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7 Counsel for Plaintiffs GERARDO SANTIAGO ARIZAGA,
8 NICOLAS SANTIAGO ARIZAGA, SERGIO SANTIAGO
9 ARIZAGA, and JOSE SANTIAGO ARIZAGA,

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SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

GERARDO SANTIAGO ARIZAGA,
NICOLAS SANTIAGO ARIZAGA,
SERGIO SANTIAGO ARIZAGA, and JOSE
SANTIAGO ARIZAGA, individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs. RACKLEY COMPANY, INC., a
California corporation, and DOES 1 through
50, inclusive,

Defendants.

CASE NO. 23CV003138

Assigned for All Purposes to:
Hon. Lauri Damrell
Dept. 22

DECLARATION OF J. KIRK DONNELLY IN
SUPPORT OF MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: April 11, 2025
Time: 9:00 a.m.
Dept.: 22

Reservation No. **A-03138-001**

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1. I am an attorney duly licensed to practice in California and before this Court, and I am the principal of the Law Offices of J. Kirk Donnelly, APC, counsel of record for plaintiffs. I make this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. If called to testify as to the within facts, I would and could competently do so.
2. Attached hereto as Exhibit 1 is a true and correct, fully-executed copy of the Parties' Class Action and PAGA Settlement Agreement and Class Notice (the "Settlement Agreement"). Attached hereto as Exhibit 2 is a true and correct copy of Plaintiffs' April 3, 2023 notice letter to the Labor & Workforce Development Agency ("LWDA") and proof of submission. Attached hereto as Exhibit 3 is proof of submission of the proposed settlement to the LWDA.
3. I am unaware of any other cases or matters that may be related to this matter or that may have overlapping claims or classes.

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5. On June 12, 2023, after exhausting administrative remedies, Plaintiffs filed a class action and PAGA complaint. In their complaint, Plaintiffs alleged Rackley failed to pay minimum and overtime wages by requiring “off the clock” and by failing to include all forms of compensation in the “regular rate of pay” for purposes of calculating overtime. Plaintiffs also claimed Defendant failed to provide all required meal and rest breaks on a fully-compliant basis, also did not reimburse employees for using their own cell phones for work purposes. Based on these allegations, Plaintiffs’ FAC alleged claims for minimum wage violations, overtime violations, meal and rest break violations, failure to reimburse expenses, failure to provide

1 accurate wage statements, failure to pay all wages due on separation of employment, unfair
2 competition under Bus. & Prof. Code §§ 17200, et seq., and violation of PAGA.

3 6. In response, Rackley denied Plaintiffs' allegations, and argued its meal break and
4 payroll policies and procedures comply with California law, that it provided its employees with
5 required meal and rest breaks, that it properly tracked employee time and paid Plaintiff and all
6 other employees all wages due at the correct hourly and overtime rates. Additionally, Rackley
7 strongly contends the case cannot be maintained as any kind of class or representative action,
8 arguing that to the extent class members missed meal breaks, that such breaks were non-
9 compliant, or that any unpaid "off the clock" work occurred, it was intermittent and infrequent
10 and evidence of such violations would be purely anecdotal, and therefore individualized issues
11 predominate and trial would be unmanageable.

12 7. After the matter was at issue, both sides propounded and responded to extensive
13 written discovery, and further began engaging in meet and confer discussions regarding the
14 discovery responses. Ultimately, the Parties agreed to attempt mediation and also agreed on a
15 protocol for an exchange of additional documents and information before the mediation to
16 facilitate the settlement discussions. Consequently, Plaintiffs' counsel reviewed payroll records,
17 compensation plans, personnel policies/handbooks, meal and rest break policies, personnel files,
18 and a random of sampling of Class Member paystubs and time records. Defendant also provided
19 data regarding the total number of putative class members, the estimated total amount of
20 workweeks and pay periods they worked, average pay rates, and information regarding other non-
21 hourly compensation, among other relevant data.

22 8. The Parties then engaged the Hon. Howard Broadman (Ret.), a respected
23 professional neutral with substantial wage and hour and class action experience. On December
24 12, 2024, the Parties participated in a mediation with Judge Broadman. Throughout the day, the
25 arms-length negotiations were hard-fought and adversarial as the Parties exchanged extensive
26 information on their legal and factual positions, and made numerous offers and counter-offers,
27 and ultimately reached agreement on all major issues. The Parties then collaboratively drafted the
28 Settlement Agreement and Release ("Settlement Agreement") setting forth the settlement terms

1 now before the Court for approval.

2 **THE PROPOSED SETTLEMENT TERMS**

3 9. Under the settlement, Rackley will pay \$512,500 into a common fund, the Gross
4 Settlement Amount (“GSA”). Attorney’s fees of up to \$170,833.33 (1/3 of the GSA), litigation
5 costs of up to \$15,000, settlement administration costs of no more than \$7,495, a service award to
6 each Plaintiff of no more than \$10,000 (\$40,000 total), and PAGA civil penalties of \$50,000 (of
7 which 75%, or \$37,500 will go to the LWDA and 25%, or \$12,500, will go to the PAGA
8 Members on a pro rata basis), all will be paid from the GSA. The balance of around \$229,171.67
9 will be allocated pro rata to the Class Members based on their weeks worked during the Class
10 Period. No portion of the GSA will revert to Rackley.

11 10. The settlement provides for conditional certification of a settlement class including
12 all current and former non-exempt California employees who worked for Defendant at any time
13 during the Class Period December 16, 2018 through March 12, 2025. The Settlement Class consists
14 of about 280 individuals.

15 11. As noted, the settlement obligates Rackley to pay \$512,500 to resolve the
16 Settlement Class’s claims, inclusive of attorney’s fees and costs. At least \$229,171.67 from the
17 GSA will be distributed to the Participating Class Members. This is a cash settlement that does
18 not require Participating Class Members to submit a claim form to receive their settlement share.
19 Participating Class Members will receive their settlement checks automatically via First Class
20 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining
21 eighty percent will be allocated to penalties and interest, which allocation is consistent with
22 Rackley’s potential liability. Rackley will pay any and all applicable employer-side payroll taxes
23 separately and in addition to the GSA. Subject to the Court’s approval, any amounts not claimed
24 (because a class member does not cash their settlement check) will be forwarded to the State
25 Controller’s Unclaimed Property Fund.

26 12. Each Participating Class Member will receive a share of the Net Settlement
27 Amount based on his or her total pay periods worked in California as a non-exempt employee
28 during the Class Period. Thus, each Class Member’s Individual Settlement Payment will be

1 calculated using criteria typically used in determining appropriate amounts of unpaid wages,
2 unpaid premium wages for missed meal and rest breaks, and potential statutory penalties under
3 applicable law. These methods are intended to ensure each Class Member receives a settlement
4 award corresponding to the relative value of their potential claims. The proposed allocation
5 provides a reasonable way to compensate Class Members based on the amount of time they
6 worked for Rackley in California and the amount unpaid/underpaid overtime, the number of
7 missed or non-compliant meal breaks and rest breaks, etc. I estimate the average class award at
8 around \$818, based on approximately \$9.96 per work week, and the average PAGA award at
9 about \$80, based on approximately \$1.71 per pay period.

10 13. After obtaining higher bids from two other providers, and subject to the Court's
11 approval, the Parties have agreed on Apex Class Action, LLC ("Apex") as the Settlement
12 Administrator. Apex is qualified and has significant experience administering class action
13 settlements, including numerous wage and hour matters. Phoenix's fees and costs will not exceed
14 \$7,495.00. If the Court approves less than the above amount, the difference will remain in the Net
15 Settlement Amount for distribution to the Participating Class Members.

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

1 15. Class Members will have sixty days to dispute the information in their Notice used
2 to calculate their settlement award, and also have 60 days to submit any objections to the
3 settlement or to request exclusion. If a Class Member disputes their individual information, the
4 Settlement Administrator will review the Class Member's records and any other information
5 submitted, and make a final determination. PAGA Members may not opt out or otherwise
6 exclude himself or herself from the release of PAGA claims.

7 16. All Participating Class Members will release Rackley from all claims alleged in
8 the operative complaint, or that could have been brought based on the factual allegations in the
9 complaint during the Class Period. The release is limited to the claims that were actually pleaded
10 or could have been pleaded based on the alleged facts in the complaint.

11 17. Plaintiffs devoted time and resources to the litigation, provided documents,
12 responded to extensive written discovery (special and form interrogatories, document requests,
13 and requests for admissions) and assisted my office with investigating the claims asserted and in
14 preparing for the mediation. Defendant will not oppose a request for an enhancement award to
15 Plaintiffs of not more than \$10,000.00 each in recognition of their time spent on this matter, the
16 risks they undertook on behalf of the class, and the benefit conferred to the class, as addressed in
17 their respective declarations filed herewith.

