly, Pro Energy emphasized that, like Plaintiff Tate, a significant portion of the
26 putative class were union employees and the terms of their employment controlled by the terms of
27 the relevant Collective Bargaining Agreements. Thus, per Defendant, the claims of many class
28 members were subject to federal preemption under the Labor Management Relations Act and

1 further subject to the grievance and arbitrations procedures of the CBAs.

2 34. As far as potential PAGA liability, the theoretical civil penalties likely are around
3 \$15 million should Plaintiffs prevail on all claims and establish violations of the multiple Labor
4 Code sections at issue. As with the class claims, Plaintiffs discounted the potential PAGA penalties
5 based on Defendants' various defenses on the merits and also accounted for the Court's wide
6 discretion to reduce such penalties, or to decline to award penalties at all. Accordingly, the Parties
7 allocated \$60,000 to PAGA penalties. Plaintiffs submit this amount is reasonable under the
8 circumstances and in line with comparable settlements in other wage and hour class actions in
9 California. Additionally, the LWDA has been informed of the terms of the PAGA portion of the
10 settlement, and will be able to weigh in as necessary.

11 35. The settlement obviates the significant risk that this Court may find any kind of class
12 or representative resolution unachievable or deny certification of all or some of Plaintiff's claims.
13 Furthermore, even if Plaintiffs obtained certification of all or some of the claims, continued
14 litigation would be lengthy and expensive as the parties pursued merits discovery, a probable motion
15 to decertify, as well as trial and possible appeals, and would further and substantially delay any
16 recovery by the class with no assurance of recovering significantly more than the proposed
17 settlement. While Plaintiffs, co-counsel and I are confident in the merits of these claims, legitimate
18 controversies exist regarding each one of them. We also recognize proving the amount of wages
19 and penalties due each Class Member would be an expensive, time-consuming, and uncertain
20 proposition.

21 36. Thus, Plaintiff Tate and I, and our co-counsel and co-plaintiff, discounted the value
22 of the class claims consistent with the risks discussed above, and carefully weighed the likelihood
23 of the class receiving substantially greater benefit if the litigation continued. We concluded – in
24 light of these very real and substantial risks – settlement on the proposed terms and without
25 prolonged and costly litigation was in the best interests of the class. The overall \$900,000 recovery
26 represents a significant percentage of Defendant's potential exposure. Given Defendant's multi-
27 layered defenses and all other potential risks of continued litigation, a total recovery for the class of
28 \$900,000, which will result in average award of around \$330 per class member, plus additional

1 sums under PAGA, is a significant result well within the range of reasonableness considering all
2 potential outcomes, and it will provide direct monetary awards to all Class Members without further
3 delay.

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

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

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

15 40. In particular, I have served as class counsel in several certified class action cases,
16 including:

- 17 a. *Party City Wage and Hour Cases*, JCCP4781 (class counsel for certified class of non-
18 exempt hourly employees who worked for Defendants in California)
- 19 b. *Lewis v. Express Messenger Systems*, Los Angeles Superior Court Case No. BC501521
20 (class counsel for certified class of last-mile delivery drivers who were alleged to be
21 misclassified as independent contractors)
- 22 c. *Ramirez-Vivar v. Grifols Diagnostic Solutions, Inc., et al.*, Alameda County Superior
23 Court, Case No. RG21099519 (class counsel for certified classes of non-exempt hourly
24 employees who worked for Defendants in California)
- 25 d. *Jones v. LA Live*, Los Angeles County Case No. BC687908 (class counsel for certified
26 issue classes consisting of hourly employees who worked at Staples Center and Nokia
27 Theater)

28 41. The following is a representative sample of settlements in wage and hour class

1 action and PAGA representative cases in which I was listed as an attorney of record and either
2 managed, or co-managed with attorneys at my firm and other co-counsel:

- 3 e. *Cruz v. Walmart*, Los Angeles County Super. Ct. Case No. 18STCV03128 (\$15 million
4 global PAGA settlement on behalf of hourly employees statewide for alleged Labor
5 Code violations.)
- 6 f. *Vorise v. 24 Hour Fitness USA, Inc.*, Contra Costa County Super. Ct., Case No. C 15-
7 02051 (\$11 million global PAGA settlement on behalf of over 36,000 employees for
8 Labor Code violations.)
- 9 g. *Gross v. Sodexo*, Kern County Super Ct., Case No. BCV-18-101746 Capstone (\$4.75
10 million class and PAGA settlement on behalf of class of non-hourly employees for
11 Labor Code violations.)
- 12 h. *Campbell v. AEG* (\$1.8M class and PAGA settlement on behalf of group of hourly
13 employees who worked at concert venues in California for alleged Labor Code
14 violations)
- 15 i. *Fiebelkorn v. AEG*, et al. Los Angeles Superior Court Case No. BC717337 (\$1.75M
16 class settlement on behalf of group of hourly employees who worked at Oakland
17 Coliseum for alleged Labor Code violations)
- 18 j. *Amaro v. Anaheim Arena Management*, Orange County Superior Court Case No. 30-
19 2017-00917542 (\$2,212,500 class and PAGA settlement on behalf of group of hourly
20 employees who worked at Honda center in Anaheim California for alleged Labor Code
21 violations)
- 22 k. *Espindola v. Panda Express*, San Bernardino Superior Court Case No. CIVDS1931455
23 (\$3.125M class and PAGA settlement on behalf of hourly employees statewide for
24 alleged Labor Code violations)
- 25 l. *Gold v. Benihana*, San Diego Court Superior Court Case No. 37-2016-00022320-CU-
26 OE-NC (\$2.25M class and PAGA settlement on behalf of hourly employees statewide
27 for alleged Labor Code violations)
- 28 m. *Party City Wage and Hour Cases*, JCCP4781 (\$6.5M class and PAGA settlement on

