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Attorneys for Plaintiff STANLEY GLENN

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

STANLEY GLENN, as an individual and
on behalf of all others similarly situated,

Plaintiff,
vs.

THE MCCOY GROUP, LLC., a
California limited liability company;
MCCOY GROUP, INC., a Wisconsin
corporation; FOODLINER, INC., a
Wisconsin corporation; and DOES 1-
100, inclusive,

Defendants.

CASE NO.: C23-00863

Assigned for All Purposes to:
Hon. Charles S. Treat
Dept 12

**DECLARATION OF NIKKI TRENNER IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

**[Filed concurrently with Notice of Motion and
Motion; Memorandum of Points &
Authorities; Declarations of Stanley Glenn
and Jodey Lawrence; [Proposed] Order]**

DATE: TBD
TIME: 8:30 a.m.
DEPT.: 12

1 I, NIKKI TRENNER, declare as follows:

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

5 2. **Settlement Agreement and Notice.** Attached hereto as **Exhibit 1** is a true and
6 correct copy of the Parties' Class Action and PAGA Settlement Agreement and Class Notice.
7 Attached hereto as **Exhibit 2** is a true and correct copy of Plaintiff's PAGA notice letter and
8 proof of submission to the LWDA.

9 3. I am unaware of any other pending matters that would overlap with this case in
10 any way or that will be impacted by the settlement in this case.

11 4. McCoy is a family-owned and operated company that provides transportation
12 services, including shipping, truck sales, leasing, and rentals. Defendant Foodliner, Inc. is part of
13 The McCoy Group and operates as the largest food grade bulk carrier in the United States.
14 Plaintiff Glenn was employed by McCoy as a truck driver from July 2020 to May 2022. Plaintiff
15 worked primarily out of Defendant's location in Rialto, California.

16 5. Plaintiff alleges several wage and hour violations by Defendant. First, he claims
17 Defendant required Plaintiff and the Class Members to work off the clock as they were forced to
18 clock out of Defendant's timekeeping system while waiting, loading, and offloading cargo to
19 prevent running out of their daily hours of service under federal DoT regulations. Plaintiff further
20 alleges Defendant failed to pay for what amounted to "on duty" meal periods. For example,
21 Plaintiff claims McCoy's "vessel security" policies mandate that drivers watch over their
22 equipment at all times during their shifts, and that other policies requiring that employees stay on
23 schedule and make all deliveries on time likewise caused meal periods to be "on duty." Plaintiff
24 also alleged he and the Class Members had to use their personal cell phones for work related
25 purposes, including communicating with supervisors before and after their shifts and
26 downloading the company application onto their personal phones to conduct daily work activities,
27 all without any reimbursement.

28 6. Based on these allegations, on April 13, 2023, Plaintiff filed the underlying class

1 action against McCoy on behalf of himself and all other similarly situated non-exempt employees
2 alleging (1) failure to pay minimum wages and liquidated damages; (2) failure to furnish itemized
3 wage statements; (3) failure to timely pay all wages due upon separation of employment; (4)
4 failure to reimburse business expenses; and (5) violations of the Unfair Competition Law. After
5 exhausting administrative remedies, on October 3, 2023, Plaintiff filed a First Amended
6 Complaint adding a cause of action under PAGA. The FAC is the operative complaint for
7 purposes of settlement.

8 7. McCoy has at all times denied Plaintiff's allegations and maintained its and
9 payroll and timekeeping policies and procedures comply with California law, and that it paid the
10 class members for all hours worked and paid all wages due. Defendant also contends there would
11 be no need for any class member to use their own phone on company business and therefore no
12 reimbursement is owed. Additionally, McCoy strongly contends the case cannot be maintained as
13 a class action, arguing for example that to the extent class members worked off the clock it was
14 intermittent and infrequent, against company policy, and evidence of such missed breaks would
15 be anecdotal, and therefore individualized issues would predominate.

16 8. After Plaintiff filed his complaint, the Parties engaged in initial written discovery
17 and, after meeting and conferring regarding discovery, law and motion, and other case
18 management issues, agreed to attempt mediation. The Parties also agreed on a protocol for an
19 exchange of substantial documents and information before the mediation to facilitate the
20 settlement discussions. Consequently, Plaintiff's counsel reviewed payroll records, compensation
21 plans, personnel policies/handbooks, personnel files, and a random of sampling of Class Member
22 paystubs and time records. Plaintiff then had those records analyzed by Berger Consulting Group
23 to look for, inter alia, violation rates for potential damages from off the clock work, unreimbursed
24 expenses, etc. Defendant also provided data regarding the total number of putative class
25 members, the estimated total amount of workweeks and pay periods they worked, and average
26 pay rates, among other relevant data.

27 9. The Parties then engaged Steve Mehta, Esq., a respected professional neutral with
28 substantial wage and hour and class action experience and, in February 2024, the Parties

1 participated in a full day mediation with Mr. Mehta. Throughout the day, the arms-length
2 negotiations were hard-fought and adversarial as the Parties exchanged extensive information on
3 their legal and factual positions, and made numerous offers and counter-offers. With the
4 mediator's assistance, the Parties were able to reach agreement on all major issues.

5 **THE PROPOSED SETTLEMENT TERMS**

6 10. Under the settlement, McCoy will pay \$195,000 into a common fund, the Gross
7 Settlement Amount ("GSA"). Attorney's fees of up to \$65,000 (1/3 of the GSA), litigation costs of
8 up to \$20,000, settlement administration costs of no more than \$7,500, a service award to Plaintiff
9 of no more than \$10,000, and PAGA civil penalties of \$10,000, all will be paid from the GSA. The
10 balance of around \$82,500 will be allocated pro rata to the Class Members based on their weeks
11 worked during the Class Period. No portion of the GSA will revert to McCoy.

12 11. The settlement provides for conditional certification of a settlement class including
13 all current and former non-exempt employees who worked either directly or via a staffing agency
14 for any one or more of the Defendants The McCoy Group, LLC, McCoy Group, Inc., and Foodliner,
15 Inc. (together "McCoy" or "Defendant") at any location in California at any time during the Class
16 Period of August 16, 2020 to March 22, 2024. The Settlement Class consists of about 138
17 individuals.

18 12. As noted, the settlement obligates McCoy to pay \$195,000 to resolve the
19 Settlement Class's claims, inclusive of attorney's fees and costs. At least \$82,500 from the GSA
20 will be distributed to the Participating Class Members. This is a cash settlement that does not
21 require Participating Class Members to submit a claim form to receive their settlement share.
22 Participating Class Members will receive their settlement checks automatically via First Class
23 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining
24 eighty percent will be allocated to expenses, penalties and interest, which allocation is consistent
25 with McCoy's potential liability. McCoy will pay any and all applicable employer-side payroll
26 taxes separately and in addition to the GSA. Subject to the Court's approval, any amounts not
27 claimed (because a class member does not cash their settlement check) will be forwarded to the
28 State Controller's Unclaimed Property Fund.

1 13. Each Participating Class Member will receive a share of the Net Settlement
2 Amount based on his or her total weeks worked in California as a non-exempt employee during
3 the Class Period. Thus, each Class Member's Individual Settlement Payment will be calculated
4 using criteria typically used in determining appropriate amounts of unpaid wages, unreimbursed
5 expenses, and potential statutory penalties under applicable law. These methods are intended to
6 ensure each Class Member receives a settlement award corresponding to the relative value of
7 their potential claims. The proposed allocation provides a reasonable way to compensate Class
8 Members based on the amount of time they worked for McCoy in California and the amount
9 unpaid off the clock work, unreimbursed expenses, etc. I estimate the average award will be
10 around \$598.

11 14. Subject to the Court's approval, the Parties have agreed on Phoenix Settlement
12 Administrators ("Phoenix") as the Settlement Administrator. Phoenix is qualified and has
13 significant experience administering class action settlements, including numerous wage and hour
14 matters. Phoenix's fees and costs will not exceed \$7,500.00. If the Court approves less than the
15 above amount, the difference will remain in the Net Settlement Amount for distribution to the
16 Participating Class Members.