18 18. The terms of the Parties' settlement also allow Plaintiffs' counsel to apply for an
19 award of attorney's fees of up to 1/3 of the GSA, or \$170,833.33 and reimbursement of actual
20 costs and expenses of up to \$15,000.00. A 1/3 award is consistent with California precedent,
21 including Laffitte v. Robert Half Int'l Inc. (2016) 1 Ca1.5th 480, 506. My office will submit a
22 request for attorney's fees and actual litigation costs at final approval per the terms of the
23 Settlement Agreement and applicable law, will provide the Court with appropriate information
24 and evidence regarding hourly rates, tasks performed, and time expended on the case, and further
25 argument supporting the fees requested. My office will not be sharing or splitting any fees
26 awarded with any other attorney or law firm. Additionally, my office has expended
27 approximately \$8,178 in costs on this matter at this time, excluding costs for filing this motion,
28 and we anticipate approximately \$500 in additional costs for final approval, settlement

1 administration, and any compliance hearing(s). If the Court approves less than the above amounts,
2 the difference will remain in the Net Settlement Amount for distribution to the Participating Class
3 Members.

4 19. As noted, the Parties allocated \$50,000 to resolution of Plaintiffs' alleged claims
5 under PAGA, and respectfully submit that amount is fair, reasonable and adequate, and consistent
6 with PAGA's underlying purposes. Consistent with PAGA, \$37,500 of that amount will go to the
7 LWDA for the State's share of the civil penalties, while the remaining \$12,500 will be distributed
8 pro rata to eligible PAGA Members. Prior to filing this motion, my office provided notice of the
9 proposed settlement of the PAGA claims and the approval hearing to the LWDA. A true and
10 correct copy of the LWDA's acknowledgement of receipt is attached hereto as Exhibit 3.

11 20. Class Members and PAGA Members have one hundred and eighty days to cash
12 Individual Settlement Payments. Any Settlement checks not cashed after 180 days from the date
13 of mailing of Individual Settlement Payments shall be sent to the State of California Unclaimed
14 Property Fund in the Class Members' or PAGA Members' name.

15 **B. The Proposed Settlement Class Should Be Conditionally Certified**

16 21. In the present matter, conditional certification is proper since this matter satisfies
17 all requirements for class certification under Code of Civil Procedure section 382. First, the class
18 is both sufficiently numerous, consisting of approximately 280 individuals, and ascertainable by
19 reference to Defendant's personnel and payroll records.

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

24 23. Next, common questions of law and fact predominate – particularly for purposes
25 of a settlement class – as the Class Members all were paid via substantially similar company-wide
26 policies that resulting alleged off the clock work, underpaid overtime, missed/non-compliant meal
27 and rest breaks, etc. Since the focus of the claims against Rackley concerns the legality of
28 common policies applied uniformly to the entire class, common issues predominate over

1 individualized inquiries concerning liability. For instance, Rackley's compensation scheme
2 either properly calculated and paid the class members for overtime hours worked or it did not.
3 Regardless of that determinations, it will decide liability for all Class Members one way or
4 another.

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

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

15 25. Prior to mediation, the parties engaged in extensive formal and informal discovery
16 to facilitate settlement discussions. As a result, Plaintiffs reviewed documents and information
17 regarding Rackley's payroll practices, pay stubs and time records for a sampling of about 20% of
18 the class members, meal and rest break policies, etc., and information from Defendant regarding
19 class size and breakdown of job positions, work weeks, rates of pay, and other information used
20 to formulate a damages model. Plaintiffs' counsel are confident they obtained sufficient
21 information to enable them to understand the law and facts of this case and make an informed
22 decision regarding the proposed settlement and whether it is in the best interests of the class.

23 27. Using that data, Plaintiffs ran various calculations and estimated Rackley's likely
24 maximum exposure on the class claims at approximately \$6,143,500, including about \$327,750
25 on the off the clock/unpaid wage claims, around \$40,350 on the regular rate claims,
26 approximately \$811,400 on the meal period claims, about \$2,704,800 on the rest period claims,
27 about \$115,000 on the expense reimbursement claims, around \$733,000 on the wage statement
28 claims, and \$1,411,200 on the waiting time penalty claims.

1 28. We estimated these amounts as follows:

2 **Minimum Wage/Off the Clock**

3 23,000 work weeks * 1 hour off the clock/week * \$14.25/hour avg. min. wage = \$327,750

4 **Underpaid OT/Regular Rate**

5 11,500 pay periods * 35% violation rate * \$10 avg. underpaid OT = \$40,350

6 **Meal Period Violations**

7 96,600 shifts * 30% violation rate * \$28/hour avg. rate = \$811,400

8 **Rest Period Violations**

9 96,600 shifts * 100% violation rate * \$28/hour avg. rate = \$2,704,800

10 **Expense Reimbursement/Cell Phone Use**

11 23,000 work weeks * \$5/week phone reimbursement = \$115,000

12 **Wage Statement Violations**

13 156 initial violations * \$50/violation + 7,252 subsequent violations * \$100/violation = \$733,000

14 **Waiting Time Penalties**

15 210 former employees * (240 hours * \$28/hour avg. wage) = \$1,411,200

16 29. The unpaid wage claims focus primarily on Rackley's alleged failure to pay Class
17 Members at least minimum wages and/ or overtime wages for all of their hours worked.
18 Plaintiffs allege, for example, they regularly performed post-shift work off the clock, such as
19 cleaning and stowing equipment, cleaning up the job site, etc., which time was not always
20 recorded or paid for. Per Plaintiffs, all of this pre- and post-shift off the clock work resulted in the
21 loss of up to 15 minutes of compensable time per shift.

22 30. Plaintiffs also allege Defendant failed to incorporate all forms of compensation
23 into their regular rate of pay calculations when paying overtime as required by California law.
24 Here, Plaintiffs allege class members regularly received lump sum travel time pay when working
25 on distant projects, but that Rackley failed to pay the required overtime on those payments.
26 Plaintiffs' analysis suggested about 35% of pay periods were subject to this issue where an
27 employee both worked overtime and received travel time pay, such that a recalculation of the
28 regular rate was required.

1 31. In response, Rackley argued its payroll policies are fully compliant, that it
2 properly tracked and paid for all hours worked at the appropriate hourly wage. Defendant also
3 argued that off the clock work was prohibited and if any class members failed to record and
4 report time it was in violation of company policy and would have occurred on a haphazard and
5 individual basis. Accordingly Defendant argued the issue would not be certifiable since it would
6 require individualized inquiries whether any compensable “off the clock” work occurred and why
7 it was or was not documented and paid for, and whether management was even aware of it. In
8 light of Rackley’s defenses and the difficulties inherent in certifying off the clock claims in the
9 absence of any records, we discounted the claim by 80%, to about \$65,000. On the underpaid
10 overtime/regular rate claim, we discounted the claim by 50%, to about \$20,000.

11 32. On the meal and rest break claims, Plaintiffs contend Rackley’s written policies
12 are not fully compliant, and regardless the time and pay records show substantial “de facto”
13 violations for non-compliant meal breaks. For example, Plaintiffs argued Defendant’s own
14 records show large numbers of missed first and second meal periods, as well as untimely meal
15 periods that started after the fifth hour of work. Indeed, Plaintiffs argued Rackley’s own policies
16 mandated that meal periods should start at 12 noon even when employee shifts started at 6 or 6:30
17 a.m., and accordingly were untimely. Overall, Plaintiffs allege their analysis of the sample time
18 records showed at least at a 30% de facto violation rate for missed and untimely meal periods.

19 33. In response, Rackley argued its written policies are fully compliant, particularly
20 and that it provided employees with the opportunity to receive all required meal breaks and
21 thereby met its obligations under the Labor Code and applicable Wage Order. Further, Defendant
22 argued to the extent employees missed a break or took a non-compliant break, any such
23 discrepancies were aberrational and against company policy and a myriad of individual issues
24 would be required to determine whether the potential violation resulted from employee choice or
25 some other reason. It also argued it had no “policy” requiring meal breaks to start at 12 noon,
26 and especially during the summer months employees typically took their meal periods much
27 earlier to get out of the heat. Consequently, per Defendant, individualized inquiries would
28 dominate on this issue and render class certification of the meal break claim inappropriate.

1 34. For rest breaks, Plaintiffs again argued that there were numerous “de facto”
2 violations where class members didn’t receive a break (especially third breaks), or didn’t receive
3 a compliant break/had their breaks interrupted by supervisors. As with meal breaks, Defendant
4 argued the applicable rest break policies complied with California law, and that it authorized and
5 permitted employees to take all required breaks. Defendant further contended that, in light of the
6 fact that it is not required to maintain a record of rest periods, any evidence of failure to authorize
7 rest periods and/or discouragement from taking rest periods would be purely anecdotal and
8 individual issues would predominate on liability. This arguably would once again make class
9 certification and a trial unmanageable since the number of instances an employee missed a rest
10 break, or had a break interrupted, would have to be tested on a case by case basis to determine
11 compliance. On the meal break claims, we applied an 80% risk discount, valuing those claims at
12 about \$160,000, after accounting for Rackley’s defenses on certification and the merits. For the
13 rest break claims, we applied a 90% discount, to about \$270,000

14 35. Plaintiffs also allege they had to use their personal cell phones for work purposes
15 without any reimbursement. As such, employees are entitled to unreimbursed costs for the use of
16 their cell phones. Defendant on the other hand argued that its policies prohibited use of cell
17 phones while working, particularly given the class members frequently worked with heavy
18 equipment and/or worked 2-3 stories in the air while constructing buildings. Per Rackley any use
19 of personal mobile devices was unnecessary to perform the job and therefore was purely for
20 personal convenience. If so, then the expense was neither reasonable nor necessary, and no
21 reimbursement was required. Labor Code § 2802. After considering these defenses, we applied a
22 50% discount on this claim, to about \$57,500 on a risk-discounted basis.