- 1 behalf of hourly employees statewide for alleged Labor Code violations)
- 2 n. *Lewis v. Express Messenger Systems*, Los Angeles County Super Court Case No.
- 3 BC501521 (\$10.5M class and PAGA settlement on behalf of a statewide group of
- 4 independent contractor last-mile delivery drivers alleged to be misclassified)
- 5 o. *Flores v. Tesla*, Alameda County Superior Court Case No. RG18907072 (\$4M class
- 6 and PAGA settlement on behalf of statewide group of hourly employees for alleged
- 7 Labor Code violations)
- 8 p. *Ruiz v. Disney Stores*, San Bernardino Superior Court Case No. CIVDS2016983 (\$2M
- 9 class and PAGA settlement on behalf of statewide group of hourly employees who
- 10 worked at retail stores in California for alleged Labor Code violations)
- 11 q. *Ramirez v. Yin Management*, Sacramento County Superior Court Case No. 34-2021-
- 12 00301530 (\$1.8M class and PAGA settlement on behalf of statewide group of hourly
- 13 employees who worked at Defendant's McDonald's franchises in California for alleged
- 14 Labor Code violations).
- 15 r. *Suhartono v. RRG Besh*, Los Angeles County Superior Court Case No. 19STCV22184
- 16 (\$2.25 class and PAGA settlement on behalf of statewide group of hourly employees
- 17 who worked at Defendant's McDonald's franchises in California for alleged Labor
- 18 Code violations).
- 19 s. *Gomes v. Kura Sushi*, Los Angeles County Superior Court Case No. 19STCV18977
- 20 (\$1.75M class and PAGA settlement on behalf of statewide group of hourly employees
- 21 who worked at Defendant's restaurants in California for alleged Labor Code violations)
- 22 t. *Saldana v. Hydrochem*, Contra Costa Superior Court Case No. CIVMSC19-02624
- 23 (\$1.38M class and PAGA settlement on behalf of statewide group of hourly employees
- 24 for alleged Labor Code violations).

25 42. In addition, below are settlements in consumer class action cases in which I was

26 listed as an attorney of record and either managed, or co-managed with attorneys at my firm:

- 27 u. *Lopez v. Seterus, et al.*, Los Angeles Superior Court Case No. BC484297 (\$3M Class
- 28 settlement on half of thousands of borrowers in California, Florida, and Texas for UCL

1 violations premised on improper late fee collections)

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

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

10 44. Zach Crosner is a 2010 graduate of University San Diego School of Law, and has
11 some 13 years of experience as a practicing attorney, all of which have focused on litigation of
12 employment, labor law, consumer, and class action claims. Following graduation, he
13 immediately began working for a nationally recognized plaintiff’s complex litigation firm,
14 CaseyGerry, where I had the fortune of working directly with past presidents of the consumer
15 attorneys and recipients of trial attorneys of the year awards. He also worked for former
16 CAALA and CLAY trial attorney of the year recipient, attorney Conal Doyle, as his sole
17 associate attorney. During his tenure at these firms, he focused on advocating for the rights of
18 consumers and employees in class action litigation, civil rights and employment litigation,
19 catastrophic injuries, insurance bad faith and appellate litigation.

20 45. In 2013, Mr. Crosner founded the law firm of Crosner Legal, P.C. which since its
21 inception has focused almost exclusively on wage and hour class actions and other labor and
22 employment law cases representing plaintiffs. Currently, over ninety percent (90%) of his
23 practice is dedicated exclusively to the prosecution of wage and hour class actions, and Crosner
24 Legal is currently responsible as lead counsel or co-lead counsel for prosecuting well over fifty
25 (50) wage and hour class actions and/or PAGA representative actions in both federal and state
26 courts throughout California.

27 46. Mr. Crosner currently is an executive board member of the Wage and Hour
28 Committee and the Legislative Committee for the California Employment Lawyers Association;

1 a member of the Grassroots Advocacy Team for the National Employment Lawyers Association;
2 Wage and Hour Committee member and Class Action Committee member for the National Trial
3 Lawyers; a member of the American Association for Justice; and member of the Pound Civil
4 Justice Institute. He was selected for 2018-20 by Super Lawyers as a “Southern California
5 Rising Star” for employment and labor law.

6 47. Jamie Serb graduated from the University of California, San Diego in 2004 and
7 graduated from California Western School of Law in 2013, and has been a member of the California
8 Bar since 2013. She gained extensive experience in wage and hour litigation, beginning work as a
9 class action attorney in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm,
10 APLC; Turley Law Firm, APLC). She joined Crosner Legal on January 4, 2021 as an associate
11 attorney. She has handled wage and hour class actions and PAGA lawsuits for over six (6) years
12 and has assisted in obtaining millions of dollars for employees during her years of practice.

13 48. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
14 action settlements while serving as lead class counsel in recent years, including but not limited to a
15 \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America, Inc.*,
16 Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action settlement
17 in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252 (Sacramento
18 Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017 (*Montelone v. Ocean
19 Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a \$1.8 million wage and
20 hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc. dba American
21 Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and hour class action
22 settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160 JGB (C.D. Cal.)), a
23 \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham Vacation
24 Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million wage and
25 hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-CV-04864-
26 YGR (N.D.Cal.)); a \$7.25 million wage and hour class action settlement in 2020 in *Avina, et al. v.
27 First Alarm Security & Patrol, Inc.*, Case No. 18CV323753 (Santa Clara Cty. Super Ct.); a \$2.2
28 million wage and hour class action settlement in 2021 (*Ghorchian, et al. v. West Hills Hospital, et*

1 *al.*, Case No. LS029737 (Los Angeles Cty. Super. Ct.)); a \$2.85 million dollar wage and hour
2 settlement in 2021 (*Valencia v. The Original Mowbray's Tree Service, Inc.*, Case No.
3 CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1 million wage and hour class action
4 settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super.
5 Ct.)), a \$1.4 million wage and hour class action settlement in 2023 in *Correa, et al. v. FedEx Supply*
6 *Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.), a \$2.38 million wage and
7 hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case No.
8 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million wage and hour class action settlement
9 in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino Cty. Super.
10 Ct.); \$1.015 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo Autism*
11 *Therapy*, Case No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a \$1.15 million wage and
12 hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*, Case No.
13 21STCV18512 (Los Angeles Cty. Super. Ct.); a \$1.5 million wage and hour class action settlement
14 in *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty. Super. Court); a \$1.3
15 million wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*, Case No.
16 20STCV06618 (Los Angeles Cty. Super. Court); a \$1.925 million wage and hour class settlement
17 in 224 in *Lo v. Cyberpower, Inc.*, Case No. 21STCV31479 (Los Angeles Cty. Super. Ct); and a
18 \$1.19 million dollar wage and hour class action settlement in 2024 in *Herrera v. Signature Flight*
19 *Support LLC*, Case No. 22STCV18367 (Los Angeles Cty. Super. Ct.).

20 49. For the foregoing reasons, it is respectfully requested that the Court preliminarily
21 approve the settlement.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing
23 is true and correct. Executed on August 23, 2024, at Los Angeles, California.