17 15. The proposed Notice of Class Action Settlement (Exhibit A to the Settlement
18 Agreement) sets out information about this case and explains the basic settlement terms in plain
19 language. The Notice also sets forth the individualized information used to calculate Class
20 Members' Individual Settlement Payments and each Class Member's estimated settlement award.
21 The Notice likewise details the procedures for Class Members to dispute their individual
22 information, the procedure for submitting an objection to the Settlement, the procedure to request
23 exclusion, and the fact that any final judgment will bind all class members who do not opt out.
24 Cal. Rules of Court 3.769(f) and 3.766(d). In sum, the Notice provides the Class Members with
25 the information necessary to evaluate the Settlement and decide to participate in, opt out of, or
26 object to the proposed Settlement, and meets all requirements imposed by the California Rules of
27 Court. Coupled with the notice procedure, the Notice provides the best notice practicable.

28 16. Class Members will have forty-five (45) days to dispute the information in their

1 Notice used to calculate their settlement award, and also have 45 days to submit any objections to
2 the settlement or to request exclusion. If a Class Member disputes their individual information,
3 the Settlement Administrator will review the Class Member's records and any other information
4 submitted, and make a final determination.

5 17. All Participating Class Members will release McCoy from all claims alleged in the
6 operative complaint, or that could have been brought based on the factual allegations in the
7 complaint during the Class Period, including claims under PAGA. The release is limited to the
8 claims that were actually pleaded or could have been pleaded based on the alleged facts in the
9 operative complaint.

10 18. A modest incentive award for Plaintiff is appropriate under applicable law, as he
11 devoted time and resources to the litigation, provided documents, assisted Class Counsel with
12 investigating the claims asserted and in preparing for mediation. Defendant will not oppose a
13 request for an enhancement award to Plaintiff of not more than \$10,000.00 in recognition of his
14 time spent on this matter, the risks he undertook on behalf of the class, the benefit conferred to the
15 class, and for providing a full general release of claims, all as addressed in his declaration filed
16 herewith. If the Court approves less than the above amount, the difference will remain in the Net
17 Settlement Amount for distribution to the Participating Class Members.

18 19. The terms of the Parties' settlement also allow Crosner Legal to apply for an
19 award of attorney's fees of up to one-third of the GSA, or \$65,000 and reimbursement of actual
20 costs and expenses of up to \$20,000.00. At final approval, my office will submit a request for
21 attorney's fees and actual litigation costs per the terms of the Settlement Agreement and
22 applicable law, and will provide the Court with appropriate information and evidence regarding
23 hourly rates, tasks performed, and time expended on the case. If the Court approves less than the
24 above amounts, the difference will remain in the Net Settlement Amount for distribution to the
25 Participating Class Members.

26 20. The Parties allocated \$10,000 to resolution of Plaintiff's claims under PAGA and,
27 as addressed in more detail below, I submit that amount is fair, reasonable and adequate, and
28 consistent with PAGA's underlying purposes. As required by Labor Code section 2699(l)(2),

1 Plaintiff gave notice to the LWDA of the proposed settlement and the preliminary approval hearing.
2 A true and correct copy of the LWDA's acknowledgement of receipt is attached as **Exhibit 3**.

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

4 21. In the present matter, conditional certification is proper since this matter satisfies
5 all requirements for class certification under Code of Civil Procedure section 382. First, the class
6 is both sufficiently numerous, consisting of approximately 138 individuals, and ascertainable by
7 reference to Defendant's personnel and payroll records.

8 22. Next, Plaintiff is an adequate class representative, as his claims do not conflict
9 with and are not antagonistic to the claims of other class members. Further, his claims are typical
10 as he is a member of the class and his claims arise from the same employment practices and
11 course of conduct giving rise to the claims of the other class members.

12 23. Common questions of law and fact predominate – particularly for purposes of a
13 settlement class – as the Class Members all were paid via substantially similar compensation
14 plans that underpaid them for overtime hours worked, and subject to the same policies that
15 resulted in missed/non-compliant meal and rest periods. Since the focus of the claims against
16 McCoy concerns the legality of common policies applied uniformly to the entire class, common
17 issues predominate over individualized inquiries concerning liability. For instance, McCoy's
18 compensation plans either properly paid the class members for overtime hours worked or they did
19 not. Regardless of these determinations, it will decide liability for all Class Members one way or
20 another.

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

The Proposed Settlement Meets the Kullar Factors

25. Prior to the mediation, the parties engaged in both formal and informal discovery to facilitate settlement discussions. Plaintiff reviewed documents and information regarding McCoy's payroll practices, a random sampling of pay stubs and time records from class members, a class list, applicable compensation plans and expense reimbursement plans, etc., and information from Defendant regarding class size and breakdown, work weeks/pay periods, rates of pay, and other information used to formulate a damages model. Plaintiff then had that information analyzed by a consulting expert to assist in determining potential violation rates and other data used to formulate a damages model.

26. Using that information, we estimated McCoy's potential exposure on the class claims at approximately **\$2.336** million, including about \$1,337,000 on the unpaid wage/off the clock claim, \$48,700 on the unreimbursed expense claim, \$448,000 on the wage statement claims, and \$502,875 on the waiting time penalty claims.

27. We estimated these amounts as follows:

Unpaid Minimum Wage/Off the Clock

$50,450 \text{ shifts} * 1 \text{ hour/shift} * \$13.25/\text{hr avg. minimum wage} = \$668,500$
 $\times 2 \text{ liquidated damages} = \$1,337,000$

Expense Reimbursement

$9,740 \text{ work weeks} * \$5.00 \text{ work week} = \$48,700$

Wage Statement Violations

$112 \text{ eligible employees} * \$4,000/\text{employee} = \$448,000$

Waiting Time Penalties

$76 \text{ former employees} (240 \text{ hours} * \$27.57/\text{hr avg. wage}) = \$502,875$

28. First, on the unpaid wage claims, Plaintiff first contends McCoy off the clock as they were forced to clock out of Defendant's timekeeping system while waiting, loading, and offloading cargo to prevent running out of their daily hours of service under federal DoT regulations. Plaintiff further alleges Defendant failed to pay for what amounted to "on duty" meal periods. For example, Plaintiff claims McCoy's "vessel security" policies mandate that drivers

1 watch over their equipment at all times during their shifts, and that other policies requiring that
2 employees stay on schedule and make all deliveries on time likewise caused meal periods to be “on
3 duty.” On the other hand, McCoy argued its policies strictly prohibited any off the clock work, and
4 that its policies allowed employees sufficient time to complete all duties within the allocated hours
5 of service, and to take a full, off duty lunch break. Thus, per McCoy, any alleged off the clock
6 work would have been against company policy, done without the company’s knowledge or
7 approval, and therefore not compensable. Defendant further argued the issue is not certifiable since
8 it would require innumerable individualized inquiries to determine the reasons for any alleged off
9 the clock work and whether it was compensable.

10 29. The claims for unreimbursed business expenses under Labor Code § 2802 revolved
11 around Plaintiff’s allegations that McCoy required its non-exempt employees to use their personal
12 cell phones for business purposes including, but not limited to communicating with supervisors
13 while on duty, and downloading a company app used to conduct their duties. In response, Defendant
14 argued there was no need for employee’s to use personal phones for legitimate work purposes, and
15 that any such use would have been purely for personal convenience. Thus, per McCoy, use of
16 personal phones wasn’t necessary and therefore not reimbursable.

17 30. Plaintiff’s claims for penalties under Labor Code §§ 203 and 226 are derivative of
18 the underlying unpaid minimum and overtime wage claims and, accordingly, they would essentially
19 rise or fall with Plaintiff’s success or failure on his primary claims. Further, Plaintiff had to account
20 for the discretionary nature of such awards and the “good faith” and other defenses available to
21 Defendant.