23 36. The claims under Labor Code section 226 allege that certain Defendant’s wage
24 statements did not accurately reflect the “gross wages earned” or the “net wages earned” because
25 Rackley included non-wage amounts paid, such as “nontax” per diems and travel reimbursement,
26 in the tabulation of the gross and net wage amounts. Thus, per Plaintiffs, these particular wage
27 statements overstated both gross and net wages earned. Plaintiffs also allege derivative violations
28 of Labor Code section 226 as well derivative violations of Labor Code sections 201, *et seq.*,

1 which claims are subject to the same risks and uncertainties plus additional risks posed by the
2 need to take into account the discretionary nature of such awards and the “good faith” and other
3 defenses available to Defendant. Thus, while these claims largely are derivative of the unpaid
4 wage claim, they also are subject to additional defenses. We applied a 70% risk discount on the
5 wage statement claim, and an 80% risk discount to each of these claims as well, yielding after
6 trial values of about \$220,000 and \$280,000 respectively.

7 37. As far as potential PAGA liability, the allegedly aggrieved employees theoretically
8 are entitled to penalties totaling around \$3.7 million in civil penalties should Plaintiffs prevail on
9 all claims and establish violations of the multiple Labor Code sections for every single pay period
10 at issue, and recover the maximum allowable penalties. As with the class claims, Plaintiffs
11 discounted the potential PAGA penalties based on Defendant’s various defenses on the merits
12 and also accounted for the Court’s wide discretion to reduce such penalties, or to decline to award
13 penalties at all. Accordingly, the Parties allocated \$50,000 to PAGA penalties, and Plaintiffs
14 submit this amount is reasonable under the circumstances and in line with comparable settlements
15 in other wage and hour class actions in California. Additionally, the LWDA has been informed of
16 the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary.

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

27 39. Plaintiffs and I discounted the value of the class claims consistent with the risks
28 discussed above, and carefully weighed the likelihood of the class receiving substantially greater

benefit if the litigation continued. We concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class, and the overall \$512,500 recovery represents a significant percentage of Defendant’s maximum potential exposure, and amounts to about 47% of the estimated \$1,082,500 risk discounted exposure. Given these risks, a total recovery for the class of \$512,500, which will result in average award of some \$818 per class member, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay.

40. I am a 1989 graduate of the College of William and Mary, and a 1995 graduate *cum laude* of the University of San Diego School of Law, where I was selected to the Order of the Coif and the Order of Barristers. Prior to 2003, I was a litigation associate with Ross Dixon & Bell, LLP (now Troutman Pepper Locke LLP), in Orange County, California, where my practice focused on complex business, employment, and insurance coverage disputes. In 2003, I became associated with Dostart Clapp & Coveney, LLP, then one of the premiere plaintiffs’ wage and hour class action firms in California. In 2008, I founded the Law Offices of J. Kirk Donnelly. Since 2003, my practice has focused on representing plaintiffs in wage and hour and consumer law matters, including both class actions and individual matters. I have served as class and/or PAGA counsel in a number of wage and hour class and representative actions, including: Martinez v. ‘T’ McGee Electric, Inc., Case No. CIVSB2114427 (San Bernardino County Superior Court); Herrera v. Stone Etc., Inc., et al., Case No. 21STCV43188 (Los Angeles Superior Court); Acosta v. Turlock Walnut Company, Case No. 22-CV-001051 (Stanislaus County Superior Court); Trujillo v. Ford Spraying, Inc., Case No. VCU298017 (Tulare County Superior Court); Velasquez v. Water Damage Rescue, Inc. Case No. 21STCV46033 (Los Angeles County Superior Court); Rico v. FMA Landscape Services, Inc., Case No. 23CV409762 (Santa Clara County Superior Court); Galindo v. Berro Management Company, Inc., Case No. 22STCV25853 (Los Angeles Superior Court); Quintero, et al. Greg Markarian Ag Enterprises, Inc., Case No. 23CV-00106 (Merced County Superior Court); George v. Retail Merchandising Solutions, Inc., Case No. RG16828194 (Alameda County Superior Court); Bolanos v Lyneer Staffing Solutions

1 LLC, Case No. 23STCV21860 (Los Angeles County Superior Court); Buford v. Medical
2 Solutions, LLC, Case No. 18-CV-04104 YGR (N.D. Cal.); Bautista v. Western Care
3 Construction, Case No. S-CV-0049217 (Placer County Superior Court); Delgado v Vander
4 Woude Farms, Case No. 23CV-04131 (Merced County Superior Court); Herrera v. TVI, Inc., et
5 al., Case No. CIVDS1722863 (San Bernardino County Superior Court); Rios v AMI Foods, Inc.
6 Case No. 22CV005381 (Alameda County Superior Court); Freeman v. Bank of America, N.A.,
7 Case No. CGC18471710 (San Francisco County Superior Court); Gutierrez v. Fraiche Catering,
8 Inc., Case No. CGC-23-605255 (San Francisco Superior Court); Gomez v. Giulietta Italian
9 Foods, Inc., Case No. 22CV392988 (Santa Clara County Superior Court), Echeverria v.
10 Technicote, Inc., Case No. RIC1714621 (Riverside County Superior Court), Acosta v. ECC
11 Capital Corporation, Case No. 30-2009-00180086 (Orange County Superior Court), Tiffany v.
12 Hometown Buffet, Inc., Case No. 06-CV-2524 SMA (N.D. Cal.), Mendoza v. Bear Stearns
13 Residential Mortgage Corporation, Case No. 08-CV-6916 DSF (C.D. Cal.), In Re: First Franklin
14 Employment Cases, JCCP No. 4598 (San Diego County Superior Court), Mendoza v. ECC
15 Capital Corporation, Case No. 08-CV-6916 JN (C.D. Cal.), Acosta v. Bear Stearns, Case 30-
16 2009-00180086 (Orange County Superior Court); George v. Mercado Latino, Inc., Case No.
17 CIVDS1822302 (San Bernardino County Superior Court), Verduzco v. Ramco Enterprises, LP, et
18 al., Case No. 18CV004104 (Monterey County Superior Court); Gonzalez v. Power Design, Inc.,
19 Case No. 19STCV31839 (Los Angeles County Superior Court); Weston v. Cuesta Investments,
20 Case No. 18CV04823 (Santa Barbara County Superior Court); Martinez v. DNNEY Trade Co.,
21 Case No. 18STCV09631 (Los Angeles County Superior Court); Navarro v. Ressac, Case No.
22 19STCP00319 (Los Angeles County Superior Court); Villalta v. Stars Recreation Center, Case
23 No. FCS054507 (Solano County Superior Court); Anglin v. Sonnikson and Stahl Construction,
24 Case No. CIVMSC19-00149 (Contra Costa County Superior Court); Rosendahl v. Riverside
25 Metro Auto Group, Case No. RIC1903707 (Riverside County Superior Court); Hawkins v. SAS
26 Retail Services, Inc., Case No. 30-2017-00958467-CU-OE-CXC (Orange County Superior
27 Court); Salazar v. National Labor Contractors, et al., Case No. CIVDS1905225 (San Bernardino
28 County Superior Court); Reyes v. Assa Abloy Door Controls and Accessories Group, Inc., Case

1 No. 56-2019-00523849-CU-OE-VTA (Ventura County Superior Court); Valencia v The Original
2 Mowbray's Tree Service, Incorporated, Case No. CIVDS1825518 (San Bernardino County
3 Superior Court); Castillo v. Gaither's Family Homes, Inc., Case No. VCU277188 (Tulare County
4 Superior Court); Canales v. Fashion Design, LLC, Case No. 30-2019-010529520CU-OD-CXC
5 (Orange County Superior Court); and Thomas v Californian-Magnolia Convalescent Hospital,
6 Inc., Case No. RIC1901197 (Riverside County Superior Court).

7 41. During the approximately five years I was associated with DCC, the firm was
8 appointed class counsel in over 20 class actions alleging violations of federal and California wage
9 and hour laws. I played an integral role in litigating these matters, which included some of the
10 largest and most complex wage and hour class actions ever brought in California. For instance,
11 while I was with DCC, the firm was co-lead counsel in Bahramipour v. Citigroup Global
12 Markets, Inc., Case No. 04-0440-CW (N.D. Cal.), a class action on behalf of stockbrokers
13 employed by Citigroup (as well as several predecessor entities) for unpaid overtime,
14 reimbursement of business expenses, and improper deductions from wages. Although the matter
15 initially was filed on behalf of a class of California-only employees, it eventually evolved into a
16 nationwide class action on behalf of over 17,000 class members, and ultimately settled for
17 approximately \$106 million. Likewise, I played a prominent role in litigating Takacs v. A.G.
18 Edwards & Sons, Inc., Case No. 04-CV-1852 JAH (S.D. Cal.), one of the first class actions
19 brought in California on behalf of stock brokers seeking recovery of overtime wages and
20 reimbursement for business expenses and improper wage deductions, and one of the most
21 extensively litigated such cases. The matter resulted in a comprehensive opinion denying
22 defendant's motion for summary judgment, found at 444 F.Supp.2d 1100, which opinion decided
23 several issues present in all of the stock broker overtime cases in the plaintiffs' favor.

