

**MELMED LAW GROUP P.C.**

Jonathan Melmed (SBN 290218)  
Meghan N. Higday (SBN 334626)  
Emily G. Horrigan (SBN 354753)  
1801 Century Park East, Suite 850  
Los Angeles, California 90067  
Phone: (310) 824-3828  
Fax: (310) 862-6851  
Emails: [jm@melmelaw.com](mailto:jm@melmelaw.com); [mh@melmedlaw.com](mailto:mh@melmedlaw.com); [eh@melmedlaw.com](mailto:eh@melmedlaw.com)

Attorneys for Plaintiff

**SAGASER, WATKINS & WIELAND, PC**

Ian Wieland (SBN 285721)  
Justin G. Donner (SBN 316504)  
5260 North Palm Avenue, Suite 400  
Phone: (559) 421-7000  
Fax: (559) 473-1483  
Emails: [ian@sw2law.com](mailto:ian@sw2law.com); [justin@sw2law.com](mailto:justin@sw2law.com)

Attorneys for Defendants

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

REYES SALADO GOMEZ, an individual, on  
behalf of himself, the State of California, as a  
private attorney general, and on behalf of all others  
similarly situated,

Plaintiff,

v.

THE GARY AND DONNA DE GRAAF FAMILY  
TRUST, an individual; DUSTIN DE GRAAF, an  
individual; JZB FARMING, a Business of  
Unknown Formation; JER-Z-BOYZ RANCH, a  
Business of Unknown Formation; DANIEL DE  
GRAAF, an individual; and DOES 1 TO 50,

Defendants.

Case No.: VCU297485

**Settlement Agreement and Release of Class  
Action**

## **SETTLEMENT AGREEMENT AND RELEASE OF CLASS ACTION**

This Class Action and PAGA Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into by: **(1)** Plaintiff Reyes Salado Gomez (“Plaintiff”), individually and, if approved by the Court, in his representative capacity on behalf of the proposed Settlement Class, as defined below, and as a private attorney general on behalf of the State of California; and **(2)** Defendants The Gary and Donna De Graaf Family Trust, Dustin De Graaf, JZB Farming, Jer-Z-Boyz Ranch, and Daniel De Graaf (collectively, “Defendants”). Plaintiff and Defendants are collectively referred to herein as the “Parties.” This Settlement Agreement is subject to the approval of the Court, pursuant to California Rules of Court, rule 3.769, subdivisions (c), (d), and (e), and is made for the sole purpose of attempting to consummate settlement of the action on a class-wide basis subject to the following terms and conditions.

### **1. DEFINITIONS**

As used in this Settlement Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into this definition section.

#### **1.1. ACTION**

“Action” shall mean the following civil action: *Reyes Salado Gomez v. The Gary and Donna De Graaf Family Trust, et al.*, case number VCU297485, currently pending before the Superior Court of the State of California for the County of Tulare.

#### **1.2. ADMINISTRATIVE EXPENSES**

“Administrative Expenses” shall include all costs and expenses associated with and paid to the third-party settlement administrator, Simpluris, Inc., which are estimated not to exceed \$7,000.00.

#### **1.3. APPLICABLE WAGE ORDER**

“Applicable Wage Order” shall mean the California Industrial Welfare Commission (“IWC”) Wage Order applicable to the facts of this case, including IWC Wage Order 14-2001 and others that may be applicable. (Cal. Code of Regs., tit. 8, § 11140.)

1       **1.4. CLAIMS**

2           “Claims” shall mean the all of the claims asserted in any of the versions of the Complaint within  
3 the Action including, but not limited to, the Operative Complaint, the PAGA Notice, and any other  
4 claims asserted in the Action. Claims shall also include those claims which could have reasonably  
5 been alleged based upon the facts alleged in the Complaints of the Action or the PAGA Notice.

6       **1.5. CLASS ATTORNEY FEES AND EXPENSES**

7           “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement Amount  
8 attributable to attorney fees and litigation expenses. The Parties agree that the fee-portion of the Class  
9 Attorney Fees and Expenses shall be up to one-third of the Gross Settlement Amount (i.e., \$66,666.67),  
10 as approved by the Court, and the award of costs and expenses shall be up to an additional \$15,000.00.  
11 If the Escalator Provision described below is triggered, and Defendant elects to proceed with the  
12 Escalator Provision instead of reducing the liability period to avoid the pro rata increase to the GSA,  
13 so as to increase the Gross Settlement Amount, the Parties agree that the fee portion of the Class  
14 Attorney Fees and Expenses will increase proportionally such that the total amount of attorneys’ fees  
15 remains one-third of the Gross Settlement Amount *after* the upward adjustment required by the  
16 Escalator Provision is implemented.

17       **1.6. CLASS COUNSEL**

18           “Class Counsel” shall mean Jonathan Melmed, Meghan N. Higday, and Emily G. Horrigan of  
19 Melmed Law Group P.C. who are seeking Court approval to serve as a class counsel.

20       **1.7. CLASS DATA**

21           “Class Data” means Class Member identifying information in Defendant’s possession including  
22 each Class Member’s name, last-known mailing address, Social Security number, and hire and  
23 termination dates for the purpose of calculating the number of Class Period Workweeks and PAGA  
24 pay periods.

25       **1.8. CLASS MEMBER**

26           “Class Member” shall mean any person who is a prospective member of the Settlement Class,  
27 or, if such person is incompetent or deceased, the person’s legal guardian, executor, heir, or successor-  
28 in-interest. Class Member includes a Class Participants and Non-Participating Class Members

(including a Non-Participating Class Member who qualifies as an aggrieved employee within the  
PAGA Settlement Class).

### **1.9. CLASS NOTICE**

“Class Notice” means the Court-approved Notice of Class Action Settlement and Hearing Date  
for Final Court Approval, in substantially the same form as that attached as Exhibit 1 hereto.

### **1.10. CLASS PARTICIPANTS**

“Class Participants” shall mean all Class Members who do not timely request exclusion from  
the Class Settlement.

### **1.11. CLASS PERIOD**

“Class Period” shall mean the period from April 17, 2019, through the date of preliminary  
approval of the settlement or earlier, if Defendant chooses an earlier date pursuant to Section 9.2 of  
this Agreement.

### **1.12. CLASS REPRESENTATIVE**

“Class Representative” shall mean the named Plaintiff in the Operative Complaint, Reyes  
Salado Gomez, seeking Court approval to serve as a class representative.

### **1.13. CLASS SETTLEMENT**

“Class Settlement” shall mean the settlement embodied in this Settlement Agreement, which is  
subject to Court approval.

### **1.14. COMPLAINT OR OPERATIVE COMPLAINT**

“Complaint” shall mean any of the versions of the complaint in the Action including, but not  
limited to, the operative complaint. “Operative Complaint” shall mean the Second Amended Complaint  
required by the Agreement.

### **1.15. COURT**

“Court” shall mean the Superior Court of the State of California for the County of Tulare.

### **1.16. DEFENDANTS**

“Defendants” shall mean Defendants The Gary and Donna De Graaf Family Trust, Dustin De  
Graaf, JZB Farming, Jer-Z-Boyz Ranch, and Daniel De Graaf.

**1.17. DEFENSE COUNSEL**

“Defense Counsel” shall mean Ian B. Wieland and Justin G. Donner of Sagaser, Watkins & Wieland, PC who represent Defendants.

**1.18. EFFECTIVE DATE**

“Effective Date” means the date by when both of the following have occurred: (a) the Court enters Final Judgment approving 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. EMPLOYEE’S TAXES AND REQUIRED WITHHOLDING**

“Employee’s Taxes and Required Withholding” shall mean the employee’s share of any and all applicable federal, state, or local payroll taxes, including those collected under authority of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and/or the State Unemployment Tax Act (SUTA) on the portion of any Class Participant’s Individual Settlement Amount that constitutes wages. The Employee’s Taxes and Required Withholdings will be withheld from and paid out of the Individual Settlement Amounts paid from the Net Settlement Amount.

**1.20. EMPLOYER’S TAXES**

“Employer’s Taxes” shall mean and refer to Defendants’ share of payroll taxes (e.g., Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is owed on the portion of any Class Participant’s Individual Settlement Amount that constitutes wages.

**1.21. FINAL APPROVAL AND FAIRNESS HEARING**

“Final Approval and Fairness Hearing” shall mean the Court’s hearing on the Motion for Final Approval of the Settlement.

**1.22. FINAL JUDGMENT**

“Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1           **1.23. GROSS SETTLEMENT AMOUNT**

2           “Gross Settlement Amount” means \$200,000.00 which is the total amount Defendant agrees  
3 to pay under the Settlement except if the Escalator Provision detailed at Section 9.2 is triggered and  
4 Defendant elects, in its sole discretion, to utilize a pro rata increase to the GSA to extend the Class  
5 Release Period. The Gross Settlement Amount will be used to pay Administrative Expenses,  
6 Employee’s Taxes, Employer’s Taxes, Individual Settlement Payments, the Class Attorney Fees and  
7 Expenses, the Incentive Award, and PAGA Payment (both Individual PAGA Payment and LWDA  
8 PAGA Payment).

9           **1.24. HEARING ON PRELIMINARY APPROVAL**

10          “Hearing on Preliminary Approval” shall mean the hearing held on the motion for preliminary  
11 approval of the Class Settlement.

12          **1.25. INCENTIVE AWARD**

13          “Incentive Award” shall mean any additional monetary payment provided to the Class  
14 Representative for his efforts and risks on behalf of the Settlement Class in this Action.

15          **1.26. INDIVIDUAL SETTLEMENT AMOUNT**

16          “Individual Settlement Amount” shall mean each Class Participant’s pro rata share of the Net  
17 Settlement Amount, calculated according to the number of Workweeks worked during the Class Period,  
18 less any Employee’s Taxes and Required Withholdings. The Individual Settlement Amount does not  
19 include any portion of the PAGA Payment.

20          **1.27. LWDA**

21          “LWDA” means the California Labor and Workforce Development Agency, the agency  
22 entitled, under Labor Code section 2699, subdivision (i).

23          **1.28. NET SETTLEMENT AMOUNT**

24          “Net Settlement Amount” shall mean the Gross Settlement Amount minus: Administrative  
25 Expenses; Class Attorney Fees and Expenses; PAGA Payment (both Individual PAGA Payment and  
26 LWDA PAGA Payment); Employer’s Taxes; and Plaintiff’s Incentive Award. The remainder is to be  
27 paid to Class Participants as Individual Settlement Amounts.  
28

**1.29. OPT OUT**

“Opt Out” shall refer to the process of submitting a timely and valid request for exclusion to the Settlement Administrator no later than the Response Deadline.

**1.30. OPT-OUTS OR NON-PARTICIPATING CLASS MEMBER**

“Opt-Outs” shall mean all persons who timely and validly request exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

**1.31. PAGA**

“PAGA” means the Private Attorneys General Act (Lab. Code, § 2698 et seq.).

**1.32. PAGA NOTICE**

“PAGA Notice” means Plaintiff’s April 17, 2023, letter, which he alleges was provided to both Defendant and the LWDA, providing notice pursuant to Labor Code section 2699.3, subdivision (a).

**1.33. PAGA PAYMENT**

“PAGA Payment” means the penalties pursuant to PAGA that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$15,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$11,250.00) to the LWDA (“LWDA PAGA PAYMENT”) and twenty-five percent (25%) (i.e., \$3,750.00) to the PAGA Settlement Class (“INDIVIDUAL PAGA PAYMENT”). Class Counsel shall give timely notice to the LWDA regarding the Operative Complaint pursuant to Labor Code section 2699 subdivision (s)(1), this Settlement Agreement pursuant to Labor Code section 2699, subdivision s)(2), and the intent to submit the Final Judgment pursuant to Labor Code section 2699 subdivision (s)(3).

**1.34. PAGA PERIOD**

“PAGA Period” shall mean the period from April 17, 2022, through the date of preliminary approval of the settlement.

**1.35. PAGA SETTLEMENT CLASS**

“PAGA Settlement Class” shall mean all individuals who are or were employed by defendants as non-exempt employees in California during the PAGA Period. At the time the MOU was executed,

Defendants estimated a PAGA settlement class that consists of approximately 96 employees that worked a total of approximately 2,421 pay periods during the PAGA Period.

### **1.36. PARTIES**

“Parties” shall mean Plaintiff and Defendants.

### **1.37. PLAINTIFF**

“Plaintiff” shall mean Plaintiff Reyes Salado Gomez.

### **1.38. PRELIMINARY APPROVAL DATE**

“Preliminary Approval Date” shall mean the date upon which the Court enters an order preliminarily approving this Settlement Agreement.

### **1.39. RELEASED CLASS CLAIMS**

“Released Class Claims” shall mean means the Released Claims being released by Class Participants as described in Section 11.1 below.

### **1.40. RELEASED PAGA CLAIMS**

“Released PAGA Claims” means the Released Claims being released by Aggrieved Employees as described in Section 11.1 below.

### **1.41. RELEASED PARTIES**

“Released Parties” shall mean Defendants and each of their former, present, and future agents, employees, representatives, administrators, directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, accountants, receivers, advisors, consultants, partners, partnerships, parents, divisions, subsidiaries, affiliates, heirs, joint venturers, trustees, investors, fiduciaries, franchisees or franchisors, and commonly controlled entities of any kind.

### **1.42. RESPONSE DEADLINE**

“Response Deadline” shall mean the date forty-five (45) days following the date on which the Settlement Administrator first mails Class Notice to the Class Members and the last day on which Class Members may submit a request for exclusion and/or objection to Class Settlement.

### **1.43. SETTLEMENT**

“Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

#### 1.44. SETTLEMENT ADMINISTRATOR OR ADMINISTRATOR

“Settlement Administrator” shall mean Simpluris, Inc. (or other administrator agreed on by the parties) which the Parties have agreed will be responsible for administration of the Class Settlement and related matters.

#### 1.45. SETTLEMENT CLASS

“Settlement Class” shall mean all individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period. Based on a review of records through the date of mediation and at the time the MOU was executed, Defendants estimated a Settlement Class of approximately 268 Class Members that worked a total of approximately 11,982 workweeks.

#### 1.46. WORKWEEK

“Workweek” means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

### 2. FACTUAL AND PROCEDURAL BACKGROUND

#### 2.1. PLAINTIFF’S CLAIMS

On August 16, 2023, Plaintiff filed a class action complaint alleging the following violations: (1) failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order; (2) failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Order; (3) failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Order; (4) failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order; (5) failure to maintain accurate employment records in violation of Labor Code section 1174; (6) failure to pay timely wages during employment in violation of Labor Code sections 204, 210; (7) failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; (8) failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; (9) failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; and (10) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210).

Plaintiff asserted a deprivation of rights for himself and the proposed Class Members provided by Labor Code sections 201-204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2084, and others that may be applicable; California Business and Professions Code sections 17200 through 17210, and the applicable wage orders (i.e., Wage Order No. 14).

On September 8, 2023, Plaintiff filed an amended complaint adding a cause of action for statutory penalties pursuant to PAGA (Lab. Code, §§ 2698–2699.6). The Claims asserted were based upon Plaintiff’s PAGA Notice, which made the same allegations contained within the Class Action Complaint. Plaintiff asserted violations of Labor Code sections 201-204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2084, and others that may be applicable; California Business and Professions Code sections 17200 through 17210, and the applicable wage orders (i.e., Wage Order No. 14).

At mediation on March 12, 2024, Plaintiff further asserted that Defendants failed to pay split shift premiums during the Class Period.

## **2.2. AMENDMENT**

This Agreement is contingent upon Plaintiff filing a Second-Amended Complaint (“SAC”) capturing claims asserted at mediation regarding split shift premiums, the court approving of the filing of this SAC, and Plaintiff giving notice of the SAC to the LWDA. Plaintiff shall provide amended notice to the LWDA regarding the addition of split shift claims and also simultaneously provide the LWDA with a copy of the SAC itself. Following that amended notice and after waiting 65 calendar days, Plaintiff shall file the Joint Stipulation for Leave to File Plaintiff’s SAC attached hereto as **Exhibit 2** with the court simultaneously with his motion for Preliminary Approval, with the SAC attached as **Exhibit A** to the Joint Stipulation. The Court’s order allowing leave to file the SAC is contingent on the court also issuing preliminary and final approval and also proper notice being provided to the LWDA regarding the intent to amend and the SAC pursuant to Labor Code section 2699 subdivision (s)(1). If the Court denies Plaintiff’s motion final approval of the Parties’ PAGA and Class Settlement, without leave for Plaintiff to file another motion, then Plaintiff must seek formal leave to file the SAC through motion. The proposed order shall cover these limitations and all other

1 limitations detailed in Exhibit 2. The SAC adds split shift claims to the class action and also to the  
2 PAGA portion via Labor Code section 558 and Wage Order 14. Furthermore, Plaintiff's SAC and  
3 amended PAGA Notice shall contain all allegations necessary to effectuate the release of all claims set  
4 forth in the release described in this Agreement. Plaintiff's Motion for Preliminary Approval and  
5 Proposed Order regarding the same shall make clear that it is based upon the SAC.

### 6 **2.3. DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION**

7 Class Counsel has conducted significant informal discovery during the prosecution of the  
8 Action. This discovery, investigation, and prosecution has included, among other things, (a) over a  
9 dozen telephonic conferences with Plaintiff; (b) inspection and analysis of hundreds of pages of  
10 documents and other information produced by Plaintiff and Defendants; (c) analysis of employment  
11 data from a sample of Class Members; (d) an analysis of the legal positions taken by Defendants;  
12 (d) investigation into the viability of class treatment of the claims asserted in the Action; (e) analysis  
13 of potential class-wide damages, including information sufficient to understand Defendants' potential  
14 defenses to Plaintiff's claims; (f) research of the applicable law with respect to the claims asserted in  
15 the Complaint and the potential defenses thereto; and (g) assembling and analyzing of data for  
16 calculating damages.