22 31. On the PAGA claims, the alleged aggrieved employees theoretically are entitled to
23 penalties totaling about \$1.8 million should Plaintiff prevail on all claims, establish violations of
24 the multiple Labor Code sections at issue, and secure the maximum penalty for eligible pay periods.
25 As with the class claims, Plaintiff discounted the potential PAGA penalties based on Defendant’s
26 various defenses on the merits and also accounted for the Court’s wide discretion to reduce such
27 penalties, or to decline to award penalties at all. Plaintiff submits this amount is reasonable under
28 the circumstances and in line with comparable settlements in other wage and hour class actions in

1 California. Additionally, the LWDA has been informed of the terms of the PAGA portion of the
2 settlement, and will be able to weigh in as necessary.

3 32. Overall, Defendant raised various defenses to Plaintiff's claims on both class
4 certification and the merits that, if successful, could have negatively impacted Plaintiff's claims
5 or potentially reduced potential damages. Accordingly, Plaintiff faced significant risks going
6 forward with this litigation, and given the need to secure and maintain class certification, prevail
7 at trial, and deal with post-trial appeals, it would have taken years to realize any recovery in this
8 action. Plaintiff and I discounted the value of the class claims consistent with the risks discussed
9 above, and carefully weighed the likelihood of the class receiving substantially greater benefit if
10 the litigation continued. We concluded – in light of these very real and substantial risks –
11 settlement on the proposed terms and without prolonged and costly litigation was in the best
12 interests of the class. The overall \$195,000 recovery represents a significant percentage of
13 Defendant's potential exposure and, given the multiple litigation risks addressed above, a total
14 recovery for the class of \$195,000, with an average award of some \$598 per class member, is a
15 fair result within the range of reasonableness considering all potential outcomes.

16 33. I graduated from Trinity Law School in 2017 and joined Mara Law Firm, PC
17 (formerly The Turley and Mara Law Firm, APLC) that same year. I later joined Crosner Legal
18 in 2020 and am currently employed as a senior associate in the wage and hour department. I
19 have solely handled wage and hour class actions and PAGA lawsuits for six (6) years. I
20 routinely write and oppose motions, draft complaints, appear before the Court at law and
21 motion and settlement hearings, engage in the discovery process, including drafting Belaire-
22 West notices and meet and confer letters.

23 34. I have obtained class certification in the following matters: *Hernandez v.*
24 *Aviation Port Services, LLC*, Kern County Superior Court Case No. BCV-18-100141. I have
25 also assisted in obtaining millions of dollars for employees in the following court-approved
26 class action and/or representative PAGA settlements: *Michael Campbell, et al. v. Symons*
27 *Emergency Specialities, Inc.*, San Bernardino County Superior Court Case No. CIVDS1903158;
28 *Amber Collins v. Danbarb, Inc., et al.*, Los Angeles County Superior Court Case No.

20STCV44190; *Michael Elridge v. LA Downtown Medical Center, LLC, et al.*, Los Angeles County Superior Court Case No. 20STCV05951; *Anthony Leon, et al. v. Sierra Aluminum Company, et al.*, San Bernardino County Superior Court Case No. CIVDS2010856; *Elaine Moyal v. Cabinets To Go, LLC*, Los Angeles County Superior Court Case No. 20STCV32477; *Genevieve Rangel v. Bassett Direct NC, LLC*, Orange County Superior Court Case No. 30-2018-01040101-CU-OE-CXC; *Jacob Buys v. Sizewise Rentals, Inc., et al.*, Sacramento County Superior Court Case No. 34-2018-00225848-CU-OE-GDS; *Alejandro Valencia v. VM Tree Service, Inc., et al.*, Riverside County Superior Court Case No. RIC1819395; *Joshua Rael v. Intercontinental Hotels Group Resources, Inc.*, Los Angeles County Superior Court Case No. 19STCV16010; *Angel Cervantez v. Valley Pallet, Inc.*, Sacramento County Superior Court Case No. 34-2018-00234334-CU-OE-GDS; *Tonja Edwards-Bloodsaw v. Sandburst Convalescent Group, LTD, et al.*, Los Angeles Superior Court Case No. 19STCV15797; *Moriah Holtegaard, et al. v. Howroyd-Wright Employment Agency, Inc. dba AppleOne Corporation Services, et al.*, Central District Court of California, Eastern Division, Case No. 5:20-cv-00509 JGB (KKx); *Jade Findley, et al. v. Avenue5 Residential, LLC, et al.*, Los Angeles County Superior Court Case No. 20STCV34633; *Keivan Keyhanzad v. Ryan Cars, LLC dba Pomona Kia, et al.*, Riverside County Superior Court Case No. RIC1905276; *Luis Bolanos v. FSC Corporation dba Il Pastaio Restaurant, et al.*, Los Angeles County Superior Court Case No. BC722758; *Loretta Cannon v. Pasadena Hospital Association, LTD dba Huntington Hospital*, Los Angeles County Superior Court Case No. 19STCV14554; *Nathan Kapusta v. Cardinale Motors SLO, Inc., et al.*, Kern County Superior Court Case No. BCV-20-101593; and *Jesse McCauley v. Mullahey Ford, Inc., et al.*, San Luis Obispo County Superior Court Case No. 21CV0001.

35. Zach Crosner is a 2010 graduate of University San Diego School of Law and he has approximately thirteen years of experience as a practicing attorney. For nearly his entire career, his practice has focused on litigation of wage & hour, consumer, and privacy class action and representative action claims. Following graduation he immediately began working for a nationally recognized plaintiff's complex litigation firm, CaseyGerry, where he worked directly with past presidents of the consumer attorneys and recipients of trial attorneys of the

1 year awards. He also worked for other firms that included former CAALA and CLAY trial
2 attorney of the year recipients. While with these firms, he advocated for the rights of consumers
3 and employees in class action litigation, civil rights and employment litigation, catastrophic
4 injuries, insurance bad faith and appellate litigation.

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

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

27 38. Jamie Serb is a partner with Crosner Legal and head of the firms’ Wage & Hour
28 practice group. She graduated from the University of California, San Diego in 2004, graduated

1 from California Western School of Law in 2013, and has been a member of the California Bar since
2 2013. She gained extensive experience in wage and hour litigation, beginning work as a class action
3 attorney in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm, APLC; Turley
4 Law Firm, APLC). She joined Crosner Legal on January 4, 2021 as an associate attorney. She has
5 handled wage and hour class actions and PAGA lawsuits for the past several years and has assisted
6 in obtaining millions of dollars for employees during her years of practice.

7 39. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
8 action settlements while serving as lead class counsel in recent years, including but not limited to
9 a \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America,*
10 *Inc.*, Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action
11 settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252
12 (Sacramento Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017
13 (*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a
14 \$1.8 million wage and hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc.*
15 *dba American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and
16 hour class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160
17 JGB (C.D. Cal.)), a \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham*
18 *Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million
19 wage and hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-
20 CV-04864-YGR (N.D.Cal.)); a \$7.25 million wage and hour class action settlement in 2020 in
21 *Avina, et al. v. First Alarm Security & Patrol, Inc.*, Case No. 18CV323753 (Santa Clara Cty. Super
22 Ct.); a \$2.2 million wage and hour class action settlement in 2021 (*Ghorchian, et al. v. West Hills*
23 *Hospital, et al.*, Case No. LS029737 (Los Angeles Cty. Super. Ct.)); a \$2.85 million dollar wage
24 and hour settlement in 2021 (*Valencia v. The Original Mowbray's Tree Service, Inc.*, Case No.
25 CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1 million wage and hour class action
26 settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super.
27 Ct.)), a \$1.4 million wage and hour class action settlement in 2023 in *Correa, et al. v. FedEx Supply*
28 *Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.), a \$2.38 million wage and

1 hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case No.
2 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million wage and hour class action settlement
3 in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino Cty. Super.
4 Ct.); \$1.015 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo Autism*
5 *Therapy*, Case No. C GC-21-596378 (San Francisco Cty. Super. Ct); and a \$1.15 million wage and
6 hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*, Case No.
7 21STCV18512 (Los Angeles Cty. Super. Ct.).

8 40. For the foregoing reasons, I respectfully request the Court grant this motion and
9 grant preliminary approval to the proposed settlement.

10 I declare under penalty of perjury under the laws of California that the foregoing is true and
11 correct. Executed on May 30, 2024 at San Diego, California.