24 42. My firm has obtained several multi-million dollar wage and hour class
25 action/PAGA settlements while serving as lead counsel in recent years, including a \$9.75 million
26 wage and hour class action/PAGA settlement in Freeman v. Bank of America, N.A., a \$1.4
27 million dollar wage and hour class action settlement in Mendoza v. Bear Stearns Residential
28 Mortgage Corporation, a \$1.2 million dollar class action settlement in In re: First Franklin

1 Employment Cases, and a \$1.2 million dollar wage and hour class action/PAGA settlement in
2 George v. Retail Merchandising Solutions, Inc.

3 43. For the foregoing reasons, it is respectfully requested that the Court approve the
4 settlement.

5 44. I have reviewed the Court's Checklist for Approval of Class Action and/or PAGA
6 Settlements, and believe the settlement documents and motion papers comply with the Court's
7 requirements.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct. Executed this 4th day of March 2025, at Carlsbad, California.

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12 _____
13 Declarant
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EXHIBIT 1

CLASS AND PAGA ACTION SETTLEMENT AGREEMENT

This Class and PAGA Action Settlement Agreement (“Agreement”) is made by and between Jose Santiago Arizaga, Sergio Santiago Arizaga, Gerardo Santiago Arizaga, and Nicolas Santiago Arizaga (“Plaintiffs”) and Rackley Company, Inc. (“Defendant”). Plaintiffs and Defendant shall collectively be referred to as “Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1. “Action” means the lawsuit alleging wage and hour violations against Defendant: Gerardo Santiago Arizaga, Nicolas Santiago Arizaga, *Sergio Santiago Arizaga, and Jose Santiago Arizaga v. Rackley Company, Inc.*, Superior Court of the State of California, County of Sacramento, Case No. 23CV03138.

1.2. “Administrator” means Apex Class Action, LLC the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. “Agreement” or “Settlement Agreement” shall mean this Class and PAGA Action Settlement Agreement, including the Class Notice.

1.5. “Aggrieved Employee” means all current and former non-exempt California employees who worked for Defendant at any time during the PAGA Period.

1.6. “Class Counsel” means J. Kirk Donnelly and The Law Offices of J. Kirk Donnelly, APC.

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 a complete list that Defendant will provide to the Settlement Administrator on one spreadsheet which shall include the Class Member’s name, last-known mailing address, Social Security Number, date of hire, and date of termination (if any) during the Class Period.

1.9. “Class Member” means all current and former non-exempt California employees who worked for Defendant at any time during the Class Period

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 to be mailed to

Class Members in English with a certified Spanish translation in the form attached as Exhibit A and incorporated by reference into this Agreement.

1.12. “Class Period” means the period from December 16, 2018 through the earlier of (a) the date the Court enters an order granting preliminary approval of this settlement or, (b) March 12, 2025 (i.e., 90 days after mediation).

1.13. “Class Representatives” and “Plaintiffs” each means Jose Santiago Arizaga, Sergio Santiago Arizaga, Gerardo Santiago Arizaga, and Nicolas Santiago Arizaga.

1.14. “Class Representative Service Payment” means the payments to the Class Representatives for initiating the Action and providing services in support of the Action.

1.15. “Complaint” refers to the operative complaint filed in the Action, which is the Complaint filed on or about June 12, 2023, alleging class and representative PAGA action claims.

1.16. “Court” means the Superior Court of California, County of Sacramento.

1.17. “Defendant” means Rackley Company, Inc.

1.18. “Defense Counsel” means Brian Bertossa and Daniel F.C. Kozieja and Cook Brown LLP.

1.19. “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.

1.20. “Exclusion List” means the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion.

1.21. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.22. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

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

1.24. “Gross Settlement Amount” or “GSA” means Five Hundred Twelve Thousand Five Hundred Dollars and Zero Cents (\$512,500.00), which is the total amount Defendant agrees to pay under the Settlement, except for the employer’s share of applicable payroll tax obligations that Defendant shall separately pay. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, the Class Representative Service Payments, and the Administrator’s Expenses.

1.25. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of workweeks worked during the Class Period.

1.26. “Individual PAGA Payment” means the Aggrieved Employees’ pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods Worked during the PAGA Period.

1.27. “Judgment” means the judgment entered by the Court based upon the Final Approval.

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

1.29. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.30. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.31. “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.

1.32. “PAGA Period” means the period from period between April 3, 2022 through the earlier of (a) the date the Court enters an order granting preliminary approval of this settlement or, (b) March 12, 2025 (i.e., 90 days after mediation).

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

1.34. “PAGA Notice” means Plaintiffs’ April 3, 2023, letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a).

1.35. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid (\$50,000.00), allocated 25% (\$12,500.00) to the Aggrieved Employees and 75% (\$37,500.00) to LWDA in settlement of PAGA claims.

1.36. “Pay Periods” means all pay periods during which the Aggrieved Employee was employed by Defendant and worked at least one shift during the PAGA Period.

1.37. “Participating Class Member” means all Class Members except for those who opt-out by submitting a timely and valid Request for Exclusion.

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 and Approval of the Settlement.

1.40. “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.

1.41. “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.

1.42. “Released Parties” means: Defendant and all of its past or present owners, officers, directors, shareholders, members, executives, partners, employees, insurers, managers, agents, representatives, predecessors, successors, parents, subsidiaries, joint ventures and affiliated entities.

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 60 days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may prepare and submit a “Request for Exclusion” to the Settlement Administrator. Class Members to whom Notice Packets are re-sent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

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

1.46. “Weekly Report” refers to the report that the Administrator must email to Defense Counsel and Class Counsel on a weekly basis 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 credited (i) Workweeks during the Class Period or (ii) Pay Periods Worked during the PAGA Period, received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments. The Weekly Report 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.

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

2. RECITALS.

2.1. On June 12, 2023, Plaintiffs commenced the Action by filing a complaint alleging class action allegations against Defendant for failure to pay wages due, including minimum and overtime wages, failure to provide meal periods, failure to provide rest periods, failure to reimburse business expenses, failure to provide accurate itemized wage statements, failure to pay all wages due on separation of employment, and unfair competition, and a cause of action under the Private Attorneys General Act Labor Code §§ 2698, *et seq.* for alleged violations of Labor Code sections 201-203, 204, 210, 216, 221-224, 226, 226.7, 245.5, 246, 450, 510, 512, 514, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 1199, 2802, 2810.3, 2810.5, and all applicable wage orders. Defendant denies the allegations in the Action, denies any

failure to comply with the laws identified in the Action, and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave timely written notice to Defendant and the LWDA by sending a PAGA Notice on or about April 3, 2023.

2.3. On December 12, 2024, the Parties participated in a private mediation presided over by the Hon. Howard Broadman (Ret.), which resulted in this Agreement to settle the Action.

2.4. Prior to and during mediation, in preparation of negotiating and reaching Settlement, Plaintiffs obtained, through formal and informal discovery, documents and information, including but not limited to Plaintiffs' personnel file and time/payroll records, Defendant's policies and practices regarding payroll, meal and rest breaks, and expense reimbursement, information relating to the size of the Class and the number of Aggrieved Employees, number of Workweeks, as well as a statistically significant sampling of payroll and timekeeping records of putative class members during the Class Period. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.5. 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.

2.7. The Parties recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. The Parties also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Based on the foregoing, the Parties believe the Settlement set forth in this Settlement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Defendant agrees to pay \$512,500.00 and no more as the Gross Settlement Amount, and to separately pay any and all employer payroll taxes owed on the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadlines 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 Defendant.

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:

3.2.1. To Plaintiffs: Class Representative Service Payments to the Class Representatives

of not more than \$10,000.00 each (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as a Participating Class Member and Aggrieved Employee). Defendant will not oppose Plaintiffs' request for Class Representative Service Payments that do not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves Class Representative Service Payments less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments and Individual Settlement Payment using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payment and the Individual Settlement Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of no more than one-third (1/3) of the GSA, which is currently estimated to be \$170,833.33, and a Class Counsel Litigation Expenses Payment of not more than \$15,000. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, 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 \$7,495.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$7,495.00, the Administrator will retain the remainder in the Net Settlement Amount to be distributed to the class pro rata.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks 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. One-third of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining two-thirds of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for expense reimbursement, interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$50,000.00 to be paid from the Gross Settlement Amount, with 75% (\$37,500.00) allocated to the LWDA PAGA Payment and 25% (\$12,500.00) 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 by the total number of Pay Periods Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's Pay Periods Worked. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks. Based on its records, Defendant estimates that as of December 12, 2024, there are estimated totals of 280 Class Members and 23,000 Workweeks during the Class Period. If the number of Workweeks exceeds 23,000 Workweeks by more than 15%, or 26,450 Workweeks, Defendant may elect at its discretion either (1) to increase the Gross Settlement Amount on a pro-rata basis equal to the increase in the number of Workweeks over 15% or (2) to cut off the Class Period at an earlier date to avoid an increase in Class Workweeks over 15%.

