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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF RIVERSIDE**

17
18 PEDRO CEDENO, as an individual on behalf
of himself and on behalf of all others similarly
19 situated,

20 Plaintiff,

21 vs.

22 SANNIPOLI CORPORATION, a
California Corporation; MATTHEWS
23 INTERNATIONAL CORPORATION, a
Pennsylvania Corporation; THE YORK
24 GROUP, INC., a Delaware Corporation; and
DOES 1-100, inclusive,

25 Defendants.
26
27
28

) Lead Case No. CVRI2303826
)
) [Consolidated with Case Nos. CVRI2304132;
) CVRI2304915; and CVRI2306853]

) Assigned for All Purposes To:
) Judge: Harold W. Hopp
) Dept: 1

) **DECLARATION OF CHAD SAUNDERS**
) **IN SUPPORT OF MOTION FOR**
) **PRELIMINARY APPROVAL OF CLASS**
ACTION SETTLEMENT

Date: August 27, 2024
Time: 8:30 a.m.
Dept. 1

Reservation No: 203794953319

1 I, CHAD SAUNDERS, declare as follows:

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

5 2. Attached hereto as Exhibit 1 is a true and correct, fully-executed copy of the Parties'
6 Class Action and PAGA Settlement Agreement (the "Settlement Agreement"). Attached hereto as
7 Exhibits 2, 3 and 4 respectively are true and correct copies of the proposed Class Notice, Objection
8 Form, and Request for Exclusion Form the Parties propose to send to the Class Members. Attached
9 hereto as Exhibit 5 is true and correct copies of Plaintiff Cedeno's PAGA notice letter and amended
10 PAGA notice letter to the Labor & Workforce Development Agency ("LWDA") and proof of
11 submission. Attached hereto as Exhibit 6 is a true and correct copy of proof of submission of the
12 proposed settlement to the LWDA.

13 3. **Case Management Order ("CMO"), ¶ G(3)(a)(vii):** after diligent search and
14 inquiry to all other members of my firm, I am unaware of any other class, representative or other
15 collective action in any other court in this or any other jurisdiction that asserts claims against similar
16 to those asserted in this action on behalf of a class or group of individuals that would include some
17 or all of the individuals who would be Class Members or PAGA Employees in this matter.

18 **FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

19 4. Sannipoli Corp., which does business as Whited Cemetery Service, owns and operates
20 several funeral homes in California. In or around January 2021, Sannipoli was acquired by Defendant
21 Matthews International Corp. (which in turn is owned by The York Group, Inc.). Plaintiff Cedeno
22 was employed by Sannipoli/Whited as a non-exempt employee with a job title of laborer and quality
23 control inspector from in or around April 2022, through April 25, 2023. He worked for Whited at its
24 Menifee, California location.

25 5. Plaintiffs allege Defendants committed a number of Labor Code violations. First, they
26 claim Sannipoli utilized a rounding policy that resulted in systematic underpayment of wages, and
27 further that Sannipoli did not pay Plaintiffs and Class Members overtime at the regular rate of pay
28 and failed to incorporate, inter alia, non-discretionary bonuses into the regular rate for pay. Next

1 Plaintiffs alleged Sannipoli did not provide second meal periods when employees worked more than
2 10 hours in a workday, and also did not permit employees to take off-duty rest breaks because
3 Defendants' policy states that employees "must remain on the facility premises" during rest breaks.
4 Plaintiffs also alleged they incurred unreimbursed expenses such as use of personal telephones and
5 personal vehicles on company business. Finally, Plaintiffs alleged Sannipoli did not list the name of
6 the legal entity that was the employer on Class Members' wage statements but instead identified the
7 dba "Whited Cemetery Service" as the employer even though no such legal entity exists.

8 6. Based on these allegations, Plaintiffs collectively filed several complaints against
9 Defendants. First, on July 26, 2023, Plaintiff Cedeno filed a putative class action, case number
10 CVRI2303826, alleging (1) violation of California Labor Code §§ 1194, 1197, and 1197.1 (unpaid
11 minimum wages); (2) violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (3)
12 violation of Labor Code §§ 226.7 and 512 (a) (unpaid meal period premiums); (4) violation of Labor
13 Code § 226.7 (unpaid rest period premiums); (5) violation of Labor Code § 226(a) (non-compliant
14 wage statements); (6) violation of Labor Code §§ 201 and 202 (final wages not timely paid); (7)
15 violation of Labor Code §§ 2800 and 2802 (unreimbursed business expenses); (8) violation of
16 Business & Professions Code §§ 17200, et seq. On August 11, 2023, after notice to Labor &
17 Workforce Development Agency ("LWDA"), Plaintiff Cedeno filed a separate complaint seeking
18 civil penalties under PAGA based on the same alleged Labor Code violations.

19 7. On September 18, 2023, Plaintiff Padilla filed a putative class action complaint in
20 Riverside County Superior Court against Defendants, case number CVRI2304915, alleging largely
21 the same Labor Code violations as the Cedeno Class Action. On December 21, 2023, Padilla filed a
22 second complaint under PAGA in Riverside County Superior Court against Defendants, case number
23 CVRI2306853.

24 8. On February 8, 2024, the Parties filed a stipulation to consolidate all of the above
25 complaints into a single action, with the lead Case Number CVRI2303826. On February 20, 2024
26 the Court granted the stipulation and ordered the complaints to be consolidated for the purposes of
27 settlement and approval.

28 9. Defendants have at all times denied Plaintiffs' collective allegations and maintained

1 their timekeeping and payroll policies accurately track and pay for all hours worked by its employees
2 and at the correct rates of pay. Defendants further contend they provided employees with all required
3 meal and rest breaks on a fully compliant basis, and reimbursed any reasonable and necessary
4 business expenses as required under California law. Defendants also argued the case cannot be
5 maintained as any kind of class or representative action, emphasizing for example that to the extent
6 class members missed meal and/or rest breaks, or that such breaks were non-compliant, it was
7 intermittent and infrequent and evidence of such missed breaks would be purely anecdotal, and
8 therefore individualized issues predominate and trial on a representative basis would be
9 unmanageable.

10 10. **CMO, ¶ G(3)(a)(vi):** After Plaintiffs filed their respective complaints, and after
11 agreeing to participate in early mediation, the Parties engaged in formal and informal discovery to
12 facilitate an exchange of information necessary to engage in a meaningful mediation. Consequently,
13 Plaintiffs' counsel reviewed payroll records, personnel policies/handbooks, compensation policies,
14 personnel files, and a random of sampling paystubs and time records for about 20% of the class.
15 Defendants also provided documents reflecting their wage and hour policies and practices, and data
16 regarding the total number of current and former employees, the estimated total amount of
17 workweeks and pay periods they worked, and average hourly pay rates, among other relevant data.
18 Plaintiffs had that information reviewed and analyzed by Berger Consulting Group to assist with
19 evaluating things such as time allegedly lost to due rounding, meal period violation rates, etc., and
20 to prepare a damages model.

21 11. The Parties then engaged Louis Marlin, Esq., a highly respected mediator with
22 extensive wage and hour class action experience and, in January 2024, participated in a full day
23 global mediation with Mr. Marlin. Throughout the day, the arms-length negotiations were hard-
24 fought and adversarial as the Parties exchanged extensive information on their legal and factual
25 positions, and made numerous offers and counter-offers. After a full day of negotiations, the Parties
26 reached agreement on all major issues in all cases and thereafter prepared the Settlement Agreement
27 now before the Court for approval.

28 /////

THE PROPOSED SETTLEMENT TERMS

12. Under the settlement, Defendants will pay \$900,000 into a common fund, the Gross Settlement Amount. Reasonable attorney's fees of up to \$300,000 (33 1/3% of the GSA), actual litigation costs not to exceed \$25,000, enhancement awards to Plaintiffs of up to \$10,000 each, settlement administration costs of no more than \$12,890, and \$60,000 for civil penalties under PAGA (of which 75%, or \$45,000, will go to the Labor & Workforce Development Agency, and 25%, or \$15,000 will go to the PAGA Employees) all will be paid from the Gross Settlement Amount. The remainder of approximately \$482,110 will be allocated among the Settlement Class Members based on their total weeks worked during the Class Period. No portion of the Gross Settlement Amount will revert to Defendants.

13. **CMO, ¶ G(3)(a)(i):** The settlement provides for conditional certification of a settlement class including all current and former non-exempt hourly employees, including Plaintiffs, who worked for Defendants directly or through a staffing agency at a Sannipoli Corporation d/b/a/ Whited Cemetery Service location in California during the Class Period of July 26, 2019 through April 4, 2024.¹ The Settlement Class consists of approximately 461 individuals.²

14. **CMO, ¶¶ G(3)(i):** This is a cash settlement that does not require Settlement Class Members to submit a claim form to receive their settlement share. Settlement Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty five percent of each settlement share will be allocated to wages and the remaining seventy five percent will be allocated to expense reimbursement, penalties and interest. Defendants will pay any and all applicable employer-side payroll taxes separately and in addition to the Gross Settlement Amount.

15. **CMO, ¶ G(3)(c):** Subject to the Court's approval, any amounts not claimed (because

¹ Earlier this year, Matthews settled a wage & hour class action titled Beinbrech v. Matthews International Corp. (San Bernardino Co., Case No.CIVSB2226992) for \$1.1 million. That settlement is pending preliminary approval. According to Defendants' counsel, it did not include any employees of Sannipoli.

² **CMO, ¶ G(3)(a)(i):** The "PAGA Employees" for purposes of PAGA include all current and former non-exempt employees of Defendants who worked either directly or through a staffing agency at a Whited Cemetery Service location in California employed during PAGA Period of June 7, 2022 through April 4, 2024. There are approximately 199 PAGA Employees.

1 a class member does not cash his or her settlement check) will be forwarded to the State Controller's
2 Unclaimed Property Fund.

3 16. Each Settlement Class Member will receive a share of the Net Settlement Amount
4 based on his or her total weeks worked for Defendants during the Class Period while employed in a
5 non-exempt position. Thus, each Class Member's Individual Settlement Payment will be calculated
6 using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium
7 wages for missed meal and rest breaks, and potential statutory penalties under applicable law. These
8 methods are intended to ensure each Class Member receives a portion of the available settlement
9 funds corresponding to the relative value of his or her potential claims. The proposed allocation
10 provides a reasonable way to compensate Class Members based on the amount of time they worked
11 for Defendants and the number of instances they missed a meal break and/or rest break, were not
12 provided compensation in lieu of such missed breaks, or lost pay due to the alleged rounding and
13 regular rate issues.

14 17. **CMO, ¶ G(3)(a)(v):** I estimate the average class settlement award will be
15 approximately \$1,045, and the class awards will range from about \$25 on the low end (for Class
16 Members with one work week) to over \$6,030 on the high end (for Class Members employed for the
17 entire Class Period). The estimated average PAGA award will be about \$75, and PAGA awards will
18 range from about \$2 to \$205.

19 18. **CMO, ¶ G(3)(d)(i):** Subject to the Court's approval, and after obtaining multiple
20 bids, the Parties agreed on Apex Class Action, LLC ("Apex") as the Settlement Administrator. Apex
21 is qualified and has significant experience administering class action settlements, including
22 numerous wage and hour matters. Apex has agreed to cap its fees and costs at \$12,890. If the Court
23 approves less than the above amount, the difference will remain in the Net Settlement Amount for
24 distribution to the Settlement Class Members.

25 19. **CMO, ¶ G(3)(k):** The proposed Notice (Exhibit 2 hereto) sets out information about
26 this case and explains the basic settlement terms in plain language, and meets all requirements under
27 California Rules of Court 3.769(f) and 3.766(d). The Notice also sets forth the individualized
28 information used to calculate Individual Settlement Payments and each Class Member's estimated

1 settlement award. The Notice likewise details the procedures for Class Members to dispute their
2 individual information, for submitting an objection to the Settlement, and to request exclusion.
3 Further, each notice packet will include a Request for Exclusion form and Objection Form (Exhibits
4 3 and 4 hereto). In sum, the Notice provides the Class Members with the information necessary to
5 evaluate the Settlement and provides fair opportunity to participate in, opt out of, or object to the
6 proposed Settlement. Many Class Members are more comfortable in Spanish and accordingly the
7 notice documents will be translated into Spanish in addition to English. Coupled with the notice
8 procedure, the proposed Notice provides the Class with the best notice practicable.

9 20. Class Members will have forty-five (45) days to dispute the information in their
10 Notice used to calculate their settlement award, and also have 45 days to submit any objections to
11 the settlement or to request exclusion. In the event a Class Member disputes their individual
12 information, the Settlement Administrator will review the Class Member's records as well as any
13 additional information submitted, and make a final determination.

14 21. **CMO, ¶¶ G(3)(e) and G(9)(d):** All Settlement Class Members will release
15 Defendants from all claims alleged in the operative complaint, or that could have been brought based
16 on the factual allegations in the complaint during the Class Period. Plaintiffs and the LWDA will
17 release those PAGA claims alleged in the PAGA notice to the extent alleged in the FAC. The Class
18 and PAGA releases are limited to the claims that were actually pleaded or could have been pleaded
19 based on the alleged facts in the FAC, and PAGA notice for the PAGA claims. Only Plaintiffs will
20 provide a full general release of all claims.

21 22. The settlement provides Defendants will not oppose a request for attorney's fees not
22 to exceed 33.33% of the Gross Settlement Amount, or \$300,00, nor will they oppose a request for
23 reimbursement of litigation costs and expenses of up to \$25,000.00. Defendants also will not oppose
24 a request for an enhancement award to Plaintiffs of not more than \$10,000.00 each in recognition of
25 their time spent on this matter, the risks they undertook on behalf of the class, and the benefit
26 conferred to the class, as set forth in their respective declarations filed herewith. Plaintiffs' counsel
27 will provide the Court with appropriate summaries and evidence of their efforts and time records in
28 anticipation of the Final Approval Hearing. If the Court approves less than the above amounts, the

1 difference will remain in the Net Settlement Amount for distribution to the Settlement Class
2 Members.

3 23. As noted, the Parties allocated \$60,000 from the GSA to resolution of Plaintiffs'
4 claims under PAGA, and Plaintiffs submit that amount is fair, reasonable, and adequate, and
5 consistent with PAGA's underlying purposes. As required by Labor Code section 2699(l)(2),
6 Plaintiffs gave notice of the settlement and approval hearing to the LWDA via its online portal.

7 **CONDITIONAL CLASS CERTIFICATION**

8 24. In the present matter, conditional certification is proper since this matter satisfies all
9 requirements for class certification under Code of Civil Procedure section 382. First, the class is
10 both sufficiently numerous, consisting of approximately 461 individuals. The class also is
11 ascertainable by reference to Defendants' personnel and payroll records.

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

16 26. Next, common questions of law and fact predominate – particularly for purposes of a
17 settlement class – as the Class Members all were subject to the same meal and rest break policy, and
18 likewise were subject to the same time rounding and regular rate policies. Since the focus of the
19 claims against Defendants concern the legality of common policies applied uniformly to the entire
20 class, common issues predominate over individualized inquiries concerning liability. For instance,
21 Defendants' calculation and payment of overtime was done under a company-wide policy applied
22 equally and consistently to all class members, and that policy is compliant with California law or I
23 is not. Regardless of that determination, it will decide liability for all class members one way or
24 another. Similarly, whether personal cell use was necessary raises another question common to all
25 class members.

26 27. Resolving this matter as a class action is superior to other available means for the fair
27 and efficient adjudication of this controversy for multiple reasons, including inter alia: (a) individual
28 joinder of all members of the class is impractical, (b) class action treatment will permit a large

number of similarly situated persons to resolve their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of effort and expense; and (c) the damages suffered by many of the individual class members are relatively small and the expenses and burden of individual litigation would make it difficult or impossible for them to seek redress on their own.

DUNK/KULLAR FACTORS - CMO, ¶¶ G(3)(ii)-(iii) and G(9)(b)-(c)

28. Prior to mediation, the parties engaged in both formal and informal discovery to facilitate settlement discussions. As a result, Plaintiffs reviewed documents and information regarding Defendants' payroll practices, a representative sampling of pay stubs and time records for about 20% of the class members, applicable compensation plans, meal and rest break policies, etc., and information from Defendants regarding class size and breakdown, number of work weeks/pay periods, average rates of pay, and other information used to formulate a damages model. Plaintiffs then had that information reviewed with the assistance of a consulting expert. Plaintiffs' counsel are confident they obtained sufficient information to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is fair and reasonable.

29. Using the data obtained from Defendants, Plaintiffs ran various calculations and estimated Defendants' likely maximum exposure on the class claims at approximately **\$4.730** million, including about \$78,600 on the unpaid wage/rounding claim, \$17,000 on the underpaid overtime/regular rate claims, \$630,500 on the meal break claims, \$1,531,000 on the rest break claims, \$190,090 on the unreimbursed expense claims, \$670,000 on the wage statement claims, and \$1,613,000 on the waiting time penalty claims.

30. We calculated these amounts as follows:

Off the Clock/Rounding

2,968 unpaid hours * \$13.25 avg. min. wage = \$39,326 * 2 for liquidated damages = \$78,642

Underpaid Overtime/Regular Rate

\$17,000 per Plaintiffs' experts

Meal Period Violations

74,617 eligible shifts * 43% unique violation rate * \$19.65 avg. rate of pay = \$630,476

1 Rest Break Violations

2 77,927 eligible shifts * 100% violation rate * \$19.65 avg. rate of pay = \$1,531,265

3 Expense Reimbursement

4 19,209 work weeks * \$10/week = \$192,090

5 Wage Statement Violations

6 183 initial violations * \$50/ violation = 6,604 subsequent violations * \$100 per violation = \$669,550

7 Waiting Time Penalties

8 342 former employees * (240 hours * \$19.65/hr avg. wage) = \$1,612,870

9 31. First, on their unpaid wage claims, Plaintiffs allege Defendants' compensation
10 plans failed to pay for all hours worked and particularly that Defendants rounded employee time
11 punches such that the class members systematically lost hours worked as a result. Per Plaintiffs'
12 experts' analysis, around 79% of the class members lost time due to rounding, and the overall
13 class lost nearly 3,000 hours of pay. In response, Defendants argued their timekeeping and
14 payroll policies accurately tracked and paid for all employee time, and that any rounding was
15 entirely neutral in its overall impact on employee pay and thus permissible. Thus, per
16 Defendants, any time rounding resulted in no loss of compensable time or pay to the class
17 members. On the regular rate claim, Plaintiffs alleged employees were not paid all overtime
18 wages due because Defendants did not include certain forms of compensation, primarily non-
19 discretionary bonus payments, in the "regular rate of pay" used to calculate the correct overtime
20 rate. As a result, Plaintiffs contend Defendants frequently underpaid the Class Members for their
21 overtime. While Plaintiffs believe this is one of their stronger claims, they also recognize the
22 exposure is nominal, as the amount lost typically is only a few dollars per work week.

23 32. On the meal break claims, Plaintiffs primarily contend there are numerous "de
24 facto" violations for missed, late, and short meal periods. Per Plaintiffs, his experts' review of the
25 time records produced suggested a violation rate of around 43% for missed and non-compliant
26 meal periods, including missed second lunches on 10+ hour shifts. In response, Defendants argued
27 their break policies are fully compliant with California law, that it provided class members with the
28 opportunity to take all required breaks, and that many class members waived second meal periods.

1 Defendants further maintained that, in light of its compliant policies, whether a class member
2 missed a meal period, received a late meal period, or missed a rest break would have been
3 aberrational and against company policy. Thus, per Defendants, these issues are not amenable to
4 class or representative treatment since their resolution would require individualized inquiries as to
5 why a break was missed or non-compliant. Further, Defendants emphasized it paid thousands in
6 premium wages for documented violations.

7 33. For rest breaks, Plaintiffs again argued that there were numerous “de facto”
8 violations where class members didn’t receive a break (especially third breaks), or didn’t receive a
9 compliant break/had their breaks interrupted by supervisors. Plaintiffs further argued Defendants’
10 policies prohibited them from leaving the premises while on a rest break. As with meal breaks,
11 Defendants argued the applicable rest break policies complied with California law, and that it
12 authorized and permitted employees to take all required breaks. Defendants further contended that,
13 in light of the fact that it is not required to maintain a record of rest periods, any evidence of failure
14 to authorize rest periods and/or discouragement from taking rest periods would be purely anecdotal
15 and individual issues would predominate on liability. This arguably would once again make class
16 certification and a trial unmanageable since the number of instances an employee missed a rest
17 break, or had a break interrupted, would have to be tested on a case by case basis to determine
18 compliance.

19 34. On the expense reimbursement claim, Plaintiffs allege that use of personal cellular
20 phones was necessary and consequential to their employment duties for purposes of communicating
21 with supervisors. Defendants did not reimburse employees for the cost associated with the use of the
22 personal cellular phones for Defendants’ benefit. Plaintiffs further argued class members
23 occasionally had to drive their personal vehicles for work purposes but did not receive any
24 reimbursement. In response, Defendants argued it provided employees with all tools and equipment
25 necessary to perform their job duties, and to the extent employees used their own phones while at
26 work it was purely for personal convenience, was not necessary to their employment, and therefore
27 was not reimbursable. Similarly, per Defendants there would be no need for class members to use
28 their personal vehicles on company business.