12
13 
14 _____
Nikki Trenner

EXHIBIT

1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Stanley Glenn (“Plaintiff”) and Defendants McCoy Group, Inc. and Foodliner, Inc. (“Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendants captioned *Stanley Glenn v. McCoy Group, Inc, et al.*, case number C23-00863 initiated on April 14, 2023, currently pending in Superior Court of the State of California, County of Contra Costa and the related PAGA notice letter filed by Plaintiff on or about April 13, 2023.
- 1.2 “Administrator” means Phoenix Class Action Administration, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means all current and former non-exempt employees who worked either directly or via a staffing agency for any one or more of the Defendants at any location in California at any time during the PAGA Period.
- 1.5 “Class” means all current and former non-exempt employees who worked either directly or via a staffing agency for any one or more of the Defendants at any location in California at any time during the Class Period.
- 1.6 “Class Counsel” means Zach Crosner, Jamie Serb, and Nikki Trenner of Crosner Legal, PC.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, email address (if available), and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

- 1.10 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, if applicable in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement.
- 1.12 “Class Period” means the period from August 16, 2020 to March 22, 2024.
- 1.13 “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15 “Court” means the Superior Court of California, County of Contra Costa.
- 1.16 “Defendants” means the named Defendants McCoy Group, Inc. and Foodliner, Inc.
- 1.17 “Defense Counsel” means Alexandra M. Asterlin and Kyle A. Wende of Ogletree, Deakins, Nash, Smoak & Stewart, PC.
- 1.18 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19 “Final Approval” or “Final Approval Order” means the Court’s Order Granting Final Approval of the Settlement.
- 1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21 “Final Judgment” means the Judgment entered by the Court upon granting Final Approval of the Settlement as binding upon the Parties following the Final Approval Hearing.
- 1.22 “Gross Settlement Amount” means \$195,000.00 which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount includes all of the following: Individual

Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the Administrator's Expenses. Payment of the amount necessary to cover the employer's portion of payroll taxes associated with the portion of the Settlement allocated to wages shall be made by Defendant, separate and apart from the Gross Settlement Award. The Administrator will make all required tax deductions and payments using a Qualified Settlement Fund. As set forth herein the Administrator will issue all of the above-referenced payments from the Qualified Settlement Fund in accordance with the applicable provisions of this Agreement.

- 1.23 "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period. Any Class Member who timely submits a valid Request for Exclusion, pursuant to the procedures outlined herein, is not a Participating Class Member and is not eligible to receive an Individual Class Payment.
- 1.24 "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during the PAGA Period.
- 1.25 "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26 "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27 "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28 "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. The Net Settlement Amount shall be allocated as follows: (a) 20% to wages; and (b) 80% to penalties and interest. The Administrator will be responsible for issuing a form W-2 to each Class Member for the amount each received for unpaid "wages" and an IRS Form 1099 for the portion designated as penalties and interest, as required by law.
- 1.29 "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30 "Operative Complaint" means the First Amended Complaint filed in the Action on October 3, 2023.

- 1.31 “PAGA Pay Period” means any Pay Period during the PAGA Period during which an Aggrieved Employee recorded performing any compensable time for Defendants as an hourly-paid or non-exempt employee, according to Defendants’ records.
- 1.32 “PAGA Period” means the period from April 13, 2022 to March 22, 2024.
- 1.33 “PAGA” means the Private Attorneys General Act of 2004 (Labor Code §§ 2698. et seq.).
- 1.34 “PAGA Notice” means Plaintiff’s April 13, 2023 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.35 “PAGA Penalties” means the total amount of PAGA civil penalties (\$10,000.00) to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$2,500.00) and 75% to LWDA (\$7,500.00) in settlement of PAGA claims.
- 1.36 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37 “Plaintiff” means Stanley Glenn, the named plaintiff in the Action.
- 1.38 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.39 "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval of the Settlement.
- 1.40 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.41 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.42 “Released Parties” means: Defendants and each of their former and present directors, officers, shareholders, owners, members, managers, employees, agents, representatives, partners, investors, shareholders, administrators, parent companies, divisions, joint venturers, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.43 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.44 "Response Deadline" means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, (b) fax, email, or mail his or her Objection to the Settlement, or (c) dispute the information contained in the Notice of Class Action Settlement. Class Members to

whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired. If the 45th day falls on a Sunday or federal or state holiday, the deadline shall be extended to the next business day.

- 1.45 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.46 “Workweek” means any week, during the Class Period, during which a Class Member recorded performing any compensable work for Defendants as an hourly-paid or non-exempt employee, according to Defendants’ records. worked for Defendants for at least
- 1.47 “Workweek and/or Pay Period Dispute” means a Settlement Class Member’s written letter disputing the pre-printed information on the Notice of Class Action Settlement as to the number of the Settlement Class Member’s Workweeks worked during the Class Period or the number of Pay Periods worked during the PAGA Period, and the dispute must: (a) contain the case name and number of the Action; (b) contain the Class/PAGA Member’s full name, signature, address, telephone number, and the last 4 digits of the social security number; (c) clearly state the dispute about Workweeks/Pay Periods credited and what the Class/PAGA Member contends is the correct number; (d) attach any documentation to support the Class/PAGA Member’s position; and (e) be timely submitted by mail to the Administrator at the specified address, postmarked on or before the Response Deadline.

2. RECITALS.

- 2.1 On April 14, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for (1) failure to pay minimum wages and liquidated damages; (2) failure to furnish itemized wage statements; (3) failure to timely pay all wages upon separation of employment; (4) failure to reimburse business expenses; and (5) violations of the Unfair Competition Law. Plaintiff filed a First Amended Complaint (“Operative Complaint”) on October 3, 2023 alleging an additional cause of action against Defendants for violations of the PAGA. Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint, and deny any and all liability for the causes of action alleged.
- 2.2 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.
- 2.3 On February 6, 2024, the Parties participated in an all-day mediation presided over by Steven G. Mehta of the Mediation Offices of Steven G. Mehta, Esq., which led to this Agreement to settle the Action.

- 2.4 Prior to mediation, Plaintiff obtained, through informal discovery, relevant documents and class data from Defendants including (1) Plaintiff's personnel file, (2) Plaintiff's time and payroll records, (3) the employee handbooks in effect during the Class Period, (4) Defendants' additional policies and operating procedures regarding the (a) payment of wages, (b) timekeeping policies (including recording hours), (c) issuance of wage statements, (d) reimbursement of business expenses, and (e) termination wages, (5) a sampling of the payroll and time records for the putative class members, (6) the total number of class members, (7) the total number of aggrieved employees, (8) the total number of Workweeks, and (8) the total number of Pay Periods, among other information and documents. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal. App. 4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129-130 ("*Dunk/Kullar*").
- 2.5 The Court has not granted class certification.
- 2.6 The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1 **Gross Settlement Amount.** Except as otherwise provided by Paragraph 8 below, Defendants promise to pay \$195,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants. The employer's share of payroll taxes and other required withholdings from the Individual Class Payments, including but not limited to the FICA and FUTA contributions, if applicable, shall be paid separately from, and in addition to, the Gross Settlement Amount.
- 3.2 **Payments from the Gross Settlement Amount.** The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval Order:
- 3.2.1 **To Plaintiff:** Class Representative Service Payment to the Class Representative of not more than \$10,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the Final Approval motion, Plaintiff

will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

- 3.2.2 **To Class Counsel:** A Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which is currently estimated to be \$65,000.00 and a Class Counsel Litigation Expenses Payment of not more than \$20,000.00. Defendants will not oppose requests for these payments provided that do not exceed these amounts. As part of the Final Approval motion, Plaintiff and/or Class Counsel will request approval of the Class Counsel Fees Payment and Class Litigation Expenses Payment. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.3 **To the Administrator:** An Administrator Expenses Payment not to exceed \$7,500 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$7,500, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4 **To Each Participating Class Member:** An Individual Class Payment is calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
- 3.2.4.1 **Tax Allocation of Individual Class Payments.** The Administrator will report each payment made from the Qualified Settlement Fund to state and federal government authorities, including the Internal Revenue Service, to the extent required by law. 20% of each

Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. Plaintiff, any Participating Class Member, and any PAGA Member who receives an Individual Class Payment or Individual PAGA Payment should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

Participating Class Members, Aggrieved Employees, and Class Counsel shall be solely responsible for the reporting and payment of their share of any federal, state, and/or local income tax or other tax or any other withholding, if any, on any payments made pursuant to the Settlement.