4.2. Class Data. Not later than twenty (20) days after service of notice of entry of the Order granting Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount and the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than thirty (30) days after service of notice of entry of the Order granting Final Approval.

4.4. Payments from the Gross Settlement Amount. Within ten (10) days after Defendant funds the Gross Settlement Amount and required employer-side payroll taxes, 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 Payments. Disbursements of Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Individual Settlement 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 Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (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 also send checks for Individual PAGA Payments to all Aggrieved Employees. If the recipient is both a Participating Class Member and Aggrieved Employees, the Payments may be contained on one check. 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 Class Members 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 Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment checks or Individual PAGA Payment checks are uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California State Controller's Unclaimed Property Fund.

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

5. RELEASES OF CLAIMS. As of the date Defendant fully funds the entire Gross Settlement Amount and all required employer payroll taxes, Plaintiffs, Participating Class Members, Aggrieved Employees and Class Counsel will release claims against all Released Parties as follows:

5.1. Plaintiffs' Release.

5.1.1. Scope of Plaintiffs' Release. In consideration of Defendant's promises and agreements as set forth herein, Plaintiffs and their 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, from the beginning of time through the execution of this Agreement including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Complaint including but not limited to any and all any claims related to Plaintiffs' employment with Defendant and for wages, meal period premiums, rest period

premiums, reimbursements, bonuses, severance pay, vacation pay, sick pay, penalties, employment benefits, stock options, violation of any personnel policy; and any and all claims against Defendant or damages of any kind whatsoever, arising out of any common law torts, contracts, express or implied, any covenant of good faith and fair dealing, or any federal, state, or other governmental statute, executive order, regulation or ordinance, or common law, or any other basis whatsoever, to the fullest extent provided by law including, but not limited to, those claims arising out of employment, and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Complaint, Plaintiffs' PAGA Notice or released under Paragraphs 5.2 and 5.3, below ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

5.1.2. Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

5.2. Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint, including, but not limited to, claims under the applicable Wage Order(s), Labor Code sections 201-203, 204, 210, 216, 221-224, 226, 226.7, 245.5, 246, 450, 510, 512, 514, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 1199, 2802, 2810.3, and 2810.5, including claims for unpaid minimum wages; failure to pay overtime; failure to provide meal premiums and/or unpaid meal period premiums; failure to authorize and permit rest breaks and/or unpaid rest break premiums; failure to reimburse business expenses, failure to timely pay final wages; failure to provide complete wage statements; failure to keep accurate and complete payroll records; failure to maintain a compliant sick leave policy; failure to provide paid sick leave; and unfair competition under Business & Professions Code sections 17200, *et seq.* (the "Released Class Claims"). The operative release period for the Released Class Claims is the Class Period. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3. Release by Aggrieved Employees: All Aggrieved Employees 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 in the Complaint and Plaintiffs' PAGA Notice, or reasonably could have been alleged based on

the facts stated in the Complaint and the PAGA Notice, including but not limited to PAGA claims premised on violation of Labor Code sections 2698, *et seq.* for alleged violations of Labor Code sections 201-203, 204, 210, 216, 221-224, 226, 226.7, 245.5, 246, 450, 510, 512, 514, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 1199, 2802, 2810.3, 2810.5, including claims for unpaid minimum wages; failure to pay overtime; failure to provide meal premiums and/or unpaid meal period premiums; failure to authorize and permit rest breaks and/or unpaid rest break premiums; failure to reimburse business expenses, failure to timely pay final wages; failure to provide complete wage statements; failure to keep accurate and complete payroll records; failure to maintain a compliant sick leave policy; failure to provide paid sick leave; and unfair competition under Business & Professions Code sections 17200, *et seq.*, and all applicable wage orders and applicable sections of the relevant Industrial Welfare Commission Wage Order(s) (the “Released PAGA Claims”). The operative release period for the Released PAGA Claims is the PAGA Period.

6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to expeditiously and jointly prepare and file an unopposed motion for preliminary approval (“Motion for Preliminary Approval”).

6.1 Plaintiffs’ Responsibilities. Within 30 days after full execution of this Agreement, Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (iv) signed declarations from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from Class Counsel attesting to its competency to represent the Class Members; the 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)); (vi); and all facts relevant to any actual or potential conflict of interest with Class Members, and/or the Administrator. In their Declarations, Plaintiffs 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.

6.2 Responsibilities of Counsel Class Counsel will expeditiously finalize and file the Motion for Preliminary Approval no later than 40 days after the full execution of this Agreement; obtain a prompt mutually convenient hearing date for the Motion for Preliminary Approval; and Class Counsel and Defense Counsel will appear 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, and all related documents.

6.3 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.

6.4 Defendant's Right To Withdraw. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendant may, but is not obligated, to elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, 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, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant 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.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected the Administrator to serve and verified that, as a condition of appointment, the Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

7.4 Notice to Class Members.

7.4.1 No later than five (5) 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 in the Class Period and Pay Periods Worked in the PAGA Period, in the Class Data.

7.4.2 Using best efforts to perform as soon as possible, and in no event later than ten (10) business days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as Exhibit A, or as modified by the Court and agreed to by the Parties. 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 worked during the Class Period and Pay Periods Worked during the PAGA Period (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 three (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 Worked, and Requests for Exclusion will be extended an additional 14 calendar days beyond the Response Deadline 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, Defense Counsel, Class Counsel or Defendant are contacted by or otherwise discover 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 calendar 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 email, fax, or mail a signed written Request for Exclusion no later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be postmarked by the Response Deadline.

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

7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases 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 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks Or Pay Periods Worked During PAGA Period. Each Class Member shall have until the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Workweeks or Pay Periods Worked that were allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator in writing via mail, email or fax. 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 Workweeks and Pay Periods Worked 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 Pay Periods Worked 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 Pay Periods Worked during the PAGA Period to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 Objections to Settlement.

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

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

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

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

7.8.1 Email Address and Toll-Free Number. The Administrator will maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails. Upon request of a Class Member, the Administrator will be authorized to provide 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.

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 the Exclusion List to Defense Counsel containing (a) the Exclusion List containing names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion; (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). Class member identifying information shall not be shared with Class Counsel. Class Counsel will receive general reports from the Administrator as detailed in the next section.

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 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.

7.8.4 Pay Period And Workweek Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and 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 before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, 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 Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator must also provide a breakdown of the Gross Settlement Amount, high/low/average payments to Participating Class Members, the total Pay Periods Worked by Class Members and Aggrieved Employees and the per Pay Period value of each. 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 fourteen (14) 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. MOTION FOR FINAL APPROVAL. Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final

Approval Order and Judgment (collectively “Motion for Final Approval”). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than 5 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone or email, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

8.1 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 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

8.2 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 Class Members), 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.

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

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

8.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), 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.

8.6 Under California Rule of Court 3.771(b), the Administrator will provide notice of the Judgment to the Class by posting a copy of the Judgment on its website for a period of no less than sixty (60) days following entry of Judgment.

9. ADDITIONAL PROVISIONS.

9.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the operative Complaint and/or PAGA Notice have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and 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).

9.2 Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency.

Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

Nothing herein shall restrict Class Counsel from complying with filing and notice requirements to the LWDA relating to PAGA settlements or otherwise including publicly available information regarding this Settlement in future judicial submissions regarding Class Counsel's qualifications and experience.

9.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

9.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to

or by any Party.

9.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

9.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

9.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

9.8 No Tax Advice. Neither Plaintiffs, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

9.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

9.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

9.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

9.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

9.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement. Class Counsel and Plaintiffs agree that they will not issue any press release, press statement, initiate media coverage, or respond to any media inquiries regarding the Lawsuit, Defendant or the Released Parties, or the settlement of this Lawsuit. Class Counsel and Plaintiffs agree that any website or social media posting will refer to Defendant's respective names simply as "Confidential."

9.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs will destroy, all paper and electronic versions of Class and PAGA Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class and PAGA Data.

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

9.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

9.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs:

J. Kirk Donnelly
Law Offices of J. Kirk Donnelly, APC
2173 Salk Ave., Ste. 250
Carlsbad CA 92008
kdonnelly@jkd-law.com

To Defendant:

Brian Bertossa
Daniel F.C. Kozieja
Cook Brown LLP
2407 J Street, Second Floor
Sacramento CA 95816
bbertossa@cookbrown.com
dkozieja@cookbrown.com

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

9.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process. Through signing this Agreement, Plaintiffs are agreeing to withdraw their pending discovery requests. This does not prejudice Plaintiffs' ability to reserve discovery in the future should Defendant exercise its right to void this Agreement as detailed herein or if litigation continues due to some other cause including, but not limited to, a lack of court approval of the Agreement.

AGREED AS TO FORM AND CONTENT

PLAINTIFFS

Date: _____

SERGIO SANTIAGO ARIZAGA

Date: _____

GERARDO SANTIAGO ARIZAGA

Date: 02 / 12 / 2025

José Santiago

JOSE SANTIAGO ARIZAGA

Date: _____

NICOLAS SANTIAGO ARIZAGA

DEFENDANT RACKLEY COMPANY, INC.