1 35. As far as the wage statement claim, Plaintiffs allege Defendants' wage statements
2 violated Section 226(a)(8) on their face because they do not identify the actual legal entity that
3 employed the class members. Plaintiffs further allege derivative claims under Labor Code § 226
4 (inaccurate wage statements) and §§ 201-203 (waiting time penalties). These derivative claims are
5 based on the unpaid wage claims and will rise or fall along with those primary claims, in addition to
6 being subject to "good faith" and other defenses available to Defendants. Defendants argued further
7 that the wage statements accurately contained all required information, and that acted in good faith
8 all times with respect to payment of wages. Accordingly, Plaintiffs discounted these claims
9 significantly in light of these multiple potential defenses.

10 36. **CMO, ¶ G(9)(b):** As far as potential PAGA liability, the alleged aggrieved employees
11 theoretically are entitled to penalties totaling about **\$3.38** million should Plaintiffs prevail on all
12 claims, establish violations of the multiple Labor Code sections at issue, and secure the maximum
13 penalty on all claims as to all pay periods at issue. This estimate includes \$741,700 on the unpaid
14 wage/rounding claim (7,417 pay periods with a violation * \$100/violation), \$37,100 on the regular
15 rate claim (371 pay periods *\$100/pay period), \$380,700 on the meal break claims (3,807 pay periods
16 * \$100/violation), \$741,700 on the rest break claims, (7,417 pay periods with a violation *
17 \$100/violation), \$741,700 on the wage statement claims (7,417 pay periods with a violation *
18 \$100/violation); \$741,700 on the expense reimbursement claims (7,417 pay periods with a violation
19 * \$100/violation); and \$15,700 on the unpaid wages at discharge claim (157 pay periods * \$100/pay
20 period). As with the class claims, Plaintiffs discounted the potential PAGA penalties based on
21 Defendants' various defenses on the merits and also accounted for the Court's wide discretion to
22 reduce such penalties, or to decline to award penalties at all. Accordingly, the Parties allocated
23 \$60,000 to PAGA penalties.

24 37. **CMO, ¶ G(9)(b):** as with the class claims, Plaintiffs discounted the potential PAGA
25 penalties based on Defendants' various defenses on the merits, as discussed in detail above. We also
26 accounted for the argument that any trial under PAGA would be unmanageable due to individualized
27 issues, and further accounted for the Court's wide discretion to reduce any penalties awarded, or to
28 decline to award penalties at all. In this regard, there was no evidence suggesting any of the alleged

1 Labor Code violations were intentional in Defendants' part, and we also noted that Defendants are a
2 modest sized company and that imposition of a large penalty award likely would be deemed unjust
3 and oppressive and potentially jeopardize Defendants' ability to continue operations. Accordingly,
4 at mediation the Parties negotiated an allocation of \$60,000 to PAGA penalties, and I submit this
5 amount is reasonable under the circumstances and in line with comparable settlements in other wage
6 and hour class actions in California. Additionally, the LWDA has been informed of the terms of the
7 PAGA portion of the settlement, and will be able to weigh in as necessary.

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

17 39. Taking into account all of the above-discussed risk factors, Plaintiffs calculated
18 Defendants' exposure on the class claims at around **\$1,182,000** on a risk-discounted basis (which is
19 about an 80% discount off of the theoretical maximum) and, accordingly, the settlement represents
20 a little under 77% of the estimated recovery after trial. Given Defendants' multi-layered defenses
21 and all other potential risks of continued litigation, a total recovery for the class of \$900,000, which
22 will result in average award of over \$1,045 per class member, is a significant result well within the
23 range of reasonableness considering all potential outcomes, and it will provide direct monetary
24 awards to all Class Members without further delay.

25 40. I received a Bachelor of Arts in Philosophy from the University of Maryland
26 Baltimore County in 2001 and a Juris Doctor from New College of California School of Law in 2008.
27 While a law student, I completed 600 hours of public interest law apprenticeship, at Legal Services
28 for Children, Disability Rights California, and as a Certified Legal Intern with the Bay Area Legal

1 Aid Housing Clinic. I have been a member of the California Bar since 2008. Since 2009, I have been
2 a class action attorney, practicing mainly in the area of California wage and hour law, with the firms
3 of Hoffman & Lazear, Kralowec Law P.C., Sundeen Salinas & Pyle, and Hunter Pyle Law. I joined
4 Crosner Legal in May 2021 as a Senior Associate Attorney. In this role I routinely draft complaints
5 and discovery, brief motions, appear before California courts for law and motion and settlement
6 hearings, lead mediation negotiations, and draft settlement approval documents. I also regularly
7 communicate with class members, co-counsel, and opposing counsel. I have represented thousands
8 of employees in both state and federal courts, involving class actions and PAGA claims, and I have
9 assisted in obtaining millions of dollars for employees during my years of practice.

10 41. I have been approved as Class Counsel by numerous courts throughout California,
11 including in the following cases: *Alonzo, et al. v. First Transit, Inc.* (Los Angeles Superior Court
12 case no. BC433932; settled for \$2 million); *Sadiq v. Greatwide Dedicated Transport II, LLC*
13 (Alameda County Superior Court case no. RG15789114; settled for \$762,500); *Kostyuk v.*
14 *Golden State Overnight Delivery Service, Inc.* (Alameda County Superior Court case no.
15 RG14727191; settled for \$1.25 million); *Newcomb, et al. v. J.B. Hunt Transport, Inc.* (Alameda
16 County Superior Court case no. RG16815734; settled for \$750,000); *Hooper v. URS Midwest,*
17 *Inc.*, (San Bernardino Superior Court Case No. CIV DS1607489; settled for approximately \$3
18 million); *Brooks, et al. v. Chariot Transit, Inc.* (San Francisco Superior Court case no. CGC-16-
19 554398; settled for \$750,000); *Austin, et al. v. Foodliner, Inc.* (Northern District of California,
20 case number 16-cv-07185-HSG; settled for \$1.2 million); *Castro, et al. v. ABM Industries, Inc.,*
21 *et al.* (Northern District of California, case number 17-cv-03026-YGR; settled for \$5.4 million);
22 *Benton v. Northern California InAlliance* (Sacramento County Superior Court, case number 34-
23 2021-00293036; settled for \$650,000); *French v. Lonza, Inc.* (Los Angeles County Superior Court,
24 case number 21STCV08097; settled for \$556,500); *McKinnie v. Iron Mountain Secure*
25 *Shredding, Inc., et al.* (Los Angeles Superior County Superior Court, case number
26 21STCV05707; settled for \$1.5 million); and *Bland v. Marin Airporter* (Marin County Superior
27 Court, case number CIV 2003640; settled for \$450,000).

28 42. Zach Crosner is a 2010 graduate of University San Diego School of Law, and has

1 some 13 years of experience as a practicing attorney, all of which have focused on litigation of
2 employment, labor law, consumer, and class action claims. Following graduation, he immediately
3 began working for a nationally recognized plaintiff's complex litigation firm, CaseyGerry, where
4 I had the fortune of working directly with past presidents of the consumer attorneys and
5 recipients of trial attorneys of the year awards. He also worked for former CAALA and CLAY
6 trial attorney of the year recipient, attorney Conal Doyle, as his sole associate attorney. During
7 his tenure at these firms, he focused on advocating for the rights of consumers and employees in
8 class action litigation, civil rights and employment litigation, catastrophic injuries, insurance bad
9 faith and appellate litigation.

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

17 44. Mr. Crosner currently is an executive board member of the Wage and Hour
18 Committee and the Legislative Committee for the California Employment Lawyers Association;
19 a member of the Grassroots Advocacy Team for the National Employment Lawyers Association;
20 Wage and Hour Committee member and Class Action Committee member for the National Trial
21 Lawyers; a member of the American Association for Justice; and member of the Pound Civil
22 Justice Institute. He was selected for 2018-20 by Super Lawyers as a "Southern California Rising
23 Star" for employment and labor law.

24 45. Brandon Brouillette is a graduate of Loyola Law School, Los Angeles, from which he
25 received a *juris doctorate* degree in 2009. Prior to attending law school, he attended the University
26 of Southern California, from which he received a bachelors of science in Business Administration
27 in 2006.

28 46. He has been a Partner at Crosner Legal since February 1, 2023. Prior to joining

1 Crosner Legal, he was a Senior Associate and Team Director of a Wage and Hour Litigation Team
2 at Capstone Law APC, which he originally joined as an associate attorney in May 2016.

3 47 Since being admitted to the California State Bar in 2010, Mr. Brouillete's entire
4 legal career has been dedicated to protecting employee and consumer rights through the
5 prosecution of class action and representative actions filed on behalf of plaintiffs in class actions
6 and statewide representative actions. Throughout his career he has managed or co-managed more
7 than 100 class action and PAGA representative cases, from initial filing of the complaint through
8 final resolution.

9 48. In particular, he has served as class counsel in several certified class action cases,
10 including:

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

22 49. The following is a representative sample of settlements in wage and hour class
23 action and PAGA representative cases in which he was listed as an attorney of record and either
24 managed, or co-managed with attorneys at his firm and other co-counsel:

- 25 e. *Cruz v. Walmart*, Los Angeles County Super. Ct. Case No. 18STCV03128 (\$15 million
26 global PAGA settlement on behalf of hourly employees statewide for alleged Labor
27 Code violations.)
- 28 f. *Vorise v. 24 Hour Fitness USA, Inc.*, Contra Costa County Super. Ct., Case No. C 15-

- 02051 (\$11 million global PAGA settlement on behalf of over 36,000 employees for Labor Code violations.)
- g. *Gross v. Sodexo*, Kern County Super Ct., Case No. BCV-18-101746 Capstone (\$4.75 million class and PAGA settlement on behalf of class of non-hourly employees for Labor Code violations.)
- h. *Campbell v. AEG* (\$1.8M class and PAGA settlement on behalf of group of hourly employees who worked at concert venues in California for alleged Labor Code violations)
- i. *Fiebelkorn v. AEG*, et al. Los Angeles Superior Court Case No. BC717337 (\$1.75M class settlement on behalf of group of hourly employees who worked at Oakland Coliseum for alleged Labor Code violations)
- j. *Amaro v. Anaheim Arena Management*, Orange County Superior Court Case No. 30-2017-00917542 (\$2,212,500 class and PAGA settlement on behalf of group of hourly employees who worked at Honda center in Anaheim California for alleged Labor Code violations)
- k. *Espindola v. Panda Express*, San Bernardino Superior Court Case No. CIVDS1931455 (\$3.125M class and PAGA settlement on behalf of hourly employees statewide for alleged Labor Code violations)
- l. *Gold v. Benihana*, San Diego Court Superior Court Case No. 37-2016-00022320-CU-OE-NC (\$2.25M class and PAGA settlement on behalf of hourly employees statewide for alleged Labor Code violations)
- m. *Party City Wage and Hour Cases*, JCCP4781 (\$6.5M class and PAGA settlement on behalf of hourly employees statewide for alleged Labor Code violations)
- n. *Lewis v. Express Messenger Systems*, Los Angeles County Super Court Case No. BC501521 (\$10.5M class and PAGA settlement on behalf of a statewide group of independent contractor last-mile delivery drivers alleged to be misclassified)
- o. *Flores v. Tesla*, Alameda County Superior Court Case No. RG18907072 (\$4M class and PAGA settlement on behalf of statewide group of hourly employees for alleged Labor

Code violations)

- p. *Ruiz v. Disney Stores*, San Bernardino Superior Court Case No. CIVDS2016983 (\$2M class and PAGA settlement on behalf of statewide group of hourly employees who worked at retail stores in California for alleged Labor Code violations)
- q. *Ramirez v. Yin Management*, Sacramento County Superior Court Case No. 34-2021-00301530 (\$1.8M class and PAGA settlement on behalf of statewide group of hourly employees who worked at Defendant's McDonald's franchises in California for alleged Labor Code violations).
- r. *Suhartono v. RRG Besh*, Los Angeles County Superior Court Case No. 19STCV22184 (\$2.25 class and PAGA settlement on behalf of statewide group of hourly employees who worked at Defendant's McDonald's franchises in California for alleged Labor Code violations).
- s. *Gomes v. Kura Sushi*, Los Angeles County Superior Court Case No. 19STCV18977 (\$1.75M class and PAGA settlement on behalf of statewide group of hourly employees who worked at Defendant's restaurants in California for alleged Labor Code violations)
- t. *Saldana v. Hydrochem*, Contra Costa Superior Court Case No. CIVMSC19-02624 (\$1.38M class and PAGA settlement on behalf of statewide group of hourly employees for alleged Labor Code violations).

50. In addition, below are settlements in consumer class action cases in which he was listed as an attorney of record and either managed, or co-managed with attorneys at his firm:

- u. *Lopez v. Seterus, et al.*, Los Angeles Superior Court Case No. BC484297 (\$3M Class settlement on half of thousands of borrowers in California, Florida, and Texas for UCL violations premised on improper late fee collections)
- v. *McGill v. Citibank*, Riverside County Superior Court Case No. RIC 1109398 (in landmark case that established the 'McGill rule' precluding the waiver of public injunctive relief in pre-dispute arbitration agreements, negotiated confidential settlement on behalf of consumer who sued for damages and class injunctive relief stemming from marketing of credit protector plan)

1 51. Finally, he has been selected by his peers as a Super Lawyers ‘Rising Star’ every year
2 since 2016 through 2022, which is a recognition that is provided to only 2.5% of active lawyers
3 practicing within the State of California

4 52. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
5 action settlements while serving as lead class counsel in recent years, including but not limited to a
6 \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America, Inc.*,
7 Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action settlement in
8 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252 (Sacramento Cty.
9 Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017 (*Montelone v. Ocean*
10 *Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a \$1.8 million wage and
11 hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc. dba American*
12 *Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and hour class action
13 settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160 JGB (C.D. Cal.)), a
14 \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham Vacation Ownership,*
15 *et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million wage and hour class action
16 settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-CV-04864-YGR (N.D.Cal.));
17 a \$7.25 million wage and hour class action settlement in 2020 in *Avina, et al. v. First Alarm Security*
18 *& Patrol, Inc.*, Case No. 18CV323753 (Santa Clara Cty. Super Ct.); a \$2.2 million wage and hour
19 class action settlement in 2021 (*Ghorchian, et al. v. West Hills Hospital, et al.*, Case No. LS029737
20 (Los Angeles Cty. Super. Ct.)); a \$2.85 million dollar wage and hour settlement in 2021 (*Valencia*
21 *v. The Original Mowbray’s Tree Service, Inc.*, Case No. CIVDS1825518 (San Bernardino Cty.
22 Super. Ct.)); a \$1 million wage and hour class action settlement in 2022 (*Duong v. Loan Factory,*
23 *Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super. Ct.)), a \$1.4 million wage and hour class action
24 settlement in 2023 in *Correa, et al. v. FedEx Supply Chain, Inc.*, Case No. CIVDS2023369 (San
25 Bernardino Cty. Super. Ct.), a \$2.38 million wage and hour class action settlement in 2023 in *Michel,*
26 *et al. v. Valley Thrift Store, Inc.*, Case No. 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5
27 million wage and hour class action settlement in 2023 in *Jajuga v. Pilot Travel Centers*, Case No.
28 CIVDS1931464 (San Bernardino Cty. Super. Ct.); \$1.015 million wage and hour class action

1 settlement in 2023 in *Gotishan v. Kyo Autism Therapy*, Case No. CGC-21-596378 (San Francisco
2 Cty. Super. Ct); and a \$1.15 million wage and hour PAGA settlement in 2023 in *Vaughn v. Public*
3 *Health Foundation Enters., Inc.*, Case No. 21STCV18512 (Los Angeles Cty. Super. Ct.); a \$1.5
4 million wage and hour class action settlement in *McKinnie v. Iron Mountain*, Case No.
5 21STCV05707 (Los Angeles Cty. Super. Court); and a \$1.3 million wage and hour class action
6 settlement in *Ellsworth, et al. v. Hallcon*, Case No. 20STCV06618 (Los Angeles Cty. Super. Court).

7 53. For all the foregoing reasons, I believe the settlement is fair, reasonable, and in the
8 best interests of the class.

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct. Executed this 8th day of August 2024, at Berkeley, California.

11
12
13 
14 Declarant

EXHIBIT

1

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Attorneys for Defendants MATTHEWS
INTERNATIONAL CORPORATION; THE
YORK GROUP, INC.; AND SANNIPOLI
CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

RIVERSIDE HISTORIC COURTHOUSE

PEDRO CEDENO, as an individual on behalf of
himself and on behalf of all others similarly
situated,

Plaintiff,

vs.

SANNIPOLI CORPORATION, a
California Corporation; MATTHEWS
INTERNATIONAL CORPORATION, a
Pennsylvania Corporation; THE YORK
GROUP, INC., a Delaware Corporation; and
DOES 1-100, inclusive,

Defendants.

Lead Case No. CVRI2303826
[Consolidated with Case Nos. CVRI2304132;
CVRI2304915; and CVRI2306853]

*[Assigned for all purposed to The Honorable
Harold Hopp, Dept. 1]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT**

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between Plaintiffs Pedro Ceden0 (“Ceden0”) and Santos Martinez Padilla (“Padilla”) (Ceden0 and
3 Padilla collectively “Plaintiffs”) and Defendants Matthews International Corporation
4 (“Matthews”), The York Group Inc., (“York”) and Sannipoli Corporation (“Sannipoli”)
5 (collectively “Defendants”) (collectively “the Parties”) with regard to the consolidated lawsuits,
6 lead case titled *Ceden0 v. Matthews International Corporation, et al.*, Case No. CVRI2303826
7 pending in the Superior Court of the State of California, County of Riverside (the “Civil
8 Actions”).

9 THE SETTLEMENT

10 1. Subject to the Court’s approval pursuant to Section 382 of the California Code of
11 Civil Procedure and Rule 3.769 of the California Rules of Court, Plaintiffs and Defendants have
12 agreed to settle the Civil Actions upon the terms and conditions and for the consideration set forth
13 in this Agreement.

14 DEFINITIONS

15 Unless otherwise defined herein, capitalized terms used in this Agreement shall have the
16 meanings set forth below:

17 2. “Civil Actions” means the lawsuits filed by Plaintiffs in the Superior Court of the
18 State of California for the County of Riverside titled, *Pedro Ceden0 v. Matthews International et*
19 *al*, Case Number CVRI2303826, *Pedro Ceden0 v. Matthews International et al*, Case Number
20 CVRI2304132, *Santos Martinez Padilla v. Matthews International et al*, Case Number
21 CVRI2304915, *Santos Martinez Padilla v. Matthews International et al*, Case Number
22 CVRI2306853, all of which have been consolidated under lead Case Number CVRI2303826.

23 3. “Class”, “Classes”, “Class Member” or “Class Members” means all current and
24 former non-exempt hourly employees, including Plaintiffs, who worked for Defendants directly or
25 through a staffing agency at a Sannipoli Corporation d/b/a/ Whited Cemetery Service location in
26 California during the Class Period.

27 4. “Class Counsel” means Zachary Crosner, Brandon Brouillette, and Chad Saunders
28

1 from Crosner Legal P.C. (“Crosner”) and Norman Blumenthal, Kyle Nordrehaug, and Aparajit
2 Bhowmik from Blumenthal Nordrehaug Bhowmik De Blouw (“BNBD”).

3 5. “Class Period” means between July 26, 2019, through April 4, 2024.

4 6. “Class Representatives” or “Plaintiffs” means plaintiffs Pedro Ceden0 and Santos
5 Martinez Padilla.

6 7. “Complaints” means the Complaints filed in the Superior Court of the State of
7 California for the County of Riverside titled, *Pedro Ceden0 v. Matthews International et al*, Case
8 Number CVRI2303826, *Pedro Ceden0 v. Matthews International et al*, Case Number
9 CVRI2304132, *Santos Martinez Padilla v. Matthews International et al*, Case Number
10 CVRI2304915, *Santos Martinez Padilla v. Matthews International et al*, Case Number
11 CVRI2306853, all of which have been consolidated under lead Case Number CVRI2303826..

12 8. “Court” means the Superior Court of the State of California for the County of
13 Riverside.

14 9. “Defendants” means Defendants Matthews International Corporation, The York
15 Group, Inc. and Sannipoli Corporation.

16 10. “Defense Counsel” means Jennifer C. Terry and Corrie J. Buck of Reed Smith
17 LLP.

18 11. “Effective Date” means the first date upon which all of the following events have
19 occurred:

20 (i) this Agreement has been executed by all Parties and by Class Counsel and
21 Defense Counsel;

22 (ii) the Court has preliminarily approved the Settlement;

23 (iii) notice has been properly given to Class Members;

24 (iv) the Court has held a Final Fairness and Approval Hearing and entered the
25 Final Order and Judgment approving the Settlement; and

26 (v) in the event no objection is submitted, then the date Judgment is entered, in
27 the event no appeal is filed, then sixty (60) days after the entry of the Final
28

Order and Judgment, or, if an appeal is filed, upon the final dismissal of the appeal, writ or other appellate proceeding opposing this Agreement.

12. “Employer’s Share of Payroll Taxes” means Defendants’ portion of payroll taxes, including, but not limited to FICA and FUTA, on the portion of the Individual Settlement Payments that constitutes wages. This additional amount shall be paid by Defendants in addition to the GSA and sent to the Settlement Administrator at the same time as the GSA. The Settlement Administrator shall handle the calculation of the taxes owed, payment of such amounts to the appropriate agencies, and reporting.