24
25
26 
27 _____
28 Declarant

EXHIBIT

1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs Charmaine Tate and Dave Crockett (“Plaintiffs”) on the one hand, and defendant Pro Energy Services Group, LLC, (“Defendant”) on the other. The Agreement refers to Plaintiffs and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Actions” means the Plaintiffs’ lawsuits alleging wage and hour and other violations against Defendant captioned *Charmaine Tate v. Pro Energy Services Group, LLC* Case No.: 23CV0586 initiated on April 20, 2023 and pending in Superior Court of the State of California, County of El Dorado, and *Dave Crockett v. Pro Energy Services Group, LLC* Case No.: CV-0050881 initiated on July 21, 2023 and pending in Superior Court of the State of California, County of Placer.
- 1.2 “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means a person employed by DEFENDANT in California and classified as a non-exempt hourly employee who worked for DEFENDANT during the PAGA Period.
- 1.5 “Class” means all persons employed by DEFENDANT in California and classified as a non-exempt hourly employee who worked for DEFENDANT during the Class Period.
- 1.6 “Class Counsel” means Zach Crosner, Jamie Serb, and Brandon Brouillette of Crosner Legal, PC and Larry Lee and Simon Yang of Diversity Law Group.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, email address (if available), and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

- 1.10 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement.
- 1.12 “Class Period” means the period from April 20, 2019 to June 5, 2024.
- 1.13 “Class Representatives” mean the named Plaintiffs in the operative complaints in the Actions seeking Court approval to serve as Class Representatives, Charmaine Tate and Dave Crockett.
- 1.14 “Class Representative Service Payments” mean the payment to the Class Representatives for initiating the Action and providing services in support of the Action.
- 1.15 “Court” means the Superior Court of California, County of El Dorado and the Superior Court of California, County of Placer.
- 1.16 “Defendant” means named Defendant Pro Energy Services Group, LLC.
- 1.17 “Defense Counsel” means Quarles & Brady LLP.
- 1.18 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19 “Final Approval” or “Final Approval Order” means the Court’s Order Granting Final Approval of the Settlement.
- 1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21 “Final Judgment” means the Judgment entered by the Court upon granting Final Approval of the Settlement.
- 1.22 “Gross Settlement Amount” means \$900,000.00 which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 8

below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments and the Administrator's Expenses.

- 1.23 "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24 "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25 "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26 "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27 "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28 "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29 "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30 "Operative Complaint" means the proposed First Amended Complaint attached hereto as **Exhibit A**.
- 1.31 "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.
- 1.32 "PAGA Period" means the period from April 21, 2022 to June 5, 2024.
- 1.33 "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.34 "PAGA Notices" means Plaintiffs Tate's April 21, 2023 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.35 "PAGA Penalties" means the total amount of PAGA civil penalties (\$60,000) to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$15,000) and the 75% to LWDA (\$45,000) in settlement of PAGA claims.

- 1.36 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37 “Plaintiffs” means Charmaine Tate and Dave Crockett, the named plaintiffs in the Action.
- 1.38 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.39 "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval of the Settlement.
- 1.40 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.41 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.42 “Released Parties” means: Defendant and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates.
- 1.43 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.44 "Response Deadline" means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.45 “Settlement” means the disposition of the Actions effected by this Agreement and the Judgment.
- 1.46 “Workweek” means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

- 2.1 On April 20, 2023, Plaintiff Tate commenced the Actions by filing a Complaint alleging causes of action against Defendant for unpaid minimum wages, unpaid overtime wages, failure to provide meal periods, failure to provide rest periods, violations of Labor Code Section 226, failure to timely pay all wages due upon separation of employment, failure to reimburse for business expenses, unfair competition. On July 27, 2023 Plaintiff Tate filed a First Amended Class And Representative Action Complaint adding violation of Private Attorneys General

Act of 2004 cause of action, based on alleged violations of Labor Code sections 201–203, 204, 210, 216, 221–223, 225.5, 226, 226.7, 245–248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5, and all applicable Wage Orders, and further specifying failure to keep accurate records; failure to implement a heat illness prevention program that includes providing workers “cool-down” periods and access to shade (*see* 8 C.C.R. § 3395), as well as access to drinking water (8.C.C.R. § 3395(c); reporting time pay violations; seating violations; sick leave violations (including Labor Code sections 233–234 and 245 –248.5; failure to provide supplemental paid sick leave (Labor Code § 248.2); failure to pay vested vacation/paid time off (Labor Code § 227.3); statutory wage violations; refusal to make payment; standard conditions of labor violations; unlawful deductions; and unlawful agreements and unlawful inquiries (Labor Code §§ 432.5, 432.7, and 1024.5), unlawful PAGA waivers; and any other law that is enforceable through PAGA.

- 2.2 On July 21, 2023, Plaintiff Crockett filed a subsequent Complaint alleging causes of action against Defendant for unpaid overtime wages, violations of Labor Code Section 226, and unfair competition.
- 2.3 Defendant denies the allegations in the Tate Complaint, Tate First Amended Complaint, and Crockett Complaint, denies any failure to comply with the laws identified such complaints, and denies any and all liability for the causes of action alleged in the complaints.
- 2.4 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff Tate gave timely written notice to Defendant and the LWDA by sending the PAGA Notices.
- 2.5 On March 7, 2024, the Parties participated in an all-day mediation presided over by Louis Marlin which led to this Agreement to settle the Action.
- 2.6 Prior to negotiating the Settlement, Plaintiffs obtained, through informal discovery, sample timekeeping and payroll data, relevant policy documents, and aggregate data points needed to foster a damages exposure analysis. Plaintiffs’ investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.7 The Court has not granted class certification.

3. MONETARY TERMS.

- 3.1 **Gross Settlement Amount.** Except as otherwise provided by Paragraph 8 below, Defendants promise to pay \$900,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in

Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

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

3.2.1 To Plaintiffs: Class Representative Service Payments to the Class Representatives of not more than \$10,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiffs' request for Class Representative Service Payments that do not exceed this amount. As part of the Final Approval motion, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$300,000.00 and a Class Counsel Litigation Expenses Payment of not more than \$15,000.00. Defendants will not oppose requests for these payments provided that do not exceed these amounts. As part of the Final Approval motion, Plaintiffs and/or Class Counsel will request approval of the Class Counsel Fees Payment and Class Litigation Expenses Payment. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