Date: _____

Sign: _____

Print Name: _____

Its: _____

AGREED AS TO FORM

Date: 2/12/25

LAW OFFICES OF J. KIRK DONNELLY,
APC

J. Kirk Donnelly

J. Kirk Donnelly

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AGREED AS TO FORM AND CONTENT

Date: 02 / 12 / 2025

PLAINTIFFS

Sergio
Santiago

SERGIO SANTIAGO ARIZAGA

Date: _____

GERARDO SANTIAGO ARIZAGA

Date: _____

JOSE SANTIAGO ARIZAGA

Date: _____

NICOLAS SANTIAGO ARIZAGA

DEFENDANT RACKLEY COMPANY, INC.

Date: _____

Sign: _____

Print Name: _____

Its: _____

AGREED AS TO FORM

Date: 2/12/25

LAW OFFICES OF J. KIRK DONNELLY,
APC

J. Kirk Donnelly
J. Kirk Donnelly

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AGREED AS TO FORM AND CONTENT

PLAINTIFFS

Date: _____

SERGIO SANTIAGO ARIZAGA

Date: 02 / 12 / 2025

Gerardo Santiago

GERARDO SANTIAGO ARIZAGA

Date: _____

JOSE SANTIAGO ARIZAGA

Date: _____

NICOLAS SANTIAGO ARIZAGA

DEFENDANT RACKLEY COMPANY, INC.

Date: _____

Sign: _____

Print Name: _____

Its: _____

AGREED AS TO FORM

Date: 2/12/25

LAW OFFICES OF J. KIRK DONNELLY,
APC

J. Kirk Donnelly
J. Kirk Donnelly

9.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process. Through signing this Agreement, Plaintiffs are agreeing to withdraw their pending discovery requests. This does not prejudice Plaintiffs' ability to reserve discovery in the future should Defendant exercise its right to void this Agreement as detailed herein or if litigation continues due to some other cause including, but not limited to, a lack of court approval of the Agreement.

AGREED AS TO FORM AND CONTENT

PLAINTIFFS

Date: _____

SERGIO SANTIAGO ARIZAGA

Date: _____

GERARDO SANTIAGO ARIZAGA

Date: _____

JOSE SANTIAGO ARIZAGA

Date: 02 / 12 / 2025

Nicolas
Santiago

NICOLAS SANTIAGO ARIZAGA

DEFENDANT RACKLEY COMPANY, INC.

Date: _____

Sign: _____

Print Name: _____

Its: _____

AGREED AS TO FORM

Date: 2/12/25

LAW OFFICES OF J. KIRK DONNELLY,
APC

J. Kirk Donnelly
J. Kirk Donnelly

Attorneys for Plaintiffs

COOK BROWN LLP

Date: _____

Brian Bertossa
Daniel F.C. Kozieja
Attorneys for Defendant

9.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process. Through signing this Agreement, Plaintiffs are agreeing to withdraw their pending discovery requests. This does not prejudice Plaintiffs' ability to reserve discovery in the future should Defendant exercise its right to void this Agreement as detailed herein or if litigation continues due to some other cause including, but not limited to, a lack of court approval of the Agreement.

AGREED AS TO FORM AND CONTENT

PLAINTIFFS

Date: _____

SERGIO SANTIAGO ARIZAGA

Date: _____

GERARDO SANTIAGO ARIZAGA

Date: _____

JOSE SANTIAGO ARIZAGA

Date: _____

NICOLAS SANTIAGO ARIZAGA

DEFENDANT RACKLEY COMPANY, INC.

Date: 2/27/25

Sign: _____

Print Name: SCOTT RACKLEY

Its: President

AGREED AS TO FORM

Date: _____

LAW OFFICES OF J. KIRK DONNELLY,
APC

J. Kirk Donnelly

Attorneys for Plaintiffs

COOK BROWN LLP

A handwritten signature in blue ink, reading "Daniel F.C. Kozieja", written over a horizontal line.

Date: 2/27/25

Brian Bertossa

Daniel F.C. Kozieja

Attorneys for Defendant

Exhibit “A”

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

Santiago Arizaga, et al. v. Rackley Company, Inc., Superior Court of the State of California,

County of Sacramento

Case No. 23CV03138

***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 Rackley Company, Inc. (“Rackley” or “Defendant”), for alleged wage and hour violations. The Action is brought by Jose Santiago Arizaga, Sergio Santiago Arizaga, Gerardo Santiago Arizaga, and Nicolas Santiago Arizaga (“Plaintiffs”) and seeks payment of (1) unpaid wages, statutory damages, meal period and/or rest break premiums, unreimbursed business expenses, penalties for pay stub and wage violations, interest, and attorney’s fees on behalf of a class of non-exempt/hourly employees of Rackley (“Class Members”) during the Class Period (December 16, 2018 through March 12, 2025); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all non-exempt/hourly employees of Rackley, who worked in California during the PAGA Period (April 3, 2022 through March 12, 2025) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments and make payment to the California Labor & Workforce Development Agency (“LWDA”).

[CLASS MEMBER NAME] [ID/CONTROL NUMBER]

Two Parts	Workweeks Worked During Class Period (Class Member); Pay Periods Worked During PAGA Period (Aggrieved Employee)	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Based on Defendant’s records, and the Parties’ current assumptions, your Individual Class Payment (less withholdings), your individual Class Payment and your Individual PAGA Payment are shown in the chart above, along with the workweeks and pay periods worked you are credited with working during the Class Period and PAGA Period, respectively, according to Defendant’s

records. 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 Defendant's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.) If you believe you worked more workweeks or pay periods during either of the relevant periods, you can submit a challenge by the deadline. 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. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs' attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING & PARTICIPATE IN THE SETTLEMENT	If you want to receive your settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described below.
OPT-OUT (EXCLUDE YOURSELF) DEADLINE: 	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. If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims. See Section 10 of this Notice.
OBJECT DEADLINE: 	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 3 of this Notice.
DISPUTE YOUR	If you believe that your number of workweeks or pay periods worked listed

WORKWEEKS OR PAY PERIODS WORKED DEADLINE: 	above is incorrect, you may challenge it. The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks and pay periods you worked during the Class and PAGA Periods. The number you are credited are shown in the chart on the first page, and are based on Defendant's records. If you disagree with either of these numbers, you must challenge it by the deadline. See Section 4 of this Notice.
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Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT'S NOT REQUIRED	
DATE: TIME: A.M. / P.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. 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.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former employees of Rackley. The Action accuses Defendant of violating California labor laws by failing to pay minimum wages, overtime wages, meal and rest period premiums, and timely wages, failing to reimburse business expenses, and failing to provide meal periods, rest breaks and accurate itemized wage statements, among other things. Based on the same claims, Plaintiffs also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) ("PAGA").

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

Plaintiffs are represented by attorneys in the Action ("Class Counsel"). See Section 9 below for their contact information.

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

So far, the Court has made no determination whether Defendant or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Defendant 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, Defendant does not admit any violations or concede the merit of any claims.

The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate,

authorized this Notice, and scheduled a hearing to determine Final Approval.

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

1. Defendant Will Pay \$512,500.00 as the Gross Settlement Amount (“Gross Settlement”). Defendant 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 Payments, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and the amounts to be paid to the LWDA. Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement no later than 30 days after the Court grants Final Approval and enters Judgment. 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.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. \$170,833.33 (1/3 of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$15,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. \$10,000.00 to each Plaintiff as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class.
 - C. Up to \$7,495.00 to the Administrator for services administering the Settlement.
 - D. \$50,000.00 for the PAGA settlement, allocated 75% (\$37,500.00) to the LWDA PAGA Payment and 25% (\$12,500.00) in Individual PAGA Payments to the Aggrieved Employees based on their share of Pay Periods Worked during the PAGA Period.

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

3. 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 workweeks during the Class Period.
4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendant are asking the Court to approve an allocation of one-third of each Individual Class Payment to taxable wages (“Wage Portion”) and two-thirds to unreimbursed expenses, penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported

on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and Defendant 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.

5. 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 sent to the California State Controller's Unclaimed Property Fund.
6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than the Response Deadline that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's 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 Defendant.

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 Defendant based on the PAGA Period facts alleged in the Action.

7. 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 Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.
8. Administrator. The Court has appointed a neutral company, Apex Class Action, LLC (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 and pay periods worked, 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.

9. Participating Class Members' Release. After the Judgment is final and Defendant has fully funded the entire 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 Defendant or related entities for wages based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint, including, but not limited to, claims under the applicable Wage Order(s), Labor Code sections 201-203, 204, 210, 216, 221-224, 226, 226.7, 245.5, 246, 450, 510, 512, 514, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 1199, 2802, 2810.3, 2810.5, including claims for claims for unpaid minimum wages; failure to pay overtime; failure to provide meal premiums and/or unpaid meal period premiums; failure to authorize and permit rest breaks and/or unpaid rest break premiums; failure to reimburse business expenses, failure to timely pay final wages; failure to provide complete wage statements; failure to keep accurate and complete payroll records; failure to maintain a compliant sick leave policy; failure to provide paid sick leave; and unfair competition under Business & Professions Code sections 17200, *et seq.* (the "Released Class Claims"). The operative release period for the Released Class Claims is the Class Period. 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.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendant has paid the entire Gross Settlement and separately paid the employer-side payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against Defendant, 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 Defendant or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases are as follows:

All Aggrieved Employees 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 in the Complaint and Plaintiffs' PAGA Notice, or reasonably could have been alleged based on the facts stated in the Complaint and the PAGA Notice, including but not limited to PAGA claims premised on violation of Labor Code sections Labor Code §§ 2698, *et seq.* for alleged violations of Labor Code sections 201-203, 204, 210, 216, 221-224, 226, 226.7, 245.5, 246, 450, 510, 512, 514, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 1199, 2802, 2810.3, 2810.5, including claims for unpaid minimum wages; failure to pay overtime; failure to provide meal premiums and/or unpaid meal period premiums; failure to authorize and permit rest breaks and/or unpaid rest break premiums; failure to reimburse business expenses, failure to timely pay final wages; failure to provide complete wage statements; failure to keep accurate and complete payroll records; failure to maintain a compliant sick leave policy; failure to provide paid sick leave; and unfair competition under Business & Professions Code sections 17200, *et seq.*, and all applicable wage orders and applicable sections of the relevant Industrial Welfare Commission Wage Order(s) (the "Released PAGA Claims"). The operative release period for the Released PAGA Claims is the PAGA Period.