13. “Enhancement Award” means any payment to the Class Representatives for their service to the Class and their individual release as set forth in paragraph 86, which is in addition to whatever payments they may otherwise be entitled to as a Settlement Class Member.

14. “Final Fairness and Approval Hearing” means the hearing to be requested by Plaintiffs and conducted by the Court after the filing by Plaintiffs of an appropriate motion and following appropriate notice to Class Members giving Class Members an opportunity to opt out from the Class and Settlement or to object to the Settlement, at which time Plaintiffs shall request that the Court finally approve the fairness, reasonableness and adequacy of the terms and conditions of the Settlement, enter the Final Order and Judgment, and take other appropriate action.

15. “Final Order and Judgment” means the order and judgment to be entered by the Court upon granting final approval of the Settlement and this Agreement as binding upon the Parties and the Settlement Class Members who do not properly and timely submit a written Opt Out.

16. “Gross Settlement Amount” or “GSA” means the maximum amount (not including the Employer’s Share of Payroll Taxes) that Defendants shall be required to pay under this Agreement, which shall be inclusive of all Individual Settlement Payments to Settlement Class Members, PAGA Payment Share to PAGA Employees, attorneys’ fees and costs, Settlement Administration Costs, Enhancement Awards to the Class Representatives, and payment to the California Labor Workforce Development Agency (“LWDA”) pursuant to the California Labor

1 Code Private Attorneys General Act of 2004 (“PAGA”), and employees’ share of payroll taxes on
2 any portion of the Individual Settlement Payments to the Settlement Class Members that
3 constitutes wages. The Gross Settlement Amount is Nine Hundred Thousand Dollars and No
4 Cents (\$900,000.00).

5 17. “Individual Settlement Payment” means the gross amount that shall be paid to
6 each Settlement Class Member for their Qualifying Workweeks. The Individual Settlement
7 Payment shall be determined as described in paragraph 73 below. If a Class Member is also a
8 PAGA Employee, the individual shall also receive a PAGA Payment Share.

9 19. “Net Settlement Amount” means the amount of money remaining after all
10 Individual Settlement Payments to Settlement Class Members, Class Counsel’s attorneys’ fees,
11 costs and expenses, any Enhancement Awards to the Class Representatives, settlement
12 administration costs and expenses, all penalty amounts, and all employee payroll
13 withholdings/taxes applicable to the Individual Settlement Payment made to Settlement Class
14 Members are deducted from the Gross Settlement Amount.

15 20. “Notice of Class Action and PAGA Settlement” or “Notice” means the form
16 attached hereto as **Exhibit 1** or whichever form is approved by the Court that shall be provided to
17 the Class Members to inform them of the terms of this Agreement and their rights and options
18 related thereto in the various methods described in paragraphs 56 and 58-60 below. Upon approval
19 by the Court, the Notice of Class Action and PAGA Settlement shall be translated into Spanish,
20 and both the English and Spanish versions shall be provided to the Class Members.

21 21. “Objection” means a Class Member’s written objection to the Settlement. Any
22 Objection shall be in the form described in paragraph 65 below.

23 22. “Opt Out” means a written request that a Class Member may submit to be excluded
24 from the Class and the Settlement. Any Opt Out shall be in the form described in paragraph 61
25 below.

26 23. “PAGA Employees” means all current and former non-exempt employees of
27 Defendants who worked either directly or through a staffing agency at a Whited Cemetery Service
28 location in California employed between June 7, 2022 through the earlier of: (a) April 4, 2024, or

1 (b) the date of preliminary approval.

2 24. "PAGA Letters" means the notice of alleged Labor Code violations that Pedro
3 Ceden0 caused to be sent to the LWDA pursuant to Labor Code Section 2699.3(l) on or about
4 June 7, 2023, and the notice of alleged Labor Code violations that Santos Martinez Padilla caused
5 to be sent to the LWDA pursuant to Labor Code Section 2699.3(l) on or about August 22, 2023.

6 25. "PAGA Payment" means the amount that the Parties have agreed to pay to the
7 California Labor and Workforce Development Agency ("LWDA") and the PAGA Employees in
8 connection with the California Labor Code Private Attorneys General Act of 2004, California
9 Labor Code Sections 2698, *et seq.* ("PAGA"). The Parties have agreed that Sixty Thousand
10 Dollars and No Cents (\$60,000) of the Gross Settlement Amount will be allocated to the resolution
11 of all claims arising under PAGA. Pursuant to Labor Code Section 2699(i), it shall be distributed
12 as follows: 25%, or \$15,000, to the PAGA Employees and 75%, or \$45,000, to the LWDA. If it
13 should later be determined by the Court that an additional amount is needed to effectuate a full and
14 complete release of all PAGA claims, the amount shall be deducted from the Gross Settlement
15 Amount.

16 26. "PAGA Payment Share" means the gross amount that shall be paid to each PAGA
17 Employee for their total PAGA Workweeks. The PAGA Payment Share for PAGA Employees
18 shall be calculated as described in paragraph 74 below.

19 27. "PAGA Period" means the period between June 7, 2022 through the earlier of: (a)
20 April 4, 2024, or (b) the date of preliminary approval.

21 28. "PAGA Workweeks" means the total number of workweeks worked by each
22 PAGA Employee during the PAGA Period based on Defendants' records.

23 29. "PAGA Workweek Payment Rate" means the gross amount that shall be paid for
24 each PAGA Workweek for PAGA Employees as described below in paragraph 74.

25 30. "Party" or "Parties" means Plaintiffs and Defendants.

26 31. "Preliminary Approval Order" means the order to be issued by the Court approving
27 and authorizing the mailing of the Notice of Class Action and PAGA Settlement by the Settlement
28 Administrator, setting the date of the Final Fairness and Approval Hearing and granting

1 preliminary approval of the Settlement set forth in this Stipulation, among other things,
2 substantially in the form attached as **Exhibit 2**, or as subsequently modified with the approval of
3 counsel for all Parties.

4 32. “Proof of Work” means document(s) that a Class Member and/or PAGA Employee
5 may submit to the Settlement Administrator to show that they are entitled to payment based upon
6 a different number of Qualifying Workweeks and/or PAGA Workweeks than the number(s)
7 calculated by the Settlement Administrator based upon Defendants’ data. Adequacy of the Proof
8 of Work submitted will be evaluated by Class Counsel, Defense Counsel, and the Settlement
9 Administrator. In the event of a disagreement, the Settlement Administrator will make the final
10 decision.

11 33. “Qualifying Workweeks” means the total number of workweeks worked by each
12 Class Member during the Class Period based on Defendants’ records.

13 34. “Released Class Claims” are defined in paragraph 93 below.

14 35. “Released PAGA Claims” with respect to the PAGA Employees are defined in
15 paragraph 94 below.

16 36. “Released Parties” means Matthews International Corporation, The York Group,
17 Inc., and Sannipoli Corporation together with their officers, directors, employees and agents.

18 37. “Response Deadline” means the forty-five (45) day period following the date the
19 Settlement Administrator mails the Notice of Class Action and PAGA Settlement to Class
20 Members within which any Class Member may: (a) submit a written Opt Out form to be excluded
21 from the Class and this Settlement (Opt-Out Form attached as **Exhibit 2**) ; (b) submit an Objection
22 (Objection Form attached as **Exhibit 3**); and/or (c) submit a dispute regarding their Qualifying
23 Workweeks and/or PAGA Workweeks and any Proof of Work. For purposes of this definition,
24 the term “submit” refers to the date by which the correspondence is postmarked, faxed, or emailed
25 and is thereafter received by the Settlement Administrator. All Opt Outs and Objections must be
26 submitted on or before the end of the Response Deadline or within the extended deadline for
27 certain Class Members only as expressly described in paragraph 58(a).

28 38. “Settlement” means the final and complete disposition of the Civil Actions as

provided for in this Agreement and all Exhibits hereto.

39. “Settlement Administrator” means Apex Class Action Administration (“Apex”).

40. “Settlement Administration Costs” means the reasonable costs and fees of administration of this Settlement to be paid to the Settlement Administrator from the Gross Settlement Amount, including, but not limited to: (i) translating into Spanish, printing and emailing and mailing and re-mailing (if necessary) of Notices of Class Action and PAGA Settlement to Class Members and PAGA Employees; (ii) preparing and maintaining a web site for settlement administration; (iii) preparing and submitting to Settlement Class Members, PAGA Employees, and government entities all appropriate tax filings and forms; (iv) computing the amount of and distributing Individual Settlement Payments, PAGA Payment Shares, Class Representative Service Award, and Class Counsel Attorneys’ Fees, Costs and Expenses; (v) processing and validating Opt Outs; and (vi) calculating and remitting to the appropriate government agencies all employer and employee payroll tax obligations arising from the Settlement and preparing and submitting filings required by law in connection with the payments required by the Settlement.

41. “Settlement Class Members” means Plaintiffs and all other Class Members who do not submit a timely and valid Opt Out under the process described in paragraph 61.

42. “Workweek Payment Rate” means the gross amount that shall be paid for each Qualifying Workweek as described below in paragraph 73.

BACKGROUND

43. On July 26, 2023, Plaintiff Pedro Cedenro (“Cedenro”) filed a putative class action complaint in Riverside County Superior Court against Matthews International Corporation, The York Group, Inc., and Sannipoli Corporation (“Defendants”), case number CVRI2303826 (the “Cedenro Class Action Complaint”). Through the Cedenro Class Action Complaint, Cedenro, a non-former exempt employee seeks damages, restitution, penalties, unpaid wages, injunctive relief, declaratory relief, pre- and post-judgment interest, costs, attorneys’ fees, and any other relief deemed appropriate by the Court on the basis of the allegations, inter alia, against Defendants: (1) violation of California Labor Code §§ 1194, 1197, and 1197.1 (unpaid minimum wages); (2)

1 violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (3) violation of California
2 Labor Code §§ 226.7 and 512 (a) (unpaid meal period premiums); (4) violation of California
3 Labor Code § 226.7 (unpaid rest period premiums); (5) violation of California Labor Code §
4 226(a) (non-compliant wage statements); (6) violation of California Labor Code §§ 201 and 202
5 (final wages not timely paid); (7) violation of California Labor Code §§ 2800 and 2802
6 (unreimbursed business expenses); (8) violation of California Business & Professions Code §§
7 17200, et seq.

8 44. On September 12, 2023, Defendants filed their Answer to the Cedeno Class Action
9 Complaint

10 45. On August 11, 2023, Cedeno filed a second complaint under the Private Attorney
11 General’s Act (“PAGA”) in Riverside County Superior Court against Defendants, case number
12 CVRI2304132 (the “Cedeno PAGA Complaint”). The Cedeno PAGA Complaint alleges
13 violations of the PAGA, including failure to pay overtime wages, failure provide meal periods or
14 to pay premiums in lieu thereof, failure to provide rest periods or to pay rest premiums in lieu
15 thereof, failure to pay minimum wages, failure to timely pay wages upon separation from
16 employment, failure to timely pay wages during employment, failure to provide accurate itemized
17 wage statements, failure to reimburse business expenses, failure to maintain records, credit check
18 related claims, background check/criminal history related claims, failure to pay sick wages at the
19 regular rate, failure to provide supplemental paid sick leave, failure to pay vacation wages, failure
20 to provide suitable resting facilities, failure to provide suitable seating, and OSHA and Cal/OSHA
21 violations.

22 46. On October 3, 2023, Defendants filed their Answer to the Cedeno PAGA
23 Complaint.

24 47. On September 18, 2023, Plaintiff Santos Martinez Padilla (“Padilla”) filed a
25 putative class action complaint in Riverside County Superior Court against Matthews International
26 Corporation, The York Group, Inc., and Sannipoli Corporation (“Defendants”), case number
27 CVRI2304915 (the “Padilla Class Action Complaint”). Through the Padilla Class Action
28 Complaint, Padilla, a non-exempt employee seeks damages, restitution, penalties, unpaid wages,

1 injunctive relief, declaratory relief, pre- and post-judgment interest, costs, attorneys' fees, and any
2 other relief deemed appropriate by the Court on the basis of the allegations, inter alia, against
3 Defendants: (1) violation of California Business & Professions Code §§ 17200, et seq.; (2)
4 violation of California Labor Code §§ 1194, 1197, and 1197.1 (unpaid minimum wages); (3)
5 violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (4) violation of California
6 Labor Code §§ 226.7 and 512 (a) (unpaid meal period premiums); (5) violation of California
7 Labor Code § 226.7 (unpaid rest period premiums); (6) violation of California Labor Code §
8 226(a) (non-compliant wage statements); (7) violation of California Labor Code §§ 2800 and 2802
9 (unreimbursed business expenses); (8) violation of California Labor Code §§ §§201-204, 233, 246
10 (failure to pay sick time).

11 48. Due to the pending settlement discussions, the Parties stipulated, and the Court
12 ordered, that Defendants' responsive pleading deadline to the Padilla Class Action Complaint
13 would be April 28, 2024.

14 49. On December 21, 2023, Padilla filed a second complaint under the Private Attorney
15 General's Act ("PAGA") in Riverside County Superior Court against Defendants, case number
16 CVRI2306853 (the "Padilla PAGA Complaint"). The Padilla PAGA Complaint alleges violations
17 of the PAGA, including failure to pay overtime wages, failure provide meal periods or to pay
18 premiums in lieu thereof, failure to provide rest periods or to pay rest premiums in lieu thereof,
19 failure to pay minimum wages, failure to timely pay wages upon separation from employment,
20 failure to timely pay wages during employment, failure to provide accurate itemized wage
21 statements, failure to reimburse business expenses, failure to maintain records, credit check related
22 claims, background check/criminal history related claims, failure to pay sick wages at the regular
23 rate, failure to provide supplemental paid sick leave, failure to pay vacation wages, failure to
24 provide suitable resting facilities, failure to provide suitable seating, and OSHA and Cal/OSHA
25 violations.

26 50. Defendants' Answer to the Padilla PAGA Complaint is currently April 10, 2024.

27 51. The Cedeno Class Action Complaint, the Cedeno PAGA Complaint, the Padilla
28 Class Action Complaint, and the Padilla PAGA Complaint shall be referred to hereafter as the

1 “Complaints.”

2 52. On February 8, 2024, the Parties filed a stipulation to consolidate the Complaints
3 into a single action, with the lead Case Number CVRI2303826.

4 53. On February 20, 2024 the Court granted the stipulation and ordered the Complaints
5 to be consolidated for the purposes of settlement and approval.

6 54. Defendants deny each of the allegations of the Complaints and the PAGA Letters,
7 denies Defendants has any liability for the claims of Plaintiffs, the putative class(es) they purport
8 to represent or any allegedly aggrieved employee, and deny that Plaintiffs, the putative class(es)
9 they purport to represent or any allegedly aggrieved employee are entitled to any relief.

10 55. Class Counsel and Defense Counsel have extensive experience in litigating wage
11 and hour class actions in California. Class Counsel and Defense Counsel have vigorously litigated
12 the Civil Action since its inception.

13 56. On January 5, 2024, the Parties engaged in mediation before Louis Marlin, Esq., an
14 experienced mediator in this area of law. During the mediation, Plaintiffs and Defendants agreed
15 on the principal terms of a settlement and, thereafter, executed a Memorandum of Understanding
16 (“MOU”) to memorialize their agreement on or about January 22, 2024. The MOU is superseded
17 in all respects by this Agreement.

18 50. This Agreement is made in compromise of and embraces all claims against any of
19 the Released Parties as enumerated in paragraphs 93-94 below.

20 51. Because the settled matters are putative class and representative actions, this
21 Agreement must receive preliminary and final approval by the Court. Accordingly, Plaintiffs and
22 Defendants enter into this Agreement on a conditional basis. Should the Court, or any other court
23 taking jurisdiction of this matter, decline to approve all material aspects of the Settlement or make
24 any ruling substantially altering the material terms of the Settlement, the Settlement shall be
25 voidable and unenforceable as to Plaintiffs and Defendants, at the option of any party. Subject to
26 the requirements of the immediately preceding sentence, any party may exercise its option to void
27 this Settlement by giving notice, in writing, to the other Parties and to the Court at any time before
28 final approval by the Court of this Settlement. The Party electing to void this Settlement will pay

1 all of the Settlement Administration Costs incurred as of the time such Party elected to void the
2 Settlement. In the event that the Effective Date, as defined herein does not occur, this Agreement
3 shall be deemed null and void *ab initio* and shall be of no force or effect whatsoever, and shall not
4 be referred to or utilized for any purpose. Defendants deny all of Plaintiffs' claims and all class
5 and representative claims as to liability and damages. Defendants expressly reserve all rights to
6 challenge any and all such claims and allegations upon all procedural and factual grounds,
7 including the assertion of all defenses, if the Effective Date of the Settlement does not occur.
8 Likewise, Plaintiffs expressly reserves all rights to pursue, amend, dismiss or otherwise dispose of
9 the claims covered under this Settlement, including but not limited to seeking damages, restitution,
10 fees, expenses, interest and/or any other monetary amount in excess of the GSA set forth above for
11 the claims included in the Civil Actions or for any other claims Plaintiffs may have against
12 Defendants, in the event the Effective Date of the Settlement does not occur.

13 52. Plaintiffs and Class Counsel have concluded, after taking into account the sharply
14 disputed factual and legal issues involved in the Complaints, the risks attending further
15 prosecution, and the substantial benefits to be received pursuant to settlement as set forth in this
16 Agreement, that settlement on the terms set forth herein is in the best interest of Plaintiffs and the
17 Class and the PAGA Employees, and is fair and reasonable.

18 53. Similarly, Defendants have concluded, after taking into account the sharply
19 disputed factual and legal issues involved in the Civil Action, the risks and expense attending
20 further litigation, and their desire to put the controversy to rest, that settlement on the terms set
21 forth herein is in their best interest and is fair and reasonable.

22 54. This Settlement contemplates (i) entry of an order preliminarily approving the
23 Settlement, (ii) distribution of the Notice of Class Action and PAGA Settlement to Class Members
24 and PAGA Employees, and (iii) entry of a Final Order and Judgment of the Settlement. The Court
25 shall retain jurisdiction over the Civil Action and Parties for purposes of enforcing the Settlement
26 and resolving any disputes relating to the Settlement.

27 **SETTLEMENT APPROVAL AND IMPLEMENTATION PROCEDURE**

28 **Preliminary Approval of Settlement**

1 55. As soon as practicable, Class Counsel shall submit this Agreement to the Court for
2 its preliminary approval. Plaintiffs shall also move the Court to enter a Preliminary Approval
3 Order and to conditionally certify the Class for purposes of this Settlement only. Class Counsel
4 shall provide the motion for preliminary approval to Defense Counsel for review of the substance
5 contained in the motion for preliminary approval at least 2 days prior to filing. The submission
6 shall also include admissible evidence as may be required for the Court to determine that this
7 Settlement is fair, adequate, and reasonable, as required by California Code of Civil Procedure
8 section 382. The submission shall also include the Notice of Class Action and PAGA Settlement
9 in the form attached hereto as **Exhibit 1**, an Opt-Out Form attached hereto as **Exhibit 2**, an
10 Objection Form attached hereto as **Exhibit 3**, a proposed order granting preliminary approval of
11 Settlement in the form attached hereto as **Exhibit 4**, which shall, among other things, set a Final
12 Fairness and Approval Hearing date, a declaration from the Settlement Administrator, and a
13 declaration from Defendants' counsel. Plaintiffs and Defendants agree that the conditional
14 certification of the Class for settlement purposes only is in no way an admission by any of the
15 Released Parties that class certification would otherwise be proper.

16 **Notice to Class Members and PAGA Employees**

17 56. Following the Court's order granting preliminary approval of this Settlement, the
18 Settlement Administrator shall disseminate the Notice of Class Action and PAGA Settlement in
19 the form attached hereto as **Exhibit 1** to the Class Members and PAGA Employees.

20 **Cooperation**

21 57. The Parties agree to cooperate with each other to accomplish the terms of this
22 Settlement, including, but not limited to, the timely execution of such documents and such other
23 acts as may be reasonably necessary to implement the terms of this Settlement. Neither the Parties
24 nor any of their attorneys or agents shall solicit or encourage any Class Members to exclude
25 themselves from the Settlement or to object to the Settlement. The Parties to the Settlement shall
26 use their best efforts, including all efforts contemplated by this Agreement and any other efforts
27 that may become necessary by Court order, or otherwise, to effectuate this Settlement and the
28 terms set forth herein.

1 **Notice of Class Action and PAGA Settlement by Mail**

2 58. The Settlement Administrator shall, within fourteen (14) days receiving the Class
3 Data from Defendants, mail by First-Class United States mail the Notice of Class Action and
4 PAGA Settlement to each Class Member and PAGA Employee, translated by the Settlement
5 Administrator into English and Spanish (hereinafter “Notice”), using the most recent address
6 available to the Settlement Administrator for mail delivery, after updating provided addresses
7 using the National Change of Address Database. The Settlement Administrator shall also, within
8 10 days of mailing the Notice, send an electronic copy of the Notice via email to the last known
9 email addresses (to the extent available) of each Class Member and PAGA employee.