- 3.2.3 **To the Administrator:** An Administrator Expenses Payment not to exceed \$17,500.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$17,500.00, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4 **To Each Participating Class Member:** An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
- 3.2.4.1 **Tax Allocation of Individual Class Payments.** 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for [e.g., interest and penalties] (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
- 3.2.4.2 **Effect of Non-Participating Class Members on Calculation of Individual Class Payments.** Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.
- 3.2.5 **To the LWDA and Aggrieved Employees:** PAGA Penalties in the amount of \$60,000.00 to be paid from the Gross Settlement Amount, with 75% (\$45,000.00) allocated to the LWDA PAGA Payment and 25% (\$15,000.00) allocated to the Individual PAGA Payments.
- 3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$15,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 **Class Workweeks.** Based on a review of its records to date, Defendant estimates there were a total of 81,422 Workweeks through the date of the mediation.
- 4.2 **Class Data.** Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3 **Funding of Gross Settlement Amount.** Defendant shall fund the gross settlement amount in seven (7) equal payments with the first payment on the later of 14 days after the effective date, or January 1, 2025, followed by six (6) additional payments on the last day of each subsequent month from the initial payment. Notwithstanding the foregoing, Defendants shall fully fund the Gross Settlement Amount, including all amounts necessary to fully pay Defendant's share of payroll taxes no later than June 30, 2025.
- 4.4 **Payments from the Gross Settlement Amount.** Within 14 days after Defendants complete the funding the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1 The Administrator will issue checks for the Individual Class Payments and Individual PAGA Payments and send them to the Participating Class Members and Aggrieved Employees via First Class U.S. Mail, postage

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

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

- 5. **RELEASES OF CLAIMS.** Effective on the date when Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion

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

5.1 Plaintiffs' General Release of All Claims. Plaintiffs and their representatives, agents, attorneys, heirs, administrators, successors, and assigns,, release and discharge Released Parties from any and all charges, complaints, claims, liabilities, obligations, agreements, damages, actions, causes of action and/or suits, of any nature whatsoever, known or unknown, fixed or contingent, at law or in equity, which Plaintiffs now claims to have, own or hold, or which Plaintiffs at any time previously claimed to have, own or hold at the time of signing this Release.

Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time.. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

5.1.1 Plaintiffs' Waiver of Rights Under California Civil Code Section 1542.

For purposes of Plaintiffs' Release, subject to applicable carve out listed above, Plaintiffs expressly waive and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

5.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from (i) all claims and causes of action alleged in the Operative Complaints, as enumerated in Recital 2.1, above; and (ii) any and all additional claims that reasonably could have been alleged based on the facts stated in the Operative Complaints, including, but not limited to, claims that employees did not have access to adequate restroom and handwashing facilities. Participating Class Members' only release these claims for the duration of the Class Period. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment

insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

- 5.3 **Release by Aggrieved Employees:** All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from (i) all claims and causes of action alleged in the Operative Complaints, as enumerated in Recital 2.1, above; and (ii) any and all additional claims that reasonably could have been alleged based on the facts stated in the Operative Complaints, including, but not limited to, a claim that employees did not have access to adequate restroom and handwashing facilities. Aggrieved Employees only release these claims for the duration of the PAGA Period.

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

- 6.1 **Defendant's Declaration in Support of Preliminary Approval.** If potential conflicts exists, then within 14 days of the full execution of this Agreement, DEFENDANT will prepare and deliver to Class Counsel a signed Declaration from DEFENDANT and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and DEFENDANT shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement other than any identified in this Agreement.

- 6.2 **Plaintiffs' Responsibilities.** Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code

section 2699.3, subd. (a)), Operative Complaints (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members and/or the Administrator.

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

7. SETTLEMENT ADMINISTRATION.

- 7.1 **Selection of Administrator.** The Parties have jointly selected to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 **Employer Identification Number.** The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 **Qualified Settlement Fund.** The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 **Notice to Class Members.**
 - 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and

state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice (with Spanish translation) substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 7.4.3 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, DEFENDANT or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed

written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Release and Aggrieved Employee Release under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

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

7.6 **Challenges to Calculation of Workweeks.** Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence

of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 Objections to Settlement.

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

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

7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8 **Administrator Duties.** The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1 **Email Address and Toll-Free Number.** The Administrator will maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7.8.2 **Requests for Exclusion (Opt-outs) and Exclusion List.** The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of

all Requests for Exclusion from Settlement submitted (whether valid or invalid).

- 7.8.3 **Weekly Reports.** The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4 **Workweek and/or Pay Period Challenges.** The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5 **Administrator’s Declaration.** Not later than 14 days after the Response Deadline, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of the Class Notice, the total number of Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from the Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- 7.8.6 **Final Report by Settlement Administrator.** Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.

8.1 Based on its records, DEFENDANTS estimates that, as of the date of mediation, three were 81,422 Total Workweeks during the Class period.

8.2 The Gross Settlement Amount was agreed upon based on DEFENDANT'S representations of the total number of Workweeks in the Class Period and total number of Pay Periods in the PAGA Period. If the number of Total Workweeks during the Class Period exceeds 81,422 by more than ten percent (10%), the Gross Settlement Amount shall be increased on a pro rata basis per Total Workweek or Workweek exceeding the 10% increase (i.e. if the number increases by 11%, the Gross Settlement Amount shall be increased by 1%). If more than 5% of the class elect to opt out, the defendant shall have the right to cancel the agreement and return this matter to its position as of this date.

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

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

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

10.3 **Continuing Jurisdiction of the Court.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment,

(ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

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

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

11. ADDITIONAL PROVISIONS.

12.1 **No Admission of Liability, Class Certification, or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by DEFENDANT that any of the allegations in the Operative Complaint have merit or that Defendant have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If,

for any reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement, and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

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

documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

- 12.6 **Cooperation.** The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7 **No Prior Assignments.** The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8 **No Tax Advice.** Neither Plaintiffs, Class Counsel, DEFENDANT nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9 **Modification of Agreement.** This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10 **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12 **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 **Confidentiality.** To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 **Use and Return of Class Data.** Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by DEFENDANT in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any

way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all paper and electronic versions of Class Data received from DEFENDANT unless, prior to the Court's discharge of the Administrator's obligation, DEFENDANT makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

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

To Plaintiffs:

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

Larry W. Lee
lwlee@diversitylaw.com
Simon L. Yang
sly@diversitylaw.com
DIVERSITY LAW GROUP, P.C.
515 S Figueroa St Ste 1250
Los Angeles, CA 90071-3316

To DEFENDANTS:

Jeffrey Michalowski
jeff.michalowski@quarles.com

Adrielli Ferrer
adrielli.ferrer@quarles.com
QUARLES & BRADY LLP
101 West Broadway, 9th FL
San Diego, CA 92101

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

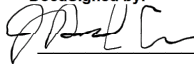
12.19 **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring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