17 Class Counsel and the Class Representative have vigorously prosecuted this case, and  
18 Defendants has vigorously contested it. The Parties have engaged in sufficient investigation and  
19 discovery to assess the relative merits of the claims of the Class Representative and of the defenses to  
20 them. After such discovery, investigation, and prosecution, the Parties attended a full-day mediation  
21 with an experienced employment law mediator, which culminated in a settlement in principle, the terms  
22 of which are elaborated in this Settlement Agreement.

### 23 **2.4. ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF** 24 **CLASS SETTLEMENT**

25 The document and data exchange in this matter, as well as discussions between counsel, have  
26 been adequate to give the Plaintiff and Class Counsel a sound understanding of the merits of their  
27 positions and to evaluate the value of the claims of the Settlement Class. The informal discovery  
28 conducted in this Action and the information exchanged by the Parties through pre-mediation

1 discussions are sufficient to reliably assess the merits of the Parties' respective positions and to  
2 compromise the issues on a fair and equitable basis.

3       The Class Representative and Class Counsel believe that the claims, causes of action,  
4 allegations, and contentions asserted in the Action have merit. However, the Class Representative and  
5 Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings  
6 necessary to prosecute the Action against Defendants through trial and through appeals. Class Counsel  
7 has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex  
8 actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential  
9 difficulty of obtaining certification of the Settlement Class as well as trying the claims of the class.  
10 Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims  
11 alleged in the Action.

12       The Class Representative and Class Counsel believe that the settlement set forth in this  
13 Settlement Agreement confers substantial benefits upon Plaintiff and the Settlement Class and that an  
14 independent review of this Settlement Agreement by the Court in the approval process will confirm  
15 this conclusion. Based on their own independent investigation and evaluation, Class Counsel has  
16 determined that the settlement set forth in this Settlement Agreement is in the best interests of Plaintiff  
17 and the Class Members.

## 18       **2.5. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

19       Defendants have denied and continue to deny all allegations, claims, and contentions alleged  
20 by Plaintiff in the Action, Complaint, Operative Complaint, and PAGA Notice. Defendants have  
21 expressly denied and continue to deny all charges of wrongdoing or liability against them arising out  
22 of any of the conduct, statements, acts, or omissions alleged in the Action, Complaint, Operative  
23 Complaint, and PAGA Notice. Defendants contend that they complied with California and federal  
24 wage and hour laws, have dealt legally and fairly with Plaintiff and the Class Members, and have  
25 several defenses to Plaintiff's claims.

26       Defendants further deny that, for any purpose other than settling this Action, these claims are  
27 appropriate for class or representative treatment. Nonetheless, Defendants have concluded that further  
28 proceedings in the Action would be protracted and expensive and that it is desirable that the Action be

1 fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement  
2 Agreement to dispose of burdensome and protracted litigation, to permit the operation of Defendants'  
3 respective businesses without further expensive litigation and the distraction and diversion of their  
4 personnel with respect to matters at issue in the Action. Defendants have also taken into account the  
5 uncertainty and risks inherent in any litigation, especially in complex cases such as the Action.  
6 Defendants have, therefore, determined that it is desirable and beneficial to them that the Action be  
7 settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

#### 8 **2.6. INTENT OF THE CLASS SETTLEMENT**

9 The Class Settlement set forth herein intends to achieve the following: **(1)** entry of an order  
10 approving the Class Settlement; **(2)** entry of Judgment as defined herein; **(3)** discharge of the Released  
11 Parties from liability for any and all of the released claims detailed within this Agreement; **(4)** discharge  
12 of Defendants from liability for any and all claims arising out of the Action; and **(5)** the execution of a  
13 full release of any and all claims by Plaintiff.

#### 14 **3. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

15 For the purposes of this Settlement Agreement only and subject to Court approval consistent  
16 with the terms of this section, the Parties agree to conditional class certification of the Settlement Class.  
17 The Parties agree that class certification and representative treatment is for purposes of this Settlement  
18 only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or enter  
19 Judgment, Defendant reserves the right to contest certification of any class for any reasons, and  
20 Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to  
21 move for class certification on any grounds available and to contest Defendant's defenses. The  
22 Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and  
23 will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate  
24 the Settlement and this Agreement).

#### 25 **4. APPOINTMENT OF CLASS COUNSEL**

26 For purposes of this Settlement Agreement only and subject to the Court's approval consistent  
27 with the terms of this section, the Parties agree to conditional appointment of Class Counsel as counsel  
28 for the Settlement Class and the effectuation of the Class Settlement pursuant to this Settlement

1 Agreement. The Parties agree to the appointment of Class Counsel for purposes of this Settlement  
2 only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or enter  
3 Judgment, Defendant reserves the right to contest appointment of Class Counsel for any reasons, and  
4 Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to  
5 move for class certification and be approved as Class Counsel on any grounds available and to contest  
6 Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will  
7 have no bearing on, and will not be admissible in connection with, any litigation (except for  
8 proceedings to enforce or effectuate the Settlement and this Agreement).

9 **5. MONETARY TERMS**

10 **5.1. SETTLEMENT AMOUNT**

11 The Parties agree to settle this Action for the Gross Settlement Amount of \$200,000.00. There  
12 shall be no reversion to Defendants. Defendants shall pay the Gross Settlement Amount in full and no  
13 more, unless opting to extend the release period pursuant to Section 9.2. The Gross Settlement Amount  
14 and other actions and forbearances taken by Defendants shall constitute adequate consideration for the  
15 releases contained within this Agreement.

16 **5.2. PAYMENTS FROM THE GROSS SETTLEMENT AMOUNT**

17 The Administrator will make and deduct the following payments from the Gross Settlement  
18 Amount, in the amounts specified by the Court in the Final Approval:

19 ***5.2.1. Incentive Award for Plaintiff***

20 Plaintiff may petition the Court to approve an Incentive Award in an amount up to \$10,000.00  
21 for Reyes Salado Gomez. Defendants shall not oppose any request by Plaintiff for an Incentive Award  
22 that does not exceed this amount. Any Incentive Award approved by the Court shall be paid to Plaintiff  
23 from the Gross Settlement Amount and shall be in addition to any distribution to which he may  
24 otherwise be entitled as a Class Participant (Individual Settlement Amount and Individual PAGA  
25 Payment). If the Court approves a Class Representative Service Payment less than the amount  
26 requested, the Administrator will retain the remainder in the Net Settlement Amount. Any Incentive  
27 Award approved by the Court shall not be considered wages, and the Settlement Administrator shall  
28 issue to Plaintiff an IRS Form 1099 reflecting such payment. Plaintiff shall be fully responsible for the

1 payment of all taxes with respect to any Incentive Award approved by the Court and liability associated  
2 with such payment, and shall hold Defendants and Released Parties harmless from all liability with  
3 regard thereto.

4 **5.2.2. To Class Counsel**

5 Class Counsel may petition the court for a Class Attorney's Fees payment of not more than one  
6 third of the Gross Settlement Amount (i.e., \$66,666.67) and the award of costs and expenses up to an  
7 additional \$15,000.00. Defendant will not oppose requests for these payments provided that they do  
8 not exceed these amounts. If the Court approves an amount of Class Attorneys' Fees and Expenses less  
9 than the amounts requested or Class Counsel voluntarily reduces the amount, the Administrator will  
10 allocate the remainder to the Net Settlement Amount. Defendant and Released Parties shall have no  
11 liability to Class Counsel or any other Plaintiff's Counsel arising from attorneys' fees or costs, aside  
12 from the Class Attorneys' Fees and Expenses Payment, which shall be paid from the Gross Settlement  
13 Amount. The Administrator will pay the Class Attorneys' Fees and Expenses Payment using one or  
14 more IRS 1099 Forms. Class Counsel, Plaintiff, and any other legal counsel who receives payment  
15 assumes full responsibility and liability for taxes owed on the Class Attorneys' Fees and Expenses  
16 Payment and holds Defendant and Released Parties harmless, and indemnifies Defendant, from any  
17 dispute or controversy regarding any division or sharing of any of these payments or tax liability and  
18 from all liability with regard thereto.

19 **5.2.3. To the Administrator**

20 An Administrative Expenses payment to be paid to the Settlement Administrator in an amount  
21 not to exceed \$7,000.00 except for a showing of good cause and as approved by the Court. To the extent  
22 the Administration Expenses are less than \$7,000.00, or the Court approves payment less than  
23 \$7,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

24 **5.2.4. To the LWDA and Aggrieved Employees**

25 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA  
26 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have  
27 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which  
28 is \$15,000.00. The PAGA Payment must be approved by the Court pursuant to Labor Code section

2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$11,250.00) to the LWDA and twenty-five percent (25%) (i.e., \$3,750.00) to the PAGA Settlement Class.

The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement Class based on the pro rata number of pay periods worked by each particular PAGA Settlement Class member during the PAGA Period as a proportion of all pay periods worked by all members of the PAGA Settlement Class. This shall be calculated by dividing the total PAGA Payment by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period and multiplying the result by each individual Aggrieved Employee's number of pay periods during the PAGA Period.

100% of each Aggrieved Employees' Individual PAGA Payment will be allocated to settlement of claims for penalties and are not subject to wage withholdings and will be reported on IRS 1099 Forms. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount.

Opt Outs (Non-Participating Class Members) will receive an Individual PAGA Payment to the extent they also qualify as an Aggrieved Employee. A Class Member's status as a Non-Participating Class Member shall, therefore, have no effect on their entitlement to Individual PAGA Payment nor shall such status change the calculation of Individual PAGA Payments.

#### ***5.2.5. Subtraction of Employer's Taxes***

Following the subtraction of the above from the Gross Settlement Amount, the Settlement Administrator shall also subtract the Employer's Taxes from the Gross Settlement Amount.

### **5.3. PAYMENT TO CLASS PARTICIPANTS FROM NET SETTLEMENT AMOUNT**

Each Class Participant shall be eligible to receive payment of the Individual Settlement Amount, which is a share of the Net Settlement Amount based on the pro rata number of Workweeks worked by the Class Members during the Class Period as a proportion of all weeks worked by all Class Members. Each Class Participant, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and Required Withholding with respect to his or her Individual Settlement Amount

1 and shall hold Defendants harmless from any and all liability with regard thereto. The Individual  
2 Settlement Amount is calculated by dividing the Net Settlement Amount by the total number of  
3 Workweeks worked by all Class Participants during the Class Period and multiplying it by each Class  
4 Participants Workweeks worked during the Class Period.

5 **5.3.1. Tax Treatment and Payment**

6 For the purpose of calculating Employee's Taxes and Required Withholding for the Individual  
7 Settlement Amounts for Class Participants (including any payments to the Class Representative but  
8 exclusive of his Incentive Award), the Parties agree that 2.5% of each Individual Settlement Amount  
9 shall constitute payment in the form of wages (and each Class Participant will be issued an IRS Form  
10 W-2 for such payment to him or her), 2.5% shall be considered reimbursement of expenses, and 95%  
11 of each Individual Settlement Amount shall constitute penalties, interest, and consideration for the  
12 release of liability contained herein (and each Class Participant will be issued an IRS Form 1099 for  
13 such payment to him or her). Prior to final distribution, the Settlement Administrator shall calculate the  
14 total Employee's Taxes and Required Withholding due as a result of the wage portion of Class  
15 Participants' anticipated Individual Settlement Amounts and such actual amount will be deducted from  
16 the Net Settlement Amount. Again, as mentioned above, Employer's Taxes due on the wage portion of  
17 the Class Participants' Individual Settlement Amounts will be paid from the Gross Settlement Amount  
18 without additional funding from Defendants. The Parties understand that Plaintiff and the Class  
19 Participants who receive any payment pursuant to this Settlement Agreement shall be solely  
20 responsible for all other individual tax obligations.

21 **5.4. NO EFFECT ON EMPLOYEE BENEFIT PLANS**

22 The payment of Individual Settlement Amounts to Class Participants and Individual PAGA  
23 Payments shall not obligate Defendant to confer any additional benefits or make any additional  
24 payments to Class Members (such as 401(k) contributions, bonuses, vacation plans, sick leave plans,  
25 PTO plans, regular rate of pay calculations, or other benefit plan) beyond those specified in this  
26 Agreement.  
27  
28

## **6. SETTLEMENT ADMINISTRATION**

### **6.1. COSTS AND EXPENSES**

All costs and expenses due to the Settlement Administrator in connection with its administration of the Class Settlement, including, but not limited to, providing the Class Notice, locating Class Members, processing Opt Out requests and objections, distributing the portion of the PAGA Payment payable to the LWDA, distributing the portion of the PAGA Payment payable to the members of the PAGA Settlement Class, and calculating, administering and distributing Individual Settlement Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement Amount, and shall not exceed \$7,000.00 except for a showing of good cause and as approved by the Court.

### **6.2. PAYMENT BY DEFENDANTS**

Defendants shall deposit the Gross Settlement Amount in a lump sum payment to the Settlement Administrator within one hundred and eighty (180) days after the Effective Date. In no event shall Defendants be obligated to pay or deposit with the Settlement Administrator more than \$200,000.00, except where the Escalator Provision is triggered, and Defendants have voluntarily elected not to shorten the Class Period to avoid triggering of the Escalator Provision.

## **7. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

### **7.1. THE SETTLEMENT ADMINISTRATOR**

The Settlement Administrator will be responsible for: mailing the Class Notice (**Exhibit 1**) to Class Members; posting notice of entry of final order and judgment certifying the Class Settlement and approving this Settlement Agreement; handling inquiries from Class Members concerning the Class Notice; determining Individual Settlement Amounts; determining individual payments to members of the PAGA Settlement Class; maintaining the settlement funds in an appropriate interest-bearing account that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1; preparing, administering, and distributing Individual Settlement Amounts to Class Participants; preparing, administering, and distributing individual payments to members of the PAGA Settlement Class; distributing the portion of the PAGA Payment payable to the LWDA; issuing a final report and performing such other duties as the Parties may direct. Additionally, the

1 Settlement Administrator will handle all tax document preparation and reporting, including state and  
2 federal tax forms, if any. The Administrator will establish and maintain and use a mailing address,  
3 email address, and a toll-free telephone number to receive Class Member written correspondence and  
4 calls.

5 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and  
6 Defense Counsel with summary information updating them as to the number of validated and timely  
7 objections and Opt Out requests. This report shall not disclose any identifying information of the Class  
8 Members or Aggrieved Employees (i.e., names, contact information, addresses, hire and termination  
9 dates, etc.) The Settlement Administrator will serve on Defense Counsel only, via e-mail, date-stamped  
10 copies of the original Opt Out requests and objections no later than seven (7) days after their receipt.  
11 The Settlement Administrator will serve on Class Counsel, via email, date-stamped copies of the Opt  
12 Out requests and objections, with any personal identifying information redacted. The Settlement  
13 Administrator will provide Defense Counsel and Class Counsel with proof of mailing of the Class  
14 Notice, without listing individual Class Member names or any other personal identifying information  
15 (i.e., names, contact information, addresses, hire and termination dates, etc.), which the Settlement  
16 Administrator will file with the Court at the time Class Counsel files its motion in support of the Court's  
17 Final Approval and Fairness Hearing.

18 No later than thirty (30) days prior to the Final Approval and Fairness Hearing, the Settlement  
19 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary  
20 information regarding: **(a)** the total amount of final Individual Settlement Amounts of each Class  
21 Participant, without any identifying personal information; **(b)** the number of Class Participants to  
22 receive such payments, and **(c)** the final number of Opt-Outs and objections.

## 23 **7.2. NOTICE TO CLASS MEMBERS**

24 Notice shall be provided to Class Members in the following manner: Within twenty-eight (28)  
25 days after the Preliminary Approval Date, Defendants shall provide the Settlement Administrator with  
26 Class Data. To protect Class Member's privacy rights, the Settlement Administrator must maintain the  
27 Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other  
28 purpose, and restrict access to the Class Data to Administrator employees who need access to the Class

1 Data to effect and perform under this Agreement. Class Counsel shall not receive a copy of this list,  
2 and the Settlement Administrator shall not provide Class Counsel with any identifying information  
3 from it.

4 Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days  
5 following receipt of the Class Data, the Settlement Administrator shall determine the number of  
6 workweeks worked by each Class Member and the number of Pay Periods worked by each Aggrieved  
7 Employee, populate the data for each Class Member and Aggrieved Employee accordingly within each  
8 employees as required by the Class Notice (see Exhibit 1), and send each Class Member and Aggrieved  
9 Employee the Class Notice via first-class, United States mail. The Class Notice shall also contain an  
10 easily-understood statement alerting the Class Members that, unless they elect to Opt Out of the Class  
11 Settlement, the Class Member is releasing and waiving all Released Claims against the Released  
12 Parties, and a means to Opt Out.

13 The Class Notice will inform Class Members of their estimated share of the settlement and the  
14 number of workweeks they worked during the Class Period and payperiods during the PAGA Period.  
15 Class Members may dispute their workweeks for the Class Period only if they believe they worked  
16 more weeks in the Class Period than Defendants' records show by submitting information to the  
17 Settlement Administrator no later than forty-five (45) days after being mailed the Class Notice, which  
18 is the defined Response Deadline. The Administrator must encourage the challenging Class Member  
19 to submit supporting documentation. In the absence of any contrary documentation, the Administrator  
20 is entitled to presume that the Workweeks contained in the Class Data are correct. The Administrator's  
21 determination of each Class Participant's workweeks shall be final and not appealable or otherwise  
22 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to  
23 calculation of Workweeks and the Administrator's determination as to such challenges to Defense  
24 Counsel and Class Counsel, except that any information provided to Class Counsel in relation to pay  
25 period disputes shall not contain any personal identifying information of the Class Members.

### 26 **7.3. OPT OUT PROCEDURE**

27 Class Members who do not timely Opt Out of the Class Settlement will be deemed to participate  
28 in the Class Settlement and shall become Class Participants without having to submit a claim form or

1 take any other action. To Opt Out of the Class Settlement, the Class Member must send a written  
2 request to be excluded to the Settlement Administrator as further detailed within the Class Notice by  
3 the Response Deadline. A Request for Exclusion is a written letter from a Class Member or their  
4 representative that reasonably communicates the Class Member's election to be excluded from the  
5 Settlement and includes the Class Member's name, address and email address or telephone number. To  
6 be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response  
7 Deadline.