10 a. Any Notice returned to the Settlement Administrator as non-
11 delivered on or before the Response Deadline with a forwarding address from the
12 U.S. postal service shall be promptly re-mailed to the forwarding address affixed
13 thereto. If no forwarding address is provided, the Settlement Administrator shall
14 promptly attempt to determine a correct address by the use of skip-tracing, or other
15 automated search, and shall then promptly perform a re-mailing to the Class
16 Member whose Notice was returned as non-delivered, assuming another mailing
17 address is identified by the Settlement Administrator. A letter prepared by the
18 Settlement Administrator will be included in the re-mailed Notice in that instance,
19 stating that the recipient of the Notice has until the original deadline set forth on the
20 Notice, or ten (10) calendar days after the date of re-mailing of the Notice
21 (whichever is later) to object or submit an Opt Out or submit Proof of Work. In no
22 event shall this be more than ten (10) calendar days after the Response Deadline.

23 b. If these procedures are followed, notice to Class Members shall be
24 deemed to have been fully satisfied, and if the intended recipient does not receive
25 the Notice of Class Action and PAGA Settlement, the intended recipient shall
26 nevertheless remain a Class Member and shall be bound by all terms of the
27 Settlement and the Final Order and Judgment.

28 59. The Notice of Class Action and PAGA Settlement to be provided to each Class

Member shall set forth the number of Qualifying Workweeks applicable to the Class Member, the number of PAGA Workweeks applicable to the PAGA Employee, the estimated Workweek Payment Rate applicable to the Class Member, the estimated PAGA Workweek Payment Rate applicable to the PAGA Employee, and the estimated Individual Settlement Payment that the Class Member shall receive under this Settlement if the Court grants final approval of the Settlement, and the estimated PAGA Payment Share that PAGA Employee shall receive under this Settlement if the Court grants final approval of the Settlement. The Notice of Class Action and PAGA Settlement shall notify the Class Members that governmentally-mandated tax withholdings shall be deducted from a portion of his or her Individual Settlement Payment, as described in paragraph 78 below.

60. If the Class Member or PAGA Employee wishes to contest the number of Qualifying Workweeks and/or the number of PAGA Workweeks assigned to him or her by the Settlement Administrator, the Class Member or PAGA Employee or his or her authorized representative in the case of the individual's death or incapacity must timely provide his or her dispute with Proof of Work to the Settlement Administrator. To be timely, the completed Proof of Work must be mailed to the Settlement Administrator and postmarked no later than thirty (30) days after the date of mailing of the Notice of Class Action and PAGA Settlement. As this is not a claims-made Settlement and Class Members need not return the optional Proof of Work, Class Members shall be bound by this Agreement unless they submit a completed, signed and timely Opt Out. However, the Released PAGA claims shall be binding on all PAGA Employees regardless of whether they submit a valid Opt Out from the Class.

Opt Out

61. Any Class Member seeking to be excluded from the Class and this Settlement shall submit a written Opt Out to the Settlement Administrator. The written Opt Out must: (1) contain the name, address, and the last four digits of the Social Security Number of the person requesting exclusion; (2) state the Class Member's request to exclude himself or herself from the Settlement and to opt out of the Settlement; (3) be signed by the Class Member or his or her lawful representative; and (4) be postmarked by the Response Deadline and returned to the Settlement

Administrator at the specified address. Class Members may use the Opt-Out form attached as **Exhibit 2** to opt-out of the Settlement. Opt Outs may also be returned to the Settlement Administrator's email address, as specified in the Notice, by 11:59 p.m. on the Response Deadline. Any Class Member, who submits a completed, signed and timely written Opt Out shall no longer be a member of the Class, shall be barred from participating in this Settlement, shall be barred from objecting to this Settlement, and shall receive no benefit from this Settlement. Any untimely or incomplete Opt Out shall be considered null and void. If a Class Member submits both a completed, signed and timely Proof of Work and a completed, signed and timely Opt Out, the Opt Out shall be deemed invalid, and the Class Member shall be a Settlement Class Member and participate in this Settlement, if the date the Opt Out was submitted falls after the date the Proof of Work was submitted. A valid Opt Out from the Class does not affect the Released PAGA Claims, which shall be binding on all PAGA Employees regardless of the requested exclusion. The Settlement Administrator shall notify Class Counsel and Defense Counsel of the number of timely opt-outs within seven (7) days after the Response Deadline.

62. If more than ten percent (10%) of the Class Members opt out of the Settlement by submitting completed, signed and timely written Opt Outs, Defendants shall have the right at their sole discretion to rescind and void this Settlement by giving written notice to Class Counsel within fourteen (14) calendar days after the Settlement Administrator informs the Parties that the opt out rate exceeded ten percent (10%). If Defendants exercises its right to rescind and void this Settlement under this paragraph, Defendants shall pay any and all reasonable costs and expenses incurred by the Settlement Administrator.

Declaration of Compliance

63. As soon as practicable, but no later than ten (10) days following the close of the Response Deadline, the Settlement Administrator shall provide Class Counsel and Defense Counsel with a declaration attesting to completion of the notice process set forth in this Agreement, the number and names of opt outs, and a summary of any disputes raised by any Class Members. This declaration shall be filed with the Court by Class Counsel along with a motion requesting final approval of the Settlement. The Settlement Administrator shall also provide

1 weekly updates to Class Counsel and Defense Counsel regarding the opt outs, disputes, and
2 objections.

3 **Sufficient Notice**

4 64. The Parties agree that compliance with the procedures described in this Agreement
5 constitutes due and sufficient notice to Class Members and PAGA Employees of this Settlement
6 and the Final Fairness and Approval Hearing, and satisfies the requirements of due process, and
7 that nothing else shall be required of Plaintiffs, Class Counsel, Defendants, Defense Counsel, or
8 the Settlement Administrator to provide notice to Class Members of the Settlement and the Final
9 Fairness and Approval Hearing.

10 **Objections to Settlement**

11 65. Any Class Member or PAGA Employee wishing to object to this Settlement shall
12 inform the Court, Class Counsel, and Defense Counsel in writing of their intent to object by
13 following the procedure set forth in the Notice of Class Action and PAGA Settlement no later than
14 the Response Deadline. Any Objection must: (1) state the Class Member's or PAGA Employee's
15 full name, address, and the last four digits of his or her Social Security Number (for identification
16 purposes only); (2) state the grounds for the objection; (3) be signed by the Class Member or
17 PAGA Employee or their lawful representative; and (4) be postmarked on or before the Response
18 Deadline and returned to the Settlement Administrator and/or be emailed to the Settlement
19 Administrator by 11:59 pm on the date of the Response Deadline. Class Members may use the
20 Objection Form attached hereto as **Exhibit 3** to object to the Settlement.

21 66. Any Class Member or PAGA Employee who fails to file a timely written Objection
22 shall be foreclosed from objecting to this Settlement, unless otherwise ordered by the Court.

23 67. Class Counsel and Defense Counsel shall file any responses to any written
24 Objections submitted to the Court in accordance with this Agreement at least seven (7) days
25 before the Final Fairness and Approval Hearing, or on another date set by the Court.

26 68. Class Counsel shall file a motion for final approval within the timeframe provided
27 in the Code of Civil Procedures. Class Counsel shall provide the motion for final approval to
28 Defense Counsel for review of the substance contained in the motion for final approval at least 10

1 days prior to filing.

2 **Final Fairness and Approval Hearing**

3 69. On the date set forth by the Court for the Final Fairness and Approval Hearing in
4 the order granting preliminary approval of the Settlement, a Final Fairness and Approval Hearing
5 shall be held before the Court in order to consider and determine: (i) whether the Court should
6 give this Settlement final approval; (ii) whether the Court should approve Class Counsel's
7 application for attorneys' fees, costs and expenses and any Enhancement Award to the Class
8 Representative; and (iii) to hear any timely objections to the Settlement. At the Final Fairness and
9 Approval Hearing, Plaintiffs, Class Counsel, Defendants, and Defense Counsel shall ask the Court
10 to give final approval to this Settlement. If the Court grants final approval of the Settlement, the
11 Settlement Administrator shall post notice of final judgment on its website within seven (7)
12 calendar days of entry of the Final Order and Judgment. Class Counsel shall submit a copy of the
13 Final Order and Judgment to the LWDA within ten (10) days after entry of the Final Order and
14 Judgment in accordance with California Labor Code section 2699(1)(3).

15 **Settlement Payment Procedures**

16 Payments under this Agreement shall be made by the Settlement Administrator as follows:

17 70. Settlement Class Members shall be paid exclusively from the Net Settlement
18 Amount.

19 71. The Parties have agreed to pay the LWDA and PAGA Employees Sixty Thousand
20 Dollars (\$60,000). PAGA Employees shall be paid exclusively from the allocated amount from
21 the Gross Settlement Amount as described above.

22 72. Plaintiffs and Defendants recognize and agree that the asserted claims in the Civil
23 Actions are extremely difficult to quantify with any certainty for any given year, or at all, and are
24 subject to a myriad of differing calculations and formulas. Plaintiffs and Defendants agree that the
25 formulas for allocating Individual Settlement Payment to Settlement Class Members and PAGA
26 Payment Shares to PAGA Employees provided herein are reasonable and that the Individual
27 Settlement Payments and PAGA Payment Shares are designed to provide a fair settlement, despite
28 the uncertainties of the amounts alleged to be owed to Settlement Class Members and PAGA

1 Employees and the calculation of them. Distribution amongst Settlement Class Members is based
2 on Qualifying Workweeks that the Class Member was employed during the Class Period. Further,
3 distribution amongst PAGA Employees is based on PAGA Workweeks that the PAGA Employee
4 worked during the PAGA Period. Plaintiffs and Defendants have agreed that the distribution to
5 each Settlement Class Member and PAGA Employee shall be determined as set forth in
6 paragraphs 73 and 74 below.

7 73. The Individual Settlement Payment to each Settlement Class Member shall be
8 determined based on the number of Qualifying Workweeks worked by the Settlement Class
9 Member during the Class Period. The Net Settlement Amount shall be divided by the total
10 number of Qualifying Workweeks for all Settlement Class Members during the Class Period. The
11 result of this division shall yield a Workweek Payment Rate for the Class. The gross amount of
12 each Settlement Class Member's Individual Settlement Payment shall be calculated by multiplying
13 the number of Qualifying Workweeks applicable to that Class Member by the Workweek Payment
14 Rate. Governmentally-required employee tax withholdings shall be deducted from that portion of
15 each Individual Settlement Payment allocated as wages.

16 74. From the PAGA Payment (which shall be deducted from the Gross Settlement
17 Amount), PAGA Payment Shares shall be allocated to the PAGA Employees. The PAGA
18 Payment Share to each PAGA Employee shall be determined based on the number of PAGA
19 Workweeks worked by the PAGA Employee during the PAGA Period. The \$15,000 allocated to
20 the PAGA Employees shall be divided by the total number of PAGA Workweeks for all PAGA
21 Employees during the PAGA Period. The result of this division shall yield a PAGA Workweek
22 Payment Rate. The gross amount of each PAGA Employee's PAGA Payment Share shall be
23 calculated by multiplying the number of PAGA Workweeks applicable to that PAGA Employee
24 by the PAGA Workweek Payment Rate.

25 75. Within fifteen (15) days after the Effective Date, Defendants shall transmit the
26 Gross Settlement Amount to the Settlement Administrator.

27 76. Within twenty-one (21) business days after the Effective Date, the Settlement
28 Administrator shall transmit to Class Counsel the attorneys' fees, costs and expenses approved by

1 the Court, shall transmit to the Class Representatives their Enhancement Awards approved by the
2 Court, shall transmit to the LWDA the payment pursuant to PAGA, shall mail Individual
3 Settlement Payments to each Settlement Class Member, and PAGA Payment Shares to each
4 PAGA Employee.

5 77. Individual Settlement Payments and PAGA Payment Shares shall be made by
6 check and shall be made payable to each Settlement Class Member and PAGA Employee as set
7 forth in this Agreement. Under no circumstances shall the Settlement Administrator distribute
8 checks to Settlement Class Members and/or PAGA Employees until all timely workweek disputes
9 with Proof of Work have been considered, calculated, and accounted for, and the Class Counsel
10 fees and expenses, costs of the Settlement Administrator, and an Enhancement Award have been
11 calculated and accounted for.

12 78. The Individual Settlement Payments are payments for all Released Class Claims for
13 the Settlement Class Members. The PAGA Payment Shares are payments for the Released PAGA
14 Claims for the PAGA Employees. The Settlement Administrator shall be authorized to establish a
15 Qualified Settlement Fund ("QSF") pursuant to Internal Revenue Service ("IRS") rules and
16 regulations in which the Gross Settlement Amount shall be placed and from which payments
17 required by the Settlement shall be made. Twenty-Five percent (25%) of the amount of each
18 Individual Settlement Payment to each Settlement Class Member shall be allocated to their
19 respective alleged unpaid wage claims and shall be paid net of all applicable employment taxes,
20 including any federal, state, and/or local in issue tax withholding requirements and the employee
21 share of FICA taxes. Seventy-Five percent (75%) of the amount of each Individual Settlement
22 Payment to each Individual Settlement Class Member shall be allocated to alleged premium pay,
23 penalties and interest, and shall not be subject to withholding. PAGA Payment Shares will be
24 allocated entirely as penalties and will be included on an IRS Form 1099 to each PAGA
25 Employee. Each Settlement Class Member, PAGA Employee, Class Counsel, and Class
26 Representative shall be responsible for remitting to state and/or federal taxing authorities any
27 applicable taxes which may be owed on the portion of any payment received pursuant to this
28 Agreement, except as provided by this Agreement. The employer's share of payroll taxes shall

1 not be paid from the Gross Settlement Amount and shall remain the sole responsibility of
2 Defendants. Defendants shall remit the additional amount of the Employer's Share of Payroll
3 Taxes to the Settlement Administrator along with the Gross Settlement Amount.

4 79. It is expressly understood and agreed that the receipt of an Individual Settlement
5 Payment and/or PAGA Payment Share shall not entitle any Class Member and/or PAGA
6 Employee to compensation or benefits under any company bonus, contest or other compensation
7 or benefit plan or agreement in place during the applicable Class Period nor applicable PAGA
8 Period, nor shall it entitle any Class Member and/or PAGA Employee to any increased retirement,
9 401(k) or matching benefits, or deferred compensation benefits. The Parties agree that any
10 Individual Settlement Payments made to Settlement Class Members and any PAGA Payment
11 Share made to PAGA Employees under the terms of this Agreement shall not represent any
12 modification of previously credited length of service or other eligibility criteria under any bonus
13 plan, employee pension benefit plan or employee welfare plan sponsored by any of the Released
14 Parties, or to which any of the Released Parties are required to make contributions. Further, any
15 Individual Settlement Payments and PAGA Payment Shares made under this Agreement shall not
16 be considered compensation in any year for purposes of determining eligibility for, or benefit
17 accrual within, any employee pension benefit plan or employee welfare benefit plan sponsored by
18 any of the Released Parties or to which any of the Released Parties are required to make
19 contributions. It is the Parties' intent that the Individual Settlement Payments and PAGA Payment
20 Shares provided for in the Agreement are the sole payments to be made by Defendants to the Class
21 Members and PAGA Employees, and that the Class Members and PAGA Employees are not
22 entitled to any new or additional compensation or benefits as a result of having received the
23 Individual Settlement Payments and PAGA Payment Shares, notwithstanding any contrary terms
24 in any agreement, contract, benefit or compensation plan document that might have been in effect
25 during the applicable Class Period and PAGA Period.

26 80. Individual Settlement Payment checks and PAGA Payment Share checks shall
27 remain negotiable for 180 days from the date of mailing. The envelopes containing the settlement
28 distributions to Class Member shall bear the notation, "YOUR CLASS ACTION SETTLEMENT

CHECK IS ENCLOSED.” The settlement distribution checks shall be valid for 180 from the date of mailing. The Settlement Administrator shall mail a reminder postcard to any Class Member whose check has not been negotiated within 60 days after the date of mailing. If (i) any of the class members are current employees of the Defendants, (ii) the distribution mailed to those employees is returned to the administrator as being undeliverable, and (iii) the Administrator is unable to locate a valid mailing address, the Administrator shall arrange with the Defendants to have those distributions delivered to the employees at their place of employment. The settlement distribution shall include notification of the entry of judgment in the envelope which shall read as follows: “Please be advised that on _____[date], the Court entered judgment in this action, *Cedeno v. Sannipoli*, Case No. CVRI2303826, and a copy of the Judgment can be found by going to the Settlement Administrator’s website as set forth in the Class Notice. Any Individual Settlement Payment checks or PAGA Payment Share checks that remain uncashed after One Hundred Eighty (180) days from issuance shall be void. The Settlement Administrator shall pay the funds represented by such un-redeemed checks to the Settlement Class Members who did cash their checks on a pro-rata basis based on their Workweek Payment Rates, as described above. In such event, the Settlement Class Member and/or PAGA Employee who did not cash his or her check shall nevertheless remain bound by the Settlement’s Released Class Claims and/or Released PAGA Claims, as applicable. Notwithstanding the foregoing, the Settlement’s Released Class Claims does not include any individual claims under Section 16(b) of the FLSA, 29 U.S.C. 216(b), as to a Settlement Class Member who does not opt in to the Settlement by cashing, depositing or endorsing his or her Individual Settlement Payment check, to the extent that opting in is required to release such FLSA claims.

The Settlement Administrator

81. The Settlement Administrator shall administer the Settlement, including, but not limited to: (i) printing, mailing and re-mailing (if necessary), and emailing, the Notice and receiving Opt Outs and Objections from Class Members and Objections from PAGA Employees; (ii) preparing and maintaining a web site for the settlement administration of this matter which includes the Notice; (iii) preparing and submitting to Settlement Class Members and PAGA

1 Employees and government entities all appropriate tax filings and forms; (iv) computing the
2 amount of and distributing Individual Settlement Payments, PAGA Payment Shares, Enhancement
3 Awards, and Class Counsel attorneys' fees and costs, and redistributing funds from uncashed
4 checks as necessary; (v) processing and validating Qualifying Workweek disputes/Proof of Work,
5 Opt Outs and Objections; (vi) establishing a QSF, as defined by the Internal Revenue Code; (vii)
6 establishing a settlement website for the posting of relevant documents; and (viii) calculating and
7 remitting to the appropriate government agencies all employer and employee payroll tax
8 obligations arising from the Settlement and preparing and submitting filings required by law in
9 connection with the payments required by the Settlement.

10 82. Settlement administration fees in a reasonable amount shall be paid to the
11 Settlement Administrator from the Gross Settlement Amount. Settlement administration fees are
12 estimated to be Twelve Thousand Eight Hundred Ninety Dollars and No Cents (\$12,890). If the
13 actual cost of settlement administration is less or more than the amount approved by the Court,
14 those funds shall be added to or subtracted from the Net Settlement Amount for allocation to
15 Settlement Class Members. All costs associated with settlement administration shall come out of
16 the Gross Settlement Amount.

17 83. Delivery of Class Data. "Class Data" means a complete list of all Class Members
18 and PAGA Employees that Defendants will diligently and in good faith compile from its records.
19 The Class Data shall include the following information from Defendants' records all to the extent
20 available: each Class Member and PAGA Employee's full name, most recent mailing address and
21 telephone number, social security number, most recent e-mail address, and dates of hire and
22 termination. Defendants shall provide the Settlement Administrator with the Class Data no later
23 than thirty (30) calendar days after the Court grants preliminary approval of the Settlement. The
24 Class Data shall only be used by the Settlement Administrator for the purpose of calculating
25 Qualifying Workweeks and PAGA Workweeks, Individual Settlement Payments and PAGA
26 Payment Shares and notifying Class Members and PAGA Employees of the Settlement. The Class
27 Data applicable to an individual Class Member (*i.e.*, unique ID, full name, most recent mailing
28 address, e-mail address, telephone number, and Qualifying Workweeks and PAGA Workweeks)

1 shall be disclosed to Class Counsel if that individual Class Member contacts Class Counsel
2 regarding their Qualifying Workweeks and/or PAGA Workweeks, estimated Individual Settlement
3 Payments and/or PAGA Payment Shares, or related issues with the settlement, but only as
4 necessary to allow them to fulfill their fiduciary duties to the Class and investigate issues that may
5 arise with respect to payments to be made to Class Members and/or PAGA Group Members, so
6 long as notice is provided to Defendants by the Settlement Administrator and Class Counsel.
7 Notwithstanding, the Class Data in its entirety shall not be disclosed to the Class Representative,
8 or any other Class Members or PAGA Group, without written consent of Defendants or by order
9 of the Court. However, concurrent with the mailing of the Notice of Class Action and PAGA
10 Settlement, the Settlement Administrator shall provide Class Counsel and Defense Counsel with a
11 redacted list of all Class Members that shall be limited to the following information: (1) Unique
12 ID (as reflected on the respective Class Member's Notice); (2) Total Qualifying Workweeks and
13 estimated Individual Settlement Payment; and (3) PAGA Workweeks and estimated PAGA
14 Payment Share (if applicable). The Settlement Administrator shall run the Class Data list through
15 the National Change of Address database, and shall use the most recent address for each Class
16 Member – either from Defendants' records or the National Change of Address database – before
17 mailing the Notice of Class Action and PAGA Settlement. The Settlement Administrator shall
18 also take reasonable steps to locate any Class Member or PAGA Employee whose Notice of Class
19 Action and PAGA Settlement is thereafter returned as undeliverable. Class Data shall be provided
20 in a secure format to be determined by the Settlement Administrator and Defendants.