3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5 **To the LWDA and Aggrieved Employees:** PAGA Penalties in the amount of \$10,000.00 to be paid from the Gross Settlement Amount, with 75% (\$7,500.00) allocated to the LWDA PAGA Payment and 25% (\$2,500.00) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$2,500.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 **Class Data.** Not later than 15 calendar days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they discover that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

The Class Data is being supplied solely for the purposes of the administration of the Settlement set forth in this Agreement and cannot be used by the Administrator or Class Counsel for any other purpose. The Parties agree the Class Data will not be used to solicit Class Members to file any claim, charge, or complaint of any kind, whatsoever, against Defendants and will only be used to so administer the Settlement under the terms provided herein.

Notwithstanding the above, within 5 calendar days of the receipt of the Class Data, the Administrator shall verify, in writing, to Class Counsel and Defense Counsel the total number of Workweeks for the purposes of determining whether the escalator clause is triggered.

- 4.2 **Funding of Gross Settlement Amount.** Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.
- 4.3 **Payments from the Gross Settlement Amount.** No later than 3 calendar days after being notified of the Court's final approval, the Administrator shall send Defense Counsel electronic wiring instructions for paying the Gross Settlement Amount into the Qualified Settlement Fund. The Administrator will also inform Defense Counsel of the amount to be sent to the Qualified Settlement Fund to pay the employer's share of payroll taxes. No later than 30 calendar days after the Effective Date, Defendants will fund the Qualified Settlement Fund.

- 4.4 Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1 The Administrator will issue checks for the Individual Class Payments and Individual PAGA Payments and send them to the Participating Class Members and Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.4.2 The Administrator must conduct a Class Member Address Search for all other Participating Class Members and Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Participating Class Members and Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Participating Class Member and/or Aggrieved Employee whose original check was lost or misplaced, requested by the Participating Class Member and/or Aggrieved Employee prior to the void date.
- 4.4.3 For any Participating Class Member and/or Aggrieved Employee whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving

no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Participating Class Members or Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.** Effective on the date when Defendants fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, and Class Members will release claims against all Released Parties as follows:

5.1 **Plaintiff's Release.** After the Court's judgment is final, and Defendants has paid the Gross Settlement and separately paid the employer-side payroll taxes, Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice; and (c) any and all claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, grievances, wages, vacation payments, severance payments, obligations, commissions, overtime payments, debts, profit sharing claims, expenses, damages, judgments, orders, and liabilities of whatever kinds or nature in state or federal law, equity or otherwise, whether known or unknown, which Plaintiff now owns or holds or at any time has owned or held against the Released Parties, including specifically, but not exclusively, and without limiting the generality of the foregoing, any and all claims known or unknown, suspected or unsuspected: (1) arising out of Plaintiff's employment with Defendants or the termination of that employment; or (2) arising out of or in any way connected with any claim, loss, damage, or injury whatsoever, known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of Defendants or the Released Parties, committed or omitted by Defendants or the Released Parties on or before the date this Agreement is executed by Plaintiff. ("Plaintiff's Release.") Plaintiff also specifically agrees and acknowledges he is waving any right to recovery based upon state or federal age, sex, race, color, national origin, marital status, religion, veteran status, disability, sexual orientation, medical condition, gender, genetic information, or other antidiscrimination laws, rules, regulations or ordinances, including but not limited to, Title VII of the Civil Rights Act of 1964, Sections 1981 and 1983 of the Civil Rights Act of 1866, the Fair Credit

Reporting Act, the Americans with Disabilities Act, the WARN Act, the Equal Pay Act, the Employee Retirement Income Security Act, California Business and Professions Code 17200, et seq., the Age Discrimination in Employment Act of 1967, as amended (“ADEA”), and the Older Workers Benefit Protection Act, as amended (“OWBPA”)(except for a claim relating to whether this release or waiver is valid under the ADEA and except for any claims under the ADEA that may arise after this Agreement is executed by Plaintiff), the California Labor Code and any similar state or local laws, such as the California Fair Employment and Housing Act, California Family Medical Leave Act, the California Family Rights Act, and all of their implementing regulations and interpretative guidelines, as well as in common law, including laws related to discrimination, harassment, or retaliation, whether known or unknown, and whether anticipated or unanticipated, arising from or relating to Plaintiff’s relationship, or the termination of the relationship with any Released Party through the date this Agreement is executed by Plaintiff for any type of relief. For the avoidance of doubt, this is a complete and general release of all claims to the maximum extent permitted by law. Plaintiff’s Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at any time, or based on occurrences outside the Class Period. 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.

5.1.1 Plaintiff’s Waiver of Rights Under California 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 California Civil Code, which reads:

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

- 5.2 Release by Participating Class Members:** After the Court’s judgment is final, and Defendants have paid the Gross Settlement and separately paid the employer-side payroll taxes, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, including, all claims for (a) claims for minimum wages

for failure to pay for all time worked, rounding, automatic deductions for meal periods, off-the-clock/unpaid work, and payment according to scheduled hours worked rather than actual hours; (b) all claims for untimely payment of final wages and associated waiting time penalties under sections 201 to 203 of the Labor Code; (c) all claims for unreimbursed expenses for expenses incurred for personal cell phones and personal vehicles; (d) all claims for improper or inaccurate wage statements under Labor Code section 226(a)(1)-(9) based upon allegations in the Action; and (e) all claims under Business & Professions Code section 17200, et seq. premised on the facts, claims, and causes of action alleged in the Action during the Class Period. Participating Class Members' only release these claims for the duration of the Class Period. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

- 5.3 **Release by Aggrieved Employees:** After the Court's judgment is final, and Defendants has paid the Gross Settlement and separately paid the employer-side payroll taxes, all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including, (a) failure to pay minimum wages; (b) failure to reimburse expenses; (c) failure to furnish accurate itemized wage statements; and (d) failure to timely pay all wages due upon separation of employment (e) failure to maintain accurate records; (f) failure to provide meal periods; (g) failure to authorize and permit rest periods; (h) failure to pay overtime; (i) failure to pay statutorily required wages; (j) refusal to pay wages due and payable; (k) unlawful labor conditions; (l) failure to provide paid sick leave; (m) failure to provide supplemental paid sick leave; (n) failure to pay vested vacation; and (n) unlawful criminal inquiries during the PAGA Period. Aggrieved Employees only release these claims for the duration of the PAGA Period.

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

- 6.1 **Defendants' Declaration in Support of Preliminary Approval.** Within 14 days of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel a signed Declaration from Defendants and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and Defendants shall aver

that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 6.2 **Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, or the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vii) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (viii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. In their Declarations, Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.3 **Responsibilities of Counsel.** Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 6.4 **Duty to Cooperate.** If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel

and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 **Selection of Administrator.** The Parties have jointly selected to serve as the Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements. Defendants and Defense Counsel shall not enter into any contractual relationship with the Administrator. The Administrator shall make clear that Plaintiff, Class Counsel, Defendants, and Defense Counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the settlement payments or development of the list of recipients of settlement payments.
- 7.2 **Employer Identification Number.** The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 **Qualified Settlement Fund.** The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 **Notice to Class Members.**
- 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

- 7.4.3 Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address, and email address or telephone number, and must be signed by the Class Member. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. The date of the postmark on the return mailing envelope on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted.
- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice.

The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

- 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Release and Aggrieved Employee Release under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment.
- 7.5.5 No later than seven (7) calendar days after the Response Deadline (plus an additional fourteen (14) days in the event of remailings), the Administrator will provide counsel for the Parties with a complete list of those members of the class who have timely submitted a Request for Exclusion.

- 7.6 **Workweek and/or Pay Period Dispute.** Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to submit a Workweek and/or Pay Period Dispute. The Class Member may challenge the allocation by communicating with the Administrator via fax, email, or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 Objections to Settlement.