Dated: 07 / 26 / 2024

Charmaine Tate

Plaintiff Charmaine Tate

Dated: 8/2/2024

DocuSigned by:


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Plaintiff Dave Crockett

Dated: _____

for: Defendant Pro Energy Services Group, LLC

Adrielli Ferrer
adrielli.ferrer@quarles.com
QUARLES & BRADY LLP
101 West Broadway, 9th FL
San Diego, CA 92101

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

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

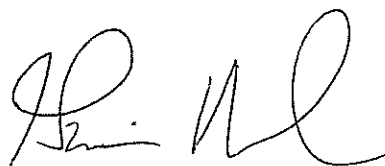
Dated: _____

Plaintiff Charmaine Tate

Dated: _____

Plaintiff Dave Crockett

Dated: 7/29/24



Defendant Pro Energy Services Group, LLC

Dated: _____

CROSNER LEGAL, PC

Dated: 07/26/2024

CROSNER LEGAL, PC

A handwritten signature in blue ink, appearing to read "Brandon Brouillette", written over a horizontal line.

Brandon Brouillette, Esq.
Zachary Crosner, Esq.
Jamie Serb, Esq.
Attorneys for Plaintiff Charmaine Tate and the Class

Dated: August 2, 2024

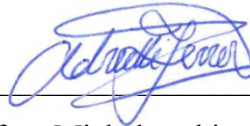
DIVERSITY LAW GROUP, P.C.

A handwritten signature in black ink, appearing to read "Larry W. Lee", written over a horizontal line.

Larry W. Lee
Attorneys for Plaintiff Dave Crockett and the Class

Dated: August 2, 2024

QUARLES & BRADY LLP

A handwritten signature in blue ink, appearing to read "Jeffrey Michalowski", written over a horizontal line.

Jeffrey Michalowski

Adrielli Ferrer
Attorneys for Defendant Pro Energy Services Group,
LLC

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING
DATE FOR FINAL COURT APPROVAL**

Charmaine Tate v. Pro Energy Services Group, LLC Case No.: 23CV0586, and
Dave Crockett v. Pro Energy Services Group, LLC Case No.: S-CV-0050881

The Superior Court for the State of California authorized this Notice. Read it carefully!

It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit ("Action") against Pro Energy Services Group, LLC ("Pro Energy") for alleged wage and hour violations. The Action was filed by former Pro Energy employees Charmaine Tate and Dave Crockett ("Plaintiffs") and seeks payment of (1) back wages, (2) meal and rest break premiums, (3) reimbursement for business expenses, (4) statutory penalties and other relief for a class of non-exempt employees ("Class Members") who worked for Pro Energy during the Class Period (April 20, 2019 to June 5, 2024); and (5) penalties under the California Private Attorney General Act ("PAGA") for all non-exempt employees who worked for Pro Energy during the PAGA Period (May 24, 2022 to June 5, 2024) ("Aggrieved Employees").

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

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

The above estimates are based on Pro Energy's records showing that you worked [REDACTED] workweeks during the Class Period and you worked [REDACTED] pay periods during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

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

If you worked for Pro Energy during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

1. **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Pro Energy.
2. **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Pro Energy, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Pro Energy will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement. If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Pro Energy that are covered by this Settlement (Released Claims).

You Can Opt-Out of the Class Settlement but not the PAGA Settlement. The Opt-out Deadline is **DATE**. If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.

You Cannot Opt-out of the PAGA Portion of the Proposed Settlement. Pro Energy must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement. Written objections must be submitted by **DATE**. All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs. Other than the PAGA portion of this Settlement, you can object to any aspect of this Settlement. See Section 7 of this Notice.

You Can Participate in the Final Approval Hearing. The Court's Final Approval Hearing is scheduled to take place on **DATE**. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using

the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

You Can Challenge the Calculation of Your Workweeks/Pay Periods. Written Challenges Must be Submitted by **DATE**. The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Workweeks and number of Pay Periods you worked according to Pro Energy’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by **DATE**. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs Charmaine Tate and Dave Crockett are former Pro Energy employees. The Action accuses Pro Energy of violating California labor laws by failing to pay overtime wages, minimum wages, break premium wages, wages due upon termination and reimbursable expenses; failing to provide meal breaks, rest breaks and accurate itemized wage statements; and failing to provide shade, heat recovery periods, and potable drinking water. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiffs are represented by Crosner Legal P.C. and Diversity Law Group, P.C. (“Class Counsel”) in the Action.

Pro Energy strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

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

So far, the Court has made no determination whether Pro Energy violated any laws. In the meantime, Plaintiffs and Pro Energy hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Pro Energy have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Pro Energy does not admit any violations or concede the merit of any claims.

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

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

Pro Energy Will Pay \$900,000.00 as the Gross Settlement Amount (Gross Settlement). Pro Energy has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Pro Energy will begin funding the Gross Settlement not more than 14 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

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

- Up to **\$300,000.00 (33.33%** of the Gross Settlement] to Class Counsel for attorneys' fees and up to **\$15,000.00** for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- Up to **\$20,000.00 (\$10,000.00 each)** as a Class Representative Service Payments to Plaintiffs for filing the Action, working with Class Counsel and representing the Class. A Class Representative Service Payment will be the only monies Plaintiffs will receive other than Plaintiffs' Individual Class Payment and any Individual PAGA Payment.
- Up to **\$17,500.00** to the Administrator for services administering the Settlement.
- Up to **\$60,000.00** for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

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

Although Plaintiffs and Pro Energy have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments

received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

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

Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Settlement, unless you notify the Administrator in writing, not later than **DATE**, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a you or your representative setting forth your name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Pro Energy.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Pro Energy based on the PAGA Period facts alleged in the Action.

The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Pro Energy have agreed that, in either case, the Settlement will be void: Pro Energy will not pay any money and Class Members will not release any claims against Pro Energy.

Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

Participating Class Members' Release. After the Judgment is final and Pro Energy has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Pro Energy or related entities for wages based on the Class Period facts and PAGA penalties based on the facts, as alleged in the Action and resolved by this Settlement.