21 **Resolution of Disputes Over Qualifying Workweeks and/or PAGA Workweeks**

22 84. In calculating the Individual Settlement Payment for each Class Member and
23 PAGA Payment Share for each PAGA Employee, Defendants' records regarding the dates of
24 employment used to generate Qualifying Workweeks and PAGA Workweeks shall be presumed to
25 be correct. Any Class Member and/or PAGA Employee who disagrees with Defendants'
26 determination of his or her or its Qualifying Workweeks and/or PAGA Workweeks as indicated
27 on his or her or its Notice of Class Action and PAGA Settlement may dispute that calculation to
28 the Settlement Administrator as explained on the Notice of Class Action and PAGA Settlement.

Defendants' determination shall be presumed accurate unless the Class Member and/or PAGA Employee submits documents to the Settlement Administrator to show that he or she is entitled to payment based upon a different number of Qualifying Workweeks and/or different number of PAGA Workweeks than the number(s) calculated by the Settlement Administrator based upon Defendants' data. Adequacy of Proof of Work submitted will be evaluated by Class Counsel, Defense Counsel, and Settlement Administrator. In the event of a disagreement, the Settlement Administrator shall make the final decision. All such challenges by Class Members and/or PAGA Employees must be received no later than the Response Deadline.

85. In no case shall a dispute result in a payment by Defendants in excess of the Gross Settlement Amount.

Enhancement Award

86. From the Gross Settlement Amount, the Class Representatives may seek approval from the Court of an Enhancement Award up to Ten Thousand Dollars (\$10,000) each for serving as a Class Representatives, which Defendants shall not oppose.

Payment of Class Counsel Attorneys' Fees, Costs and Expenses

87. Class Counsel shall apply to the Court at the Final Fairness and Approval Hearing for an award of attorneys' fees not to exceed the amount of Three Hundred Thousand Dollars (\$300,000), which is one-third of the Gross Settlement Amount and an award of reasonable costs not to exceed Twenty-Five Thousand Dollars (\$25,000), exclusive of the Settlement Administration costs, both of which shall be paid out of the Gross Settlement Amount. The attorneys' fees awarded by the Court shall be allocated 75% to Crosner and 25% to BNBD.

88. Class Counsel and Defendants agree that such awards of attorneys' fees and costs are reasonable under the circumstances. Nothing in this Agreement shall restrict Plaintiffs' or Class Counsel's ability to appeal any decision by the Court to award less than the requested attorneys' fees and costs or Class Representative Enhancement Award. A decision by the Court to award less than the requested attorneys' fees and costs or Class Representative Enhancement Award, however, is not a material change to the settlement agreement. Any order relating to the award of attorney's fees, costs or Class Representative Enhancement Award, or any appeal from

1 any order relating thereto or reversal or modification thereof, will not operate to terminate or
2 cancel this Agreement, however, the Effective Date shall not occur until any such appeal is
3 resolved. If the amount of Enhancement Award, attorneys' fees and/or costs awarded by the Court
4 is less than the requested amounts, the difference shall serve to increase the Net Settlement
5 Amount to be distributed to Settlement Class Members as part of their Individual Settlement
6 Payments. Nothing in this Agreement will require Defendants to pay more than the Gross
7 Settlement Amount under any circumstances.

8 **Taxes and Withholding and Indemnification**

9 89. The Settlement Administrator shall be responsible for ensuring that all tax
10 obligations associated with the Settlement are timely paid to the appropriate governmental taxing
11 authorities. The Settlement Administrator's responsibilities include the following:

- 12 (i) filing all federal, state and local employment tax returns, income tax
13 returns, and any other tax returns associated with the taxes,
- 14 (ii) timely and proper filing of all required federal, state and local information
15 returns (*e.g.*, 1099s, W-2s, etc.), and
- 16 (iii) completion of any other steps necessary for compliance with any tax
17 obligations applicable to Settlement Payments under federal, state and/or
18 local law.

19 90. The Settlement Administrator shall determine the amount of any tax withholding to
20 be deducted from each Settlement Class Member's Individual Settlement Payment. All such tax
21 withholdings shall be remitted by the Settlement Administrator to the proper governmental taxing
22 authorities.

23 91. Each party to this Agreement acknowledges and agrees that:

- 24 (i) No provision of this Agreement and no written communication or
25 disclosure between or among the Parties or their attorneys and other
26 advisers is or was intended to be, nor shall any such communication or
27 disclosure constitute or be construed or be relied upon as, tax advice within
28

the meaning of United State Treasury Department Circular 230 (31 CFR Part 10, as amended);

- (ii) He, she or it (a) has relied exclusively upon his, her or its own, independent legal and tax advisers for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on him or her or it; and
- (iii) No attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by him or her of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

92. The Individual Settlement Payment received by Settlement Class Members and PAGA Payment Share received by PAGA Employees shall be reported by the Settlement Administrator, as required, to the state and federal taxing authorities on IRS forms 1099 and W-2 or similar forms. Each Settlement Class Member and PAGA Employee shall be responsible for paying all applicable state, local, and federal income taxes on all amounts the Settlement Class Member and PAGA Employee receives pursuant to this Agreement.

RELEASED CLAIMS

93. **Released Class Claims:** Providing there is final approval of this Settlement, then as of the date on which Defendants fully fund the Settlement per paragraph 75 above ("Release Effective Date"), each Settlement Class Member, individually and on behalf of their respective successors, assigns, agents, attorneys, executors, heirs and personal representatives, shall fully and finally release and discharge the Released Parties, and each of them from the Released Class Claims. The Released Class Claims with respect to the Settlement Class Members include all claims, rights, demands, liabilities, statutory causes of action, and theories of liability of every

1 nature and description, that were alleged in the operative Complaints or PAGA Letter, or arising
2 out of the facts and claims alleged in the operative Complaints and/or PAGA Letter against
3 Defendants or any of the Released Parties, including, but not limited to, failure to pay wages
4 overtime wages and minimum wages, failure to provide meal and rest periods, unpaid
5 compensation or premium pay arising out of missed, late, on-duty and/or short meal and/or rest
6 periods and/or off the clock work, failure to pay wages semi-monthly at designated times, failure
7 to reimburse for business expenses, failure to pay wages upon termination, failure to provide
8 accurate itemized wage statements, failure to reimburse for business expenses, failure to provide
9 all paid sick leave and failure to provide written notice of paid sick leave, failure to maintain
10 records, credit check related claims, background check/criminal history related claims, failure to
11 pay sick wages at the regular rate, failure to provide supplemental paid sick leave, failure to pay
12 vacation wages, failure to provide suitable resting facilities, failure to provide suitable seating,
13 OSHA and Cal/OSHA violations, and penalties, damages, interest, costs or attorneys' fees, and
14 violations of any other state or federal law, whether for economic damages, non-economic
15 damages, liquidated or punitive damages, restitution, tort, contract, equitable relief, injunctive or
16 declaratory relief, to the extent necessary to effect a full and complete release of the Released
17 Class Claims, including, but not limited to, all claims under any common laws, contract, Cal. Code
18 of Regulations, Title 8, Sections 11000, *et seq.*, Wage Order 5-2001, Wage Order 9 or any other
19 applicable Wage Order, California Labor Code Sections 96-98.2, *et seq.*, 200-204, 210, 216,
20 218.5, 218.6, 221, 222, 223, 225.5, 226, 226.3, 226.7, 229, 246, 246.5, 350-353, 510, 512, 551,
21 552, 558, 1174, 1174.5, 1175, 1182.11, 1182.12, 1194-1197.1, 1198, 1198.5, 1199, 2699, 2802,
22 California Civil Code Sections 3294 and 3336 and any related provisions, the California Code of
23 Civ. Proc. Section 1021.5, and/or the California Business & Professions Code Sections 17200, *et*
24 *seq.* This release shall extend to all such claims accrued during the Class Period.

25 94. **Released PAGA Claims:** Providing there is final approval of this Settlement, then
26 as of the Release Effective Date, Plaintiffs on behalf of themselves as private attorneys general
27 and on behalf of the State of California, individually and on behalf of their respective successors,
28 assigns, agents, attorneys, executors, heirs and personal representatives, shall fully and finally

1 release and discharge the Released Parties, and each of them from the Released PAGA Claims.

2 The Released PAGA Claims with respect to PAGA Employees means all claims, rights, demands,

3 liabilities, statutory causes of action, and theories of liability of every nature and description under

4 the California Labor Code Private Attorneys General Act of 2004, Labor Code Sections 2698, *et*

5 *seq.*, that were alleged in the operative Complaints or PAGA Letters, or arising out of the facts and

6 claims alleged in the operative Complaints and/or PAGA Letters against Defendants or any of the

7 Released Parties, including, but not limited to, failure to pay wages including, but not limited to,

8 overtime wages and minimum wages, failure to provide meal and rest periods, unpaid

9 compensation or premium pay arising out of missed, late, on-duty and/or short meal and/or rest

10 periods and/or off the clock work, failure to pay wages semi-monthly at designated times, failure

11 to reimburse for business expenses, failure to pay wages upon termination, failure to provide

12 accurate itemized wage statements, failure to reimburse for business expenses, failure to provide

13 all paid sick leave and failure to provide written notice of paid sick leave, failure to maintain

14 records, credit check related claims, background check/criminal history related claims, failure to

15 pay sick wages at the regular rate, failure to provide supplemental paid sick leave, failure to pay

16 vacation wages, failure to provide suitable resting facilities, failure to provide suitable seating,

17 OSHA and Cal/OSHA violations, and penalties, interest, costs or attorneys' fees, to the extent

18 necessary to effect a full and complete release of the Released PAGA Claims. This release shall

19 extend to all such claims accrued during the PAGA Period. This release shall be binding on all

20 PAGA Employees regardless of whether they submit a valid Opt Out from the Class. The release

21 of the Released PAGA Claims will be given the full preclusive effect allowed by California law in

22 accordance with *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). In particular, and in line with the

23 understanding of *Arias*, because any Aggrieved Employee's action under PAGA functions as a

24 substitute for an action by the government itself, a judgment is binding not only on the Plaintiff

25 but also on government agencies and *any other Aggrieved Employee not a party to the proceeding*.

26 Thus, nonparty employees *cannot* sue to recover additional *civil penalties* for the same Labor

27 Code violations released (but may sue for damages or other remedies for the same violations).

28

1 95. **Release by Plaintiffs.** Upon final approval of the Settlement, Plaintiffs for
2 themselves, their successors, assigns, agents, executors, heirs and personal representatives, spouse
3 and attorneys, and any and all of them, voluntarily and with the advice of counsel, waive and
4 release any and all claims, obligations, demands, actions, rights, causes of action, and liabilities
5 against any of the Released Parties of whatever kind and nature, character, and description,
6 whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute,
7 ordinance, regulation, constitution, common law, or other source of law or contract, whether
8 known or unknown, and whether anticipated or unanticipated, including all claims arising from or
9 relating to any and all acts, events and omissions occurring prior to the date of final approval of
10 this Agreement including, but not limited to, all claims which relate in any way to their
11 employment with or the termination of their employment with the Released Parties and/or their
12 provision of services to the Released Parties at any of Defendants' locations during the Class
13 Period. Plaintiffs further release all unknown claims against any of the Released Parties, covered
14 by California Civil Code Section 1542, which states: "**A general release does not extend to**
15 **claims that the creditor or releasing party does not know or suspect to exist in his or her**
16 **favor at the time of executing the release and that, if known by him or her, would have**
17 **materially affected his or her settlement with the debtor or released party.**" Notwithstanding
18 the provisions of section 1542, and for the purpose of implementing a full and complete release
19 and discharge of all of his Released Claims, Plaintiffs expressly acknowledge that this Settlement
20 is intended to include in its effect, without limitation, all Released Claims which Plaintiffs do not
21 know or suspect to exist in their favor at the time of execution hereof, and that the Settlement
22 contemplates the extinguishment of all such Released Claims.

23 **LIMITATIONS ON USE OF THIS SETTLEMENT**

24 **Notice to LWDA**

25 96. Notification to LWDA of PAGA Claims and Settlement. Class Counsel shall be
26 responsible for notifying the LWDA, via its online Proposed Settlement of PAGA Case interactive
27 form, of: (i) the pending settlement, (ii) the release of PAGA claims herein, (iii) the amount of the
28 PAGA Allocation, (iv) the preliminary and final approval hearings, (v) a copy of the proposed

1 settlement provided to the Court; and (vi) any other information required by the LWDA's online
2 proposed settlement reporting platform accessible at [https://www.dir.ca.gov/Private-Attorneys-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
3 [General-Act/Private-Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html). Notice of the proposed settlement shall be
4 provided to the LWDA at the same time that this Stipulation is submitted to the Court.

5 **No Admission**

6 97. Neither the acceptance nor the performance by Defendants of the terms of this
7 Agreement nor any of the related negotiations or proceedings are or shall be claimed to be,
8 construed as, or deemed a precedent or an admission by Defendants of the truth of any allegations
9 in the Complaint or the PAGA Letter.

10 **Non-Evidentiary Use**

11 98. Defendants deny that they have failed to comply with the law in any respect, or
12 have any liability to anyone based on the claims asserted in the Civil Actions. Plaintiffs expressly
13 acknowledge that this Agreement is entered into for the purpose of compromising highly disputed
14 claims and that nothing herein is an admission of liability, wrongdoing, or the propriety of class or
15 representative treatment by Defendants. Neither the Agreement nor any document prepared in
16 connection with the Settlement may be admitted in any proceeding as an admission by
17 Defendants. Notwithstanding this paragraph, any and all provisions of this Agreement may be
18 admitted in evidence and used in any proceeding to enforce the terms of this Agreement, or in
19 defense of any claims released or barred by this Agreement.

20 99. This Agreement, the Settlement, and any proceedings or actions or negotiations in
21 connection therewith shall be deemed settlement communications covered by California Evidence
22 Code Sections 1152 and 1154, Federal Rule of Evidence 408, and any other similar provisions or
23 law, and shall not be construed as an admission of truth of any allegation or the validity of any
24 cause of action or claim asserted or of any liability therein.

25 **Nullification**

26 100. If the Court for any reason does not approve this Settlement, this Agreement shall
27 be considered null and void and the Parties to this Agreement shall stand in the same position,
28 without prejudice, as if the Agreement had been neither entered into nor filed with the Court.

1 101. Invalidation of any material portion of this Agreement shall invalidate this
2 Agreement in its entirety unless the Parties agree in writing that the remaining provisions shall
3 remain in full force and effect.

4 **MISCELLANEOUS PROVISIONS**

5 **No Inducements**

6 102. Plaintiffs and Defendants acknowledge that they are entering into this Settlement as
7 a free and voluntary act without duress or undue pressure or influence of any kind or nature
8 whatsoever, and that neither Plaintiffs nor Defendants have relied on any promises, representations
9 or warranties regarding the subject matter hereof other than as set forth in this Agreement.

10 **No Prior Assignment**

11 103. The Parties represent, covenant, and warrant that they have not directly or
12 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
13 person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
14 released and discharged except as set forth herein.

15 **Construction**

16 104. The Parties agree that the terms and conditions of this Agreement are the result of
17 lengthy, intensive arm's-length negotiations between the Parties and their counsel, and this
18 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
19 any Party or his or its counsel participated in the drafting of this Agreement.

20 **California Law**

21 105. All terms of this Agreement and its exhibits shall be governed and interpreted by
22 and according to the laws of the State of California, without giving effect to any conflict of law
23 principles or choice of law principles.

24 **Captions and Interpretations**

25 106. Paragraph titles or captions contained herein are inserted as a matter of convenience
26 and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or
27 any provision hereof.

1 **Incorporation of Exhibits**

2 107. All exhibits to this Agreement are incorporated by reference and are a material part
3 of this Agreement. Any notice, order, judgment, or other exhibit that requires approval of the
4 Court must be approved without material alteration from its current form in order for this
5 Agreement to be enforceable.

6 **Modification**

7 108. This Agreement may not be changed, altered, or modified, except in a writing
8 signed by the Parties, and approved by the Court. This Agreement may not be discharged except
9 by performance in accordance with its terms or by a writing signed by the Parties.

10 **Reasonableness of Settlement**

11 109. Plaintiffs represent that this is a fair, reasonable, and adequate settlement and the
12 Parties have arrived at this settlement through arms-length negotiations, taking into account all
13 relevant factors, present and potential.

14 **Integration Clause**

15 110. This Agreement contains the entire agreement between the Parties relating to the
16 Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,
17 understandings, representations, and statements, whether oral or written and whether by a party or
18 such party's legal counsel, are merged herein. No rights hereunder may be waived except in
19 writing.

20 **Binding On Assigns**

21 111. This Agreement shall be binding upon and inure to the benefit of the Parties and
22 their respective heirs, trustees, executors, administrators, successors and assigns.

23 **No Prevailing Party**

24 112. No Party shall be considered a prevailing party for any purpose. Except as
25 otherwise provided for in this Agreement, each Party shall bear its or his own attorney fees and
26 costs.

27 **Class Counsel Signatories**

28 113. It is agreed that because the members of the Class are numerous, it is impossible or

1 impractical to have each member of the Class execute this Agreement. The Notice of Class
2 Action and PAGA Settlement shall advise all Class Members of the binding nature of the
3 Agreement, and the Agreement shall have the same force and effect as if this Agreement were
4 executed by each member of the Class.

5 **Counterparts**

6 114. This Agreement, and any amendments hereto, may be executed in any number of
7 counterparts, each of which when executed and delivered shall be deemed to be an original and all
8 of which taken together shall constitute but one and the same instrument. Fax and pdf signatures
9 shall be as valid as original signatures.

10 **Waiver of Right to Object**

11 115. By signing this Agreement, Plaintiffs, on behalf of the Class and allegedly
12 aggrieved employees, agree to be bound by its terms. Plaintiffs further agree not to request to be
13 excluded from the Class or Settlement and agree not to object to any of the terms of the
14 Agreement. Any request for exclusion from the Settlement by Plaintiffs or any Objection by
15 Plaintiffs shall be void and of no force and effect. Likewise, Defendants agree to be bound by the
16 terms of this Settlement and agree not to object to any of the terms of the Agreement.

17 **Administration Costs if Settlement Fails**

18 116. If the Settlement is not finally approved by the Court, voided or rescinded, any
19 costs incurred by the Settlement Administrator shall be paid equally by the Parties (half by
20 Plaintiffs and/or Class Counsel and half by Defendants).

21 **Final Order and Judgment**

22 117. Upon final approval of the Settlement, a Final Order and Judgment shall be entered
23 by the Court which shall, among other things:

- 24 (i) Grant final approval to the Settlement as fair, reasonable, adequate, in good
25 faith and in the best interests of the Class as a whole, and order the Parties
26 to carry out the provisions of this Agreement.

- 1 (ii) Adjudge that the Settlement Class Members of the Settlement are
2 conclusively deemed to have released the Released Parties from the
3 applicable Released Class Claims, as more specifically set forth above.
- 4 (iii) Adjudge that the PAGA Employees of the Settlement are conclusively
5 deemed to have released the Released Parties from the Released PAGA
6 Claims, as more specifically set forth above.
- 7 (iv) Prohibit and permanently enjoin each Settlement Class Member of the
8 Settlement from pursuing in any fashion against any of the Released Parties
9 any and all of the applicable Released Class Claims.
- 10 (v) Prohibit and permanently enjoin each PAGA Employee of the Settlement
11 from pursuing in any fashion against any of the Released Parties any and all
12 of the Released PAGA Claims.
- 13 (vi) Reserve continuing jurisdiction as provided herein.

14 **Limitations on Disclosure**

15 118. Plaintiffs and their counsel agree to keep the fact and terms of this settlement
16 confidential until preliminary approval of the settlement is sought from the Court, and, thereafter
17 to the fullest extent possible. They also agree not to make or offer to make any disclosures other
18 than what is necessary and consistent with the need for judicial approval of the settlement and
19 notice to the class. Plaintiffs and their counsel agree that any public references to the defendants
20 in this action shall be limited to the named defendants only, Matthews International Corporation,
21 The York Group, Inc and Sannipoli Corporation.

22
23 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
24 attorneys, as of the day and year herein set forth.

25
26 DATED: 07 / 29 / 2024


PEDRO CEDENO

27
28 DATED: Jul 24, 2024



Santos Martinez padilla (Jul 24, 2024 16:48 PDT)

SANTOS MARTINEZ PADILLA

DATED: _____

MATTHEWS INTERNATIONAL CORPORATION

By: _____

DATED: _____

THE YORK GROUP, INC.

By: _____

DATED: _____

SANNIPOLI CORPORATION

By: _____

APPROVED AS TO FORM AND CONTENT:

DATED: 7/29/24

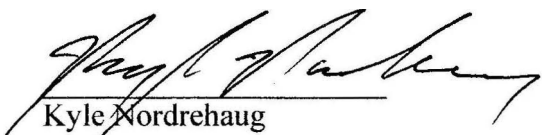
CROSNER LEGAL, P.C.