- 7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Class Representative Service Payment.
- 7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court or other method of personal appearance permitted by the court, i.e. remote appearance) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed). The date of mailing on the envelope shall be deemed the exclusive means for determining a Notice of Objection was timely received.
- 7.7.3 Any written objection must be signed by the Settlement Class Member and state: (1) the full name and address of the Settlement Class Member; (2) the factual and/or legal basis for the objection; and (3) whether the Settlement Class Member intends to appear at the Final Approval Hearing. Class Counsel shall ensure any Notice of Objection received by the Administrator by the Response Deadline is filed with the Court along with the Motion for Final Approval.
- 7.7.4 Any Settlement Class Member who fails to submit a timely written objection or present an objection in person at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the settlement by appeal or otherwise.
- 7.7.5 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

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

- 7.8.1 **Website, Email Address and Toll-Free Number.** The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,

Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes, and emails.

- 7.8.2 **Requests for Exclusion (Opt-outs) and Exclusion List.** The Administrator will promptly review, on a rolling basis, Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 7.8.3 **Weekly Reports.** The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4 **Workweek and/or Pay Period Dispute.** The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5 **Administrator’s Declaration.** Not later than 14 days after the Response Deadline, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration, suitable for filing in Court, attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of the Class Notice, the total number of Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from the Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the

Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

- 7.8.6 **Final Report by Settlement Administrator.** Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.

- 8.1 At the mediation, Defendants' data set covered the period from August 16, 2020 to December 23, 2023 ("the Data Period"). Out of that Data Period data set, Defendants' data team calculated 9,740 workweeks for the class during the Data Period.

- 8.2 If the actual count of workweeks during the Data Period is later validated by the Settlement Administrator to be more than 10% larger, i.e. 10,714 workweeks, then for each workweek that is in addition to 10,714 workweeks, the Gross Settlement Amount shall increase commensurate with the percentage increase over 10%. For example, if the Settlement Administrator determines that the number of workweeks worked by Class Members during the Data Period is actually 12% greater than 9,740, then the Gross Settlement Amount will increase by 2%. However, Defendants have the right to shorten the Class Period in lieu of increasing the Gross Settlement Amount.

9. **DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendants may, but are not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

Benefits of Settlement to Class and Aggrieved Employees. Class Counsel investigated the facts relevant to the Action, including reviewing documents and information provided by Defendants. Based upon their own independent investigation and evaluation, Class Counsel believes the Settlement with Defendants is fair, reasonable, and adequate, and in the best interest of the Settlement Class, in light of all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendants, uncertainties regarding a class trial, and numerous potential appellate issues. Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or relating to the Actions on the terms set forth herein.

Defendants have concluded any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of Defendants' time, energy, and resources have been and, unless the Settlement is completed, will continue to be devoted to, the defense of claims asserted by Plaintiff in this Action. Defendants have also taken into account the risks of further litigation in reaching the decision to enter this Settlement. Even though Defendants continue to contend they are not liable for any of the claims set forth by Plaintiff in this Action, Defendants have agreed, nonetheless, to settle in the manner and upon the terms set forth in this Agreement to put to rest the claims in this Action.

10. **MOTION FOR FINAL APPROVAL.** Plaintiff will request and Defendants will concur in said request that the Court enter, after a Final Approval Hearing, a Final Approval Order and Final Judgment. Plaintiff will request the Final Approval Order certify the Settlement Class; find this Agreement is fair, just, adequate, and in the best interests of the Class; and require the Parties carry out the provisions of this Agreement.

Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel as soon as practicable prior to filing the Motion for Final Approval, but no later than five (5) court days in advance of the filing. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

- 10.1 **Response to Objections.** Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.2 **Duty to Cooperate.** If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members or Aggrieved Employees), the Parties will expeditiously work together in good faith to address

the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

- 10.3 **Nullification of Agreement.** In the event: (a) the Court denies Preliminary Approval of the Settlement and the Parties are unable to correct the conditions causing the denial; (b) the Court denies Final Approval of the Settlement and the Parties are unable to correct the conditions causing the denial; (c) the Court refuses to enter Final Judgment as set forth herein; or (d) the Settlement does not become final for any other reason, this Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this Settlement shall be treated as void from the beginning.
- 10.4 **Continuing Jurisdiction of the Court.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.5 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 10.6 **Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment.** If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Participating Class Members or Aggrieved Employees), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class

Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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

12. ADDITIONAL PROVISIONS.

12.1 No Admission of Liability, Class Certification, or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval, or enter Judgment, Defendants reserve the right to contest certification of any class for any reasons, and Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement, and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

Defendants contend, at all times, it has complied with all applicable state, federal, and local laws relating to the Settlement Class Members' employment. Defendants have entered into this Settlement to avoid the cost, risk, and inconvenience of further litigation. Nothing contained in this Settlement, nor the fact of the Settlement itself, shall be construed or deemed as an admission of liability or wrongdoing on the part of Defendants, collectively or individually. Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Agreement is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any judicial, arbitral, administrative, investigative, or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity, against Defendants or any other Released Party. The Parties agree an express condition of this Settlement is that there has been no finding of liability on the merits and this Settlement cannot be a basis to assert offensive collateral estoppel against Defendants or to establish

subsequent violations rates in later litigation. Notwithstanding the foregoing, nothing in this Settlement shall limit Defendants' use of the Judgment or any papers in this Action to assert defensive collateral estoppel or res judicata in any other action.

- 12.2 **Confidentiality Prior to Preliminary Approval.** Plaintiff, Class Counsel, Defendants, and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.3 **Publicity.** Plaintiff and Class Counsel shall not issue any press releases, communicate with, or respond to any media or publication entities, concerning the Settlement, including the fact of the Settlement, its terms or its contents and the negotiations underlying the Settlement, except as shall be contractually required to effectuate the terms of the Settlement. However, Class Counsel may disclose or publicize, without referencing the specifics of the case, including the identities of any entities covered by the definition of Defendants, the amount of the Settlement, and that it was a wage and hour/PAGA Settlement. For the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action and the venue/case number of this action (but not any other settlement details) for such purposes.
- 12.4 **No Solicitation.** The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 12.5 **No other Actions.** Plaintiff and Plaintiff's Counsel represent that, other than the instant Action, they have no current intention of asserting any other claims against Defendants in any judicial or administrative forum. Plaintiff and Plaintiff's Counsel further represent they do not currently know of or represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against Defendants. The Parties acknowledge, understand, and agree that the representations in this paragraph are essential to the Agreement and that this agreement would not have been entered were it not for this representation.
- 12.6 **Integrated Agreement.** Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.7 **No Effect on Employee Benefits.** The Class Representative Enhancement Award, Individual Class Payments, and Individual PAGA Payments shall be deemed not to be pensionable earnings and shall not have any effect on eligibility for, or the calculation of, any employee benefits (vacation, holiday pay, retirement plans, etc.) of the respective Plaintiff, Participating Class Members, and Aggrieved Employees. The Parties agree any Class Representative Service Payment, Individual Class Payments, and Individual PAGA Payments paid to Plaintiff, Participating Class Members and Aggrieved Employees under the terms of this Settlement do not represent modification of any previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendants. Further, any Class Representative Service Payment, Individual Class Payment, and Individual PAGA Payments shall not be considered "compensation" in any year for the purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendants.
- 12.8 **Representation.** All parties have been represented by counsel throughout all negotiations, which preceded the execution of this Settlement, and all Parties have been advised by counsel prior to entering into this Settlement.
- 12.9 **Invalidity of Any Provision.** Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible, consistent with applicable precedents, so as to define the provisions of this Agreement valid and enforceable.
- 12.10 **Attorney Authorization.** Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

- 12.11 **Cooperation.** The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.12 **No Prior Assignments.** The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.13 **No Tax Advice.** Neither Plaintiff, Class Counsel, Defendants, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.14 **Modification of Agreement.** This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.15 **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.16 **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.17 **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.18 **Confidentiality.** To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.19 **Use and Return of Class Data.** Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff

shall destroy, all paper and electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants make a written request to Class Counsel for the return, rather than the destructions, of Class Data.