8 Any Opt Out request that is not postmarked by the Response Deadline will be invalid. If prior  
9 to the Response Deadline any Class Notice mailed to a Class Member is returned as having been  
10 undelivered by the United States Postal Service, the Settlement Administrator shall perform a skip trace  
11 search and seek an address correction for such Class Members, and a second Class Notice will be sent  
12 to any new or different address obtained. Such Class Members shall have an additional fourteen (14)  
13 days from the date of the mailing of the second Class Notice in which to Opt Out, object, or dispute  
14 the information provided on the Class Notice if the Response Deadline would have otherwise passed  
15 prior to fourteen (14) days from the date of the mailing of the second Class Notice.

16 It will be presumed that, if an envelope containing the Class Notice has not been returned within  
17 thirty (30) days of the mailing, the Class Member received the Class Notice. At least twenty-one (21)  
18 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class  
19 Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard  
20 to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall  
21 specify the number of Class Members to whom the Class Notice was sent and the number of Class  
22 Members to whom the Class Notice was not delivered, as well as information relating to the number  
23 of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court. The declaration  
24 shall not include private and identifying employee information.

25 If the Settlement Administrator determines that an Opt Out request returned by a Class Member  
26 before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency  
27 letter to that Class Member identifying the problem. If a Class Member submits both a dispute and an  
28 Opt Out request, the Settlement Administrator shall make reasonable attempts to clarify as if the Opt

1 Out request were deficient. If the Class Member fails to cure the deficiency, the Opt Out request shall  
2 be disregarded and the claim will be paid, and the Class Member will become bound by the judgment.

3 Class Participants will be bound by the Release provided in this Settlement Agreement.

4 A request to Opt Out of the Class Settlement shall **not** serve to exclude the Class Member from  
5 participation in the PAGA Settlement Class. Opt-Outs shall still be entitled to their share of the PAGA  
6 Payment. Class Members who are also members of the PAGA Settlement Class shall have no right or  
7 ability to opt out of the portion of this Settlement Agreement releasing PAGA claims.

#### 8 **7.4. OBJECTION PROCEDURE**

9 The Class Notice shall inform the Class Members of their right to object to the Class Settlement  
10 if they do not Opt Out. Any Class Participants who wish to object to the Class Settlement may submit  
11 a written objection to the Settlement Administrator no later than the Response Deadline. Only Class  
12 Participants may object to the Settlement. The objection should include the case name and number and  
13 must set forth, in clear and concise terms, a statement of the reasons why the objector believes that the  
14 Court should find that the proposed Class Settlement is not in the best interest of the Settlement Class  
15 and the reasons why the Class Settlement should not be approved, including the legal and factual  
16 arguments supporting the objection. If an objector also wishes to appear at the Final Approval and  
17 Fairness Hearing, in person or through an attorney, they may do so. The Settlement Administrator will  
18 promptly serve copies of any objection or notice of intention to appear on Class Counsel and Defense  
19 Counsel. Class Members wishing to make an objection may appear at the Final Approval and Fairness  
20 Hearing, either in person or through a lawyer retained at their own expense.

#### 21 **7.5. NOTICE OF FINAL JUDGMENT**

22 Within seven (7) days after the Court has held a Final and Fairness Approval Hearing and  
23 entered a final order certifying the Class for settlement purposes only and approving the Class  
24 Settlement, the Settlement Administrator will give notice of Final Judgment to Class Members pursuant  
25 to rule 3.771(b) of the California Rules of Court, by posting a copy of said order and final judgment on  
26 its website at a web address to be included in the Class Notice.

1     **8. CLASS SETTLEMENT DISTRIBUTION**

2     **8.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT**

3         The Gross Settlement Amount will be allocated as detailed within Section 5 of this Agreement.  
4     Individual Settlement Amounts to be calculated and paid to Class Participants from the Net Settlement  
5     Amount as also detailed in Section 5 of this Agreement. The method of calculating the LWDA PAGA  
6     Payment and Individual PAGA Payments is also contained in Section 5 of this Agreement.

7         As detailed in Section 6.2 of this Agreement, Defendants shall deposit the Gross Settlement  
8     Amount in a lump sum payment to the Settlement Administrator within one hundred and eighty (180)  
9     days after the Effective Date (“Defendants’ Funding Deadline”). In no event shall Defendants be  
10    obligated to pay or deposit with the Settlement Administrator more than \$200,000.00, except where  
11    the Escalator Provision is triggered, and Defendants have voluntarily elected to extend the Class Period.  
12    Nothing prevents Defendants from voluntarily electing to fund earlier.

13    **8.2. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

14         The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses  
15     approved by the Court no later than fourteen (14) days after Defendants’ Funding Deadline.

16    **8.3. TIME FOR PAYMENT OF INCENTIVE AWARD**

17         The Settlement Administrator shall distribute to Plaintiff the Incentive Award approved by the  
18     Court no later than fourteen (14) days after the Defendants’ Funding Deadline.

19    **8.4. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

20         The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment  
21     due to it and approved by the Court no later than fourteen (14) days after the Defendants’ Funding  
22     Deadline.

23    **8.5. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND**  
24    **INDIVIDUAL SETTLEMENT AMOUNTS**

25         The Settlement Administrator shall make every effort to pay the Employee’s Taxes and  
26     Required Withholding associated with each Class Participant’s Individual Settlement Amount and mail  
27     the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the  
28     last-known address no later than fourteen (14) days after the Defendants’ Funding Deadline. If the

1 Settlement Administrator is not able to do so within the time period set forth above, it shall so inform  
2 Class Counsel and Defense Counsel and provide an approximate date by which the Employee's Taxes  
3 and Required Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under  
4 no circumstances shall the Settlement Administrator distribute checks to Class Participants until all  
5 Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the  
6 remaining monetary obligations have been calculated and accounted for.

7 Within two hundred ten (210) days of mailing the Individual Settlement Amounts to Class  
8 Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a  
9 declaration of payment. If any Class Participant is deceased, payment shall be made payable to the  
10 estate of that Class Member and delivered to the executor or administrator of that estate, unless the  
11 Settlement Administrator has received an affidavit or declaration pursuant to California Probate Code  
12 section 13101, in which case payment shall be made to the affiant(s) or declarant(s).

#### 13 **8.6. NON-CASHED SETTLEMENT CHECKS**

14 Any funds associated with checks that have not been cashed within one hundred eighty (180)  
15 days, will become void and the Individual Settlement Amount and Individual PAGA Payment  
16 associated with the uncashed check(s) will be transmitted to Valley Children's Hospital ("Cy Pres  
17 Recipient"), thereby leaving no unpaid residue subject to the requirements of California Code of Civil  
18 Procedure section 384, subd. (b.). The entire Net Settlement Amount will be paid out to Class  
19 Participants, whether or not they all cash their Individual Settlement Amount checks. Therefore,  
20 Defendants shall not be required to pay any interest on said amount. For the purposes of determining  
21 whether Defendants have met their financial obligation to pay the Individual Settlement Payment,  
22 Defendants will be deemed to have fulfilled their obligation upon the mailing of the check to the Class  
23 Member, regardless of whether such Class Member subsequently negotiates the check.

#### 24 **9. NULLIFICATION OF THIS SETTLEMENT AGREEMENT**

##### 25 **9.1. DEFENDANTS' RIGHT TO VOID SETTLEMENT AGREEMENT**

26 If 5% or more Members of the Settlement Class timely submit opt out requests, Defendant(s)  
27 shall have the right (but not the obligation) to void this Settlement Agreement. If any of the Defendants  
28 exercise this right, then none of the Defendants shall be liable to pay any portion of the GSA.

## 9.2. ESCALATOR PROVISION

If the number of workweeks is greater than 10% above the represented Settlement Class, as defined in Section 1, then the portion of the GSA attributable to non-PAGA claims (i.e., the GSA less the PAGA penalties) shall be increased proportionately for each additional Workweek above the 10% buffer, but only to the extent Defendant does not choose a date earlier than the date of preliminary approval as the end of the Class Release Period to avoid any pro rata increase. If the Pro Rata Increase Threshold is triggered, Defendant shall have the exclusive right to choose an earlier date than the date of preliminary approval as the end of the Class Release Period to avoid triggering any pro rata increase altogether or, alternatively, a date that simply reduces the increase. The PAGA Release Period shall extend through the date of preliminary approval and shall not be subject to any pro rata increase.

## 9.3. STAY ON APPEAL

If a timely appeal from the approval of the Class Settlement and judgment, the judgment shall be stayed, and Defendants shall not be obligated to fund the Gross Settlement Amount or take any other actions required by this Settlement Agreement until all appeal rights have been exhausted by operation of law.

## 10. MOTIONS FOR COURT APPROVAL

### 10.1. PRELIMINARY APPROVAL

As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class Settlement, the SAC stipulation, and the SAC (see Section 2.2). Each party shall cooperate to present the Class Settlement to the Court for preliminary approval in a timely fashion.

#### *10.1.1. Plaintiff's Responsibilities*

Class Counsel will prepare all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval and a request for approval of the PAGA Settlement under Labor Code section 2699, subdivision (f)(2); (ii) a draft proposed Order Granting Preliminary Approval of PAGA Settlement and confirmation that it pertains to the SAC and preliminary approval of the SAC itself; (iii) a signed declaration from Plaintiff confirming his willingness and competency to serve and disclosing all facts relevant to any

1 actual or potential conflicts of interest with Class Members, and/or the Administrator; and (iv) a signed  
2 declaration from Class Counsels' firm attesting to its competency to represent the Class Member, and  
3 attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of  
4 violations (Lab. Code, § 2699.3, subd. (a)), amended notice and Operative Complaint as detailed in  
5 Section 2.2, and an intent to submit Final Judgment to the LWDA (Lab. Code, § 2699, subd. (s)(3)).  
6 Class Counsel will deliver to Defense Counsel, for approval, a draft proposed Order Granting  
7 Preliminary Approval of PAGA Settlement and confirmation that it pertains to the SAC and  
8 preliminary approval of the SAC itself.

9 Class Counsel is responsible for finalizing and filing the Motion for Preliminary Approval and  
10 obtaining a hearing date for the same. Class Counsel is also responsible for appearing in Court to  
11 advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering  
12 the Court's Preliminary Approval to the Administrator.

#### 13 ***10.1.2. Duty to Cooperate and Material Changes to Settlement Agreement***

14 If the Parties disagree on the draft proposed Order Granting Preliminary Approval of PAGA  
15 Settlement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the  
16 Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement.

17 If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any  
18 material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work  
19 together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the  
20 Agreement and otherwise satisfy the Court's concerns. However, no Party shall be obligated to consent  
21 to any material change (including but not limited to changes to the Gross Settlement Amount or the  
22 releases set forth herein) in the Agreement, whether or not such material change is caused or requested  
23 by the Court. The Court's decision to award less than the amounts requested for the Incentive Award,  
24 Class Attorneys' Fees and Expenses, or Administrative Expenses payment shall not constitute a  
25 material modification to the Agreement within the meaning of this section.

#### 26 **10.2. FINAL APPROVAL**

27 The Final Approval and Fairness Hearing shall be held before the Court. Not later than 16 court  
28 days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final

1 approval of the Settlement that includes a request for approval of the PAGA settlement under Labor  
2 Code §2699, subd. (l), a proposed Final Approval Order and a proposed Judgment (collectively  
3 “Motion for Final Approval”). At the Final Approval and Fairness Hearing, Plaintiff shall move the  
4 Court for the entry of the final order certifying the Settlement Class for settlement purposes only and  
5 approving the Class Settlement as being fair, reasonable, and adequate to the Class Participants within  
6 the meaning of California Rules of Court, Rule 3.769, subdivisions (c), (d) and (e), and for the entry of  
7 a final judgment of the Action consistent with the terms of the Class Settlement and rule 3.769,  
8 subdivision (h), of the California Rules of Court. Class Counsel and Defense Counsel shall submit to  
9 the Court such pleadings and/or evidence as may be required for the Court’s determination.

10 Each Party retains the right to respond to any objection raised by a Participating Class Member,  
11 including the right to file responsive documents in Court no later than 5 court days prior to the Final  
12 Approval Hearing, or as otherwise ordered or accepted by the Court.

13 If the Court does not grant Final Approval or conditions Final Approval on any material change  
14 to the Agreement (including, but not limited to, the scope of releases or changes to the Gross Settlement  
15 Amount), the Parties shall expeditiously work together in good faith to address the Court’s concerns  
16 and endeavor to revise the Agreement as necessary to obtain Final Approval. The Court’s decision to  
17 award less than the amounts requested for the Incentive Award, Class Attorneys’ Fees and Expenses,  
18 or Administrative Expenses payment shall not constitute a material modification to the Agreement  
19 within the meaning of this section. No party shall be obligated to consent to any material change in the  
20 Agreement, whether or not such material change is caused or requested by the Court.

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

25 Provided the Judgment is consistent with the terms and conditions of this Agreement,  
26 specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment  
27 reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class  
28 Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal

1 from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file  
2 motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of  
3 appeal does not include any waiver of the right to oppose such motions, writs or appeals.

4 If the reviewing appellate court vacates, reverses, or modifies the Judgment in a manner that  
5 requires a material modification of this Agreement (including, but not limited to, the scope of releases  
6 or changes to the Gross Settlement Amount), this Agreement shall be null and void. The Parties shall  
7 nevertheless expeditiously work together in good faith to address the appellate court's concerns and to  
8 obtain Final Approval and entry of Judgment. No party shall be obligated to consent to any material  
9 change in the Agreement, whether or not such material change is caused or requested by the reviewing  
10 Court. An appellate decision to vacate, reverse, or modify the Court's award of the Incentive Award,  
11 Class Attorneys' Fees and Expenses, or Administrative Expenses shall not constitute a material  
12 modification of the Judgment within the meaning of this section, as long as the Gross Settlement  
13 Amount remains unchanged.

## 14 **11. RELEASES AND WAIVERS**

### 15 **11.1. RELEASE BY PARTICIPATING CLASS MEMBERS AND AGGRIEVED** 16 **EMPLOYEES**

17 All Class Participants and all Aggrieved Employees (who shall not have the right to opt out of  
18 the release of the Released PAGA Claims), on behalf of themselves and their respective former and  
19 present representatives, agents, attorneys, heirs, administrators, successors, assigns, assignors,  
20 grantees, devisees, trustees, or any other entities in which they may have an interest, release Defendants  
21 and Released Parties from all claims that were alleged in the Complaints, Operative Complaint  
22 (including, but not limited to, the SAC), the PAGA Notice, or any other notice provided to the LWDA,  
23 or which could have been alleged based on the facts alleged in the these documents, and which arose  
24 during the Class Period and/or PAGA Period including, but not limited to: failure to pay minimum  
25 wage or straight time wages for all hours worked or to pay for all hours worked generally and any  
26 associated interest and penalties; failure to pay proper overtime or double time wages and any  
27 associated interest and penalties; failure to provide compliant rest breaks and/or rest and recovery  
28 periods and pay missed rest break premiums and any associated interest and penalties; failure to provide

compliant meal periods and pay missed meal period premiums and any associated interest and penalties, or associated claims of invalid waivers or meal period agreements; failure to maintain accurate employment records; failure to pay timely wages during employment; failure to pay all wages due and owing at separation of employment; failure to reimburse business expenses; failure to provide complete and accurate wage statements and/or pay stubs in proper form; deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); Failure to Pay Split Shift Premiums; and any and all related penalties, including recordkeeping penalties, wage statement penalties, minimum wage penalties, waiting time penalties, and other statutory or civil penalties associated with any of the foregoing. Further, such Released Claims shall include, but are not limited to those claims arising under California Labor Code sections 201-208, 210, 218.5-6, 221-223, 225.5, 226, 226.3, 226.7, 246, 248.5, 256, 510, 512, 558, 558.1, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2084, 2698 et. seq, 2699 Et Seq, and others that may be applicable and/or those arising under the applicable Industrial Welfare Commission Wage Order(s) (including but not limited to subsections 3, 4, 5, 7, 8, 9, 10, 11, 12, 18, and 20 of the applicable Wage Order(s), such as IWC Wage Order 14 [including the California Code of Regulations' codifying the applicable Wage Order(s)]); California Business and Professions Code sections 17200 through 17210; California Civil Code sections 3287 and 3289; California Code of Civil Procedure section 1021.5; all claimed or unclaimed compensatory, consequential, incidental, liquidated, punitive and exemplary damages, penalties, restitution, interest, costs and attorneys' fees, injunctive or equitable relief, and any other remedies available at law or equity, and other amounts recoverable under said claims under California law; and any related claims under the provisions of the Fair Labor Standards Act (29 USC §§201, et seq.) ("Released Class Claims").

The Parties intend that the releases within this Agreement be construed as broadly as possible. The release excludes the release of claims not permitted by law. 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. The parties warrant and

represent that the releases for Participating Class Members and Aggrieved Employees resolve, pursuant to Labor Code §§206 and 206.5, and applicable case law (including but not limited to *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796) a good faith dispute regarding any and all wages, if any, owed to Participating Class Members / Aggrieved Employees through their last day of employment with Defendant within the Class Period and PAGA Period.

## **11.2. RELEASE OF CLAIMS BY PLAINTIFF**

Plaintiff and their respective dependents, former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, assigns, assignors, legatees, executors, grantees, beneficiaries, devisees, trustees, conservators, guardians, personal representatives, or any other entities in which they may have an interest, or successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity, (“Plaintiff and Plaintiff’s Releasers”), expressly agree to release and discharge Defendants and Released Parties from all liabilities, causes of actions, charges, complaints, suits, claims, obligations, costs, losses, damages, liquidated damages, punitive damages, equitable relief, restitution, declaratory relief, interest, rights, judgments, attorneys’ fees and costs, expenses, bonds, bills, penalties, fines, and all other legal responsibilities of any form whatsoever whether known or unknown, whether suspected or unsuspected, whether fixed or contingent, including but not limited to those arising from any acts or omissions occurring prior to the Effective Date of this Agreement by Defendants and Released Parties, including those arising under any theory of law, whether common, contractual, constitutional, statutory or other of any jurisdiction, foreign or domestic, whether known or unknown, whether in law or in equity, which Plaintiff had or may claim to have against any of them by reason of any and all matters from the beginning of time to the present including, but not limited to, those arising out of his past employment with, compensation during, and/or separation from their alleged employment with Defendants. (“Plaintiff’s Release.”)