By 

Chad Saunders
Attorneys for Plaintiff PEDRO CEDENO

DATED: 7/25/24

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

By 

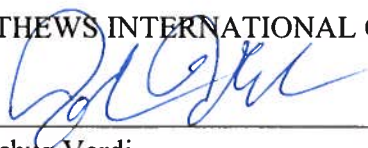
Kyle Nordrehaug
Attorneys for Plaintiff SANTOS MARTINEZ
PADILLA

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SANTOS MARTINEZ PADILLA

DATED: 8/1/2024

MATTHEWS INTERNATIONAL CORPORATION

By 
Joshua Verdi
Sr Corporate Counsel, Labor & Employment

DATED: 8/1/2024

THE YORK GROUP, INC.

By 
Joshua Verdi
Sr Corporate Counsel, Labor & Employment

DATED: 8/1/2024

SANNIPOLI CORPORATION

By 
Joshua Verdi
Sr Corporate Counsel, Labor & Employment

APPROVED AS TO FORM AND CONTENT:

DATED: _____

CROSNER LEGAL, P.C.

By _____
Chad Saunders
Attorneys for Plaintiff PEDRO CEDENO

DATED: _____

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

By _____
AJ Bhowmik
Attorneys for Plaintiff SANTOS MARTINEZ
PADILLA

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DATED: 8/1/2024

REED SMITH LLP

By 
Jennifer C. Terry

Attorneys for Defendants MATTHEWS
INTERNATIONAL CORPORATION, THE YORK
GROUP, INC., and SANNIPOLI CORPORATION

EXHIBIT

2

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

Cedeno, et al. v. Sannipoli Corp., et al., Superior Court of the
State of California, County of Riverside, Case No. CVRI2303826

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT
ACT. PLEASE READ THIS CLASS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. After final approval by the Court, the payment will be mailed to you at the same address as this notice. In exchange for the settlement payment, you will release claims against the Defendant as detailed in Section 4 below. If your address has changed, you must notify the Administrator as explained in Section 6 below.
Exclude Yourself	To exclude yourself, you must send a written request for exclusion to the Administrator as provided below. If you request exclusion, you will receive no money from the class action portion of the Settlement and you will not be bound by the class action portion of the Settlement. Instructions are set forth in Section 7 below.
Object	Write to the Administrator about why you do not agree with the settlement or appear at the Final Approval Hearing to make an oral objection. Directions are provided in Section 8 below.
Final Approval Hearing	The Court will hold a Final Approval Hearing at _____ on _____, 2024, at the Riverside County Superior Court, located at 4050 Main Street, Riverside, California, in Department 1 before Judge Harold Hopp. The hearing may be rescheduled by the Court without further notice to you.

Your options are further explained in this Class Notice. To exclude yourself from, or object to, the settlement you must take action by certain deadlines. If you want the Settlement as proposed, you don't need to do anything to obtain your share of the Settlement. Defendant will not retaliate against you for any actions you take with respect to the Settlement.

1. Why did I get this Notice?

A proposed class and PAGA action settlement (the "Settlement") of the above-captioned action pending in the Superior Court of the State of California, in and for the County of Riverside (the "Court") has been reached between Plaintiffs Pedro Cedeno and Santos Martinez Padilla ("Plaintiffs") and Defendants Matthews International Corporation, The York Group Inc., and Sannipoli Corporation ("Defendants") and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All current and former non-exempt hourly employees, including Plaintiffs, who worked for Defendants directly or through a staffing agency at a Sannipoli Corporation d/b/a/ Whited Cemetery Service location in California during the Class Period. (“Class Members” or “Class”).

The “Class Period” is July 26, 2019, through April 4, 2024.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Class Notice carefully as your rights may be affected by the Settlement.

2. What is the lawsuit about?

On July 26, 2023, plaintiff Pedro Cedenó initiated a class action against Defendants, entitled *Pedro Cedenó v. Matthews International Corporation, et al.*, Riverside Superior Court, Case No. CVRI2303826 (“Cedenó Class Action”). The Class Action asserted the following class claims against Defendants: (1) violation of California Labor Code §§ 1194, 1197, and 1197.1 (unpaid minimum wages); (2) violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (3) violation of California Labor Code §§ 226.7 and 512 (a) (unpaid meal period premiums); (4) violation of California Labor Code § 226.7 (unpaid rest period premiums); (5) violation of California Labor Code § 226(a) (non-compliant wage statements); (6) violation of California Labor Code §§ 201 and 202 (final wages not timely paid); (7) violation of California Labor Code §§ 2800 and 2802 (unreimbursed business expenses); (8) violation of California Business & Professions Code §§ 17200, et seq. Plaintiff Cedenó also filed a separate complaint (Case No. CVRI2304132) on August 11, 2023, which asserted representative claims seeking civil penalties for the violation of the Private Attorney General Act, California Labor Code section 2698 (“PAGA”) (“Cedenó PAGA Action”). A PAGA claim is a statutory claim brought on behalf of the State of California which seeks recovery only of civil penalties, not damages or wages, which are part of the class settlement. Under the law, the PAGA penalties are required to be paid 75% to the State of California and 25% is divided among employees.

On September 18, 2023, Santos Martinez Padilla filed a class action complaint against Defendants (Case No. CVRI2304915) that alleges the same class claims as the Cedenó Class Action, and a representative PAGA action (Case No. CVRI2306853) on December 21, 2023, that alleges the same PAGA claims as the Cedenó PAGA Action. These complaints were consolidated with the Cedenó Class Action for the purposes of the Settlement. The consolidated case is called “the Action” in this Notice.

Defendants deny and dispute all of Plaintiffs’ claims. Specifically, Defendants contend Plaintiffs and the Class Members were properly compensated for all wages under California law; Plaintiffs and the Class Members were provided with meal and rest periods in compliance with California law; Defendants did not fail to provide required reimbursement of expenses; Defendants did not fail to timely pay Plaintiffs or any Class Members any wages allegedly due at the time of their termination; Defendants complied with California wage statement requirements; Defendants did not engage in unlawful or unfair business practices; Defendants are not liable for any of the penalties claimed or that could be claimed in the Action; and the Action cannot be maintained as a class action or a PAGA action.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>> and determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the final approval hearing. The Court also preliminarily approved the Plaintiffs to serve as the Class Representatives, and the law firms of Crosner Legal, P.C. and Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendants have agreed to pay an “all in” amount of Nine Hundred Thousand Dollars (\$900,000) (the “Gross Settlement Amount”) to fund the settlement of the Action. The Gross Settlement Amount includes all payments of Individual Settlement Payments to Class Members, the Settlement Administration Costs, the Enhancement Awards, Class Counsel Fees and Costs, and the PAGA Penalties for civil penalties. Any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages shall be separately paid by Defendants.

Within fifteen (15) days of the Effective Date, Defendants will fund the Gross Settlement Amount by depositing the money with the Administrator. The “Effective Date” means the date the Judgment is entered by the Court, or if there are objections or any appeal of the Judgment, the date when any appeal of the Judgment has been resolved (i.e. when the Judgment is no longer subject to appeal). Twenty-one (21) business days after the Effective Date, the Administrator will mail checks for the Individual Class Payments to Participating Class Members.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount as follows, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before Individual Class Payments are made to Participating Class Members:

- Settlement Administration Costs. Payment to the Administrator, estimated not to exceed \$12,890, for expenses, including without limitation expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing settlement funds and tax forms, and handling inquiries and uncashed checks.
- Class Counsel Fees and Costs Payment. Payment to Class Counsel of reasonable attorneys’ fees not to exceed one-third of the Gross Settlement Amount, which is presently \$300,000, and an additional amount to reimburse actual litigation costs incurred by Class Counsel, not to exceed \$25,000. Class Counsel has been prosecuting the Action on behalf of Plaintiffs and the Class and Aggrieved Employees on a contingency fee basis (that is, without being paid any money) and has been paying all litigation costs and expenses.
- Enhancement Awards. Class Representative Service Payments in an amount not to exceed Ten Thousand Dollars (\$10,000.00) each to the two Plaintiffs, or such lesser amount as may be approved by the Court, to compensate them for services on behalf of the Class in initiating and prosecuting the Action, and for the risks they undertook.
- PAGA Penalties. A PAGA Penalties payment of \$60,000 to resolve the claim for civil penalties under PAGA, \$45,000 of which will be paid to the State of California’s Labor and Workforce Development Agency. The remaining \$15,000 will be distributed to the

PAGA Employees based on their respective pay periods worked during the PAGA Period, which is June 7, 2022 to April 4, 2024. “PAGA Employees” are all current and former non-exempt employees of Defendants who worked either directly or through a staffing agency at a Whited Cemetery Service location in California employed during the PAGA Period. All Aggrieved Employees will be sent their Individual PAGA Payment and be subject to the release of the Released PAGA Claims as set forth below, whether or not they opt out of the class portion of the Settlement.

Calculation of Individual Settlement Payments to Class Members. After all of the payments of the court-approved Enhancement Awards, the Class Counsel fees and costs payment, the PAGA Penalties, and the Settlement Administration Costs are deducted from the Gross Settlement Amount, the remaining portion, called the “Net Settlement Amount”, shall be distributed as Individual Settlement Payments to Participating Class Members (meaning those Class Members who do not opt out or exclude themselves from the Class). The Net Settlement Amount is estimated to be \$ _____. The Settlement Administrator will pay an Individual Settlement Payment from the Net Settlement Amount to each Participating Class Member. The Individual Settlement Payment for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member’s Workweeks. “Workweek” means any week during the Class Period in which a Class Member worked for Defendants as a Class Member for at least one day. The number of Workweeks will be based on Defendants’ records, however, Class Members may challenge the number of Workweeks as explained below. Your estimated Individual Class Payment is set forth in Section 5 below.

Calculation of Individual PAGA Payments to Aggrieved Employees: The Individual PAGA Payment for each Aggrieved Employee will be calculated by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$15,000) by the total number of PAGA Pay Periods worked by all PAGA Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Pay Periods. “PAGA Pay Period” means any Pay Period during which a PAGA Employee worked for Defendants for at least one day during the PAGA Period. The number of PAGA Pay Periods will be based on Defendants’ records, however, PAGA Employees have the right to challenge the number of PAGA Pay Periods worked as explained below. Your estimated Individual PAGA Payment is set forth in Section 5 below. You will receive your Individual PAGA Payment (if any) even if you opt out or exclude yourself from the Class.

Tax Matters. Twenty-five percent (25%) of each Individual Settlement Payment is in settlement of wage claims which are subject to wage withholdings and will be reported on IRS Form W-2. Seventy-five percent (75%) of each Individual Settlement Payment is in settlement of claims non-wages, expense reimbursement, interest and penalties, which are not subject to wage withholdings and will be reported on IRS Form 1099. Your Individual PAGA Payment (if any) is also not subject to wage withholdings and will be reported on IRS Form 1099. The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members and PAGA Employees. Neither Class Counsel nor Defendants’ Counsel intend anything contained in this Notice to constitute advice regarding taxes or taxability. Your tax issues are unique to you, and you may want to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Individual Settlement Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Administrator to inform them of your correct address to ensure you receive your payment.

4. What Do I Release Under the Settlement?

Released Class Claims. As Effective on the date when Defendants fully fund the entire Gross Settlement Amount and funds all employer payroll taxes owed on the wage portion of the Individual Settlement Payments, all Participating Class Members, on behalf of themselves and successors, assigns, agents, attorneys, executors, heirs and personal representatives, release Released Parties from the Released Class Claims. The “Released Class Claims” are those that were alleged in the operative Complaints or PAGA Letter, or arising out of the facts and claims alleged in the operative Complaints and/or PAGA Letter against Defendants or any of the Released Parties, which occurred during 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.

This means that, if you do not timely and formally exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or any other Released Party about the Released Class Claims resolved by this Settlement. It also means that all of the Court’s orders in the Actions will apply to you and legally bind you.

Released PAGA Claims. Effective on the date when Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs and the LWDA are deemed to release, on behalf of themselves and their respective successors, assigns, agents, attorneys, executors, heirs and personal representatives, the Released Parties from the Released PAGA Claims. The “Released PAGA Claims” are all claims for PAGA penalties that were alleged in the operative Complaints or PAGA Letters, or arising out of the facts and claims alleged in the operative Complaints and/or PAGA Letters against Defendants or any of the Released Parties, which occurred during the PAGA Period. The Released PAGA Claims do not include other PAGA claims, underlying wage and hour claims, claims for wrongful termination, discrimination, unemployment insurance, disability and worker’s compensation, and claims outside of the PAGA Period.

Released Parties. The Released Parties are: Defendants and Defendants’ officers, directors, employees and agents.

5. How much will my payment be?

Your Individual Settlement Payment: Defendants’ records reflect that you have <<_____>> Workweeks during the Class Period. **Based on this information, your estimated Individual Settlement Payment is <<_____>>**, minus applicable withholdings and deductions.

Your Individual PAGA Payment: Defendants' records reflect that you have <<_____>> PAGA Pay Periods during the PAGA Period. **Based on this information, your estimated Individual PAGA Payment is <<_____>>.**

Your Individual Settlement Payment and Individual PAGA Payments may be paid together in a single check, at the discretion of the Administrator.

If you wish to challenge the information set forth above, then you must submit a written dispute challenging the information along with supporting documents, to the Administrator at the address provided in this Notice no later than the 30 days after the mailing of this Notice. The deadline for submitting a dispute is _____. You may also fax the dispute to _____ or email the dispute to _____ by no later than the deadline. Any dispute should include credible written evidence and will be resolved by the Administrator.

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your share of the Settlement will be mailed automatically to the same address as this Class Notice. If your address is incorrect or has changed, you must notify the Administrator. The Administrator is: Apex Class Action Administration, [ADDRESS], (800) _____.

The Court will hold a Final Approval Hearing on _____ at _____ to decide whether to approve the Settlement. Please note the hearing could be rescheduled by the Court without further notice to you. If the Court approves the Settlement and there are no objections or appeals, the settlement payments will be mailed approximately two months after this hearing. If there are objections or appeals the payments will be delayed because resolving them can take time, usually more than a year. Please be patient.

Your settlement check must be cashed within 180 days after it is mailed. If your check is lost or misplaced, you should contact the Administrator immediately by phone to request a replacement ((800) _____). For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall redistribute the funds represented by such checks to the Participating Class Members who did cash their checks on a pro-rata basis using the same formulas described above.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Class or "opt out." **If you opt out, you will NOT receive your Individual Class Payment and you will not be bound by the release of Released Class Claims.** However, PAGA Employees who opt out of the Class will still be paid their Individual PAGA Payment and will remain subject to the release of the Released PAGA Claims, regardless of their request for exclusion from the Class.

To opt out of the Class, you must mail to the Administrator, by First Class Mail, a written, signed and dated request to opt-out postmarked no later than the Response Deadline which is _____ [forty-five (45) days after the mailing of the Notice]. You may also fax your request to opt out to _____ or email the dispute to _____ by no later than the Response Deadline. A Request for Exclusion form is included with this Notice. The Request for Exclusion should state in substance: "I wish to be excluded from the Class in the

Cedeno v. Sannipoli Corp. lawsuit.” The Request for Exclusion must state the Class Member’s full name, address, telephone number, last four digits of social security number for verification purposes, the approximate dates of employment in California by Defendants, and the name and number of the case, which is *Cedeno v. Sannipoli Corp., et al.*, Case No. CVRI2303826. The request to opt-out must be completed and signed by you. No other person may opt-out for a living member of the Class.

The address for the Administrator is *Cedeno v. Sannipoli Corp.* Administrator, c/o Apex Class Action Administration, [ADDRESS]. Absent good cause found by the Court, written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I don’t agree with the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason may object to the proposed Settlement, the attorneys’ fees, the costs and/or the service awards, either in writing or in person. Objections that are in writing should include the Class Member’s name, current address, telephone number, and the dates of employment in California by Defendant, and describe why you believe the Settlement is unfair. All written objections or other correspondence should also state the name and number of the case, which is *Cedeno v. Sannipoli Corp., et al.*, in the Superior Court of the State of California, County of Riverside, Case No. CVRI2303826. An Objection form is included with this Class Notice.

All written objections must be mailed to the *Cedeno v. Sannipoli Corp.* Administrator, c/o Apex Class Action Administration, [ADDRESS], no later than the Response Deadline which is _____ [forty-five (45) days after the mailing of the Notice]. You may also fax the dispute to _____ or email the dispute to _____ by no later than this Response Deadline.

Alternatively, Class Members may appear at the Final Approval Hearing on _____ at _____ to make an oral objection without submitting a written objection. At this time, all hearings will be held remotely. The hearing may also be rescheduled by the Court without further notice to you. If you need assistance, you may contact Class Counsel. Please check the Court’s tentative ruling website for current information concerning appearances and how to attend Court proceedings remotely:
<https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php>.

To object to the Settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object and you will still be mailed a check for your Individual Settlement Payment. Absent good cause found by the Court, any Class Member who does not object in the manner provided in this Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

The addresses for Parties’ counsel are as follows:

Class Counsel:

Zachary M. Crosner
 Brandon Brouillette
 Chad Saunders
 CROSNER LEGAL, PC
 9440 Santa Monica Blvd. Suite 301
 Beverly Hills, CA 90210
 Tel: (866) 276-7637
 Fax: (310) 510-6429
 Email: chad@crosnerlegal.com

Counsel for Defendant:

Jennifer C. Terry
 Corrie J. Buck
 Reed Smith LLP
 355 South Grand Avenue
 Suite 2900
 Los Angeles, CA 90071-1514

Norman Blumenthal
 Kyle Nordrehaug
 Blumenthal Nordrehaug Bhowmik De Blouw LLP
 2255 Calle Clara
 La Jolla, CA 92037
 Tel: 858-551-1223 / Fax: 858-551-1232
 Email: kyle@bamlawca.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____ on _____, in Department 1 of the Superior Court of California, County of Riverside, located at 4050 Main Street, Riverside, CA 92501, before Judge Harold W. Hopp. While the Court determined at preliminary approval that there is sufficient evidence to suggest the proposed settlement is fair, adequate, and reasonable, the Court will make a final determination on these issues at the Final Approval Hearing. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to approve the amount of attorneys' fees, costs and enhancement awards to be awarded. If there are objections, the Court will consider them. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?
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You may call the Administrator at _____ or write *Cedeno v. Sannipoli Corp.* Administrator, c/o Apex Class Action Administration, [ADDRESS]; or contact Class Counsel.

This Notice summarizes the proposed settlement. More details are in the Class Action and PAGA Settlement Agreement ("Agreement"). The Agreement, the Judgment and other relevant settlement documents be posted on the Settlement Administrator's website for this settlement: <<_____>>. You may also get more details by examining the Court's file via the Public Access site for the California Superior Court for the County of Riverside (<https://ecomm1.riverside.courts.ca.gov/>) and entering the Case No. CVRI2303826. The Agreement can be found in the Court file located at 4050 Main Street, Riverside, CA 92501 as Exhibit #1 to the Declaration of Chad Saunders, filed on _____.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed.
- If your check is lost or misplaced, you should contact the Administrator immediately to request a replacement.

EXHIBIT

3

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

PEDRO CEDENO, as an individual on behalf
of himself and on behalf of all others similarly
situated,

Plaintiff,

vs.

SANNIPOLI CORPORATION, a
California Corporation; MATTHEWS
INTERNATIONAL CORPORATION, a
Pennsylvania Corporation; THE YORK
GROUP, INC., a Delaware Corporation; and
DOES 1-100, inclusive,

Defendants.

CASE NO.: **CVRI2303826**

OBJECTION FORM

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Harold W. Hopp
Dept.: 1

OBJECTION FORM

USE THIS FORM ONLY IF YOU WANT TO OBJECT TO THE SETTLEMENT. TO OBJECT TO THE TERMS OF THE SETTLEMENT, YOU MUST SIGN AND COMPLETE THIS FORM ACCURATELY AND IN ITS ENTIRETY, AND YOU MUST MAIL IT BY FIRST CLASS U.S. MAIL TO THE ADMINISTRATOR (APEX CLASS ACTION ADMINISTRATION) AT THE ADDRESS BELOW SO THAT IT IS POSTMARKED ON OR BEFORE _____.

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection.

I OBJECT to the *Cedeno v. Sannipoli Corp.* Settlement for the following reasons:

[Form continues on reverse side]

(Your Signature)

(Date)

(Print Your Name)

(Your Address)

(Print Last Four Digits of Social Security Number)

(City/State/Zip Code)

Submit your fully completed and signed Objection Form as follows:

MAIL TO THE ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NOT LATER THAN
_____, 2024:

Cedeno v. Sannipoli Corp. Administrator
c/o Apex Class Action Administration
[ADDRESS]

EXHIBIT

4

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

PEDRO CEDENO, as an individual on behalf
of himself and on behalf of all others similarly
situated,

Plaintiff,

vs.

SANNIPOLI CORPORATION, a
California Corporation; MATTHEWS
INTERNATIONAL CORPORATION, a
Pennsylvania Corporation; THE YORK
GROUP, INC., a Delaware Corporation; and
DOES 1-100, inclusive,

Defendants.

CASE NO.: **CVRI2303826**

OBJECTION FORM

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Harold W. Hopp
Dept.: 1

OBJECTION FORM

USE THIS FORM ONLY IF YOU WANT TO OBJECT TO THE SETTLEMENT. TO OBJECT TO THE TERMS OF THE SETTLEMENT, YOU MUST SIGN AND COMPLETE THIS FORM ACCURATELY AND IN ITS ENTIRETY, AND YOU MUST MAIL IT BY FIRST CLASS U.S. MAIL TO THE ADMINISTRATOR (APEX CLASS ACTION ADMINISTRATION) AT THE ADDRESS BELOW SO THAT IT IS POSTMARKED ON OR BEFORE _____.