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

1. 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 during the Class Period, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member during the Class Period.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$12,500.00 by the total number of Pay Periods Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Pay Periods Worked by each individual Aggrieved Employee during the PAGA Period.
3. Workweeks Worked and Pay Period Challenges. The number of workweeks you worked during the Class Period and the number of pay periods you worked during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until [INSERT DATE] ("Response Deadline") to challenge the number of workweeks 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 Defendant's calculation of workweeks and pay periods based on Defendant's records as accurate unless you send copies of records containing contrary

information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, a check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) and Aggrieved Employee. The check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, an Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

Your checks 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 legible writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Arizaga v. Rackley Company, Inc.*, and include your identifying information (full name, address, telephone number, and last four digits 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. **Send your request to be excluded to the Administrator by INSERT DATE (the "Response Deadline"), 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 Plaintiffs and Defendant are asking the Court to approve. At least 16 court days before the INSERT DATE Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court (1) A Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel will send you copies of these documents at no cost to you. You can also access this information from the Court's Clerk's Office.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to the Administrator is INSERT DATE (the “Response Deadline”).** 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 *Arizaga v. Rackley Company, Inc.*, and include your name, current address, telephone number, 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 **INSERT DATE** at **INSERT TIME** in Department 23 of the Sacramento County Superior Court, located at the Gordon D. Schaber Courthouse, 720 Ninth St., Sacramento, California 95814. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court’s website for the most current information.

You may also attend the Final Approval Hearing remotely via Zoom videoconference or by telephone at the access information below:

To join by Zoom link: <https://saccourt-ca-gov.zoomgov.com/my/sscdept23>

To join by phone: (833) 568-8864 / ID: 16108301121

It’s possible the Court will reschedule the Final Approval Hearing. You should check the Court’s website 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 Defendant and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is telephone or send an email to the Administrator using the contact information listed below, or consult the Superior Court website by going to <https://www.saccourt.ca.gov/indexes/new-portal-info.aspx>.

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

The contact information for Class Counsel and the Settlement Administrator are below:

<u>Class Counsel:</u>
J. Kirk Donnelly Law Offices of J. Kirk Donnelly, APC 2173 Salk Ave., Ste. 250 Carlsbad CA 92008 760-209-5894 kdonnelly@jkd-law.com

<u>Settlement Administrator:</u>
XX Email Address Mailing Address Telephone Number Fax Number

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 will have no way to recover the money.

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 2

LAW OFFICES OF J. KIRK DONNELLY, APC

2173 Salk Avenue, Suite 250 · Carlsbad, California 92008
(760) 209-5894 · www.jkd-law.com

April 3, 2023

J. Kirk Donnelly
kdonnelly@jkd-law.com

VIA ELECTRONIC SUBMISSION

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

Rackley Company, Inc.
C/O Jeffrey Scott Rackley
Agent for Service of Process
4180 Spyglass Lane
Chico CA 95973

Jeffrey Scott Rackley
Chief Executive Officer
Rackley Company, Inc.
3772 County Road 99W
Orland, CA 95963

Subject: *Sergio Santiago Arizaga, Gerardo Santiago Arizaga, Nicolas Santiago Arizaga,
and Jose Santiago Arizaga adv. Rackley Company, Inc. and Jeffrey Scott Rackley*
Cal. Labor Code section 2699.3 Notice of Labor Code Violations

Dear LWDA PAGA Administrator:

This office represents Sergio Santiago Arizaga, Gerardo Santiago Arizaga, Nicolas Santiago Arizaga, and Jose Santiago Arizaga (“Complainants”) in connection with their claims under the California Labor Code. Complainants are former employees of Rackley Company, Inc. and its owner Jeffrey Scott Rackley (together “Rackley” or “Employer”).

Complainants intend to seek civil penalties, attorney’s fees, costs and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). This letter is sent in compliance

with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This letter further reserves any and all rights by Complainants 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 558, 558.1, and 1197.1 -- Complainants reserve 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 Complainants continues their 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. If Employer intends to cure the alleged violations within the statutory time period set forth in Labor Code sections 2699 and 2699.3(a), the employer shall provide notice including a description of actions taken to cure. If the alleged violation is not cured within the statutory time period, employee will commence a civil action pursuant to Section 2699.

Based on the following summary of the facts and theories upon which Complainants will base their claims, Complainants request the LWDA regard this Notice as written notice of their intent to seek civil penalties against Employer. The specific provisions of the California Labor Code Employer has violated requiring this notice include, but are not limited to California Labor Code sections 201-203, 204, 216, 221-224, 226, 226.7, 245 *et seq.*, 246, 450, 510, 512, 514, 1174, 1194, 1197, 1198, 1199, 2802, 2810.5, and all applicable Wage Orders. These violations subject Employer to civil penalties as set forth in (1) the foregoing statutes, (2) Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, 2802, and 2699, and (3) IWC Wage Order 16-2001, section 18.

Employer is Liable for All Temporary Agency Workers

Labor Code section 2810.3 requires a client employer to share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor in California for the payment of wages. Section 2810.3 prohibits a client employer from shifting to the labor contractor legal duties or liabilities under workplace safety provisions with respect to workers provided by the labor contractor. It defines a client employer as a business entity that obtains or is provided workers to perform labor within the usual course of business from a labor contractor. It defines a labor contractor as an individual or entity that supplies workers, either with or without a contract, to a client employer to perform labor within the client employer's usual course of business.

Pursuant to section 2810.3, if Employer secured temporary labor from a labor contractor, Employer shares in all legal responsibility and civil liability with its labor contractor(s), for all workers supplied by such labor contractor(s), for payment of wages.

The Employer; Summary of Labor Code Violations

Employer and its managing agent own, operate, or otherwise manage a contracting business that, among other things, constructs steel buildings.

While Employer may be a successful company/may have a noble mission, it does not comply with California labor law. Among other things, Employer failed/fails to keep accurate and complete time records for employees; failed/fails to pay employees for all hours worked; failed/fails to pay employees at least minimum wage for all hours worked or overtime rates for overtime work; failed/fails to provide employees with proper meal and/or rest breaks, and/or compensate Complainants and similarly situated aggrieved employees an additional hour of premium pay for missed/improper meal and rest periods; failed/fails to provide proper and accurate wage statements to employees; failed/fails to provide proper notices regarding employee pay; failed/fails to reimburse necessary business expenses; failed/fails to maintain a compliant sick pay policy and/or to provide paid sick leave; and failed/fails to pay employees all earned and unpaid wages when they separated/separate from employment. Further descriptions of the above-mentioned violations and others are explained below.

Complainants and the Aggrieved Employees

At all relevant times, Complainants were non-exempt employees working for Employer in its contracting business. Throughout this time, they were paid an hourly rate for time counted by Employer as hours worked.

At all relevant times, each Complainants was an aggrieved employees as defined in Labor Code §2699(c) (“any person who was employed by the alleged violator who was employed by the alleged violator and against whom one or more of the violations was committed”). They seek recovery for the Labor Code violations set forth herein on behalf of themselves and other similarly aggrieved employees, defined to include all current and former non-exempt employees of Rackley, who were employed by Employer in the State of California within one year of the filing of this Notice. Complainants believes and hereon alleges that Employer has employed an unknown number of similarly aggrieved non-exempt employees California, and further alleges on information and belief that there may be 100 or more aggrieved employees.

Labor Code Violations

Failure to Pay Wages Due (Minimum Wages, Straight Time and Overtime): California Labor Code section 1197 requires that employees must be paid at least the minimum wage fixed by the IWC for all hours worked. 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 or work in a work week. The minimum wage standard applies to each hour employees worked for which they were not paid. An employer’s failure to pay for any time 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. California Labor Code section 510 and the IWC Wage Orders also require 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.

Complainants and other aggrieved employees worked hours for which they were not paid at least the applicable minimum wage, including without limitation hours worked after clocking out for a shift that were spent, inter alia, on clean up duties. Further Complainants and other aggrieved employees were required to record that their shift ended exactly at the scheduled time even though they regularly worked additional time beyond the scheduled end of their shift, resulting in “off the clock” work. Complainants and other aggrieved employees had their meal periods interrupted by work or otherwise cut short but Employer still required them to record a full 30 minute break even though they frequently did not receive the full 30 minutes free and clear from all control by Employer. Accordingly, Employer failed to pay Complainants and other aggrieved employees for all compensable hours worked at the appropriate minimum wage, regular wage, and/or overtime rate.