Plaintiff and Plaintiff’s Releasers specifically releases claims under all applicable federal, state, and local laws including, but not limited to, Title VII of the Civil Rights Act of 1964 as amended, the Fair Labor Standards Act, the Rehabilitation Act of 1973, the Family Medical Leave Act, the Employee Retirement Income Security Act, the Consolidated Omnibus Reconciliation Act of 1986, the Equal Pay

Act, the Americans with Disabilities Act, the California Fair Employment and Housing Act, the California Family Rights Act, the California Labor Code including, but not limited to, sections 200, et seq., 970, 1102.5, 6310, and 132a, applicable California Wage Order provisions, the California Government Code including, but not limited to, sections 12940 et seq. and 12945, Title 2 of the California Code of Regulations § 11039, the California Civil Code, the California Business and Professions Code including, but not limited to, sections 17200 et seq., the California Constitution, the United States Constitution, or any laws pertaining to wrongful termination in violation of public policy, defamation, breach of contract, contractual obligations generally, discrimination based upon race, sex, disability, or any other protected status, retaliation, harassment, failure to prevent discrimination, harassment, or retaliation, failure to provide a reasonable accommodation or engage in the interactive process, and wage and hour claims (including compensation for work, overtime, PTO, vacation, or any other form of compensation or reimbursement). In sum, this release shall apply to all possible claims Plaintiff or Plaintiff's Releasers could bring against Defendants and Released Parties, whether arising in statute, regulation, common law, tort, contract, or any other body of law arising before the effective date of this agreement, whether known or unknown, and including, but not limited to, those pertaining to the alleged employment relationship between Plaintiff and Defendants.

This release is not intended to operate as, nor shall be construed as, a release or waiver of any rights and/or claims that cannot be released or waived, including worker's compensation benefits or vested employee benefits, as a matter of law. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

### **11.3. PLAINTIFF'S WAIVER OF RIGHTS UNDER CIVIL CODE SECTION 1542.**

For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the 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.**

1           **11.4. NO TAX ADVICE**

2           Plaintiffs, Class Counsel, Defendant, and Defense Counsel are not providing any advice  
3 regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the  
4 meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or  
5 otherwise.

6           **12. DUTIES OF THE PARTIES**

7           **12.1. COOPERATION**

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

17           **12.2. DUTIES PRIOR TO COURT APPROVAL**

18           Promptly upon execution of this Settlement Agreement, Class Counsel shall apply to the Court  
19 for the entry of a preliminary order scheduling a hearing on the question of whether the proposed Class  
20 Settlement should be approved as fair, reasonable, and adequate as to the Class Members, approving  
21 as to form and content the proposed Class Notice attached hereto as **Exhibit 1**, and directing the  
22 mailing of the Class Notice to Class Members. The SAC stipulation and the SAC will be filed  
23 simultaneously with Plaintiff's Motion for Preliminary Approval of the Parties' PAGA and Class  
24 Settlement (see Exhibit 2).

25           **13. MISCELLANEOUS PROVISIONS**

26           **13.1. DIFFERENT FACTS**

27           The Parties acknowledge that the facts in relation to the dispute and all claims released by the  
28 terms of this Settlement Agreement may turn out to be different from the facts now known by each

1 party and/or its counsel, or believed by such Party or counsel to be true, and each Party therefore  
2 expressly assumes the risk of the existence of different or presently unknown facts, and agrees that this  
3 Settlement Agreement shall be in all respects effective and binding despite such difference.

#### 4 **13.2. NO PRIOR ASSIGNMENTS**

5 The Parties represent, covenant, and warrant that they have not directly or indirectly assigned,  
6 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any  
7 portion of any liability, claim, demand, action, cause of action, or right herein released and discharged  
8 except as set forth herein.

#### 9 **13.3. NON-ADMISSION**

10 Nothing in this Settlement Agreement shall be construed as or deemed to be an admission by  
11 any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other  
12 person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing  
13 toward each other or any other person. Each of the Parties has entered into this Settlement Agreement  
14 with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses,  
15 and contingencies. Nothing herein shall constitute any admission by Defendants of wrongdoing or  
16 liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any  
17 admission by Defendants regarding the merits of the Claims in this Action, including but not limited  
18 to claims for unpaid wages or violations under California or federal law. Nothing herein shall constitute  
19 an admission by Defendants that the Action was properly brought as a class or representative action  
20 other than for settlement purposes. To the contrary, Defendants have denied and continue to deny each  
21 and every material factual allegation and all Claims. To this end, the Class Settlement of the Action,  
22 the negotiation and execution of this Settlement Agreement, and all acts performed or documents  
23 executed pursuant to or in furtherance of this Settlement Agreement or the Class Settlement are not,  
24 shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or  
25 liability on the part of Defendants or of the truth of any of the factual allegations in the Complaint in  
26 the Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence  
27 of any fault or omission on the part of Defendants in any civil, criminal, or administrative proceeding  
28 in any court, administrative agency, or other tribunal.

#### 13.4. NON-EVIDENTIARY USE

Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any individual who requested to be excluded from the Settlement Class), Defendants, or its, her, his, or their respective counsel, in the Action, except as is reasonably necessary to effectuate the Settlement Agreement's purpose and terms. This Settlement Agreement may, however, be used by Defendants and the Released Parties to prove or defend against any claim released herein by any Class Member in any judicial, quasi-judicial, administrative, or governmental proceeding.

#### 13.5. CONFIDENTIALITY AND NO PUBLICITY

Plaintiffs and Class 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, the Complaints, or PAGA Notice, 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; (5) in response to an inquiry or subpoena issued by a state or federal government agency; or, (6) to Class Members for purposes of informing them about this Settlement and its procedures. Thereafter, Class Counsel further agrees to keep this Agreement, the Complaints, or PAGA Notice confidential, and shall not disclose them to current or former employees of Defendants or to the media, or shall not disclose or post/publish it on any websites, blogs, social media, and/or online platforms. Exceptions to Class Counsel's obligation of confidentiality are (i) disclosures necessary to comply with the law, judicial processes, or for financial planning or tax preparation purposes; (ii) to the extent needed to enforce this Agreement; (iii) disclosures to a court for purposes of describing its qualifications as counsel; or, (iv) to Class Members for purposes of informing them about this Settlement and its procedures. Plaintiff and Class Counsel agree to immediately notify Defendant's Counsel of any judicial or agency order, inquiry, or subpoena seeking such information.

1       **13.6. NO SOLICITATION**

2           The Parties agree that they and their respective counsel and employees will not solicit any Class  
3 Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this section  
4 shall be construed to restrict the Parties or their respective counsel's ability to communicate with Class  
5 Members for purposes of informing them about this Settlement and its procedures.

6       **13.7. CONSTRUCTION**

7           The Parties agree that the terms and conditions of this Settlement Agreement are the result of  
8 lengthy, intensive, arms-length, non-collusive negotiations between the Parties and that this Settlement  
9 Agreement is not to be construed in favor of or against any party by reason of the extent to which any  
10 party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in this  
11 Settlement Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the  
12 next business day.

13       **13.8. GOVERNING LAW**

14           This Settlement Agreement is intended to and shall be governed by the laws of the State of  
15 California, without regard to conflict of law principles, in all respects, including execution,  
16 interpretation, performance, and enforcement.

17       **13.9. NOTICES**

18           Except for Class Member notices required to be made by the Settlement Administrator, all  
19 notices or other communications required or permitted under this Settlement Agreement shall be in  
20 writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S.  
21 certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the  
22 party appearing in this Settlement Agreement.

23           To Plaintiff:

24           Jonathan Melmed, Esq.

25           Meghan Higday, Esq.

26           Emily Horrigan, Esq.

27           **Melmed Law Group P.C.**

28           1801 Century Park East, Suite 850

Los Angeles, California 90067

Phone: (310) 824-3828

Fax: (310) 862-6851

Emails: [jm@melmedlaw.com](mailto:jm@melmedlaw.com); [mh@melmedlaw.com](mailto:mh@melmedlaw.com); [eh@melmedlaw.com](mailto:eh@melmedlaw.com)

To Defendant:  
 Ian B. Wieland, Esq.  
 Justin G. Donner, Esq.  
 SAGASER, WATKINS & WIELAND PC  
 5260 N Palm Ave, Ste. 400  
 Fresno, CA 93704  
 (559) 421-7000  
 ian@sw2law.com  
 justin@sw2law.com

### **13.10. CAPTIONS AND INTERPRETATIONS**

Section titles or captions contained herein are inserted as a matter of convenience and for reference only and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision thereof.

### **13.11. MODIFICATION**

This Settlement Agreement may not be changed, altered, or modified, except in writing signed by all Parties and approved by the Court.

### **13.12. INTEGRATION CLAUSE**

This Settlement Agreement contains the entire agreement between the Parties relating to the Settlement of the Action, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, and whether by a party or such party's legal counsel, are hereby superseded. No rights under this Settlement Agreement may be waived except in writing as provided above. 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.

### **13.13. SUCCESSORS AND ASSIGNS**

This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class Members (excluding only persons who timely Opt Out) and their respective present and former heirs, trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension plans, welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors, successors, and assigns.

**13.14. CORPORATE SIGNATORIES**

Any person executing this Settlement Agreement or any such related document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all Parties hereto, that such person has been duly authorized by such corporation or partnership to execute this Settlement Agreement or any such related document.

**13.15. EXECUTION IN COUNTERPARTS**

This Settlement Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument.

**13.16. ATTORNEY FEES, COSTS, AND EXPENSES**

Except as otherwise specifically provided for herein, each party shall bear her or its own attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

**13.17. ACTION TO ENFORCE AGREEMENT**

In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover her or its attorney fees and costs.

**13.18. USE AND RETURN OF CLASS DATA**

Information provided to Class Counsel pursuant to California Evidence 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 Effective Date, Class Counsel shall destroy all paper and electronic versions of Class Data received from Defendant unless, prior to the Effective Date, Defendant makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.

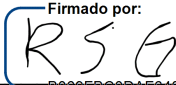
**14. EXECUTION**

The Parties and their counsel have executed this Settlement Agreement on the date below their signatures or the signature of their representatives. The date of this Settlement Agreement shall be the date of the latest signature.

**APPROVAL AND EXECUTION BY PARTIES**

**PLAINTIFF:**

Dated: 1/2/2025

Firmado por:  
  
 Reyes Salado Gomez  
 Plaintiff

**DEFENDANTS:**

Dated: \_\_\_\_\_

The Gary and Donna De Graaf Family Trust

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

JZB Farming

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Jer-Z-Boyz Ranch

By: \_\_\_\_\_

Title: \_\_\_\_\_

1 **14. EXECUTION**

2 The Parties and their counsel have executed this Settlement Agreement on the date below their  
3 signatures or the signature of their representatives. The date of this Settlement Agreement shall be the  
4 date of the latest signature.

5  
6 **APPROVAL AND EXECUTION BY PARTIES**

7 **PLAINTIFF:**

8 Dated: \_\_\_\_\_

\_\_\_\_\_  
Reyes Salado Gomez  
Plaintiff

10 **DEFENDANTS:**

11 Dated: 06/01/2025  
12 \_\_\_\_\_

The Gary and Donna De Graaf Family Trust

13 Donna de Graaf  
Donna de Graaf (Jan 6, 2025 14:44 CST)

14 By: Donna de Graaf

15 Title: trustee

16  
17 Dated: \_\_\_\_\_

JZB Farming

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19 \_\_\_\_\_  
20 By: \_\_\_\_\_

21 Title: \_\_\_\_\_

22 Dated: \_\_\_\_\_

Jer-Z-Boyz Ranch

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24 \_\_\_\_\_  
25 By: \_\_\_\_\_

26 Title: \_\_\_\_\_  
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1 **14. EXECUTION**

2 The Parties and their counsel have executed this Settlement Agreement on the date below their  
3 signatures or the signature of their representatives. The date of this Settlement Agreement shall be the  
4 date of the latest signature.

5  
6 **APPROVAL AND EXECUTION BY PARTIES**

7 **PLAINTIFF:**

8 Dated: \_\_\_\_\_

\_\_\_\_\_  
Reyes Salado Gomez  
Plaintiff

10 **DEFENDANTS:**

11 Dated: \_\_\_\_\_

The Gary and Donna De Graaf Family Trust

14 By: \_\_\_\_\_

15 Title: \_\_\_\_\_

16  
17 Dated: 07/01/2025

JZB Farming

18   
\_\_\_\_\_  
Daniel de Graaf (Jan 7, 2025 17:54 PST)

20 By: Daniel de Graaf

21 Title: Partner

22 Dated: 07/01/2025

Jer-Z-Boyz Ranch

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\_\_\_\_\_  
Daniel de Graaf (Jan 7, 2025 17:54 PST)

25 By: Daniel de Graaf

26 Title: Partner

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Dated: 07/01/2025

  
Daniel de Graaf (Jan 7, 2025 17:54 PST)  
Daniel De Graaf

Dated: \_\_\_\_\_

\_\_\_\_\_  
Dustin De Graaf

**APPROVED AS TO FORM BY COUNSEL**

**CLASS COUNSEL:**

Dated: \_\_\_\_\_

**Melmed Law Group P.C.**

\_\_\_\_\_  
Jonathan Melmed  
Attorneys for Plaintiff

**DEFENDANTS' COUNSEL:**

Dated: 1/3/2025

**Sagaser, Watkins & Wieland PC**

  
Ian B. Wieland  
Justin G. Donner  
Attorneys for Defendants

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Dated: \_\_\_\_\_

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Daniel De Graaf

Dated: 06/01/2025

\_\_\_\_\_  
*Dustin de Graaf*  
Dustin de Graaf (Jan 6, 2025 22:02 CST)  
\_\_\_\_\_  
Dustin De Graaf

**APPROVED AS TO FORM BY COUNSEL**

**CLASS COUNSEL:**

Dated: \_\_\_\_\_

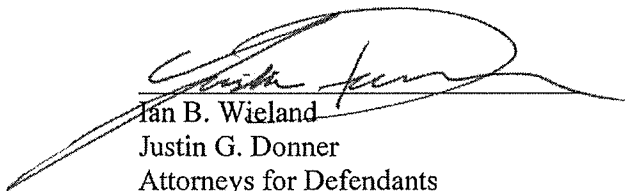
**Melmed Law Group P.C.**

\_\_\_\_\_  
Jonathan Melmed  
Attorneys for Plaintiff

**DEFENDANTS' COUNSEL:**

Dated: 1/3/2025

**Sagaser, Watkins & Wieland PC**

  
\_\_\_\_\_  
Ian B. Wieland  
Justin G. Donner  
Attorneys for Defendants

1 Dated: \_\_\_\_\_

\_\_\_\_\_  
Daniel De Graaf

2  
3 Dated: \_\_\_\_\_

\_\_\_\_\_  
Dustin De Graaf

4  
5  
6 **APPROVED AS TO FORM BY COUNSEL**

7 **CLASS COUNSEL:**

8  
9 Dated: 1/2/2025

**Melmed Law Group P.C.**

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\_\_\_\_\_  
Jonathan Melmed  
Attorneys for Plaintiff

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14 **DEFENDANTS' COUNSEL:**

15 Dated: \_\_\_\_\_

**Sagaser, Watkins & Wieland PC**

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Ian B. Wieland  
Justin G. Donner  
Attorneys for Defendants

# **EXHIBIT “1”**

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

*Reyes Salado Gomez v. The Gary and Donna De Graaf Family Trust, Dustin De Graaf, Daniel De Graaf, JZB Farming, and Jer-Z-Boyz Ranch, Tulare County Superior Court*  
Case No. VCU297485

### PLEASE READ THIS NOTICE CAREFULLY.

**You have received this Notice because records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced matter.**

**You do not need to take any action to receive a settlement payment and, unless you request to be excluded from the settlement, your legal rights may be affected.**

**This Notice is designed to advise you of your rights and options with respect to the settlement.** By order of the Superior Court of California for the County of Tulare (the “Court” or “Tulare Superior Court”), you are notified that: preliminary approval of a class action settlement reached between Reyes Salado Gomez (“Plaintiff”) and The Gary and Donna De Graaf Family Trust, Dustin De Graaf, Daniel De Graaf, JZB Farming, and Jer-Z-Boyz Ranch (“Defendants”), [Preliminary Approval Date], in the case entitled *Reyes Salado Gomez v. The Gary and Donna De Graaf Family Trust, Dustin De Graaf, Daniel De Graaf, JZB Farming, and Jer-Z-Boyz Ranch* (Case No. VCU297485, hereinafter “*Gomez v. Jer-Z-Boyz Ranch*”), which may affect your legal rights. Plaintiff and Defendants are collectively referred to as the “Parties.”

If you are a Class Member, you need not take any action to receive a settlement payment, but you have the opportunity to request exclusion from the settlement (in which case you will not receive payment under the settlement), object to the settlement, and/or dispute the pay periods credited to you, if you so choose, as explained more fully below.

### 1. BACKGROUND

Plaintiff filed a class action complaint in Tulare Superior Court, Case No. VCU297485 (the “Class Action”), on August 16, 2023. He then amended the complaint on September 8, 2023, to add a cause of action under the under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”). The case and all complaints filed within in it is referred to as the “Action.”

Plaintiff alleges that Defendants violated the California Labor Code, Business and Professions Code, and Wage Orders with respect to themselves and the Class Members by, among other things, failing to properly pay for all hours worked, including minimum and overtime wages, provide split shift premiums, provide legally-compliant meal and rest periods or premium pay in lieu thereof, provide reimbursements for business expenses, pay timely wages, failing to pay all wages due at the termination of employment, maintain required records, and failing to provide accurate wage statements and also claiming unlawful business practices under California’s Unfair Competition law. Plaintiff seeks, among other things, payment of (1) back wages and other relief for a class of hourly paid non-exempt employees (“Class Members”) who worked for Defendants in California during between April 17, 2019, and [add date of preliminary approval] (“Class”); and (2) penalties under the

California Labor Code Private Attorneys General Act of 2004 (“PAGA”) for all hourly paid non-exempt employees who worked for Defendants in California from April 17, 2022 to [add date of preliminary approval] (“Aggrieved Employees”).