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection.

I OBJECT to the *Cedeno v. Sannipoli Corp.* Settlement for the following reasons:

[Form continues on reverse side]

(Your Signature)

(Date)

(Print Your Name)

(Your Address)

(Print Last Four Digits of Social Security Number)

(City/State/Zip Code)

Submit your fully completed and signed Objection Form as follows:

MAIL TO THE ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NOT LATER THAN
_____, 2024:

Cedeno v. Sannipoli Corp. Administrator
c/o Apex Class Action Administration
[ADDRESS]

EXHIBIT

5



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

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

May 18, 2023

VIA PAGA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

Alfred L Sannipoli, Jr.
Agent for Service of Process for:
Sannipoli Corporation
9542 Covey Lane
Escondido, CA 92026

Sannipoli Corporation
Attn: Human Resources / Legal Department
26250 Palomar Road
Romoland, CA 92585

Sannipoli Corporation
Attn: Human Resources / Legal Department
PO Box 1417
Romoland, CA 92585-0417

CSC Lawyers Incorporating Service
Agent for Service of Process for:
Matthews International Corporation
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

VIA PAGA ONLINE FILING ONLY

Notice to Division of Occupational Safety and
Health Via PAGA Online Filing
Attn: Division of Occupational Safety and
Health (Cal OSHA)
1515 Clay Street, St. 1901
Oakland, CA 94612

CSC Lawyers Incorporating Service
Agent for Service of Process for:
The York Group, Inc.
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

The York Group, Inc.
Attn: CA Registered Agent Authorized
Employees: Becky DeGeorge, Koy Saechao,
Lai Saevang, Nicole Stauss, Jenn Bautista,
Trudy Desbiens, Rebecca Vang, Wendy
Harris, Melissa Dekoven, Carolyn Valle, Kaci
Ransom, Kelli Shortte, Annette Kuhlman,
Brejet Stephens, Crystal Chapman, Janette
McIntyre, Jerome Suarez, Samantha Wiltz,
and Parid Kurbini
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

Matthews International Corporation

Attn: CA Registered Agent Authorized
Employees: Becky DeGeorge, Koy Saechao,
Lai Saevang, Nicole Stauss, Jenn Bautista,
Trudy Desbiens, Rebecca Vang, Wendy
Harris, Melissa Dekoven, Carolyn Valle, Kaci
Ransom, Kelli Shortte, Annette Kuhlman,
Brejet Stephens, Crystal Chapman, Janette
McIntyre, Jerome Suarez, Samantha Wiltz, and
Parid Kurbini
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

The York Group, Inc.

Attn: Human Resources / Legal Department
Two Northshore Center
Pittsburgh, PA 15212

Matthews International Corporation

Attn: Human Resources / Legal Department
Two Northshore Center
Pittsburgh, PA 15212

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Division of Occupational
Safety and Health (Cal OSHA); Sannipoli Corporation; Matthews International
Corporation; and The York Group, Inc.
Date: May 18, 2023
Subject: *Pedro Cepeno v. Sannipoli Corporation, et al.*

Introduction

This office represents PLAINTIFF, Pedro Cepeno (hereinafter “PLAINTIFF”) in connection with PLAINTIFF’s claims under the California Labor Code. PLAINTIFF was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Sannipoli Corporation; Matthews International Corporation; and The York Group, Inc. (hereinafter, these entities and their managing agents are collectively referred to as “DEFENDANTS”). DEFENDANTS may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, PLAINTIFF, on behalf of PLAINTIFF, and on behalf of all current and former non-exempt employees employed by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of PLAINTIFF’s claims against DEFENDANTS. This NOTICE is being provided via online filing to the California Labor and Workforce Development

Agency (“LWDA”) and the Division of Occupational Safety and Health and DEFENDANTS via certified mail to their Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State.

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

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

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

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

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

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

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

PLAINTIFF believes and hereon asserts that DEFENDANTS and unknown entities must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant times herein, so as to be considered the joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. For example, based on information and belief, at times during the relevant period, DEFENDANTS issued wage statements to PLAINTIFF identify The York Group, Inc. as the name of the legal entity that is PLAINTIFF’s employer. Based on information and belief, at times during the relevant period, DEFENDANTS issued wage statements to PLAINTIFF identify Matthews International Corporation and/or Sannipoli Corporation as the name of the legal entity that is PLAINTIFF’s employer. Moreover, based on information and belief, DEFENDANTS, and each of them, maintain the same agent for service of process and/or principal place of business as provided to the California Secretary of State and/or use some of the same attorneys and/or human resources personnel to oversee employment-related matter. By reason of their status as joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. DEFENDANTS, at all

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

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

General Information

DEFENDANTS own, operate, manage and/or staff its employees to work at production plants and/or other location(s) in California, including but not limited to production plants and/or other facilities in Menifee, California and Whittier, California. DEFENDANTS, through its various locations serve the manufacturing industry. DEFENDANTS through their operations manufacture, including but not limited to, concrete burial vaults, among other related products, producing more than 200 units per day at its various California, warehouses, locations and/or production plants, including but not limited warehouses, locations and/or production plants located in the cities of Whittier and Menifee, including but not limited to, DEFENDANTS' ten-acre production plant in Menifee, California, consisting of a fully enclosed 44,000 square foot production, testing, and holding facility at which DEFENDANTS assigned PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to work during the relevant period.)¹ Although DEFENDANTS may operate a successful company or have a noble mission, DEFENDANTS do not comply with California's labor laws.

PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title of laborer and/or quality control inspector or a similar title(s) and/or position(s) from in or around April 2022 through in or around April 25, 2023. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Menifee, California location(s). PLAINTIFF regularly worked at least eight (8) to ten (10) hours per day, at least five (5) days per week days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by

¹ See <https://www.mywhited.com/about-us/>. Last visited on May 17, 2023.

DEFENDANTS as hours worked. Based on information and belief, DEFENDANTS also compensated PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES with bonuses/incentive pay (e.g., bonuses for attendance and/or safety/PPE bonuses) and/or other non-discretionary compensation.

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

Labor Code Violations

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

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

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

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

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

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

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

DEFENDANTS’ failure to keep “accurate and complete” payroll records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

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

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

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

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

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

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were forced to take late meal periods in order to complete assigned job duties. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times, interrupted during purported meal periods and/or had meal periods

cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned job duties. For example, PLAINTIFF was frequently required to take his single meal period after the fifth hour of work due to the need to complete assigned work tasks. Other times, PLAINTIFF was required to clock out for purported meal periods but to continue working due to the need to meet production / other work deadlines and/or complete other work tasks.

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

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

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

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

Based on information and belief, per DEFENDANTS' uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break. For example, DEFENDANTS frequently required PLAINTIFF to work shifts lasting longer than ten (10) hours without providing PLAINTIFF with any form of a second meal period.

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

Moreover, based on information and belief, DEFENDANTS failed to keep accurate records of the true start and end times of PLAINTIFF's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, to the extent meal period were recorded, DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in PLAINTIFF and

other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

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

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ DEFENDANTS' failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

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

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

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

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, DEFENDANTS did not have a compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in practice. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times, unable to take compliant rest periods due to NON-EXEMPT AGGRIEVED EMPLOYEES' need to complete assigned job duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted to DEFENDANTS' premises. For example, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were prohibited from leaving the work premises even to go to their vehicles during purportedly off-duty rest periods, and as such, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were not relieved of all duties and DEFENDANTS' control during purportedly off-duty rest periods, in violation of California rest period law.

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

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

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

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Failure to Provide Suitable Resting Facilities: Per section 13 of all applicable IWC Wage Orders, including but not limited to Wage Order 1, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); and All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

DEFENDANTS' locations/facilities are generally similar in layout and design, and there was, and continue to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. DEFENDANTS could have provided NON-EXEMPT AGGRIEVED EMPLOYEES with a resting facility within DEFENDANTS' facilities/locations with reasonable or no modification, but instead denied and continue to deny, employees with suitable areas to rest (e.g. a breakroom). As a result, NON-EXEMPT AGGRIEVED EMPLOYEEES were forced to adjust to areas not conducive to resting, including but not limited to leaning up against the wall, or search for facilities outside of DEFENDANTS' premises which are not designated or reserved for rest, such as their personal vehicles.

DEFENDANTS did not provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable resting facilities during their hours of work, particularly during meal and/or rest periods.

DEFENDANTS' failure to provide suitable resting facilities to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, section 13(B) and the California Labor Code, including but not limited to section 1198.

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

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

DEFENDANTS failed to compensate PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of DEFENDANTS' automatic deduction and time rounding policies for shift start and shift end times and meal period start and end times, and failure

to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

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

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For example, PLAINTIFF was frequently required to clock out for the end of his shift but to continue working due to the need to discuss work-related matters with the foreman and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES and/or complete other post-shift off-the-clock work tasks, resulting in the consistent underpayment of minimum wages and overtime wages owed to PLAINTIFF. Based on information and belief, DEFENDANTS also require other NON-EXEMPT AGGRIEVED EMPLOYEES to clock out for the end of their shifts but to continue working due to the need to respond to work related communications and/or complete other work tasks.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to be at their assigned workstations at the start of a scheduled shift, thereby forcing NON-EXEMPT AGGRIEVED EMPLOYEES to gather work related equipment and/or safety gear prior to their scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock work.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to undergo security screenings before and/or after a scheduled shift and/or before or after clocking in/out for work, resulting in pre-shift and/or post-shift off-the-clock work. Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were required to form a line to undergo security screenings and/or to spend time waiting to access DEFENDANTS' electronic/biometric timekeeping system before they could clock in for the start of their shifts on most if not all shifts worked as well as when clocking back in from purported meal periods. For example, PLAINTIFF was frequently required to wait in line for at least several minutes before PLAINTIFF could clock in for the start of his shift. This time spent under DEFENDANTS' control, including but not limited to, time spent waiting in line behind other employees for employer-mandated screenings and/or to access DEFENDANTS' electronic / biometric timekeeping system, time spent initiating and/or reinitiating the system was not recorded and not compensated, resulting in DEFENDANTS' failure to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES for all time worked.

Based on information and belief, at times, DEFENDANTS' electronic/biometric employee time-keeping system/app malfunctioned such that NON-EXEMPT AGGRIEVED EMPLOYEES were required to either reinitiate and/or otherwise troubleshoot the system prior to being able to clock

in and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid minimum wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete other off-the-clock work tasks after clocking out for the end of their shifts and/or during uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Additionally, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform other off-the-clock work for which they were not compensated. For example, based on information and belief, DEFENDANTS did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for time spent donning and doffing personal protective equipment, safety equipment and/or uniforms (e.g., safety goggles/glasses, hard hats/safety caps, gloves and/or face masks) during meal periods, rest periods, before the start of a scheduled shift, and after completing a scheduled shift.

Based on information and belief, DEFENDANTS's Kronos timekeeping software was hacked in 2021 and DEFENDANTS failed to maintain accurate records of hours worked during pay periods following the hack and/or during the hack and instead paid PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES based on scheduled hours worked rather than actual hours worked and/or otherwise failed to pay for all hours worked due to a failure to maintain accurate records of the total hours worked, leading to unpaid minimum and overtime wages.

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

Based on further information and belief, DEFENDANTS implemented a time-rounding system that as applied systematically deprived PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by DEFENDANTS would almost always, if not always, result in understating actual compensable work time. DEFENDANTS' failure to pay for all time worked by virtue of their time-rounding practices resulted in the underpayment of minimum wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-

EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

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

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

These violations subject DEFENDANTS, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

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

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

Namely, DEFENDANTS' automatic deduction and time rounding policies and practices for meal periods and shift start times and shift end times, payment according to scheduled hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal periods and/or time spent restricted to DEFENDANTS' premises and/or subject to DEFENDANTS' control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as

⁵ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

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

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

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

Based on information and belief, DEFENDANTS failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES. For example, based on information and belief, DEFENDANTS compensated PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES with bonuses/incentive pay (e.g., bonuses for attendance and/or safety/PPE bonuses) and/or other non-discretionary compensation yet DEFENDANTS failed to incorporate all non-discretionary remuneration into the regular rate(s) of pay for purposes of calculating the owed overtime rate, resulting in the miscalculation and underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

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

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

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

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

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

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

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

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

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

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

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

PLAINTIFF requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to

DEFENDANTS' sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

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

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

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

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

These violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁷

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

⁷ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

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

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

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

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

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

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

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

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

These violations subject DEFENDANTS to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁸

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

Seating Violations: Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not actively engaged in the work duties that would not permit them to be seated.

All applicable IWC Wage Orders, Section 14(A-B) provides:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

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

⁸ See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

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

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

DEFENDANTS' NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁹

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

Therefore, DEFENDANTS' violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, business expenses, suitable seating, suitable resting facilities, and other violations described herein result in separate violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

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

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

Thus, DEFENDANTS paid PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that PLAINTIFF and all NON-

⁹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”).

EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Pay Vested Vacation/Paid Time Off:

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

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

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

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as

they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials).

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

These violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹⁰

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

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

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145

California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any

¹⁰ (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”).

employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

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

Based on information and belief, DEFENDANTS shifted the costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for their business expenses including but not limited to, uniforms/work clothing/work shoes/personal protective/safety gear (e.g., gloves, work shoes and/or face masks) and the use of NON-EXEMPT AGGRIEVED EMPLOYEES’ and/or EXEMPT AGGRIEVED EMPLOYEES’ personal mobile phone, internet and/or data usage for work related purposes, including but not limited to, to receive and respond to work related messages and/or phone calls. For example, PLAINTIFF was required to purchase work shoes DEFENDANTS required PLAINTIFF wear for work, but DEFENDANTS did not provide PLAINTIFF with any reimbursement for these business expenses.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were required to receive and respond to work-related calls and/or messages from supervisors and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES regarding scheduling and/or other work tasks but were not reimbursed by DEFENDANTS at all and/or in full for these business expenses.

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

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the business use of their personal vehicles, including mileage, wear and tear, and cost of fuel when they were required to drive around and/or between job sites/DEFENDANTS’ facilities, and/or use their personal vehicles in carrying out the duties assigned by DEFENDANTS. As such, DEFENDANTS failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at the legally mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

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

As a pattern and practice, DEFENDANTS regularly failed to reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be

reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

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

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

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

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

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

Based on information and belief, DEFENDANTS also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in

writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

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

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

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

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

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

Unlawful Inquires into Criminal History

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

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

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

Unlawful PAGA Waiver

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

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

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

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

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

Failure to Provide a Safe and Healthful Workplace: Pursuant to California Labor Code sections 6400-6404 and 6406-6407 of the California Occupational Safety and Health Act ("Cal OSHA"), employers must maintain a safe and healthful place of employment.

Specifically, Labor Code section 6400, requires the following:

- (a) Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein...

Labor Code section 6401 provides as follows:

Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code section 6402 prohibits the following:

No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.

Similarly, Labor Code section 6404 provides as follows:

No employer shall occupy or maintain any place of employment that is not safe and healthful.

In addition to the above, Labor Code section 6403 requires that employees provide safety devices to their employees. Labor Code section 6403 states:

No employer shall fail or neglect to do any of the following:

- (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.
- (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.
- (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

Similarly, Labor Code section 6406(d) states the following:

No person shall do any of the following ... (d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees.

Finally, Labor Code section 6407 provides:

Every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

Moreover, Labor Code section 6409.6 sets forth the actions an employer (or representative of employer) must take within one business day of receiving notice of potential exposure to COVID-19, including but not limited to employee-notice and reporting requirements.

At all relevant times, DEFENDANTS employed PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subject to Labor Code sections 6400-

6404, 6406, and 6407. At all relevant times, DEFENDANTS had and have a policy and practice of failing to furnish and use safety devices and safeguards and of failing to adopt and use practices, means, methods, operations, and/or processes which are reasonably adequate to render such employment and place of employment safe and healthful, pursuant to, including but not limited to, Labor Code section 6401. At all relevant times DEFENDANTS had a policy and practice of requiring or permitting employees to go or be in in any employment or place of employment which is not safe and healthful, pursuant to Labor Code section 6402. At all relevant times, DEFENDANTS had and have a policy and practice of failing or neglecting to: provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe; adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and do every other thing reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code section 6403.

PLAINTIFF is informed and believes and thereon alleges that these failures include, without limitation, failing to disinfect time clocks and other surfaces after use by PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; failing to provide adequate protection equipment (e.g., face masks) to PLAINTIFF, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; and failing to provide adequate distance in working conditions between PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

At all relevant times, DEFENDANTS had a policy and practice of failing to give sufficient, adequate and proper notice to PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES of the COVID-19 exposure within one business day of receiving notice of potential COVID-19 workplace exposure from a qualifying individual as required by Labor Code section 6409.6. PLAINTIFF is informed and believes that numerous employees contracted COVID-19 during the relevant time periods, but that DEFENDANTS failed to provide notice to employees. Based on further information and belief, DEFENDANTS do not or did not keep adequate records of written notifications required in subdivision (a) for a period of at least three years.

At all relevant times, DEFENDANTS had and have a policy and practice of failing within one business day after DEFENDANTS or a representative of DEFENDANTS received notice of potential exposure to COVID-19 to provide written notice to PLAINTIFF, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES and/or their exclusive representatives, who were on the premises at the same worksite as a qualifying individual who was within the infectious period that they may have been exposed to COVID-19. Based on further information and belief, DEFENDANTS had and have a policy and practice of failing within one business day after DEFENDANTS or a representative of DEFENDANTS received a notice of potential exposure to COVID-19 to provide PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state or local laws, including but not limited to, workers' compensation, and options for exposed employees, including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave

provisions, as well as antiretaliation and antidiscrimination protections of the employee. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and 6432.

At all relevant times, DEFENDANTS had and have a policy and practice of failing within one business day after DEFENDANTS or a representative of DEFENDANTS received a notice of potential exposure to COVID-19 to notify PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES who were on the premises at the same worksite as the qualifying individual within the infectious period, and the employers of the subcontracted employees who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per the CAL-OSHA COVID-19 Emergency Temporary Standards. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and 6432.

At all relevant times, DEFENDANTS had and have a policy and practice of failing to notify the local public health agency in the jurisdiction of the worksite of the names, number, occupation and worksite of employees who had a laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health; a positive COVID-19 diagnosis from a licensed health care provider; a COVID-19 related order to isolate provided by a public health official; or died due to COVID-19, in the determination of a county public health department or per inclusion in the COVID-19 statistics of a county. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and 6432.

PLAINTIFF is informed and believes , and based thereon alleges that DEFENDANTS violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or blowers; and a sufficient number of toilets to be used by each of sex of employee.

PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS violated the Labor Code sections described herein, including without limitation, for failure to: furnish and use safety devices and safeguards; give sufficient, adequate and proper notice to employees of COVID-19 exposures, to provide written notice to PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES, who were on the premises at the same worksite as a qualifying individual who was within the infectious period that they may have been exposed to COVID-19 pursuant to California and local laws.

Based on information and belief, DEFENDANTS failed to protect NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES from exposure to COVID-19 due to, including but not limited to, failing to maintain/update DEFENDANTS' workplace safety plans and/or procedures to properly address hazards related to the COVID-19 virus.

As such, DEFENDANTS failed to comply with the occupational safety and health standards, failed to do everything reasonably necessary to protect the health and safety of employees, failed to

maintain a safe and healthful workplace, and failed to provide the safety devices necessary to maintain a safe and healthful workplace.

As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES and is subject to civil penalties.

Conclusion

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

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

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code. Likewise, PLAINTIFF requests that the Division of Occupational Safety and Health investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, PLAINTIFF requests that the agency and division inform PLAINTIFF if they do not intend to investigate these violations so that PLAINTIFF may file a lawsuit with respect to the allegations discussed in this NOTICE.

If the LWDA and/or the Division of Occupational Safety and Health elect not to take any action with respect to any of the foregoing claims, PLAINTIFF will seek these penalties in a civil action, on behalf of PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of DEFENDANTS within one year of the date of this letter as allowed by law.

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

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

Thank you for your attention to this matter.