Employer’s failure to pay for such compulsory time spent working off the clock by Complainants and other aggrieved employees violates Labor Code sections 512, 1194-1199, and Wage Order 16-2001, sections 3-4. These violations subject Employer to civil penalties under said sections and Labor Code section 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty

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 all non-exempt employees. IWC Wage Order 16-2001, section 6 similarly requires employers to keep time records showing when the employees begin and end each work period, and reflecting the time during which a meal period(s) was provided each day.

At all relevant times, Employer has failed, and continues to fail, to keep the required time records. Employer did not accurately record all of Complainants and aggrieved employees hours worked, including time spent working off the clock and after clocking out for shifts.

Employer’s failure to keep “accurate and complete” payroll records for Complainants and other aggrieved employees violates Labor Code sections 1174, 1198, 1199, and Wage Order 16-2001, section 6. These violations subject Employer to civil penalties under Labor Code sections 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each 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 § 512; IWC Wage Order 16-2001, § 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. Meal periods can be waived, but only under the following circumstances: (1) if an employee’s total work period in a

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

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.

Employers covered by Wage Order 16-2001 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. IWC Wage Order 16-2001, § 6(A)(3) ("Meal periods . . . shall also be recorded"); *Donohue v. AMN Servs.* (2021) 11 Cal.5th 58, 61.

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal period provided after 5 hours, second meal period provided after 10 hours) meal period. Lab. Code § 226.7; IWC Wage Order 16-2001, § 10(B) ("If an employer fails to provide an employee a meal 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 workday that the meal period is not provided"); *Brinker*, 53 Cal.4th 1004.

Employer failed to maintain a company meal period policy compliant with California law and failed to provide Complainants and other aggrieved employees with proper meal periods, and/or meal periods were not provided until after the start of the fifth hour work. Complainants and other aggrieved employees did not receive second meal periods on shifts lasting longer than 10 hours. Complainants and other aggrieved employees had their meal periods interrupted by work or otherwise cut short but Employer still required them to record a full 30 minute break even though they frequently did not receive the full 30 minutes free and clear from all control by Employer. Liability for 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 Orders requirements. The fact that employees may legally waive meal breaks does not affect this result. Because Employer failed to maintain a compliant written meal period policy, failed to provide Complainants and other aggrieved employees with all required meal periods, failed to provide Complainants and other aggrieved employees with timely meal periods and/or meal periods lasting a full 30 minutes free from all employer control, it also failed to provide Complainants and other aggrieved employees with all meal breaks required under California law. Employer failed to pay them premiums for such missed and non-compliant meal breaks in violation of California law.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and IWC Wage Order 16-2001, § 10(A) and (C). These violations subject Employer to civil penalties under Labor Code sections 558 and 2699, and Wage Order 16-2001, § 18. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.²

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

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. IWC Wage Order 16-2001, § 11(A). Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)) rest period. Lab. Code §226.7; IWC Wage Order 16-2001, § 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").

Employer did not maintain a company rest period policy and/or practice compliant with California law, and Employer frequently did not provide Complainants and other aggrieved employees with appropriate rest periods. Per Employer's policy and/or practice, Complainants and other aggrieved employees were not adequately informed and instructed about, and thereby were not afforded an adequate opportunity to take, proper rest breaks per California law and, in particular, Complainants and other aggrieved employees were not permitted and/or were not able to take rest breaks. Employer further failed to provide Complainants and other aggrieved employees with third rest breaks when they worked shifts longer than 10 hours. Further, Employer failed to pay Complainants and other aggrieved employees with an additional hour of pay at Complainants' and other aggrieved employees' regular rates of pay for each missed or improper rest period.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 16-2001, § 11(A). These violations subject Employer to civil penalties under Labor Code section 2699, and Wage Order 16-2001, § 18. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.³

Failure to Reimburse Reasonable and Necessary Business Expenses: under Labor Code section 2802, California law requires an employer to reimburse employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties. Accordingly, an employer must fully reimburse employees for, inter alia, all expenses incurred by the employee for using his or her personal mobile phone in furtherance of their job duties. *Gattuso v. Harte Hanks Shoppers, Inc.*, 42 Cal.4th 554, 569-75 (2007); *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014).

the employee was underpaid"); IWC Wage Order 16-2001, § 18 (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").

³ See Lab. Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); IWC Wage Order 16-2001, § 18 (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 fully and accurately record and reimburse all of Complainants and aggrieved employees expenses incurred using their personal mobile phones for work purposes, such as communicating with management during shifts, or taking pictures of projects to send to management. Employer did not fully reimburse Complainants and other aggrieved employees for driving their personal vehicles for work purposes.

The aforementioned conduct results in violations of Labor Code section 2802. These violations subject Employer to civil penalties under Labor Code section 2699. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes were violated

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his, her, or its 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. Lab. Code § 226.

As a result of Employer's violations of various Labor Code and Wage Order provisions, as discussed herein, Employer failed to provide accurate wage statements with respect to multiple categories set forth in Labor Code section 226, including without limitation gross wages earned, total hours worked, and net wages earned, and therefore Employer violated section 226. Additionally, Employer's wage statements were non-compliant on their face as they failed to include all information required by the Labor Code, including the employer and the last four digits of the employee social security number or the employee identification number. Employer also included non-taxable amounts paid for certain expenses and other non-wage payments in the tabulation of gross pay and net pay, which caused the wage statements to be inaccurate as to gross wages earned and net wages earned. These violations subject Employer to civil penalties under Labor Code sections 226, 226.3, and 2699. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.

Sick Pay Violations

Under Labor Code sections 245, *et seq.*, Employer was required to provide most exempt and non-exempt employees with 30 or more days of employment in a calendar year with paid sick leave of up to 24 hours of paid sick time per year. Employers must pay employees for sick leave at the employee's regular wage rate. If employees in the first 90 days of employment, when they are ineligible to take paid sick leave, were paid different hourly wage rates, were paid by commission or piece rate, or were nonexempt salaried employees, then the employer must calculate the rate of pay by dividing the total wages, not including overtime premium pay, by the total hours worked in the full pay periods of the prior 90 days of employment. Employers must

pay employees for sick leave no later than the payday for the next regular payroll period after the leave was taken. Labor Code §§ 245.5, 246.

An employer must provide employees in writing the amount of sick leave, or qualifying paid leave alternative, they have available. The written notice may be listed on the employees' statement of wages (pay stub) or provided on a separate document delivered to the employee on the designated pay date. At the time of hire, an employer must provide to each employee a written notice, in the language the employer normally uses to communicate information to employees, of the following: (1) that employees are entitled to accrue, request, and use paid sick leave, (2) their employer may not terminate or otherwise retaliate against them for using or requesting to use accrued sick leave, and (3) they have a right to file a claim against their employer with the California Department of Industrial Relations. Labor Code § 246.

For some or all of the relevant time period, Employer did not maintain a paid sick leave policy and/or did not maintain a compliant one. Complainants and other aggrieved employees were not provided with the required notice of written notice, were not provided in writing with the amount of sick leave available on their wage statements or in any other separate writing, and were not provided with paid sick leave.

These violations subject Employer to civil penalties under, without limitation, Labor Code sections 226, 245.5, and 246. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. Labor Code section 202 states similar provisions with respect to employees who resign. Employer still has not paid Complainants and other aggrieved employees all wages earned and unpaid at the time of discharge, including without limitation: (1) hours worked "off the clock" and (2) an additional hour of pay for meal and rest periods not provided and/or that were not compliant. 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 aggrieved employee for each pay period during which the statute provisions were violated.⁴

Employer has violated the above-referenced California Labor Code provisions, 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 Complainants and other 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 to the employer in question and to the Labor Workforce Development Agency setting forth the claims and the basis for the claims, thereby giving the Labor Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

⁴ (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").

The purpose of this letter is to satisfy the requirement created by Labor Code §§ 2699 and 2699.3(a) 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 Labor Workforce Development Agency 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 Labor Commissioner elects not to take any action with respect to any of the foregoing claims, Complainants will seek these penalties in a civil action, on behalf of himself and all other California non-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 days 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:

J. Kirk Donnelly
Law Offices of J. Kirk Donnelly, APC
2173 Salk Avenue, Suite 250
Carlsbad, CA 92008
Main: 760-209-5894
Email: kdonnelly@jkd-law.com

Thank you for your attention to this matter.

Sincerely,
LAW OFFICES OF J. KIRK DONNELLY, APC


J. Kirk Donnelly

Thank you for submission of your PAGA Case.

From: LWDA DO NOT REPLY (lwdadonotreply@dir.ca.gov)

To: kdonnelly@jkd-law.com

Date: Monday, April 3, 2023 at 09:20 AM PDT

4/3/2023

LWDA Case No. LWDA-CM-945921-23

Law Firm : Law Offices of J. Kirk Donnelly

Plaintiff Name : Sergio Santiago Arizaga, Gerardo Santiago Arizaga, Nicolas Santiago Arizaga, Jose Santiago Arizaga

Employer: Rackley Company, 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 3