Participating Class Members Release: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from (i) all causes of action and claims alleged in the Operative Complaints including those based on alleged violations of Labor Code sections 201–203, 204, 210, 216, 221–223, 225.5, 226, 226.7, 245–248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5, and all applicable Wage Orders, and further specifying failure to keep accurate records; failure to implement a heat illness prevention program that includes providing workers “cool-down” periods and access to shade (*see* 8 C.C.R. § 3395), as well as access to drinking water (8.C.C.R. § 3395(c); reporting time pay violations; seating violations; sick leave violations (including Labor Code sections 233–234 and 245 –248.5; failure to provide supplemental paid sick leave (Labor Code § 248.2); failure to pay vested vacation/paid time off (Labor Code § 227.3); statutory wage violations; refusal to make payment; standard conditions of labor violations; unlawful deductions; and unlawful agreements and unlawful inquiries (Labor Code §§ 432.5, 432.7, and 1024.5), unlawful PAGA waivers; and any other law that is enforceable through PAGA, and (ii) any and all additional claims that reasonably could have been alleged based on the facts stated in the Operative Complaints, including, but not limited to, claims that employees did not have access to adequate restroom and handwashing facilities.

Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and Pro Energy has paid the Gross Settlement and separately paid the employer-side payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against Pro Energy, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Pro Energy or its related entities based on the facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees’ Release: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice including, all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including (i) all causes of action and claims alleged in the Operative Complaints including those based on alleged violations of Labor Code sections 201–203, 204, 210, 216, 221–223, 225.5, 226, 226.7, 245–248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5, and all applicable Wage Orders, and further specifying failure to keep accurate records; failure to implement a heat illness prevention program that includes providing workers “cool-down” periods and access to shade (*see* 8 C.C.R. § 3395), as well as access to drinking water (8.C.C.R. § 3395(c); reporting time pay violations; seating violations; sick leave violations (including Labor Code sections 233–234 and 245 –248.5; failure to provide supplemental paid sick leave (Labor Code §

248.2); failure to pay vested vacation/paid time off (Labor Code § 227.3); statutory wage violations; refusal to make payment; standard conditions of labor violations; unlawful deductions; and unlawful agreements and unlawful inquiries (Labor Code §§ 432.5, 432.7, and 1024.5), unlawful PAGA waivers; and any other law that is enforceable through PAGA, and (ii) any and all additional claims that reasonably could have been alleged based on the facts stated in the Operative Complaints, including, but not limited to, claims that employees did not have access to adequate restroom and handwashing facilities. Aggrieved Employees only release these claims for the duration of the PAGA Period.

HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

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

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

Workweek/Pay Period Challenges. The number of Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Pro Energy's records, are stated in the first page of this Notice. You have until **DATE** to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

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

4. HOW WILL I GET PAID?

Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment. **Non-Participating Class Members.** The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

5. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Actions as **Charmaine Tate v. Pro Energy Services Group** or **Dave Crockett v. Pro Energy Services Group, LLC**, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. The Administrator must be sent your request to be excluded by **DATE**, or it will be invalid. Section 9 of the Notice has the Administrator's contact information.

6. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Pro Energy are asking the Court to approve. At least 16 court days before the Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as a Class Representative Service Payments. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you.

A Participating Class Member who disagrees with any aspect of the Agreement or the Motion for Final Approval may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. The deadline for sending written objections to the Administrator is **DATE**. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action **Charmaine Tate v. Pro Energy Services Group** or **Dave Crockett v. Pro Energy Services Group, LLC** and include your name, current address, telephone number, and approximate dates of employment with Pro Energy and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

7. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on **DATE** at **TIME** in Department ____ of the _____ Superior Court, located at _____. At the Hearing, the judge

will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via _____. Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Court's website beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

8. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Pro Energy and Plaintiffs have promised to do under the proposed Settlement. If you have questions or would like additional information, you can telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<https://public-portal-eldorado.journaltech.com/public-portal/?q=user/login&destination=node/394/335924> or <https://www.placer.courts.ca.gov/online-services/online-case-access>) and entering the Case Number for the Actions, *Charmaine Tate v. Pro Energy Services Group, LLC* Case No. 23CV0586 or *Dave Crockett v. Pro Energy Services Group, LLC* Case No. S-CV-0050881. You can also make an appointment to personally review court documents in the Clerk's Office at the Cameron Park Branch of El Dorado County Superior Court by calling (530) 621-5867 for the Tate Action or at the Hon. Howard G. Gibson Courthouse of Placer County Superior Court by calling (916) 408-6000.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel: Zachary Crosner
 zach@crosnerlegal.com
 Jamie Serb
 jamie@crosnerlegal.com
 Brandon Brouillette
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 9440 Santa Monica Blvd., Suite 301
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DIVERSITY LAW GROUP, P.C.
 515 S Figueroa St Ste 1250
 Los Angeles, CA 90071-3316

Settlement Administrator: Phoenix Settlement Administrators

Email Address:

Mailing Address:

Telephone:

Fax Number:

9. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

10. WHAT IF I CHANGE MY ADDRESS?

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

EXHIBIT

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

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

April 21, 2023

VIA PAGA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

William B. Treitler
Agent for Service of Process for:
Pro Energy Services Group, LLC
3737 Camino Del Rio South, Suite 109
San Diego, CA 92108

Pro Energy Services Group, LLC
Attn: Human Resources/ Legal Department
2060 Aldergrove Avenue
Escondido, CA 92029

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency and Pro Energy Services Group, LLC
Date: April 21, 2023
Subject: *Charmaine Tate v. Pro Energy Services Group, LLC*

Introduction

This office represents COMPLAINANT, Charmaine Tate (hereinafter "COMPLAINANT") in connection with COMPLAINANT's claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entity and individual managing agents of said entity: Pro Energy Services Group, LLC (hereinafter, this entity and its

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

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

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

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

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

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

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

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

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

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

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

Individual Liability Under Labor Code § 558.1

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

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

General Information

EMPLOYER owns, operates or otherwise manages a construction and/or utilities business, providing services to businesses in the electrical distribution and transmission industry, including but not limited to construction, maintenance, repair, testing and/or inspection of electrical infrastructure and facilities, construction management and coordination, traffic control, facilities and materials management, among other related services. EMPLOYER owns, operates and/or otherwise manages, locations, offices, yards, sites and/or facilities in California, including but not limited to, locations, offices, yards, sites and/or facilities located in Placerville, El Dorado, Riverside, San Diego, and Sacramento. Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a flagger, traffic controller and/or similar title(s) and/or position(s) from in or around late July 2022, through on or around September 1, 2022. EMPLOYER regularly assigned COMPLAINANT to work at various locations, offices, yards, sites and/or facilities owned, operated and/or otherwise managed by EMPLOYER, including but not limited to, locations, offices, yards, sites and/or facilities located in Placerville, California, and El Dorado, California. COMPLAINANT regularly worked at least six (6) to twelve (12) hours per day, at least

five (5) days per week. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (14) fails and continues to fail to provide cooldown recovery periods and/or pay proper premiums in lieu thereof; (15) fails and continues to fail to pay all reporting time pay wages; (16) failed and continues to fail to provide suitable seating; and (17) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

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

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

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

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

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

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

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

EMPLOYER’s failure to keep “accurate and complete” payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.¹

¹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”).