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

To Plaintiff:

Zachary Crosner
zach@crosnerlegal.com
Jamie Serb
jamie@crosnerlegal.com
Nikki Trenner
nikki@crosnerlegal.com
9440 Santa Monica Blvd., Suite 301
Beverly Hills, CA 90210

To Defendants:

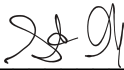
Alexandra M. Asterlin
alexandra.asterlin@ogletree.com
Kyle A. Wende
kyle.wende@ogletree.com
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, PC
500 Capitol Mall, Suite 2500
Sacramento, CA 95814

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

executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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

Dated: 04 / 29 / 2024



Plaintiff Stanley Glenn

Dated: _____

Print Name: _____

Print Title: _____

For Defendant The McCoy Group, LLC

Dated: _____

Print Name: _____

Print Title: _____

For Defendant Foodliner, Inc.

Dated: _____

CROSNER LEGAL, PC



Zachary Crosner
Jamie Serb
Nikki Trenner
Attorneys for Plaintiff Stanley Glenn and the Class

Dated: _____

**OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, PC**

executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

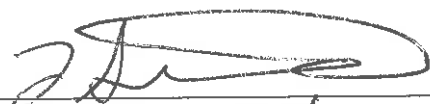
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Dated: _____

Plaintiff Stanley Glenn

Dated: _____

Print Name:


Tim Stueck

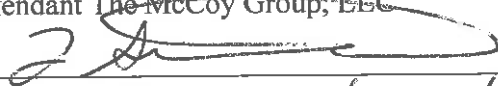
Print Title:

CFO

For Defendant The McCoy Group, LLC

Dated: _____

Print Name:


Tim Stueck

Print Title:

CFO

For Defendant Foodliner, Inc.

Dated: _____

CROSNER LEGAL, PC

Zachary Crosner

Jamie Serb

Nikki Trenner

Attorneys for Plaintiff Stanley Glenn and the Class

Dated: April 30, 2024

**OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, PC**

Alexandra Asterlin
Kyle A. Wende
Attorneys for Defendants The McCoy Group, LLC
and Foodliner, Inc.

EXHIBIT “A”

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

(case name and number)

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

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

You may be eligible to receive money from an employee class action lawsuit ("Action") against Defendants The McCoy Group, LLC and Foodliner, Inc. ("Defendants") for alleged wage and hour violations. The Action was filed by a former employee of Defendants ("Plaintiff") and seeks payment of unpaid minimum wages, unpaid reimbursements, and penalties for inaccurate wage statements and failure to pay all wages due upon termination of employment for a class of all current and former non-exempt employees who worked either directly or via a staffing agency for any one or more of the Defendants at any location in California during the Class Period from August 16, 2020 to March 22, 2024 ("Class Members"); and (2) penalties under the California Private Attorney General Act ("PAGA") for all current and former non-exempt employees who worked either directly or via a staffing agency for any one or more of the Defendants at any location in California during the PAGA Period from April 13, 2022 to March 22, 2024 ("Aggrieved Employees").

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

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

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

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

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

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

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

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

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

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

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

You Can Participate in the Final Approval Hearing. The Court’s Final Approval Hearing is scheduled to take place on **DATE**. You don’t have to attend, but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

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

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former non-exempt employee who worked for Defendants in California. The Action accuses Defendants of violating California labor laws by (1) failing to pay all wages; (2) failure to provide accurate wage statements; (3) failure to pay all wages owed upon termination of employment; and (4) failure to reimburse business expenses. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys (“Class Counsel”) in the Action.

Defendants strongly deny violating any laws or failing to pay any wages and contends it complied with all applicable laws.

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

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

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

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

Defendants Will Pay \$195,000.00 as the Gross Settlement Amount (Gross Settlement).

Defendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendants will fund the Gross Settlement not more than 7 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

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

- Up to \$65,000.00 (1/3 of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$20,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- Up to \$10,000.00 as a Class Representative Service Payment for filing the Action, working with Class Counsel and representing the Class. A Class Representative Service Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
- Up to \$7,500 to the Administrator for services administering the Settlement.
- Up to \$10,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

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

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

Although 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.

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

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

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

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

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

Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities

for wages based on the Class Period facts and PAGA penalties based on the facts, as alleged in the Action and resolved by this Settlement.

Participating Class Members Release: After the Court's judgment is final, and Defendants have paid the Gross Settlement and separately paid the employer-side payroll taxes, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint including, claims for: (a) all claims for unpaid wages, including claims for minimum wages for failure to pay for all time worked, rounding, automatic deductions for meal periods, off-the-clock/unpaid work, and payment according to scheduled hours worked rather than actual hours; (b) all claims for untimely payment of final wages and associated waiting time penalties under sections 201 to 203 of the Labor Code; (c) all claims for unreimbursed expenses for expenses incurred for personal cell phones and personal vehicles; (d) all claims for improper or inaccurate wage statements under Labor Code section 226(a)(1)-(9) based upon allegations in the Action; and (e) all claims under Business & Professions Code section 17200, et seq. premised on the facts, claims, and causes of action alleged in the Action. Except for the PAGA Released Claims, 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. Except as set forth in Section 5.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

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

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

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

Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$2,500.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of Pay Periods worked by each individual Aggrieved Employee.

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

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

5. HOW WILL I GET PAID?

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

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

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

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

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least 16 court days before the Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons

why the proposed Settlement is fair, and stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website [\(url\)](#) or the Court's website [\(url\)](#).

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

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on **DATE** at **TIME** in Department 12 of the Contra Costa Superior Court, located at 725 Court Street Martinez, CA 94553. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via Zoom at <https://www.cc-courts.org/calendars/court-calendars.aspx>. Check the Court's website for the most current information.

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants 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 Phoenix Class Action Administration's website at [\(url\)](#). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to <https://odyportal.cc-courts.org/Portal/Home/Dashboard/29> and entering the Case Number for the Action, Case No. C23-00863. You can also make an appointment to personally

review court documents in the Clerk's Office at the Martinez-Wakefield Taylor Courthouse by calling (925) 608-1000.

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

Class Counsel:

Zachary Crosner
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Jamie Serb
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Nikki Trenner
nikki@crosnerlegal.com
9440 Santa Monica Blvd., Suite 301
Beverly Hills, CA 90210
Telephone: (866) 276-7637
Fax: (310) 510-6429

Settlement Administrator:

Phoenix Class Action Administration

Email Address:

Mailing Address:

Telephone:

Fax:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

11. WHAT IF I CHANGE MY ADDRESS?

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

EXHIBIT

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

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

April 13, 2023

VIA PAGA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

Douglas McCoy
Agent for service of Process for:
McCoy Group, Inc.
5000 Cake Pkwy
Deforest, WI 53532-1904

McCoy Group, Inc.
Attn: Human Resources / Legal Department
2099 Southpark Ct Ste 2
Dubuque, IA 52003-8095

Sayyida A McCoy
Agent for Service of Process for:
The McCoy Group LLC
2126 Lincoln Avenue
Richmond, CA 94801

The McCoy Group LLC
Attn: Human Resources / Legal Department
2126 Lincoln Avenue
Richmond, CA 94801

Rita Soliz,
Agent for Service of Process for:
Foodliner, Inc
2419 Nielson Street
El Cajon, CA 92020

Foodliner, Inc
Attn: Human Resources / Legal
Department:
2099 Southpark Ct, Suite 1
Dubuque, IA 52003

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; The McCoy Group LLC;
McCoy Group, Inc. and Foodliner, Inc
Date: April 13, 2023
Subject: *Stanley Glenn v. The McCoy Group LLC et. al.*

Introduction

This office represents COMPLAINANT, Stanley Glenn (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: The McCoy Group LLC; McCoy Group, Inc. and Foodliner, Inc (hereinafter, these entities and their managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