Best Regards,

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

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

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

Thu, May 18, 2023 at 9:43 AM

5/18/2023

LWDA Case No. LWDA-CM-955866-23
Law Firm : Crosner Legal, PC
Plaintiff Name : Pedro Cepeno
Employer: Sannipoli Corporation
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



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

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

July 27, 2023

VIA PAGA ONLINE FILING ONLY:

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

VIA PAGA ONLINE FILING ONLY

Notice to Division of Occupational Safety and
Health Via PAGA Online Filing
Attn: Division of Occupational Safety and
Health (Cal OSHA)
1515 Clay Street, St. 1901
Oakland, CA 94612

VIA U.S. CERTIFIED MAIL:

Alfred L Sannipoli, Jr.
Agent for Service of Process for:
Sannipoli Corporation
9542 Covey Lane
Escondido, CA 92026

Sannipoli Corporation
Attn: Human Resources / Legal Department
26250 Palomar Road
Romoland, CA 92585

Sannipoli Corporation
Attn: Human Resources / Legal Department
PO Box 1417
Romoland, CA 92585-0417

CSC Lawyers Incorporating Service
Agent for Service of Process for:
The York Group, Inc.
Attn: CA Registered Agent Authorized
Employees: Becky DeGeorge, Koy Saechao,
Lai Saevang, Nicole Stauss, Jenn Bautista,
Trudy Desbiens, Rebecca Vang, Wendy
Harris, Melissa Dekoven, Carolyn Valle, Kaci
Ransom, Kelli Shortte, Annette Kuhlman,
Brejet Stephens, Crystal Chapman, Janette
McIntyre, Jerome Suarez, Samantha Wiltz,
and Parid Kurbini
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

The York Group, Inc.
Attn: Human Resources / Legal Department
Two Northshore Center
Pittsburgh, PA 15212

CSC Lawyers Incorporating Service
Agent for Service of Process for:
Matthews International Corporation
Attn: CA Registered Agent Authorized
Employees: Becky DeGeorge, Koy Saechao,
Lai Saevang, Nicole Stauss, Jenn Bautista,
Trudy Desbiens, Rebecca Vang, Wendy
Harris, Melissa Dekoven, Carolyn Valle, Kaci
Ransom, Kelli Shortte, Annette Kuhlman,
Brejet Stephens, Crystal Chapman, Janette
McIntyre, Jerome Suarez, Samantha Wiltz, and
Parid Kurbini
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

Matthews International Corporation
Attn: Human Resources / Legal Department
Two Northshore Center
Pittsburgh, PA 15212

AMENDED NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Division of Occupational
Safety and Health (Cal OSHA); Sannipoli Corporation; Matthews International
Corporation; and The York Group, Inc.
Date: July 27, 2023
Subject: *Pedro Cedeno v. Sannipoli Corporation, et al.*

Introduction

This office represents PLAINTIFF, Pedro Cedeno (hereinafter “PLAINTIFF”) in connection with PLAINTIFF’s claims under the California Labor Code. PLAINTIFF was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Sannipoli Corporation; Matthews International Corporation; and The York Group, Inc. (hereinafter, these entities and their managing agents are collectively referred to as “DEFENDANTS”). DEFENDANTS may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, PLAINTIFF, on behalf of PLAINTIFF, and on behalf of all current and former non-exempt employees employed by any one or more of the DEFENDANTS at any location in California within one year of PLAINTIFF’s original notice filed on May 18, 2023 (assigned LWDA case no: LWDA-CM-955866-23) (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by any one or more of the DEFENDANTS at any location in California within one year of the date of PLAINTIFF’s original notice filed on May 18, 2023 (“EXEMPT

AGGRIEVED EMPLOYEES”), hereby gives written amended notice (“AMENDED NOTICE”) of PLAINTIFF’s claims against DEFENDANTS. This AMENDED NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and the Division of Occupational Safety and Health and DEFENDANTS via certified mail to their Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State.

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

This AMENDED NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This AMENDED NOTICE further reserves any and all rights by PLAINTIFF to amend this AMENDED NOTICE to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—PLAINTIFF reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this AMENDED NOTICE shall relate back to the date of PLAINTIFF’s original notice filed on May 18, 2023. Consequently, DEFENDANTS are on AMENDED NOTICE that PLAINTIFF continues its investigation, with the full intent to amend and/or change this AMENDED NOTICE, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that DEFENDANTS intend to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the DEFENDANTS shall provide AMENDED NOTICE including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, PLAINTIFF will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

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

PLAINTIFF, on behalf of PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that DEFENDANTS have violated, requiring this AMENDED NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 208, 216, 221-223, 226, 226.7, 245-248.6, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802, 2810.5, and all applicable Wage Orders.

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

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

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

PLAINTIFF believes and hereon asserts that DEFENDANTS and unknown entities must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant times herein, so as to be considered the joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. For example, based on information and belief, at times during the relevant period, DEFENDANTS issued wage statements to PLAINTIFF identify The York Group, Inc. as the name of the legal entity that is PLAINTIFF’s employer. Based on information and belief, at times during the relevant period, DEFENDANTS issued wage statements to PLAINTIFF identify Matthews International Corporation and/or Sannipoli Corporation as the name of the legal entity that is PLAINTIFF’s employer. Moreover, based on information and belief, DEFENDANTS, and each of them, maintain the same agent for service of process and/or principal place of business as provided to the California Secretary of State and/or use some of the same attorneys and/or human resources personnel to oversee employment-related matter. By reason of their status as joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

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

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

General Information

DEFENDANTS own, operate, manage and/or staff its employees to work at production plants and/or other location(s) in California, including but not limited to production plants and/or other facilities in Menifee, California and Whittier, California. DEFENDANTS, through its various locations serve the manufacturing industry. DEFENDANTS through their operations manufacture, including but not limited to, concrete burial vaults, among other related products, producing more than 200 units per day at its various California, warehouses, locations and/or production plants, including but not limited warehouses, locations and/or production plants located in the cities of Whittier and Menifee, including but not limited to, DEFENDANTS' ten-acre production plant in Menifee, California, consisting of a fully enclosed 44,000 square foot production, testing, and holding facility at which DEFENDANTS assigned PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to work during the relevant period.)¹ Although DEFENDANTS may operate a successful company or have a noble mission, DEFENDANTS do not comply with California's labor laws.

¹ See <https://www.mywhited.com/about-us/>. Last visited on May 17, 2023.

PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title of laborer and/or quality control inspector or a similar title(s) and/or position(s) from in or around April 2022 through in or around April 25, 2023. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Menifee, California location(s). PLAINTIFF regularly worked at least eight (8) to ten (10) hours per day, at least five (5) days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked. Based on information and belief, DEFENDANTS also compensated PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES with bonuses/incentive pay (e.g., bonuses for attendance and/or safety/PPE bonuses) and/or other non-discretionary compensation.

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

AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

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

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

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

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

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

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

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

DEFENDANTS’ failure to keep “accurate and complete” payroll records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each

Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

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

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

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

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

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints

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

of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were forced to take late meal periods in order to complete assigned job duties. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times, interrupted during purported meal periods and/or had meal periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned job duties. For example, PLAINTIFF was frequently required to take his single meal period after the fifth hour of work due to the need to complete assigned work tasks. Other times, PLAINTIFF was required to clock out for purported meal periods but to continue working due to the need to meet production / other work deadlines and/or complete other work tasks.

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

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

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

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

Based on information and belief, per DEFENDANTS' uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break. For example, DEFENDANTS frequently required PLAINTIFF to work shifts lasting longer than ten (10) hours without providing PLAINTIFF with any form of a second meal period.

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

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

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

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ DEFENDANTS' failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

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

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

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

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, DEFENDANTS did not have a compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in practice. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times, unable to take compliant rest periods due to NON-EXEMPT AGGRIEVED EMPLOYEES' need to complete assigned job duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted to DEFENDANTS' premises. For example, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were prohibited from leaving the work premises even to go to their vehicles during purportedly off-duty rest periods, and as such, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were not relieved of all duties and

DEFENDANTS' control during purportedly off-duty rest periods, in violation of California rest period law.

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

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

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

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Failure to Provide Suitable Resting Facilities: Per section 13 of all applicable IWC Wage Orders, including but not limited to Wage Order 1, employees shall be provided with suitable

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

resting facilities. Section 13(B) of the Wage Orders provides: “Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

DEFENDANTS’ locations/facilities are generally similar in layout and design, and there was, and continue to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. DEFENDANTS could have provided NON-EXEMPT AGGRIEVED EMPLOYEES with a resting facility within DEFENDANTS’ facilities/locations with reasonable or no modification, but instead denied and continue to deny, employees with suitable areas to rest (e.g. a breakroom). As a result, NON-EXEMPT AGGRIEVED EMPLOYEES were forced to adjust to areas not conducive to resting, including but not limited to leaning up against the wall, or search for facilities outside of DEFENDANTS’ premises which are not designated or reserved for rest, such as their personal vehicles.

DEFENDANTS did not provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable resting facilities during their hours of work, particularly during meal and/or rest periods.

DEFENDANTS’ failure to provide suitable resting facilities to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, section 13(B) and the California Labor Code, including but not limited to section 1198.

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

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

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

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

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For example, PLAINTIFF was frequently required to clock out for the end of his shift but to continue working due to the need to discuss work-related matters with the foreman and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES and/or complete other post-shift off-the-clock work tasks, resulting in the consistent underpayment of minimum wages and overtime wages owed to PLAINTIFF. Based on information and belief, DEFENDANTS also require other NON-EXEMPT AGGRIEVED EMPLOYEES to clock out for the end of their shifts but to continue working due to the need to respond to work related communications and/or complete other work tasks.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to be at their assigned workstations at the start of a scheduled shift, thereby forcing NON-EXEMPT AGGRIEVED EMPLOYEES to gather work related equipment and/or safety gear prior to their scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock work.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to undergo security screenings before and/or after a scheduled shift and/or before or after clocking in/out for work, resulting in pre-shift and/or post-shift off-the-clock work. Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were required to form a line to undergo security screenings and/or to spend time waiting to access DEFENDANTS' electronic/biometric timekeeping system before they could clock in for the start of their shifts on most if not all shifts worked as well as when clocking back in from purported meal periods. For example, PLAINTIFF was frequently required to wait in line for at least several minutes before PLAINTIFF could clock in for the start of his shift. This time spent under DEFENDANTS' control, including but not limited to, time spent waiting in line behind other employees for employer-mandated screenings and/or to access DEFENDANTS' electronic / biometric timekeeping system, time spent initiating and/or reinitiating the system was not recorded and not compensated, resulting in DEFENDANTS' failure to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES for all time worked.

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

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete other off-the-clock work tasks after clocking out for the end of their shifts and/or during uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Additionally, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform other off-the-clock work for which they were not compensated. For example, based on information and belief, DEFENDANTS did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for time spent donning and doffing personal protective equipment, safety equipment and/or uniforms (e.g., safety goggles/glasses, hard hats/safety caps, gloves and/or face masks) during meal periods, rest periods, before the start of a scheduled shift, and after completing a scheduled shift.

Based on information and belief, DEFENDANTS's Kronos timekeeping software was hacked in 2021 and DEFENDANTS failed to maintain accurate records of hours worked during pay periods following the hack and/or during the hack and instead paid PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES based on scheduled hours worked rather than actual hours worked and/or otherwise failed to pay for all hours worked due to a failure to maintain accurate records of the total hours worked, leading to unpaid minimum and overtime wages.

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

Based on further information and belief, DEFENDANTS implemented a time-rounding system that as applied systematically deprived PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by DEFENDANTS would almost always, if not always, result in understating actual compensable work time. DEFENDANTS' failure to pay for all time worked by virtue of their time-rounding

practices resulted in the underpayment of minimum wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week. For example, on February 3, 2023, PLAINTIFF received a wage statement in which his hours worked were rounded to “44.50.” On January 20, 2023, PLAINTIFF’s wage statement shows his hours rounded to “45.40.” Similarly, on April 14, 2023, PLAINTIFF’s hours were rounded to “47.20.” Based on information and belief, each of PLAINTIFF’s wage statements include regular, overtime, and total hours that are rounded to the nearest tenth of an hour.

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

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

These violations subject DEFENDANTS, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

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

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

⁵ See Lab. Code §1197.1(a) (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

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

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

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

Based on information and belief, DEFENDANTS failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES. For example, based on information and belief, DEFENDANTS compensated PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES with bonuses/incentive pay (e.g., bonuses for attendance and/or safety/PPE bonuses) and/or other non-discretionary compensation yet DEFENDANTS failed to incorporate all non-discretionary remuneration into the regular rate(s) of pay for purposes of calculating the owed overtime rate, resulting in the miscalculation and underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

These violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁷

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by

⁷ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

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

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

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

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

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

failed to display the proper overtime rate(s) for each hour of overtime worked by PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

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

Moreover, based on information and belief, DEFENDANTS issued wage statements to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer. For example, based on information and belief, at times during the relevant period, DEFENDANTS issued wage statements to PLAINTIFF that identify York Group, Inc., as the name of the legal entity that is PLAINTIFF's employer. Additionally, during the relevant period, DEFENDANTS issued wage statements to PLAINTIFF that identified "Whited Cemetery Service" as the legal entity that is the employer. Whited Cemetery Service is a division and/or a fictitious business name of Defendant SANNIPOLI CORPORATION. Moreover, some documents in PLAINTIFF's personnel file identify Matthews International as the employer and/or include the logo for Matthews International. While other personnel documents identify Whited Cemetery Service and Sannipoli Corporation as PLAINTIFF's employer. Moreover, based on information and belief, DEFENDANTS, and each of them, maintain the same agent for service of process and/or principal place of business as provided to the California Secretary of State and/or use some of the same attorneys and/or human resources personnel to oversee employment-related matter.

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

These violations subject DEFENDANTS to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁸

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

⁸ See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

Seating Violations: Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not actively engaged in the work duties that would not permit them to be seated.

All applicable IWC Wage Orders, Section 14(A-B) provides:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

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

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

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

DEFENDANTS' NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁹

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage

⁹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, DEFENDANTS' violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, business expenses, suitable seating, suitable resting facilities, and other violations described herein result in separate violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

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

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

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

Failure to Pay Vested Vacation/Paid Time Off:

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

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite

period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

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

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

Based on further information and belief, DEFENDANTS failed to timely provide all owed wages immediately upon discharge of employment. Based in information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES experienced breaks in employment caused by DEFENDANTS whereby NON-EXEMPT AGGRIEVED EMPLOYEES would not be called in for work for longer than a single pay period due to including but not limited to DEFENDANTS’ lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

These violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹⁰

Violation of Labor Code Section 208:

Labor Code Section 208 provides: Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in

¹⁰ (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 county where the employee has been performing labor. All payments shall be made in the manner provided by law.

Based on information and belief, DEFENDANTS have a policy and practice of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES who are terminated with their final paychecks at the place of discharge and/or of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES with their final paychecks at the office or agency of DEFENDANTS in the county where the work was performed, in violation of Labor Code Section 208.

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

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

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145

California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

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

Based on information and belief, DEFENDANTS shifted the costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for their business expenses including but not limited to, uniforms/work clothing/work shoes/personal protective/safety gear (e.g., gloves, work shoes and/or face masks) and the use of NON-EXEMPT AGGRIEVED EMPLOYEES’ and/or EXEMPT AGGRIEVED

EMPLOYEES' personal mobile phone, internet and/or data usage for work related purposes, including but not limited to, to receive and respond to work related messages and/or phone calls. For example, PLAINTIFF was required to purchase work shoes DEFENDANTS required PLAINTIFF wear for work, but DEFENDANTS did not provide PLAINTIFF with any reimbursement for these business expenses.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were required to receive and respond to work-related calls and/or messages from supervisors and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES regarding scheduling and/or other work tasks but were not reimbursed by DEFENDANTS at all and/or in full for these business expenses.

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

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the business use of their personal vehicles, including mileage, wear and tear, and cost of fuel when they were required to drive around and/or between job sites/DEFENDANTS' facilities, and/or use their personal vehicles in carrying out the duties assigned by DEFENDANTS. As such, DEFENDANTS failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at the legally mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

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

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

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

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

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

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

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

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

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

address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

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

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

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

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

Unlawful Inquires into Criminal History

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

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

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

Unlawful PAGA Waiver

Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to

other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

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

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

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

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

Failure to Provide a Safe and Healthful Workplace: Pursuant to California Labor Code sections 6400-6404 and 6406-6407 of the California Occupational Safety and Health Act (“Cal OSHA”), employers must maintain a safe and healthful place of employment.

Specifically, Labor Code section 6400, requires the following:

- (a) Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein...

Labor Code section 6401 provides as follows:

Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code section 6401.7 (a) provides as follows:

Every employer shall establish, implement, and maintain an effective injury prevention program.

Labor Code section 6402 prohibits the following:

No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.

Similarly, Labor Code section 6404 provides as follows:

No employer shall occupy or maintain any place of employment that is not safe and healthful.

In addition to the above, Labor Code section 6403 requires that employees provide safety devices to their employees. Labor Code section 6403 states:

No employer shall fail or neglect to do any of the following:

(a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

(b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.

(c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

Similarly, Labor Code section 6406(d) states the following:

No person shall do any of the following ... (d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees.

Finally, Labor Code section 6407 provides:

Every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

Moreover, Labor Code section 6409.6 sets forth the actions an employer (or representative of employer) must take within one business day of receiving notice of potential exposure to COVID-19, including but not limited to employee-notice and reporting requirements.

At all relevant times, DEFENDANTS employed PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subject to Labor Code sections 6400-6404, 6406, and 6407. At all relevant times, DEFENDANTS had and have a policy and practice of failing to furnish and use safety devices and safeguards and of failing to adopt and use practices, means, methods, operations, and/or processes which are reasonably adequate to render such employment and place of employment safe and healthful, pursuant to, including but not limited to, Labor Code section 6401.

At all relevant times, DEFENDANTS had a policy and practice of failing to establish, implement, and/or maintain an effective injury prevention program, in violation of Labor Code section 6401.7.

At all relevant times DEFENDANTS had a policy and practice of requiring or permitting employees to go or be in in any employment or place of employment which is not safe and healthful, pursuant to Labor Code section 6402.

At all relevant times, DEFENDANTS had and have a policy and practice of failing or neglecting to: provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe; adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and do every other thing reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code section 6403.

PLAINTIFF is informed and believes and thereon alleges that these failures include, without limitation, failing to disinfect time clocks and other surfaces after use by PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; failing to provide adequate protection equipment (e.g., face masks) to PLAINTIFF, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; and failing to provide adequate distance in working conditions between PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

At all relevant times, DEFENDANTS had a policy and practice of failing to give sufficient, adequate and proper notice to PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES of the COVID-19 exposure within one business day of receiving notice of potential COVID-19 workplace exposure from a qualifying individual as required by Labor Code section 6409.6. PLAINTIFF is informed and believes that numerous employees contracted COVID-19 during the relevant time periods, but that DEFENDANTS failed to provide notice to employees. Based on further information and belief, DEFENDANTS do not or did not keep adequate records of written notifications required in subdivision (a) for a period of at least three years.

At all relevant times, DEFENDANTS had and have a policy and practice of failing within one business day after DEFENDANTS or a representative of DEFENDANTS received notice of potential exposure to COVID-19 to provide written notice to PLAINTIFF, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES and/or their exclusive representatives, who were on the premises at the same worksite as a qualifying individual who was within the infectious period that they may have been exposed to COVID-19. Based on further information and belief, DEFENDANTS had and have a policy and practice of failing within one business day after DEFENDANTS or a representative of DEFENDANTS received a notice of potential exposure to COVID-19 to provide PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state or local laws, including but not limited to, workers' compensation, and options for exposed employees, including COVID-19-related

leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the employee. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and 6432.

At all relevant times, DEFENDANTS had and have a policy and practice of failing within one business day after DEFENDANTS or a representative of DEFENDANTS received a notice of potential exposure to COVID-19 to notify PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES who were on the premises at the same worksite as the qualifying individual within the infectious period, and the employers of the subcontracted employees who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per the CAL-OSHA COVID-19 Emergency Temporary Standards. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and 6432.

At all relevant times, DEFENDANTS had and have a policy and practice of failing to notify the local public health agency in the jurisdiction of the worksite of the names, number, occupation and worksite of employees who had a laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health; a positive COVID-19 diagnosis from a licensed health care provider; a COVID-19 related order to isolate provided by a public health official; or died due to COVID-19, in the determination of a county public health department or per inclusion in the COVID-19 statistics of a county. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and 6432.

PLAINTIFF is informed and believes , and based thereon alleges that DEFENDANTS violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or blowers; and a sufficient number of toilets to be used by each of sex of employee.

PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS violated the Labor Code sections described herein, including without limitation, for failure to: furnish and use safety devices and safeguards; give sufficient, adequate and proper notice to employees of COVID-19 exposures, to provide written notice to PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES, who were on the premises at the same worksite as a qualifying individual who was within the infectious period that they may have been exposed to COVID-19 pursuant to California and local laws.

Based on information and belief, DEFENDANTS failed to protect NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES from exposure to COVID-19 due to, including but not limited to, failing to maintain/update DEFENDANTS' workplace safety plans and/or procedures to properly address hazards related to the COVID-19 virus.

As such, DEFENDANTS failed to comply with the occupational safety and health standards, failed to do everything reasonably necessary to protect the health and safety of employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices necessary to maintain a safe and healthful workplace.

As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES and is subject to civil penalties.

Conclusion

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

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

The purpose of this AMENDED NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this AMENDED NOTICE according to the time frame contemplated by the code. Likewise, PLAINTIFF requests that the Division of Occupational Safety and Health investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, PLAINTIFF requests that the agency and division inform PLAINTIFF if they do not intend to investigate these violations so that PLAINTIFF may file a lawsuit with respect to the allegations discussed in this AMENDED NOTICE.

If the LWDA and/or the Division of Occupational Safety and Health elect not to take any action with respect to any of the foregoing claims, PLAINTIFF will seek these penalties in a civil action, on behalf of PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of DEFENDANTS within one year of the date of this letter as allowed by law.

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

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

Thank you for your attention to this matter.

Best Regards,

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

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Manny Martinez <manny@crosnerlegal.com>

Thank you for your Amended PAGA Claim Notice Submission.

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>

Thu, Jul 27, 2023 at 10:44 AM

To: prelit@crosnerlegal.com

07/27/2023 10:44:10 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT

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EXHIBIT

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