Defendants deny all of the allegations in the Actions or that it violated any law, and contends that it, at all times, fully complied with all applicable laws. Defendants have entered into the settlement described in this notice for the purpose of avoiding further expense associated with defending the lawsuit.

The Parties participated in mediation with a mediator and, as a result, the Parties executed a settlement agreement that settles the Action (“Settlement Agreement” or “Agreement”).

As mentioned above, the Tulare Superior Court has preliminarily approved this Settlement Agreement and has appointed Simpluris, Inc. as the administrator of the settlement (“Settlement Administrator”), Plaintiff as the representative of the Class (“Class Representative”), and Melmed Law Group P.C. as counsel for the Class (“Class Counsel”).

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendants that the claims in the Action have merit or that Defendants have any liability to Plaintiff or to Class Members. The Court has determined only that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the final hearing.

## **2. SUMMARY OF THE PROPOSED SETTLEMENT**

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant 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 Final Approval.

### **A. SETTLEMENT FORMULA**

The total Gross Settlement Amount is Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) (the “Gross Settlement Amount”). The portion of the Gross Settlement Amount that is available for payment to Class Members who do not timely and validly request exclusion from the settlement (“Participating Class Members”) is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Gross Settlement Amount less the following payments which are subject to Court approval : (1) attorneys’ fees in the amount of up to \$66,666.67 and reimbursement of litigation costs and expenses in the amount not to exceed \$15,000.00 to Class Counsel (“Attorneys’ Fees and Costs”); (2) service award to Plaintiff in the amount of up to \$10,000.00 (“Service Payment”); (3) fees and expenses of administration of the Settlement to the Settlement Administrator in an amount not to exceed \$7,000.00 (“Settlement Administration Fees”); (4) \$15,000.00, which sum is allocated by the Parties to resolve the PAGA claims; and (5) Defendants’ share of payroll taxes as applicable.

Participating Class Members are entitled to receive payment under the settlement (“Individual Class Payment”) based on the number of workweeks they worked for the dairy during the Class Period. Participating Class Members’ Individual Class Payments were calculated by (a) dividing the Net Settlement Amount by the total number of workweeks worked by all Class Members during the Class

Period and (b) multiplying the result by each Participating Class Member's individual number of workweeks during the Class Period.

Aggrieved Employees are entitled to receive payment under the settlement ("Individual PAGA Payment") based on the number of pay periods they worked for the dairy during the PAGA Period. Aggrieved Employees' Individual PAGA Payments were calculated by (a) dividing \$3,750.00 (the amount allocated to settlement of claims under PAGA that is distributable to Aggrieved Employees) by the total number of pay periods worked by Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's individual number of pay periods worked during the PAGA Period.

Each Individual Class Payment will be allocated as 2.5% to wages (which will be reported on an IRS Form W2 and subject to reduction for employee-side payroll taxes), 2.5% as reimbursement of expenses, and 95% to penalties, interest, and in consideration for the release of liability (which will be reported on an IRS Form 1099). Each Individual PAGA Payment will be allocated as 100% to penalties (which will be reported on an IRS Form 1099). Although Plaintiff and Defendants 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.

If the Court grants final approval of the settlement, Individual Class Payments and Individual PAGA Payments will be mailed to Participating Class Members and Aggrieved Employees at the address that is on file with the Settlement Administrator. If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure your receipt of payment that you may be entitled to.

#### **B. YOUR WORKWEEKS AND PAY PERIODS**

According to payroll records, you worked [ENTER NUMBER] workweeks during the Class Period and [ENTER NUMBER] pay periods during the PAGA Period.

If you wish to dispute the workweeks or pay periods credited to you, you may submit such dispute in writing to the Settlement Administrator by [deadline]. To do so, you must submit a writing to the Settlement Administrator that contains, at a minimum: (a) your full name, address, and signature; (b) the case name and number of the Class Action (Gomez v. Jer-Z-Boyz Ranch, Tulare County Superior Court Case No. VCU297485); (c) a clear statement indicating that you dispute the number of workweeks and/or pay periods credited to you; and (d) any documentation that supports your belief that you should be credited with a different number of workweeks and/or pay periods. The Settlement Administrator's contact information is listed within Section 5 of this notice.

#### **C. YOUR ESTIMATED INDIVIDUAL CLASS PAYMENT AND INDIVIDUAL PAGA PAYMENT**

Based on records, and the Parties' current assumptions, your Individual Class Payment is estimated to be \$ [REDACTED] (less payroll 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 several factors. (If no amount is stated for your Individual PAGA Payment, then according to records you are not eligible for an Individual PAGA Payment because you didn't work during the PAGA Period.) Your

1 Individual PAGA Payment is not subject to withholdings and will only be distributed if the Court  
2 approves the settlement and after the settlement goes into effect.

3 The settlement approval process may take several months. Your Individual Class Payment and  
4 Individual PAGA Payment reflected in this Notice is only an estimate. Your actual Individual Class  
5 Payment and Individual PAGA Payment may be higher or lower.

6 The front of every check issued for Individual Class Payments and Individual PAGA Payments will  
7 show the date when the check expires (the void date). If you don't cash it by the void date, your check  
8 will be automatically cancelled, and the monies will irrevocably lost to you because they will be paid  
9 to a non-profit organization or foundation ("Cy Pres"), Valley Children's Hospital.

#### 10 **D. RELEASED CLAIMS**

11 "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a  
12 Final Judgment approving of the Settlement; and (b) the Judgment is final. The Judgment is final as of  
13 the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement,  
14 the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the  
15 Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely  
16 appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a  
17 remittitur.

18 Upon the Effective Date, you will be deemed to have, and by operation of the Judgment will have  
19 fully, finally, and forever released, relinquished and discharged Defendant and the Released Parties  
20 from any and all Released Claims, as detailed below. "Released Parties" means Defendants and each  
21 of their former, present, and future agents, employees, representatives, administrators, directors,  
22 officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, accountants,  
23 receivers, advisors, consultants, partners, partnerships, parents, divisions, subsidiaries, affiliates, heirs,  
24 joint venturers, trustees, investors, fiduciaries, franchisees or franchisors, and commonly controlled  
25 entities of any kind.

26 All Participating Class Members, on behalf of themselves and their respective former and present  
27 representatives, agents, attorneys, heirs, administrators, successors, assigns, assignors, grantees,  
28 devisees, trustees, or any other entities in which they may have an interest, release Defendants and  
Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the  
facts alleged in the Action, the complaints filed in the Action, any notices or documents filed with the  
California Labor and Workforce Development Agency regarding this matter, or which could have been  
alleged based on the facts alleged in the these documents, and which arose during the Class Period  
and/or PAGA Period including, but not limited to: failure to pay minimum wage or straight time wages  
for all hours worked or to pay for all hours worked generally and any associated interest and penalties;  
failure to pay proper overtime or double time wages and any associated interest and penalties; failure  
to provide compliant rest breaks and/or rest and recovery periods and pay missed rest break premiums  
and any associated interest and penalties; failure to provide compliant meal periods and pay missed  
meal period premiums and any associated interest and penalties, or associated claims of invalid waivers  
or meal period agreements; failure to maintain accurate employment records; failure to pay timely  
wages during employment; failure to pay all wages due and owing at separation of employment; failure  
to reimburse business expenses; failure to provide complete and accurate wage statements and/or pay

1 stubs in proper form; deceptive, fraudulent, or otherwise unlawful business practices based on the  
 2 foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210);  
 3 Failure to Pay Split Shift Premiums; and any and all related penalties, including recordkeeping  
 4 penalties, wage statement penalties, minimum wage penalties, waiting time penalties, and other  
 5 statutory or civil penalties associated with any of the foregoing. Further, such Released Claims shall  
 6 include, but are not limited to those claims arising under California Labor Code sections 201-208, 210,  
 7 218.5-.6, 221-223, 225.5, 226, 226.3, 226.7, 246, 248.5, 256, 510, 512, 558, 558.1, 1174, 1174.5, 1185,  
 8 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2084, 2698 et. seq, 2699 Et Seq, and others that  
 9 may be applicable and/or those arising under the applicable Industrial Welfare Commission Wage  
 10 Order(s) (including but not limited to subsections 3, 4, 5, 7, 8, 9, 10, 11, 12, 18, and 20 of the applicable  
 11 Wage Order(s), such as IWC Wage Order 14 [including the California Code of Regulations' codifying  
 12 the applicable Wage Order(s)]); California Business and Professions Code sections 17200 through  
 13 17210; California Civil Code sections 3287 and 3289; California Code of Civil Procedure section  
 14 1021.5; all claimed or unclaimed compensatory, consequential, incidental, liquidated, punitive and  
 15 exemplary damages, penalties, restitution, interest, costs and attorneys' fees, injunctive or equitable  
 16 relief, and any other remedies available at law or equity, and other amounts recoverable under said  
 17 claims under California law; and any related claims under the provisions of the Fair Labor Standards  
 18 Act (29 USC §§201, et seq.) ("Released Class Claims").

12 The Parties intend that the releases within this Agreement be construed as broadly as possible. The  
 13 release excludes the release of claims not permitted by law. Participating Class Members do not release  
 14 any other claims, including claims for vested benefits, wrongful termination, violation of the Fair  
 15 Employment and Housing Act, unemployment insurance, disability, social security, workers'  
 16 compensation or claims based on facts occurring outside the Class Period.

#### 16 **E. COURT APPROVED DEDUCTIONS FROM GROSS SETTLEMENT.**

17 At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the  
 18 following deductions from the Gross Settlement, the amounts of which will be decided by the Court  
 19 at the Final Approval Hearing:

- 19 A. Up to \$66,666.67 (one third of the Gross Settlement) to Class Counsel for attorneys' fees and  
 20 up to \$15,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred  
 21 expenses on the Action without payment.
- 22 B. Up to \$10,000.00 as a Class Representative Award for filing the Action, working with Class  
 23 Counsel and representing the Class. A Class Representative Award will be the only monies  
 24 Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA  
 25 Payment.
- 26 C. Up to \$7,000.00 to the Administrator for services administering the Settlement.
- 27 D. Up to \$15,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25%  
 28 in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay  
 Periods.
- E. Employer's share of payroll taxes as determined by the Administrator.

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

### 3. OPTIONS AND RIGHTS AS A CLASS MEMBER

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet issued final approval. 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 all deductions from the Gross Settlement Amount detailed therein. The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have three 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. You will automatically be issued your Individual Class Payment and Individual PAGA Payment, if any, unless you decide to exclude yourself from the settlement. Unless you elect to exclude yourself from the Settlement, you will be bound by the terms of the settlement and any judgment that may be entered by the Court based thereon, and you will be deemed to have released the Released Claims against the Released Parties as described in Section II.D above.

(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 Settlement 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. You cannot opt-out of the PAGA portion of the proposed Settlement. The Opt-Out Deadline is **[Opt-Out Deadline]**.

To opt-out, you must 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 Settlement Administrator will exclude you based on a writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Gomez v. Jer-Z-Boyz Ranch*, Tulare County Superior Court VCU297485, 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 **[Opt-Out Deadline]**, or it will be invalid. Section 5 of the Notice has the Settlement Administrator's contact information.

(3) **Object to the Settlement.** You can object to the terms of the settlement as long as you have not submitted a Request for Exclusion. If you wish to object to the settlement, you may submit an objection in writing to the Settlement Administrator. To do so, you must submit a writing to the Settlement Administrator that contains, at a minimum: (a) your full name, address, and signature; (b) the case name and number of the Class Action (*Gomez v. Jer-Z-Boyz Ranch*, Tulare County Superior Court Case No. VCU297485); (c) all legal and factual bases for your objection

to the Settlement; (d) a statement as to whether you intend to appear at the Final Approval Hearing; and, (e) a statement as to whether you are represented by counsel and, if so, your counsel's name, address, and phone number. If you wish to object to the settlement, you must mail your Objection form or other documentation to the Settlement Administrator at the address listed in Section 5 below by **[RESPONSE DEADLINE]**. 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 4 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

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

#### **4. FINAL APPROVAL HEARING**

The Court will hold a Final Approval Hearing on **[date]** at **[time]** in Department **[ ]** of the Tulare Superior Court at 221 S. Mooney Blvd, Visalia, CA 93291 to determine whether it will issue final approval of the Agreement including, but not limited to, whether the attorneys' fees and costs to Class Counsel, Service Payment to Plaintiffs, and Settlement Administration Fees to the Settlement Administrator should be awarded. The hearing may be continued without further notice to the Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to do so.

#### **5. ADDITIONAL INFORMATION**

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers which are on file with the Court.

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment, or any other Settlement documents is to go to the Settlement Administrator's website at **(url)**. You can also telephone or send an email to the Settlement Administrator using the contact information listed below, or consult the Superior Court website by going to <https://www.tulare.courts.ca.gov/> and search for the case using case number (search can be performed via "Cas Information" section of website). You can also make an appointment to personally review court documents in the Tulare County Superior Court (phone number: [559-730-5000](tel:559-730-5000)).

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.**

**IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR VIA THE BELOW CONTACT INFORMATION:**

**[Add Third-Party Administrator's Information]**

# **EXHIBIT “2”**

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**MELMED LAW GROUP P.C.**

Jonathan Melmed (SBN 290218)

jm@melmedlaw.com

Meghan N. Higday (SBN 334626)

mh@melmedlaw.com

Emily G. Horrigan (SBN 354753)

eh@melmedlaw.com

1801 Century Park East, Suite 850

Los Angeles, California 90067

Phone: (310) 824-3828

Fax: (310) 862-6851

Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

*[Additional Counsel on Following Page]*

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

REYES SALADO-GOMEZ, an individual, on  
behalf of himself, the State of California, as a  
private attorney general, and on behalf of all  
others similarly situated,

Plaintiff,

v.

THE GARY AND DONNA DE GRAAF  
FAMILY TRUST, ; DUSTIN DE GRAAF, an  
individual; DANIEL DE GRAAF, an individual;  
JZB FARMING, a Business of Unknown  
Formation; JER-Z-BOYZ RANCH, A Business  
of Unknown Formation; and DOES 1 TO 50,

Defendants.

Case Number: VCU297485

**Joint Stipulation for Leave to File Plaintiff's  
Second Amended Complaint**

Complaint Filed: April 17, 2023

Trial Date: None Set

**SAGASER, WATKINS & WIELAND, PC**

Ian B. Wieland (SBN 285721)

ian@sw2law.com

Justin G. Donner (SBN 316504)

justind@sw2law.com

5260 North Palm Avenue, Suite 400

Fresno, California 93704

Phone: (559) 421-7000

Fax: (559) 473-1483

Attorneys for Defendants The Gary and Donna De Graaf Family Trust, Dustin de Graaf, Daniel de Graaf, JZB Farming, and Jer-Z-Boyz Ranch

**JOINT STIPULATION**

This stipulation is between Plaintiff Reyes Salado-Gomez (“Plaintiff”) and Defendants The Gary and Donna De Graaf Family Trust, Dustin de Graaf, Daniel de Graaf, JZB Farming, and Jer-Z-Boyz Ranch (“Defendants”) (collectively, the “Parties”), as follows:

1. On April 17, 2023, Plaintiff filed his initial class action complaint (“Complaint”) in the Tulare County Superior Court, wherein he alleged, on behalf himself and of all other similarly situated employees, causes of action against Defendants for: **(1)** failure to pay all minimum wages, **(2)** failure to pay all overtime wages, **(3)** failure to provide rest periods and pay missed rest period premiums, **(4)** failure to provide meal periods and pay missed meal period premiums, **(5)** failure to maintain accurate employment records, **(6)** failure to pay wages timely during employment, **(7)** failure to pay all wages earned and unpaid at separation, **(8)** failure to indemnify all necessary business expenditures, **(9)** failure to furnish accurate itemized wage statements, and **(10)** violations of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210).

2. On April 17, 2023, Plaintiff asserts that he, or his counsel, filed a letter with the Labor and Workforce Development Agency (the “LWDA”) notifying the LWDA of the Labor Code violations alleged in this case and of Plaintiff’s intent to include representative claims for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) on behalf of a group of aggrieved employees in this case.

3. As required by PAGA, Plaintiff asserts that he, or his counsel, submitted the \$75.00 filing fee with the LWDA by regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), Plaintiff asserts that no notice was received by him or his counsel from the LWDA evidencing its intention to investigate within sixty-five calendar days of the postmark date of the PAGA notice.

4. On September 8, 2023, Plaintiff filed a First Amended Class and Representative Action Complaint (“FAC”), adding alleged violations of PAGA, Labor Code section 2698, *et seq.*, against Defendants.

5. On March 12, 2024, the Parties attended private mediation with Hon. Howard R. Broadman, Ret. The Parties reached a settlement and executed a Memorandum of Understanding on August 8, 2024, and a Long-Form Agreement thereafter (“PAGA and Class Settlement”).

6. Pursuant to the Parties’ PAGA and Class Settlement, Plaintiff now seeks leave to file a Second Amended Complaint (“SAC”) to add one cause of action for split shift premiums.

7. On October 4, 2024, Plaintiff represents that he provided notice to the LWDA of his intent to add this cause of action for split shift premiums and simultaneously provided the LWDA with a copy of the SAC attached hereto as **Exhibit A**. Plaintiff asserts that he has waited 65 calendar days before filing this stipulation and SAC, and further asserts that the LWDA has provided him with no notice of an intent to investigate.

8. Accordingly, Plaintiff and Defendants stipulate that Plaintiff may file the SAC attached hereto as **Exhibit A**, without need for a formal motion to request leave from the Court, as detailed below and within this stipulation.

**NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between the Parties, subject to the approval of the Court, as follows:

1. Plaintiff shall be granted leave to file and serve the Second Amended Complaint (“SAC”), in the form attached hereto as **Exhibit A**, following 65 calendar days of giving notice to the LWDA of the same, for the purposes of seeking court approval of the Parties’ Settlement Agreement.

2. Defendants’ stipulation to allow amendment is contingent upon court approval of the PAGA and Class Settlement.

3. This stipulation and the attached SAC must be filed simultaneously with Plaintiff’s Motion for Preliminary Approval of the Parties’ PAGA and Class Settlement. The Motion for Preliminary Approval must contain a proposed order that preliminarily approves the PAGA and Class Settlement and the SAC.

4. The Parties must agree on the form of the proposed order to be filed with Plaintiff’s Motion for Preliminary Approval, which will preliminarily approve of the PAGA and Class Settlement and the SAC.

1           5.       If the Court denies Plaintiff's motion final approval of the Parties' PAGA and Class  
2 Settlement, without leave for Plaintiff to file another motion, then Plaintiff must seek formal leave to  
3 file the SAC through motion. The proposed order shall cover these limitations.

4           6.       If the court grants final approval, then Defendants' answer on file shall constitute an  
5 answer to the SAC.

6  
7 Dated: January 2, 2025

**MELMED LAW GROUP P.C.**



**JONATHAN MELMED**

Attorney for Plaintiff, the Putative Class, and the  
Aggrieved Employees

11  
12 Dated: January 2, 2025

**SAGASER, WATKINS & WIELAND, PC**

**IAN B. WIELAND**

**JUSTIN G. DONNER**

Attorneys for Defendants The Gary and Donna De  
Graaf Family Trust, Dustin de Graaf, Daniel de  
Graaf, JZB Farming, and Jer-Z-Boyz Ranch

1           5.     If the Court denies Plaintiff's motion final approval of the Parties' PAGA and Class  
2 Settlement, without leave for Plaintiff to file another motion, then Plaintiff must seek formal leave to  
3 file the SAC through motion. The proposed order shall cover these limitations.

4           6.     If the court grants final approval, then Defendants' answer on file shall constitute an  
5 answer to the SAC.

6  
7 Dated: January 2, 2025

**MELMED LAW GROUP P.C.**

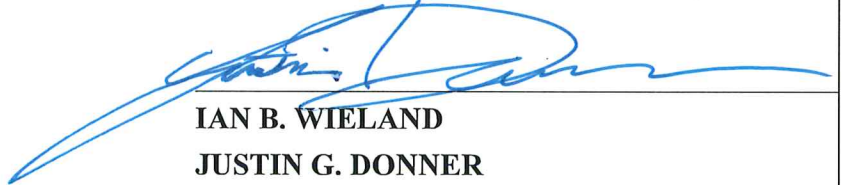


**JONATHAN MELMED**

Attorney for Plaintiff, the Putative Class, and the  
Aggrieved Employees

11  
12 Dated: January <sup>3</sup>~~2~~, 2025

**SAGASER, WATKINS & WIELAND, PC**



**IAN B. WIELAND**

**JUSTIN G. DONNER**

Attorneys for Defendants The Gary and Donna De  
Graaf Family Trust, Dustin de Graaf, Daniel de  
Graaf, JZB Farming, and Jer-Z-Boyz Ranch

# EXHIBIT A

**MELMED LAW GROUP P.C.**  
Jonathan Melmed (SBN 290218)  
jm@melmedlaw.com  
Meghan N. Higday (SBN 334626)  
mh@melmedlaw.com  
1801 Century Park East, Suite 850  
Los Angeles, California 90067  
Phone: (310) 824-3828  
Fax: (310) 862-6851

Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

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

REYES SALADO-GOMEZ, an individual, on  
behalf of himself, the State of California, as a  
private attorney general, and on behalf of all  
others similarly situated,

Plaintiff,

v.

THE GARY AND DONNA DE GRAAF  
FAMILY TRUST, ; DUSTIN DE GRAAF, an  
individual; DANIEL DE GRAAF, an individual;  
JZB FARMING, a Business of Unknown  
Formation; JER-Z-BOYZ RANCH, a Business  
of Unknown Formation; and DOES 1 TO 50,

Defendants.

Case Number: VCU297485

**Second Amended Class and Representative  
Action Complaint For:**

- 1.** Failure to Pay All Minimum Wages,
- 2.** Failure to Pay Split Shift Premiums,
- 3.** Failure to Pay All Overtime Wages,
- 4.** Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
- 5.** Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
- 6.** Failure to Maintain Accurate Employment Records,
- 7.** Failure to Pay Wages Timely during Employment,
- 8.** Failure to Pay All Wages Earned and Unpaid at Separation,
- 9.** Failure to Indemnify All Necessary Business Expenditures,
- 10.** Failure to Furnish Accurate Itemized Wage Statements,

11. Violations of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210), and
12. Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”) for Violations of California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and Other Provisions of the Labor Code.

**Demand for Jury Trial**

Plaintiff Reyes Salado-Gomez (“Plaintiff”), on behalf of himself, the State of California, as a private attorney general, and all other similarly situated employees within the State of California, complains and alleges of defendants The Gary and Donna De Graaf Family Trust, Dustin De Graaf, Daniel De Graaf, JZB Farming, Jer-Z-Boyz Ranch, and Does 1 to 50 (collectively, “Defendants”), and each of them, as follows:

**I. INTRODUCTION**

1. This is a class action complaint brought pursuant to California Code of Civil Procedure section 382.

2. The “Class Period” as used herein, is defined as the period from April 17, 2023, and continuing into the present and ongoing. Defendants’ violations of California’s laws as described more fully below have been ongoing throughout the Class Period and are still ongoing.

3. Plaintiff brings this class action on behalf of himself and the following class: *All individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period* (the “Class Members”). (Code Civ. Proc., § 382.)

4. Plaintiff brings this action on behalf of himself and the Class Members, as a class action, against Defendants for:

- A. Failure to pay all minimum wages,
- B. Failure to pay split shift premiums,
- C. Failure to pay all overtime wages,
- D. Failure to provide rest periods and pay missed rest period premiums,
- E. Failure to provide meal periods and pay missed meal period premiums,
- F. Failure to maintain accurate employment records,
- G. Failure to pay wages timely during employment,
- H. Failure to pay all wages earned and unpaid at separation,
- I. Failure to indemnify all necessary business expenditures,
- J. Failure to furnish accurate itemized wage statements, and
- K. Violations of California’s Unfair Competition Law (“UCL”) (Bus. & Prof. Code, §§ 17200–17210).

1           5.       This action is also a representative action brought pursuant to the California Labor Code  
2 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698  
3 through 2699.6.

4           6.       The “PAGA Period” as used herein, is defined as the period from April 17, 2022, and  
5 continuing into the present and ongoing.

6           7.       This PAGA action is brought on behalf of Plaintiff, the State of California as private  
7 attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were*  
8 *employed by Defendants as non-exempt employees in California during the PAGA Period* (the  
9 “Aggrieved Employees”).

10          8.       Plaintiff is informed and believes and thereon alleges that the California Industrial  
11 Welfare Commission (“IWC”) Wage Orders applicable to the facts of this case are IWC Wage Orders  
12 13-2001 and/or 14-2001 (the “Applicable Wage Orders”) and possibly others that may be applicable.  
13 (Cal. Code of Regs., tit. 8, §§ 11130, 11140.) Plaintiff reserves the right to amend or modify the  
14 definition of “Applicable Wage Orders” with greater specificity or add additional IWC Wage Orders  
15 if additional applicable wage orders are discovered in litigation.

16       **II.    JURISDICTION & VENUE**

17          9.       This Court has subject matter jurisdiction over all causes of action asserted herein  
18 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section  
19 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds  
20 \$25,000, and because each cause of action asserted arises under the laws of the State of California or  
21 is subject to adjudication in the courts of the State of California.

22          10.       This Court has personal jurisdiction over Defendants because Defendants have caused  
23 injuries in the County of Tulare and the State of California through their acts, and by their violation of  
24 the California Labor Code and California state common law. Defendants transact millions of dollars of  
25 business within the State of California. Defendants own, maintain offices, transact business, have an  
26 agent or agents within the County of Tulare, and/or otherwise are found within the County of Tulare,  
27 and Defendants are within the jurisdiction of this Court for purposes of service of process.  
28

11. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the Code of Civil Procedure. Defendants operate within California and do business within Tulare County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of Defendants' employees identified above within Tulare County and surrounding counties where Defendants may remotely operate.

12. This matter is not appropriate for removal under the Class Action Fairness Act (28 U.S.C. § 1332) as the amount in controversy for Plaintiff's and the Class Members' claims, in aggregate, is less than \$5 million. Additionally, all the allegations herein occurred in the State of California. As such, even if the amount in controversy did exceed \$5 million this matter would still not be appropriate for removal under the "local controversy" exception to the Class Action Fairness Act. (28 U.S.C. § 1332, subd. (d)(4)(A).)

### **III. THE PARTIES**

#### **A. PLAINTIFF**

13. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly employee in the County of Tulare.

14. Plaintiff brings this action on behalf of himself and the following class pursuant to section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period* (the "Class Members").

15. Plaintiff also brings this action on behalf of himself and the State of California, as a private attorney general, and on behalf of the following group of aggrieved employees: *All individuals who are or were employed by Defendants as non-exempt employees in California during the PAGA Period* (the "Aggrieved Employees").

16. The Class Members and the Aggrieved Employees, at all times pertinent hereto, are or were employees of Defendants during the relevant statutory period.

#### **B. DEFENDANTS**

17. Plaintiff is informed and believes and thereon alleges that Defendants were authorized to and doing business in Tulare County and is and/or was the legal employer of Plaintiff, the other

1 Aggrieved Employees, and the other Class Members during the applicable statutory periods. Plaintiff,  
 2 the other Aggrieved Employees, and the other Class Members were, and are, subject to Defendants'  
 3 policies and/or practices complained of herein and have been deprived of the rights guaranteed to them  
 4 by: California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185,  
 5 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable;  
 6 California Business and Professions Code sections 17200 through 17210 ("UCL"); and the Applicable  
 7 Wage Orders (Cal. Code of Regs., tit. 8, §§ 11130, 11140).

8 18. Plaintiff is informed and believes, and based thereon alleges, that during the Class  
 9 Period and PAGA Period, Defendants did (and continue to do) business in the State of California,  
 10 County of Tulare. Defendants' operations are headquartered in Tulare County.

11 19. Plaintiff does not know the true names or capacities, whether individual, partner, or  
 12 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants  
 13 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this  
 14 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and  
 15 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were  
 16 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff,  
 17 the other Aggrieved Employees, and the other Class Members to be subject to the unlawful employment  
 18 practices, wrongs, injuries, and damages complained of herein.

19 20. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned  
 20 herein, Defendants were and/or are the employers of Plaintiff, the other Aggrieved Employees, and the  
 21 other Class Members. At all times herein mentioned, each of said Defendants participated in the doing  
 22 of the acts hereinafter alleged to have been done by the named Defendants. Furthermore, the  
 23 Defendants, and each of them, were the agents, representatives, and employees of each and every one  
 24 of the other Defendants, and at all times herein mentioned were acting within the course and scope of  
 25 said agency, representation, and employment. Defendants, and each of them, approved of, condoned,  
 26 or otherwise ratified every one of the acts or omissions complained of herein.

27 21. Plaintiff is further informed, and believes, and thereon alleges, that at all times  
 28 mentioned herein, that Defendants, and each of them, are the alter egos of one another and that there

1 existed and now exists a unity of interest and ownership between them such that the individuality and  
 2 separateness of each of them has ceased. Plaintiff is further informed, and believes, and thereon alleges,  
 3 that at all times mentioned herein, that Defendants, and each of them, have been and now are mere  
 4 shells and naked frameworks that their principal uses for the conduct of that Defendant's own business,  
 5 property, and affairs, for which Defendants, and each of them, have concealed and misrepresented their  
 6 identities as the entities responsible for their ownership, management, and financial interests.

7 22. Plaintiff is further informed, and believes, and thereon alleges, that at all times  
 8 mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture,  
 9 partnership, and common enterprise, and acting within the course and scope of and in pursuance of said  
 10 joint venture, partnership, and common enterprise. Further, Plaintiff is informed, and believes, and  
 11 thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff, the other  
 12 Aggrieved Employees, and the other Class Members.

#### 13 **IV. COMMON FACTS & ALLEGATIONS**

14 23. Plaintiff and the other Class Members (collectively, the "Class Members") are, and were  
 15 at all relevant times, employed by the Defendants within the State of California.

16 24. Likewise, Plaintiff and the other Aggrieved Employees (collectively, the "Aggrieved  
 17 Employees") are, and were at all relevant times, employed by the Defendants within the State of  
 18 California.

19 25. The Class Members and the Aggrieved Employees are, and were, at all relevant times,  
 20 non-exempt employees for the purposes of minimum wages, split shift premiums, overtime, rest breaks,  
 21 meal periods, and the other claims alleged in this complaint.

22 26. Specifically, Plaintiff was employed by Defendants within the statutory Class Period  
 23 and PAGA Period, working as an hourly, non-exempt tractor driver for Defendants. Plaintiff's duties  
 24 included driving a tractor.

#### 25 **A. MINIMUM WAGE VIOLATIONS**

26 27. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed  
 27 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code  
 28 section 1194 entitles "any employee receiving less than the legal minimum wage . . . to recover in a

1 civil action the unpaid balance of the full amount of this minimum wage.” Likewise, the Applicable  
2 Wage Orders also obligate employers to pay each employee minimum wages for all hours worked.  
3 (Cal. Code of Regs., tit. 8, §§ 11130, 11140.) Labor Code section 1198 makes unlawful the employment  
4 of an employee under conditions that the IWC Wage Orders prohibit.

5 28. These minimum wage standards apply to each hour that employees work. Therefore, an  
6 employer’s failure to pay for any particular time worked by an employee is unlawful, even if averaging  
7 an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above  
8 minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

9 29. Here, Defendants failed to fully conform their pay practices to the requirements of the  
10 law during the relevant statutory periods. The Class Members and the Aggrieved Employees were not  
11 compensated for all hours worked including, but not limited to, all hours they were subject to the control  
12 of Defendants and/or suffered or permitted to work under the California Labor Code and the Applicable  
13 Wage Orders. Among other violations, the Class Members and the Aggrieved Employees were subject  
14 to the control of Defendants while off-the-clock and did not receive minimum wage for each hour  
15 worked.

16 30. Additionally, the Class Members and the Aggrieved Employees were not paid all wages  
17 for all hours worked due to Defendants’ uniform payroll policies and practices that unfairly rounded  
18 employees’ wages to the detriment of the Class Members and the Aggrieved Employees. This rounding  
19 policy routinely failed to capture the entirety of the hours the Class Members and the Aggrieved  
20 Employees worked and was structured in a way that in favored underpayment. (See *See’s Candy Shops,*  
21 *Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907.) As a result, the Class Members and the  
22 Aggrieved Employees suffered periodic shortages in the hours for which they were compensated. This  
23 uncompensated time violated California’s requirement that employees be compensated for all hours  
24 worked. As a result of this practice, the Class Members and the Aggrieved Employees were not  
25 compensated their minimum wages for all hours worked.

26 31. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an  
27 employer who has failed to pay its employees the legal minimum wage is liable to pay those employees  
28

the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

32. When employees, such as the Class Members, are not paid for all hours worked under Labor Code section 1194, they are entitled to recover minimum wages for the time which they received no compensation. (See *Sillah v. Command International Security Services* (N.D. Cal. 2015) 154 F.Supp.3d 891 [employees suing for failure to pay overtime could recover liquidated damages under Labor Code section 1194.2 if they also showed they were paid less than minimum wage].)

33. Labor Code section 1197.1 authorizes employees who are paid less than the minimum wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other damages, as follows:

(1) “For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid.”

(2) “For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd.

(a).)

34. As set forth above, Defendants failed to fully compensate the Class Members and the Aggrieved Employees for all minimum wages. Accordingly, the Class Members are entitled to recover liquidated damages for violations of Labor Code section 1197.1.

35. Based upon these same factual allegations, the Class Members are likewise entitled to penalties under Labor Code sections 1199.

#### **B. UNPAID SPLIT SHIFT PREMIUMS**

36. Under the Applicable Wage Orders, a “split shift” is defined as “a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.” When an employer requires an employee to work a split shift, the employee is entitled to a split shift premium, which is equal to the difference between what the employee earned for the

1 shift and what they would have earned had they been paid the minimum wage for their entire shift plus  
2 an extra hour. (Cal. Code of Regs., tit. 8, §§ 11130, 11140, subds. 4(C); *Aleman v. AirTouch Cellular*  
3 (2012) 209 Cal.App.4th 556, 575–576.) The Applicable Wage Orders treat split shift violations as a  
4 minimum wage violation. Labor Code sections 1197 and 1198 make the minimum wages set by the  
5 IWC enforceable and recoverable in a civil action.

6 37. Here, the Class Members and the Aggrieved Employees were at times scheduled to work  
7 more than one shift in the same day, with an unpaid, non-working break of longer than an hour—and  
8 longer than a bona fide meal period—between the shifts. This includes many occasions when the total  
9 amount paid to the Class Members and the Aggrieved Employees was less than the minimum wage for  
10 all hours worked plus one hour. Defendants, however, failed to pay the Class Members and the  
11 Aggrieved Employees one hour’s pay at the state minimum wage in addition to the minimum wage for  
12 the workday.

### 13 C. OVERTIME VIOLATIONS

14 38. Labor Code section 510 requires employers to compensate employees who work more  
15 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on  
16 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.  
17 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate  
18 employees at no less than twice the regular rate of pay when an employee works more than twelve  
19 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,  
20 subd. (a).) These rules are also reflected in the Applicable Wage Orders.

21 39. IWC Wage Order 14-2001, section 3(A), is similar, but provides in pertinent part:

22 “(1) Such employees shall not be employed more than ten (10) hours in any  
23 one workday or more than six (6) days in any workweek unless the  
24 employee receives one and one-half (1½) times such employee’s regular  
25 rate of pay for all hours worked over ten (10) hours in any workday and  
26 for the first eight (8) hours on the seventh (7th) day of work and double  
27 the employee’s regular rate of pay for all hours worked over eight (8) on  
28 the seventh (7th) day of work in the workweek.