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

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

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

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, COMPLAINANT was consistently forced to take shortened and/or interrupted meal periods and/or work through her meal periods completely due to lack of coverage, the need to make/receive work-related

communications and/or complete other work tasks. For example, during most, if not all shifts COMPLAINANT worked, COMPLAINANT was required to eat her meals and/or take any meal periods while working. Based on information and belief, EMPLOYER did not provide COMPLAINANT nor other NON-EXEMPT AGGRIEVED EMPLOYEES with any mechanism with which to record their meal periods. Instead, EMPLOYER performed an automatic deduction of at least thirty minutes per shift per NON-EXEMPT AGGRIEVED EMPLOYEE even though EMPLOYER had actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently forced to cut their meal periods short, take interrupted meal periods and/or work through their meal periods completely.

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

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

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

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

Based on information and belief, per EMPLOYER's uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break. For example, when COMPLAINANT worked shifts lasting longer than ten (10) and/or twelve (12) hours, COMPLAINANT was not afforded with any version of a second meal period.

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

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

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

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide valid meal periods,

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

and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

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

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

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have any sort of compliant rest period policy in practice. For example, during most, if not all of her shifts,

to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

COMPLAINANT was required to work through part or all of her owed rest periods due to lack of coverage, the need to make/receive work-related communications and/or complete other work tasks.

EMPLOYER further failed to authorize and permit rest periods that were a "net" ten minutes in a suitable rest area and instead, to the extent any rest periods were provided at all, limited NON-EXEMPT AGGRIEVED EMPLOYEES to only ten-minute rest periods, requiring them to be back at their workstations within ten minutes of leaving, in violation of California rest period law.

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

Furthermore, EMPLOYER failed to provide any form of a second rest period on shifts lasting longer than six (6) hours. For example, when COMPLAINANT worked shifts lasting longer than six (6) hours, COMPLAINANT was not afforded with any version of a second rest period.

Moreover, based on information and belief, EMPLOYER failed to provide any form of a third rest period on shifts lasting longer than ten hours. For example, when COMPLAINANT worked shifts lasting longer than ten (10) hours, COMPLAINANT was not afforded with any version of a third rest period.

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

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil

penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³

Cooldown Recovery Period Violations: California Code of Regulations, Title 8, section 3395 mandates that all employers with “outdoor places of employment” implement a heat illness prevention program that includes, among other requirements, providing workers “cool-down” periods of at least five minutes in the shade. Specifically, section 3395 provides that “employees shall be allowed and encouraged to take a cool-down rest in the shade for a period of no less than five minutes at a time when they feel the need to do so to protect themselves from overheating” and that “such access to shade shall be permitted at all times.” Under California Labor Code section 226.7, if an employer fails to provide an employee a recovery period, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to spend multiple hours at a time outdoors in significantly high temperature heat conditions. EMPLOYER failed to provide proper heat illness prevention training and/or heat illness policies/practices/programs as required by California’s Heat Illness Prevention statute, Title 8 Section 3395(d). EMPLOYER failed to provide adequate access to drinking water as required by California’s Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, EMPLOYER maintained a policy and practice of not permitting necessary time for cooldown recovery breaks, and as a result, NON-EXEMPT AGGRIEVED EMPLOYEES were required to remain outdoors with little to no access to shade for extended periods of time. In addition, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES with an additional hour of pay at their respective regular rate(s) of pay for each missed cooldown recovery period.

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

It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages. Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale. Payment to an employee of less than the

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

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

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

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

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER's policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For example, based on information and belief, EMPLOYER did not provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with any mechanism with which to record their actual shift start and end times; rather, EMPLOYER recorded for payroll purposes COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' total scheduled hours worked and/or scheduled shift start and end times rather than actual hours worked

and/or otherwise would forego recording and reporting to payroll all actual time worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, resulting in the underpayment of minimum wages and overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

For example, EMPLOYER's time records and/or wage statements for COMPLAINANT evidence the rounding of COMPLAINANT's total hours worked to at least the nearest half and/or whole hour. For example, EMPLOYER's wage statement for COMPLAINANT for pay period beginning on July 25, 2022, and ending on July 31, 2022, shows precisely 7.50 regular hours worked. EMPLOYER's wage statement for COMPLAINANT for pay period beginning on August 1, 2022, and ending on August 7, 2022, shows precisely 30.00 regular hours worked and precisely 7.50 overtime hours worked. Likewise, EMPLOYER's wage statement for COMPLAINANT for pay period beginning on August 8, 2022, and ending on August 14, 2022, shows exactly 24.00 regular hours worked, precisely 8.00 overtime hours worked and precisely 2.00 "double time" hours worked. Similarly, EMPLOYER's wage statement for COMPLAINANT for pay period beginning on August 15, 2022, and ending on August 21, 2022, shows exactly 30.00 regular hours worked and exactly 4.00 overtime hours worked. Likewise, EMPLOYER's wage statement for COMPLAINANT for pay period beginning on August 22, 2022, and ending on August 28, 2022, shows precisely 22.50 regular hours worked and precisely 6.00 overtime hours worked. Based on information and belief, EMPLOYER rounded COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' total hours worked to at least the nearest half and/or whole hour during most if not all pay periods during the relevant period, resulting in the underpayment of minimum wages and overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER required/requires NON-EXEMPT AGGRIEVED EMPLOYEES to travel between EMPLOYER's facilities/job sites/locations and/or between/around job sites without compensating NON-EXEMPT AGGRIEVED EMPLOYEES for the travel time, resulting in off-the-clock work and the underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. For example, on at least six (6) occasions, EMPLOYER required COMPLAINANT to drive to various job sites after her shift had ended to pick up other NON-EXEMPT AGGRIEVED EMPLOYEES, tools and/or equipment and/or complete other work tasks before then driving to EMPLOYER's facility to retrieve her personal vehicle so she could then leave work. This time spent under EMPLOYER's control, including but not limited to, time spent traveling between EMPLOYER's locations, sites, and/or facilities and/or time spent completing work tasks at EMPLOYER's various locations, sites and/or facilities was not recorded and not compensated and resulted in unpaid minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were also required to complete off-the-clock work outside of scheduled shifts due to, including but not limited to, work-related phone calls and/or messages they received to their personal phones and were required to respond to, including but not limited to, communications from supervisors and/or other NON-EXEMPT AGGRIEVED EMPLOYEES regarding scheduling

and/or other work tasks, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

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

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

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

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

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

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

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

These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

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

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

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

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

⁴ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

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

Based on information and belief, EMPLOYER sometimes paid COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES multiple rates of base pay in one workweek but failed to incorporate all multiple rates of base pay into the regular rate of pay for purposes of calculating the owed overtime rate. For example, based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES earned multiple base pay rates during the same workweek, yet, EMPLOYER failed to incorporate all/both base pay rates into the regular rate of pay for purposes of calculating the owed overtime rate, resulting in the miscalculation and underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