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

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

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

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

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

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

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

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common

management; and (4) common ownership or financial control. *Laird v. Capital Cities/ABC, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. For example, based on information and belief, EMPLOYER issued wage statements to COMPLAINANT identifying “McCoy” and/or “The McCoy Group” as the name of the legal entity that is the employer. However, based on information and belief, various documents in COMPLAINANT’s personnel file reflect the following as the name of COMPLAINANT’s employer: “Foodliner” and/or “Foodliner, Inc.” Moreover, most if not all the loads COMPLAINANT hauled for EMPLOYER were hauled and/or otherwise transported for a business operating under the name “Foodliner” and/or “Foodliner, Inc.” Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to identify themselves as “Foodliner” and/or “Foodliner, Inc.” when making deliveries. Based on further information and belief, EMPLOYER, and each of them, share the same principal business address, agent for service of process as provided to the California Secretary of State and/or Wisconsin Secretary of State and/or utilize some of the same attorneys and/or human resources personnel to oversee employment-related matters. By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

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

law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

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

General Information

EMPLOYER owns, operates or otherwise manages a transportation business. Based on information and belief, EMPLOYER owns, operates and/or otherwise manages companies and/or business entities that operate under and/or operated under the following names: McCoy Group / McCoy Group, Inc., Truck Country, Foodliner / Foodliner, Inc., Quest Liner, Foodliner Mexico/Quest Liner Mexico, Quest Logistics, and/or McCoy Construction & Forestry. EMPLOYER owns, operates, and/or otherwise manages, locations, sites, yards, and/or facilities in California, including but not limited to locations, sites, yards and/or facilities in Rialto, California, among other cities in California.. Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a driver, truck driver and/or similar title(s) and/or position(s) from in or around July 2020 through on or around May 1, 2022. EMPLOYER regularly assigned COMPLAINANT to work out of its locations, yards and/or facilities located in Rialto, California, and COMPLAINANT completed routes for EMPLOYER in various cities located throughout California. COMPLAINANT regularly worked at least fourteen (14) hours per day. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT

AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; and (14) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

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

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

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

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER's failure to relieve NON-EXEMPT AGGRIEVED

EMPLOYEES of all duties and EMPLOYER's control for unpaid meal periods, resulting in unpaid hours worked.

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

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

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

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 6. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.¹

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

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an

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

employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

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

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

NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES frequently had their meal periods cut short, interrupted and/or were not relieved of all duties and EMPLOYER's control during meal periods and/or were required to take their meal periods well after the fifth hour of work due to the need to meet work deadlines, unload/load items, respond to work-related communications and/or complete other work tasks.

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

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

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

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which were free of

EMPLOYER's control owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

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

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

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

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

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)). Lab. Code §226.7; applicable IWC Wage Order, §11(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

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

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

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

NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have any sort of compliant rest period policy in practice. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES frequently had their rest periods cut short, interrupted and/or were required to work through them completely due to the need to meet work deadlines, unload/load items, respond to work-related communications and/or complete other work tasks.

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

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

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

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER’s control during rest periods. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, those not employed as drivers and/or similar title(s) and/or position(s), were required to remain tethered to their workstations and/or were required to monitor work communication devices during purported rest periods, and as such were not relieved of all duties and EMPLOYER’s control during their rest periods, in violation of California rest period law.

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³

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

It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages. Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale. Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful. Labor Code section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” The applicable Wage Order defines “hours worked” as “the time during which an employee is subject

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

to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

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

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

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER’s policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For example, EMPLOYER prohibited COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES from recording their actual hours worked and/or any hours worked in excess of fourteen (14) hours in a shift. However, due to their assigned workloads and/or explicit instructions from EMPLOYER, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently were required to clock out but to continue working. For example, on at least a dozen occasions when arriving at an unload destination shortly before exceeding fourteen hours of worktime, COMPLAINANT was required to log out of the vehicle/timekeeping system and continue working, including but not limited to, going through the unload process and/or performing other work tasks off the clock so that COMPLAINANT would not exceed his fourteen-hour shift. As such, COMPLAINANT was consistently suffered, permitted and/or required to perform off-the-clock work resulting in the substantial underpayment of minimum wages and straight time wages owed to COMPLAINANT.

Based on information and belief, EMPLOYER did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all pre-trip and/or post-trip inspections, waiting time, time spent

at weight stations, time spent fueling, cleaning, retrieving, returning, maintaining, repairing trucks and/or work equipment/tools, setting up, time spent completing paperwork, loading, unloading, waiting between jobs and tasks, and/or performing other work tasks, resulting in a failure to pay NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to spend time starting, booting and/or logging into the vehicle onboarding system before they could clock in for the start of their shifts. As such, NON-EXEMPT AGGRIEVED EMPLOYEES spent at least several minutes before each scheduled shift starting, booting and/or logging into the vehicle onboarding system in order to clock in and begin their shifts. At the end of their shifts, NON-EXEMPT AGGRIEVED EMPLOYEES were required to first clock out for the end of their shifts before spending at least several minutes to shut down and/or log out of the vehicle system. This pre-shift and post-shift work was off-the-clock and uncompensated resulting in unpaid minimum wages and straight time wages.

Moreover, based on information and belief, at times, EMPLOYER's electronic time-keeping system/app malfunctioned such that NON-EXEMPT AGGRIEVED EMPLOYEES were required to either reinitiate and/or otherwise troubleshoot the system and/or wait for the system to boot prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking out for shifts and/or back in for meal periods. This time spent under EMPLOYER's control was not recorded and not compensated and resulted in unpaid minimum wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

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

Based on information and belief, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, training, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by EMPLOYER. For example, based on information and belief, EMPLOYER required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to watch training videos and/or review other training materials and/or undergo testing regarding the training videos and/or other training materials, resulting in approximately at least four (4) to five (5) hours of uncompensated work time at least every several months. Based on information and belief, this work time was completed off-the-clock and was not compensated.

Based on further information and belief, EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. EMPLOYER's failure to pay for all time worked by virtue of its time-rounding practices resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

EMPLOYER's failure to pay for all time worked by virtue of its time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

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

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

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

Based on information and belief, EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

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

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

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

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

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

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to work completed during unpaid meal periods and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Failure to Pay Vested Vacation/Paid Time Off:

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

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

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

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

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

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

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁸

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

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

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

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

⁸ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

Based on information and belief, EMPLOYER shifted its costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, uniforms and/or protective/safety equipment, and/or the use of NON-EXEMPT AGGRIEVED EMPLOYEES' and/or EXEMPT AGGRIEVED EMPLOYEES' personal mobile phone and data usage for work-related purposes, including but not limited to, to receive and respond to work related messages and/or phone calls. For example, COMPLAINANT received work-related calls and/or messages on a near daily basis if not daily to his personal cell phone from managers and/or supervisors, including but not limited to, regarding scheduling/other work tasks but was not reimbursed and/or not reimbursed in full by EMPLOYER for these business expenses as required under California Law.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost of purchasing and/or maintaining work uniforms and/or protective/safety equipment.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for additional business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to, hand tools/equipment and/or cost of fuel, costs of vehicle/equipment maintenance and/or repairs, and/or work-related fees/fines, incurred as a direct consequence of the discharge of their assigned job duties without receiving any and/or full reimbursement from EMPLOYER for these expenses.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were also required to use their personal vehicles for work but were not provided any and/or full reimbursement by EMPLOYER for these expenses including but not limited to, reimbursement for mileage, cost of fuel, and/or other costs related to the use of their personal vehicles for work purposes. For example, on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were required to use their personal vehicles for EMPLOYER's business purposes, including but not limited to, for driving between and/or around EMPLOYER's job sites/facilities/locations and/or for other work purposes without receiving any and/or full reimbursement from EMPLOYER for the business use of their personal vehicles.

Based on information and belief, EMPLOYER failed to reimburse other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for all expenses they incurred in connection with EMPLOYER's requirement that NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES use their personal vehicles for work.

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

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

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

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

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

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

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

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

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

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

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

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

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

Unlawful Inquires into Criminal History

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

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

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

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

Conclusion

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

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

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

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and

all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

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

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

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in cursive script that reads "Kiara Bramasco".

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

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

Thu, Apr 13, 2023 at 5:09 PM

4/13/2023

LWDA Case No. LWDA-CM-948411-23
Law Firm : Crosner Legal, PC
Plaintiff Name : Stanley Glenn
Employer: McCoy Group, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT

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