“(2) For employers of more than 25 employees:

“(a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9½) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1½) times such employee’s regular rate of pay for all hours worked over nine and one-half (9½) hours in any one workday or more than fifty-five (55) hours in any one workweek.

“(b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1½) times such employee’s regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.” (Cal. Code of Regs., tit. 8, § 11140, subd. 3.)

40. In accordance with Labor Code section 1194 and the Applicable Wage Orders, the Class Members and the Aggrieved Employees could not then agree and cannot now agree to work for a lesser wage than the amount provided by Labor Code sections 510 or the Applicable Wage Orders.

41. Here, Defendants violated their duty to accurately and completely compensate the Class Members and the Aggrieved Employees for all overtime worked. The Class Members and the Aggrieved Employees periodically worked hours that entitled them to overtime compensation under the law but were not fully compensated for those hours.

42. Moreover, during the relevant statutory periods, Defendants had a policy and practice of failing to pay overtime wages at the proper rate when it actually paid overtime. Specifically, when Defendants paid overtime wages to the Class Members and the Aggrieved Employees, Defendants failed to include all compensation when calculating the regular rate of pay used in overtime calculations and when paying overtime.

43. For instance, the Class Members and the Aggrieved Employees would often receive, along with their hourly rates of pay for their working hours, additional remuneration and/or non-discretionary bonus pay. Defendants, however, calculated the regular rate of pay for the Class Members

1 and the Aggrieved Employees without factoring into the regular rate of pay all other non-hourly pay  
 2 earnings received during the pay period. As a result, the Class Members and the Aggrieved Employees  
 3 were underpaid overtime wages when they worked in excess of eight hours in any workday and/or forty  
 4 hours in a workweek when such additional forms of remuneration were earned. By its practice of  
 5 periodically requiring the Class Members and the Aggrieved Employees to work in excess of eight  
 6 hours in a workday and/or forty hours in a workweek without compensating them at the rate of one and  
 7 one-half (1½) their regular rate of pay, Defendants willfully violated the provisions of Labor Code  
 8 sections 510, 1194, and 1199.

9 44. These actions were and are in clear violation of California’s overtime laws as set forth  
 10 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of Regs., tit. 8,  
 11 §§ 11130, 11140.) As a result of Defendants’ faulty policies and practices, the Class Members and the  
 12 Aggrieved Employees were not compensated for all hours worked or paid accurate overtime  
 13 compensation.

#### 14 **D. REST BREAK VIOLATIONS**

15 45. Pursuant to Labor Code section 226.7 and the Applicable Wage Orders, Defendants  
 16 were and are required to provide the Class Members and the Aggrieved Employees with compensated,  
 17 duty-free rest periods of not less than ten minutes for every major fraction of four hours worked. Under  
 18 the Applicable Wage Orders, an employer must authorize and permit all employees to take ten minute  
 19 duty free rest periods for every major fraction of four hours worked. (Cal. Code of Regs., tit. 8, §§  
 20 11130, 11140.)

21 46. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an  
 22 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,  
 23 or applicable regulation, standard, or order of the Industrial Welfare Commission . . . .” (Lab. Code, §  
 24 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one  
 25 additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery  
 26 period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes must  
 27 factor in all nondiscretionary payments for work performed by the employee, including non-  
 28 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base

1 hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage  
 2 Orders set when and for how long the rest period must take place and the Labor Code establishes that  
 3 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay  
 4 their employees when employers fail to provide rest periods.

5 47. The California Supreme Court has held that, during required rest periods, “employers  
 6 must relieve their employees of all duties and relinquish any control over how employees spend their  
 7 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing  
 8 control over employees during rest periods requires that employees be “free to leave the employer’s  
 9 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court  
 10 explained in the context of rest breaks that employer liability attaches from adopting an unlawful  
 11 policy:

12 “An employer is required to authorize and permit the amount of rest break time  
 13 called for under the wage order for its industry. If it does not—if, for example,  
 14 it adopts a uniform policy authorizing and permitting only one rest break for  
 15 employees working a seven-hour shift when two are required—it has violated  
 16 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53  
 17 Cal.4th 1004, 1033.)

18 48. Here, Defendants periodically did not permit the Class Members and the Aggrieved  
 19 Employees to take compliant duty-free rest breaks, free from Defendants’ control as required by Labor  
 20 Code section 226.7, the Applicable Wage Orders, and applicable precedent. (See *Augustus v. ABM*  
 21 *Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods employers must  
 22 relieve employees of all duties and relinquish control over how employees spend their time.”].) At all  
 23 relevant times, the Class Members and the Aggrieved Employees were periodically not provided with  
 24 legally-compliant and timely rest periods of at least ten minutes for each four hour work period, or  
 25 major fraction thereof due to Defendants’ unlawful rest period policies/practices. The Class Members  
 26 and the Aggrieved Employees were often expected and required to continue working through rest  
 27 periods to meet the expectations Defendants and finish the workday. In some cases when the Class  
 28 Members and the Aggrieved Employees worked more than ten hours in a shift, Defendants failed to

1 authorize and/or permit a third mandated rest period. As a result, the Class Members and the Aggrieved  
2 Employees were periodically unable to take compliant rest periods.

3 49. In such cases where Defendants did not offer the Class Members and the Aggrieved  
4 Employees the opportunity to receive a compliant off-duty rest period, “the court may not conclude  
5 employees voluntarily chose to skip those breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015)  
6 241 Cal.App.4th 388, 410 (2015) [“If an employer fails to provide legally compliant meal or rest  
7 breaks, the court may not conclude employees voluntarily chose to skip those breaks.”]; *Brinker Rest.*  
8 *Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break  
9 that was required by law but never authorized; if a break is not authorized, an employee has no  
10 opportunity to decline to take it.”].)

11 50. In addition to failing to authorize and permit compliant rest periods, the Class Members  
12 and the Aggrieved Employees were not compensated with one hour’s worth of pay at their regular rate  
13 of compensation when they were not provided with a compliant rest period in accordance with Labor  
14 Code section 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and the  
15 Applicable Wage Orders.

16 51. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other non-  
17 exempt employees, rest period premiums and penalties.

#### 18 **E. MEAL BREAK VIOLATIONS**

19 52. Labor Code section 512 and the Applicable Wage Orders require employers to provide  
20 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of  
21 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of  
22 more than five hours per day without providing the employee with a meal period of not less than 30  
23 minutes . . . .”]; Cal. Code of Regs., tit. 8, §§ 11130, 11140 [“No employer shall employ any person  
24 for a work period of more than five (5) hours without a meal period of not less than 30 minutes . . . .”].)  
25 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-  
26 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not  
27 employ an employee for a work period of more than 10 hours per day without providing the employee  
28 with a second meal period of not less than 30 minutes . . . .”].)

53. “An on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts have “found that the nature of the work exception applies: (1) where the work has some particular external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation to determine whether the nature of the work prevents an employee from being relieved before requiring an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 946.)

54. Here, the Class Members and the Aggrieved Employees were never asked to sign any enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature of their work involved the kind of “external force” that might justify on-duty meal breaks. (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not provide compliant off-duty meal periods within the first five hours of work for the Class Members and the Aggrieved Employees.

55. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the Labor Code and/or applicable IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior Court*, *supra*, 53 Cal.4th at p. 1033.)

1           56. During the applicable statutory periods here, the Class Members and the Aggrieved  
2 Employees were periodically denied legally-compliant and timely off-duty meal periods of at least  
3 thirty minutes due to Defendants’ unlawful meal period policy and practices. As a result of Defendants’  
4 uniform meal period policies and practices, the Class Members and the Aggrieved Employees were  
5 often not permitted to take compliant first meal periods before the end of the fifth hour of work. The  
6 Class Members and the Aggrieved Employees were also periodically not permitted to take second meal  
7 periods for shifts in excess of ten hours. Defendants thus violated Labor Code section 512 and the  
8 Applicable Wage Orders by failing to advise, authorize, or permit the Class Members and the  
9 Aggrieved Employees to receive thirty-minute, off-duty meal periods within the first five hours of their  
10 shifts.

11           57. Labor Code section 226.7 provides that “[a]n employer shall not require an employee  
12 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or  
13 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,  
14 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Orders further obligate  
15 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation  
16 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of  
17 Regs., tit. 8, §§ 11130, 11140 [“If an employer fails to provide an employee a meal period in accordance  
18 with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay  
19 at the employee’s regular rate of compensation for each workday that the meal period is not  
20 provided.”].) The “regular rate” for these purposes must factor in all nondiscretionary payments for  
21 work performed by the employee, including non-discretionary bonuses, commissions, and other forms  
22 of wage payments exceeding the employees’ base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC*  
23 (2021) 11 Cal.5th 858, 878.)

24           58. Accordingly, for each day that the Class Members and the Aggrieved Employees did  
25 not receive compliant meal periods, they were and are entitled to receive meal period premiums  
26 pursuant to Labor Code section 226.7 and the Applicable Wage Orders. Defendants, however, failed  
27 to pay the Class Members and the Aggrieved Employees applicable meal period premiums for many  
28

workdays that the employees did not receive a compliant meal period. Thus, Defendants have violated Labor Code section 226.7 and the Applicable Wage Orders.

59. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other non-exempt employees, meal period premiums and penalties.

#### **F. UNTIMELY WAGES DURING EMPLOYMENT**

60. Labor Code section 204 expressly requires employers who pay employees on a weekly, biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a penalty of:

“(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

“(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” (Lab. Code, § 210, subd. (a).)

61. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article . . . .” (Lab. Code, § 210, subd. (a).)

62. Due to Defendants’ failure to pay the Class Members and the Aggrieved Employees the wages described above, along with rest and meal break premiums, Defendants failed to timely pay the Class Members and the Aggrieved Employees within seven calendar days following the close of payroll in accordance with Labor Code section 204 on a regular and consistent basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016 WL 1734010, at p. \*3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period premiums can support claims under Labor Code sections 203 and 204].)

#### **G. UNTIMELY WAGES AT SEPARATION**

63. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”

1 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result  
 2 of Defendants' failure to pay the Class Members and the Aggrieved Employees for the wages described  
 3 above, along with rest and meal break premiums, Defendants violated and continue to violate Labor  
 4 Code section 203.

5 64. Due to Defendants' faulty pay policies, those Class Members and Aggrieved Employees  
 6 whose employment with Defendants concluded were not compensated for each and every hour worked  
 7 at the appropriate rate. Defendants have failed to pay formerly-employed Class Members and  
 8 Aggrieved Employees whose sums were certain at the time of termination within at least seventy-two  
 9 hours of their resignation and have failed to pay those sums for thirty days thereafter.

#### 10 **H. FAILURE TO REIMBURSE BUSINESS EXPENSES**

11 65. At all relevant times herein, Defendants were subject to Labor Code section 2802, which  
 12 states that "an employer shall indemnify his or her employees for all necessary expenditures or losses  
 13 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her  
 14 obedience to the directions of the employer." The purpose of this section is to "prevent employers from  
 15 passing along their operating expenses onto their employees." (*Gattuso v. Harte-Hanks Shoppers, Inc.*  
 16 (2007) 42 Cal.4th 554, 562.)

17 66. At all relevant times herein, Defendants were subject to Labor Code section 2804, which  
 18 states that "any contract or agreement, express or implied, made by any employee to waive the benefits  
 19 of this article or any part thereof, is null and void, and this article shall not deprive any employee or his  
 20 personal representative of any right or remedy to which he is entitled under the laws of this State."

21 67. Thus, the Class Members and the Aggrieved Employees were and are entitled to  
 22 reimbursement for the expenses they incurred during the course of their duties. The duty to reimburse  
 23 even extends to the use of equipment the employee may already own and would be required to pay for  
 24 anyway. (*Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 ["The threshold  
 25 question in this case is this: Does an employer always have to reimburse an employee for the reasonable  
 26 expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to  
 27 the situation in which the employee incurred an extra expense that he or she would not have otherwise  
 28

1 incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer  
2 would receive a windfall because it would be passing its operating expenses on to the employee.”].)

3 68. Here, Defendants failed to fully reimburse the Class Members and the Aggrieved  
4 Employees for necessary expenditures incurred as a direct consequence and requirement of performing  
5 their job duties, including the costs associated with their personal cell phone they required to perform  
6 their work. Consequently, Defendants failed to comply with Labor Code section 2802.

#### 7 **I. WAGE STATEMENT VIOLATIONS**

8 69. Defendants also failed to provide accurate itemized wage statements in accordance with  
9 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision  
10 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage  
11 statement in writing showing:

- 12 (1) The gross wages earned;
- 13 (2) The total hours worked by the employee;
- 14 (3) The number of piece-rate units earned and any applicable piece rate if  
15 the employee is paid on a piece rate basis;
- 16 (4) All deductions, provided that all deductions made on written orders of  
17 the employee may be aggregated and shown as one item;
- 18 (5) The net wages earned;
- 19 (6) The inclusive dates of the period for which the employee is paid;
- 20 (7) The name of the employee and only the last four digits of his or her social  
21 security number or an employee identification number other than a social  
22 security number;
- 23 (8) The name and address of the legal entity that is the employer; and
- 24 (9) All applicable hourly rates in effect during the pay period and the  
25 corresponding number of hours worked at each hourly rate by the  
26 employee.

27 70. Due to Defendants’ failure to pay the Class Members and the Aggrieved Employees  
28 properly as described above, the wage statements issued do not indicate the correct amount of gross

wages earned, total hours worked, or the net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

71. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and intentionally failed to provide the Class Members and the Aggrieved Employees with accurate itemized wage statements in violation of Labor Code section 226, subdivision (e). Defendants knew that they were not providing the Class Members and the Aggrieved Employees with wage statements required by California law but nevertheless failed to correct their unlawful practices and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the defendant knowingly and intentionally violated Labor Code section 226 because the “[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission” even though it believed that employees paid solely on commission or commission and salary “are exempt and therefore we do not record hours on a wage statement.”].)

#### **J. RECORDKEEPING VIOLATIONS**

72. Labor Code section 226, subdivision (a), requires employers to keep an accurate record of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent part, as follows:

“Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.” (Lab. Code, § 226.3, emphasis added.)

73. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including Defendants, to:

“Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

74. As explained in detail above, Defendants failed to provide the Class Members and the Aggrieved Employees with accurate itemized wage statements. Defendants did so, in part, because they failed to accurately track hours worked by the Class Members and the Aggrieved Employees. Defendants have thus failed to keep accurate records of the “total hours worked by the employee[s]” in violation of Labor Code section 226, subdivision (a), and are therefore subject to the penalties provided by Labor Code section 226.3. These penalties are “in addition to any other penalty provided by law.” (Lab. Code, § 226.3.)

75. The failure to accurately track hours worked also resulted in a failure of Defendants to keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees, including Plaintiff and the other Class Members, in violation of Labor Code section 1174, subdivision (d).

## **V. CLASS ACTION ALLEGATIONS**

76. As mentioned above, Plaintiff brings this action on behalf of himself and the Class Members pursuant to section 382 of the Code of Civil Procedure.

77. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the class is unknown to Plaintiff at this time; however, it is estimated that the number of Class Members is greater than 100 individuals. The identity of such membership is readily ascertainable via inspection of Defendants’ employment records.

1           78.     **Common Questions of Law and Fact Predominate/Well Defined Community of**  
2 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated  
3 non-exempt employees, which predominate over questions affecting only individual members  
4 including, without limitation to:

5                   A.     Whether Defendants' pay policies/practices resulted in a failure to pay the Class  
6 Members for all hours worked, including all minimum wages;

7                   B.     Whether Defendants' pay policies/practices resulted in a failure to pay the Class  
8 Members all split shift premiums lawfully owed;

9                   C.     Whether Defendants' pay policies/practices resulted in a failure to pay the Class  
10 Members for all required overtime wages at the Class Members' regular rate of pay;

11                  D.     Whether Defendants' rest period policies and practices afforded legally  
12 compliant rest periods or compensation in lieu thereof;

13                  E.     Whether Defendants' meal period policies and practices afforded legally  
14 compliant meal periods or compensation in lieu thereof;

15                  F.     Whether Defendants maintained accurate employment records;

16                  G.     Whether Defendants timely paid all wages during employment;

17                  H.     Whether Defendants timely paid all wages earned and unpaid at separation;

18                  I.     Whether Defendants indemnified their employees for all necessary business  
19 expenditures;

20                  J.     Whether Defendants furnished legally-compliant wage statements to the Class  
21 Members pursuant to Labor Code section 226; and

22                  K.     Whether Defendants' violations of the Labor Code and the Applicable Wage  
23 Orders amounted to a violation of California's UCL.

24           79.     **Predominance of Common Questions:** Common questions of law and fact  
25 predominate over questions that affect only individual Class Members. The common questions of law  
26 set forth above are numerous and substantial and stem from Defendants' uniform policies and practices  
27 applicable to each individual class member, such as Defendants' uniform policy and practice of failing  
28 to pay for all hours worked, Defendants' uniform policies and practices which failed to provide

1 compliant rest periods, Defendants' uniform policies and practices which failed to provide compliant  
2 meal periods, Defendants' failure to provide accurate itemized wage statements, and others. As such,  
3 the common questions predominate over individual questions concerning each individual class  
4 member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

5       80.     **Typicality:** The claims of Plaintiff are typical of the claims of the Class Members  
6 because Plaintiff was employed by Defendants as a non-exempt employee in California during the  
7 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged herein,  
8 Plaintiff, like the other Class Members, was deprived of minimum, regular, and overtime wages  
9 because of Defendants' unlawful timekeeping policies and practices, was deprived of rest periods and  
10 premium wages in lieu thereof, was deprived of meal periods and premium wages in lieu thereof, was  
11 subject to Defendants' uniform rest period policies and practices, was subject to Defendants' uniform  
12 meal period policies and practices, was not provided accurate itemized wage statements, was not paid  
13 all wages in full and on time, , and was subject to other similar policies and practices to which the Class  
14 Members were subject.