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

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §3(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

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

⁵ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

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

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

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

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

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

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

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

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

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

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

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

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

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

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁶

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

⁶ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

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

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

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

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

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

compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, wage statements issued by EMPLOYER failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

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

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

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁷

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

Cooldown Recovery Period Violations: California Code of Regulations, Title 8, section 3395 mandates that all employers with "outdoor places of employment" implement a heat illness prevention program that includes, among other requirements, providing workers "cool-down" periods of at least five minutes in the shade. Specifically, section 3395 provides that "employees shall be allowed and encouraged to take a cool-down rest in the shade for a period of no less than five minutes at a time when they feel the need to do so to protect themselves from overheating" and that "such access to shade shall be permitted at all times." Under California Labor Code section 226.7, if an employer fails to provide an employee a recovery period, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

⁷ See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to spend multiple hours at a time outdoors in significantly high temperature heat conditions. EMPLOYER failed to provide proper heat illness prevention training and/or heat illness policies/practices/programs as required by California's Heat Illness Prevention statute, Title 8 Section 3395(d). EMPLOYER failed to provide adequate access to drinking water as required by California's Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, based on information and belief, EMPLOYER maintained a policy and practice of not permitting necessary time for cooldown recovery breaks, and as a result, NON-EXEMPT AGGRIEVED EMPLOYEES were required to remain outdoors with little to no access to shade for extended periods of time. In addition, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES with an additional hour of pay at their respective regular rate(s) of pay for each missed cooldown recovery period.

Reporting Time Pay Violations:

All applicable IWC Wage Orders, including but not limited to, IWC Wage Order No. 16 provide as follows:

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

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

NON-EXEMPT AGGRIEVED EMPLOYEES were not paid reporting time wages in accordance with California law, including but not limited to the applicable IWC Wage Order, including but not limited to, IWC Wage Order No. 16. For example, at times, NON-EXEMPT AGGRIEVED EMPLOYEES reported to work for their scheduled shift but were sent home and/or were not put to work and were not paid their owed reporting time pay wages in accordance with California law.

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

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

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

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

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

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

EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, EMPLOYER failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 12 of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting EMPLOYER to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁸

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

⁸ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”).

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

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

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

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

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

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

Failure to Pay Vested Vacation/Paid Time Off:

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

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

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

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

Moreover, EMPLOYER failed to timely provide all owed wages immediately upon discharge of employment. For example, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or

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

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁹

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

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

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

Based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide

⁹ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, EMPLOYER shifted its costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, uniforms/work clothing/shoes/personal protective/safety gear and/or the use of NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES' personal mobile phones, cost of internet and/or data usage for work related purposes, including but not limited to, to receive and respond to work related messages and/or phone calls. For example, based on information and belief, COMPLAINANT was required to use her personal cell phone/mobile device to make/receive calls/messages to/from her supervisors and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES during most if not all shifts COMPLAINANT worked during including but not limited to, pay period beginning, on July 25, 2022, and ending on July 31, 2022, pay period beginning on August 1, 2022, and ending on August 7, 2022, pay period beginning on August 8, 2022, and ending on August 14, 2022, pay period beginning on August 15, 2022, and ending on August 21, 2022, pay period beginning on August 22, 2022, and ending on August 28, 2022, yet EMPLOYER did not provide COMPLAINANT with any reimbursement for this business use of her personal cell phone/mobile device. For example, EMPLOYER's wage statements issued to COMPLAINANT for including but not limited to the aforementioned pay periods do not reflect the payment of any cell phone reimbursement.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work related purposes and/or the cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety gear (e.g., face masks, gloves and/or ear plugs). For example, EMPLOYER required COMPLAINANT to purchase steel-toed boots to wear for work without providing any form of reimbursement for these business expenses.

Additionally, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed/not reimbursed in full for the business use of their personal vehicles and/or cost of fuel when driving any company vehicles. For example, based on information and belief, at times, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES to use their personal vehicles to drive between job sites and/or use their personal vehicles for other work purposes including but not limited to transporting tools, equipment and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES between job sites/yards, without providing any and/or full reimbursement for the vehicle-related expenses incurred in connection therewith. For example, on at least four (4) occasions, EMPLOYER required COMPLAINANT to use her personal vehicle to drive between job sites during her shifts, yet EMPLOYER did not provide COMPLAINANT with any and/or full reimbursement for mileage, cost of fuel, cost of wear and tear on the vehicle, among other vehicle-related expenses, COMPLAINANT incurred in connection with EMPLOYER's business use of COMPLAINANT's personal vehicle. As such, EMPLOYER failed to compensate NON-EXEMPT AGGRIEVED

EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at the legally mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

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

As explained above, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work related purposes and/or the cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety gear.

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

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

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

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

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

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

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

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

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

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

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment,

in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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

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

Unlawful Inquires into Criminal History

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

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

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

Unlawful PAGA Waiver

Additionally, EMPLOYER violated Labor Code section 432.5 by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

An action pursuant to PAGA “...is a representative action on behalf of the state” *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and unenforceable. *See Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384 (“We conclude that where, as here, an employment agreement compels the waiver of

representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is no individual component to a PAGA action because ‘every PAGA action ... is a representative action on behalf of the state.’”)

Upon information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By requiring COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree, in writing, to an unlawful PAGA waiver, EMPLOYER required written agreement to an unlawful provision as a condition of employment which is a violation of labor code section 432.5.

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

Conclusion

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

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

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

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

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

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

Thank you for your attention to this matter.

Best Regards,

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

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

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

Fri, Apr 21, 2023 at 12:03 PM

4/21/2023

LWDA Case No. LWDA-CM-950029-23
Law Firm : Crosner Legal, PC
Plaintiff Name : Charmaine Tate
Employer: Pro Energy Services Group, LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT

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