15       81.     **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to  
16 represent fairly and adequately the interests of the Class Members. Moreover, Plaintiff's attorneys are  
17 ready, willing, and able to fully and adequately represent the Class Members and Plaintiff. Plaintiff's  
18 attorneys have prosecuted numerous wage-and-hour class actions in state and federal court in the past  
19 and are committed to vigorously prosecuting this action on behalf of the Class Members.

20       82.     **Superiority:** The California Labor Code is broadly remedial in nature and serves an  
21 important public interest in establishing minimum working conditions and standards in California.  
22 These laws and labor standards protect the average working employee from exploitation by employers  
23 who have the responsibility to follow the laws and who may seek to take advantage of superior  
24 economic and bargaining power in setting onerous terms and conditions of employment. The nature of  
25 this action and the format of laws available to Plaintiff and the Class Members make the class action  
26 format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each  
27 employee were required to file an individual lawsuit, Defendants would necessarily gain an  
28

1 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of  
2 each individual plaintiff with their vastly superior financial and legal resources.

3 83. Moreover, requiring each Class Member to pursue an individual remedy would also  
4 discourage the assertion of lawful claims by employees who would be disinclined to file an action  
5 against their former or current employer for real and justifiable fear of retaliation and permanent  
6 damages to their careers at subsequent employment. Further, the prosecution of separate actions by the  
7 individual Class Members, even if possible, would create a substantial risk of inconsistent or varying  
8 verdicts or adjudications with respect to the individual Class Members against Defendants herein, and  
9 which would establish potentially incompatible standards of conduct for Defendants or legal  
10 determinations with respect to individual Class Members which would, as a practical matter, be  
11 dispositive of the interest of the other Class Members not parties to adjudications or which would  
12 substantially impair or impede the ability of the Class Members to protect their interests.

13 84. Further, the claims of the individual Class Members are not sufficiently large to warrant  
14 vigorous individual prosecution considering the concomitant costs and expenses attending thereto. As  
15 such, the Class Members identified above are maintainable as a class under section 382 of the Code of  
16 Civil Procedure.

## 17 **VI. EXHAUSTION OF REMEDIES**

18 85. Plaintiff has fully and completely exhausted administrative remedies under PAGA prior  
19 to proceeding with the PAGA claims stated in this complaint. Plaintiff filed a PAGA notice online with  
20 the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants  
21 setting forth the facts and theories of the violations alleged against Defendants, as prescribed by PAGA.  
22 (Lab. Code, §§ 2698–2699.6.)

23 86. As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by  
24 regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by  
25 Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the  
26 postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil  
27 action pursuant to Labor Code section 2699.  
28

**VII. CAUSES OF ACTION**

**First Cause of Action**

*Failure to Pay All Minimum Wages*

*(Against All Defendants)*

87. Plaintiff realleges and incorporates by reference all previous paragraphs.

88. Section 4 of the Applicable Wage Orders and Labor Code section 1197 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. (Lab. Code, § 1197; Cal. Code of Regs., tit. 8, §§ 11130, 11140.) Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an employee who has not been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid balance, together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

89. Here, Defendants failed to fully conform their pay practices to the requirements of the law during the relevant statutory periods. Plaintiff and the other Class Members were not compensated for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the Labor Code and the Applicable Wage Orders.

90. Labor Code section 1198 makes unlawful the employment of an employee under conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

91. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the other Class Members have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief because of Defendants' violations of the Labor Code and Applicable Wage Orders.

*(Against All Defendants)*

94. The Applicable Wage Orders define “split shifts” as including any work schedule that is interrupted by unpaid nonworking periods established by the employer, other than bona fide rest or meal periods. Subdivision 4(C) requires that “[w]hen an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.” (Cal. Code of Regs., tit. 8, §§ 11130, 11140, subds. 4(C).) The split shift premium required by the Applicable Wage Orders effectively increase the applicable minimum wage on split shifts. (*Aleman v. AirTouch Cellular* (2012) 209 Cal.App.4th 556, 575.) Labor Code sections 1197 and 1198 make the minimum wages set by the IWC enforceable and recoverable in a civil action.

SECOND AMENDED CLASS AND PAGA REPRESENTATIVE ACTION COMPLAINT

**Third Cause of Action**

*Failure to Pay All Overtime Wages*

*(Against All Defendants)*

96. Plaintiff realleges and incorporates by reference all previous paragraphs.

97. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed. At all times relevant herein, Defendants were required to properly pay Plaintiff and the other Class Members for all overtime wages earned pursuant to Labor Code section 1194 and the Applicable Wage Orders. Defendants caused Plaintiff and the other Class Members to work overtime hours but did not compensate them at one and one-half times their regular rate of pay for such hours in accordance with California law. Likewise, Defendants caused Plaintiff and the other Class Members to work double-time hours but did not compensate them at twice their regular rate of pay for such hours in accordance with California law.

98. Defendants failed to fully conform their pay practices to the requirements of California law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful pay policies and practices of failing to accurately record all the time that non-exempt employees were under the supervision and control of Defendants. The foregoing policies and practices are unlawful and allow Plaintiff and the other Class Members to recover in a civil action the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, attorneys' fees, and costs of suit according to Labor Code section 204, 510, 1194, and 1198, the Applicable Wage Orders, and Code of Civil Procedure section 1021.5.

**Fourth Cause of Action**

*Failure to Provide Rest Periods and Pay Missed Rest Period Premiums*

*(Against All Defendants)*

99. Plaintiff realleges and incorporates by reference all previous paragraphs.

100. Section 12 of the Applicable Wage Orders, and Labor Code section 226.7 establish the right of employees to be provided with a rest period of at least ten minutes for each four hour period worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, §§ 11130, 11140.)

101. Due to Defendants' unlawful rest period policies and practices described in detail above, Defendants did not authorize and permit Plaintiff and the other Class Members to take all rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiff and the other Class Members at their respective regular rates of pay for each violation, in accordance with California Labor Code section 226.7.

102. The foregoing violations create an entitlement to recovery by Plaintiff and the other Class Members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Orders, and California Labor Code section 226.7.

### **Fifth Cause of Action**

#### *Failure to Provide Meal Periods and Pay Missed Meal Period Premiums (Against All Defendants)*

103. Plaintiff realleges and incorporates by reference all previous paragraphs.

104. Plaintiff is informed and believes and thereon alleges, that Defendants failed in their affirmative obligation to provide their hourly non-exempt employees, including Plaintiff and the other Class Members, with all required meal periods in accordance with the mandates of the Labor Code and the Applicable Wage Orders, for the reasons set forth herein above. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiff and the other Class Members at their respective regular rates of pay for each violation, in accordance with California Labor Code section 226.7.

105. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Orders and Labor Code sections 226.7 and 512, and Civil Code sections 3287, subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, §§ 11130, 11140.)

**Sixth Cause of Action**

*Failure to Maintain Accurate Employment Records*

*(Against All Defendants)*

106. Plaintiff realleges and incorporates by reference all previous paragraphs.

107. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall keep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and wages paid to employees employed at the respective plants or establishments. These records must be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

108. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records.

109. Defendant has intentionally and willfully failed to keep accurate and complete records showing the hours worked daily and wages paid to Plaintiff and the other Class Members. Thus, Plaintiff and the other Class Members have been denied their legal right and protected interest in having available at a central location at the plant or establishment where they are employed, accurate and complete payroll records showing the hours worked daily by, and the wages paid to, employees at those respective locations pursuant to Labor Code 1174.

**Seventh Cause of Action**

*Failure to Pay Wages Timely during Employment*

*(Against All Defendants)*

110. Plaintiff realleges and incorporates by reference all previous paragraphs.

111. Labor Code section 200 provides that "wages" include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, pieces, commission basis, or other method of calculation. Labor Code section 204 states that all wages earned by any person in any employment are payable twice during the calendar month and must be paid not more than seven days following the close of the period when the wages were earned. Labor Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a

penalty of \$100 for any initial failure to timely pay each employee's full wages and \$200 for each subsequent violation, plus 25% of the amount unlawfully withheld.

112. Labor Code section 216 establishes that it is a misdemeanor for any person, with regards to wages due, to "falsely deny the amount or validity thereof, or that the same is due, with intent to secure himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due."

113. Defendants as a matter of established company policy and procedure in the State of California, scheduled, required, suffered, and/or permitted Plaintiff and the other Class Members, to work without full compensation, to work without legally-compliant off-duty meal periods, to work without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiff and the other Class Members within seven days of the close of payroll, as required by law.

114. Defendants, as a matter of established company policy and procedure in the State of California, falsely deny they owe Plaintiff and the other Class Members these wages, with the intent of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay, and/or defraud Plaintiff and the other Class Members.

115. Defendants' pattern, practice, and uniform administration of its corporate policy of illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff and the other Class Members to recover, pursuant to Labor Code section 218, the unpaid balance of the compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest owed to them pursuant to Labor Code sections 210 and 218.5.

### **Eighth Cause of Action**

#### *Failure to Pay All Wages Earned and Unpaid at Separation*

#### *(Against All Defendants)*

116. Plaintiff realleges and incorporates by reference all previous paragraphs.

117. The actionable period for this cause of action is three years prior to the filing of this complaint through the present, and ongoing until the violations are corrected or the class is certified. (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor Code sections 201 and

202 of the California Labor Code require Defendants to pay all compensation due and owing to its former employees (including the formerly-employed Class Members) during the actionable period for this cause of action at or around the time that their employment is or was terminated, or ended.

118. Section 203 of the Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty workdays.

119. Due to Defendants' faulty pay policies, those Class Members whose employment with Defendants has concluded were not compensated for each and every hour worked at the appropriate rate. Defendants have willfully failed to pay those formerly-employed Class Members whose sums were certain at the time of termination within seventy-two hours of their resignation and have failed to pay those sums for thirty days thereafter as required by Labor Code sections 201 through 203.

120. As a result, Defendants are liable to the formerly-employed Class Members for waiting time penalties amounting to thirty days wages for the formerly-employed Class Members pursuant to Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties].)

### **Ninth Cause of Action**

#### *Failure to Indemnify All Necessary Business Expenditures*

#### *(Against All Defendants)*

121. Plaintiff realleges and incorporates by reference all previous paragraphs.

122. California Labor Code Section 2802 states that employers must "indemnify" an employee for "all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." Likewise, Labor Code section 2804 states that "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 under the laws of this State."

123. Here, Plaintiff and the other Class Members paid out of pocket for necessary business expenditures incurred as a direct consequence and requirement of performing their job duties, including

1 the costs associated with their personal cell phone they required to perform their work. Despite knowing  
 2 that Plaintiff and the other Class Members incurred these necessary business expenses, and requiring  
 3 Plaintiff and the other Class Members to use such items, Defendants did not reimburse them.

4 124. Thus, Plaintiff and the other Class Members are entitled to recover the cost of such  
 5 necessary business expenses, plus interest from the date each incurred such business expenses, plus  
 6 fees and costs. (Lab. Code, § 2802, subds. (b), (c).)

### 7 **Tenth Cause of Action**

#### 8 *Failure to Furnish Accurate Itemized Wage Statements*

#### 9 *(Against All Defendants)*

10 125. Plaintiff realleges and incorporates by reference all previous paragraphs.

11 126. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the  
 12 time of each payment to furnish an itemized wage statement in writing showing:

- 13 (1) The gross wages earned;
- 14 (2) The total hours worked by the employee;
- 15 (3) The number of piece-rate units earned and any applicable piece rate if  
 16 the employee is paid on a piece rate basis;
- 17 (4) All deductions, provided that all deductions made on written orders of  
 18 the employee may be aggregated and shown as one item;
- 19 (5) The net wages earned;
- 20 (6) The inclusive dates of the period for which the employee is paid;
- 21 (7) The name of the employee and only the last four digits of his or her social  
 22 security number or an employee identification number other than a social  
 23 security number;
- 24 (8) The name and address of the legal entity that is the employer; and
- 25 (9) All applicable hourly rates in effect during the pay period and the  
 26 corresponding number of hours worked at each hourly rate by the  
 27 employee.  
 28

127. As set forth above, Defendants issued and continues to issue wage statements to its non-exempt employees including Plaintiff and the other Class Members that are inadequate under Labor Code section 226, subdivision (a). By failing to pay Plaintiff and the other Class Members properly as described above, Defendants failed to include required information on their wage statements, including, but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section 226, subdivision (a).

128. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

129. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff and the other Class Members in violation of Labor Code section 226, subdivision (a), Plaintiff and the other Class Members are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per each Class Member from Defendants pursuant to Labor Code section 226, subdivision (e), along with costs and reasonable attorneys' fees.

### **Eleventh Cause of Action**

#### *Violations of California's Unfair Competition Law*

#### *(Against All Defendants)*

130. Plaintiff realleges and incorporates by reference all previous paragraphs.

131. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code section 17200 through 17210, by committing the unlawful acts described above. Defendants' utilization of these unfair and unlawful business practices deprived and continue to deprive Plaintiff and the other Class Members of compensation to which they are legally entitled. These practices constitute unfair and unlawful competition and provide an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

132. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged herein, Plaintiff for himself and on behalf of the Class Members, seeks full restitution of monies, as necessary

1 and according to proof, to restore any and all monies withheld, acquired and/or converted by  
2 Defendants pursuant to Business and Professions Code sections 17203 and 17208.

3 133. The acts complained of herein occurred within the four years prior to the initiation of  
4 this action and are continuing into the present and ongoing.

5 134. Plaintiff was compelled to retain the services of counsel to file this Court action to  
6 protect his interests and those of the Class Members, to obtain restitution and injunctive relief on behalf  
7 of Defendants' current non-exempt employees and to enforce important rights affecting the public  
8 interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which Plaintiff  
9 is entitled to recover under Code of Civil Procedure section 1021.5.

### 10 **Twelfth Cause of Action**

11 *Penalties Pursuant to PAGA for Violations of California Labor Code Sections 201,*  
12 *202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197,*  
13 *1197.1, 1198, 1198.5, 1199, 2802, 2804, and Other Provisions of the Labor Code*  
14 *(Against All Defendants)*

15 135. Plaintiff realleges and incorporates by reference all previous paragraphs.

16 136. Based on the above allegations incorporated by reference, Defendants violated Labor  
17 Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197,  
18 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; and the Applicable Wage  
19 Orders (Cal. Code of Regs., tit. 8, §§ 11130, 11140), and others that may be applicable.

20 137. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections  
21 2698 through 2699.6 because of Defendants' violation of Labor Code sections 201, 202, 203, 204, 210,  
22 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804,  
23 and others that may be applicable; and the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§  
24 11130, 11140), and others that may be applicable.

25 138. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation,  
26 Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time  
27 of trial subject to the following formula:

28 A. \$100 for the initial violation per employee per pay period; and

1 B. \$200 for each subsequent violation per employee per pay period.

2 139. These penalties must be allocated seventy-five percent to the Labor and Workforce  
3 Development Agency (“LWDA”) and twenty-five percent to the affected employees. These penalties  
4 may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v.*  
5 *Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v.*  
6 *Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at \*9,  
7 for the proposition that plaintiff could pursue separate claims for penalties under Labor Code section  
8 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a), violations]; see also  
9 *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL  
10 2373372, at \*17 fn. 70 [noting that federal courts applying California law have found that “PAGA  
11 penalties can be stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for  
12 different Labor Code violations.”], internal quotation marks omitted).

13 140. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all  
14 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section  
15 226, subdivision (a). Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor Code  
16 section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15 Cal.App.5th at pp.  
17 780, 788.)

18 141. For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default  
19 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny  
20 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount  
21 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand  
22 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails  
23 to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of  
24 Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the  
25 Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and  
26 seeks default PAGA penalties for each of Defendants’ numerous violations of Labor Code section 226,  
27 subdivision (e).  
28

142. Labor Code section 210 provides that “in addition to, an 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 . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices, Plaintiff and the Aggrieved Employees are also entitled to recover penalties under Labor Code section 210 through PAGA.

143. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is intentionally committed for each underpaid employee for each pay period for which the employee is underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific offense for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and to the extent permitted by law, Plaintiff and the Aggrieved Employees are entitled to recover pursuant to Labor Code section 1197.1.

144. Plaintiff was compelled to retain the services of counsel to file this action to protect his interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which Plaintiff is also entitled to recover under Labor Code section 2699, subdivision (g)(1).

#### **VIII. DEMAND FOR JURY TRIAL**

145. Plaintiff hereby demands trial by jury of Plaintiff’s and the Class Members’ claims against Defendants.

#### **IX. PRAYER FOR RELIEF**

Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed class;
2. For an order appointing Plaintiff as representative of the class;

3. For an order appointing Plaintiff's counsel as counsel for the class;
4. For the failure to pay all minimum wages, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 1194, 1194.2, 1197, and others as may be applicable;
5. For the failure to pay split shift premiums, compensatory damages in the amount of the split shift premiums owed, as may be proven;
6. For the failure to pay all overtime wages, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 204, 510, 1194, 1198, and others as may be applicable;
7. For the failure to provide rest periods and pay missed rest period premiums, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code section 226.7;
8. For the failure to provide meal periods and pay missed meal period premiums, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 226.7 and 512;
9. For the failure to maintain accurate employment records, penalties pursuant to Labor Code sections 226.3, 1174.5, and others that may be applicable;
10. For the failure to pay wages timely during employment, the unpaid balance of the compensation owed to Plaintiff and the other Class Members and any applicable penalties owed to them pursuant to Labor Code section 210;
11. For the failure to pay all wages earned and unpaid at separation, statutory waiting time penalties pursuant to Labor Code sections 201 through 203, for the Class Members who quit or were fired in an amount equal to their daily wage multiplied by thirty days, as may be proven;
12. For the failure to indemnify all necessary business expenditures, all unreimbursed business expenses, and interest thereon, that are owed, pursuant to Labor Code section 2802, and attorney fees, pursuant to Labor Code section 2802, subdivision (c);

- Dated: October 4, 2024

*Meghan Higday*  
MEGHAN N. HIGDAY

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