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

MARIA GUADALUPE HERNANDEZ, on
behalf of the State of California, and others
similarly situated,

Plaintiff,

vs.

YZER, LLC, a Florida limited liability
company; PEOPLEASE LLC, a South
Carolina limited liability company; and DOES
1-100, inclusive,

Defendant.

Case No. 23CV025345

Assigned For All Purposes To:
Hon. Michael Markman
Dept. 23

**DECLARATION OF MICHAEL JONES IN
SUPPORT OF MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

[Filed concurrently with Notice of Motion and
Motion; Memorandum of Points & Authorities;
Declarations of Maria Guadalupe Hernandez and
Chris Longley; [Proposed] Order]

Date: August 8, 2024
Time: 10:00 a.m.
Dept.: 23

Reservation ID:

1 I, MICHAEL JONES, declare as follows:

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

6 2. Attached hereto as Exhibit 1 is a true and correct, fully-executed copy of the
7 Parties' Class Action and PAGA Settlement Agreement and Class Notice ("Settlement
8 Agreement").

9 3. I am unaware of any other pending cases that will be impacted by the proposed
10 settlement in this case, or that that any overlapping claims or classes.

11 **FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

12 4. Defendant YZER is a logistics company that employs couriers to deliver
13 pharmaceutical products, among other goods, from locations across California. Defendant
14 PEOPLEASE issues wage statements and provides limited administrative services to
15 companies, including YZER.

16 5. Plaintiff Maria Hernandez ("Plaintiff") worked for YZER as a courier out of
17 YZER's Santa Fe Springs location, delivering pharmaceuticals and supplies to pharmacies and
18 hospitals. She was employed from July 2021 to August 2022. During her employment with
19 YZER, Plaintiff contends Defendants did not pay all wages due, and essentially paid employees
20 for 40 hours of work regardless of the actual hours worked. She further alleges Defendants failed
21 to provide her and the class members with compliant meal periods or rest breaks and failed to
22 maintain any written meal period or rest break policy. Finally, she alleges she and the class
23 members had to use their own cell phones for work purposes without reimbursement.

24 6. Based on these allegations, on January 9, 2023, Plaintiff filed a class action lawsuit
25 against Defendants in Alameda County, alleging claims for: (1) failure to pay all wages due,
26 including minimum and overtime wages (2) failure to provide all required meal and rest breaks or
27 compensation in lieu thereof; (3) failure to reimburse business expenses; (4) failure to provide
28 accurate, itemized wage statements; (5) failure to pay all wages due upon termination of

1 employment, and (6) unfair competition. Plaintiff also alleged claims for unfair competition
2 premised on the same Labor Code violations. After notice to the LWDA and Defendants and after
3 exhausting her administrative remedies, on March 27, 2023, Plaintiff filed a separate PAGA lawsuit
4 in Alameda County. Plaintiff based her PAGA-only complaint on the same Labor Code violations
5 alleged in the class complaint. On May 23, 2023, Plaintiff amended her class action lawsuit to
6 include her PAGA claims and dismissed the separately filed PAGA action without prejudice. True
7 and correct copies of both Plaintiff's PAGA notice letter and amended PAGA notice letter to the
8 LWDA and Defendants, along with proof of submission, are attached hereto as Exhibit 2.

9 7. YZER has at all times denied Plaintiff's allegations and maintained its meal and
10 rest break and payroll policies and procedures comply with California law, that they paid the class
11 member all wages due, and provided them with required meal and rest breaks or paid the required
12 compensation for any documented meal/rest violations. YZER also contends there would be no
13 need for any class member to use their own phone on company business and therefore no
14 reimbursement is owed. Additionally, YZER strongly contends the case cannot be maintained as
15 a class action, arguing for example that to the extent class members missed meal and/or rest
16 breaks, or that such breaks were non-compliant, it was intermittent and infrequent and evidence
17 of such missed breaks would be anecdotal, and therefore individualized issues would
18 predominate.

19 8. After Plaintiff filed her complaints, the Parties engaged in initial written discovery
20 and, after meeting and conferring regarding discovery, law and motion, and other case
21 management issues, agreed to attempt mediation. The Parties also agreed on a protocol for an
22 exchange of substantial documents and information before the mediation to facilitate the
23 settlement discussions. Consequently, Plaintiff's counsel reviewed payroll records, compensation
24 plans, personnel policies/handbooks, meal and rest break policies, personnel files, and a random
25 of sampling of Class Member paystubs and time records. Plaintiff then had those records
26 analyzed by Berger Consulting Group to look for, inter alia, violation rates for missed, late and/or
27 short meal breaks, potential damages from unpaid overtime, etc. YZER also provided data
28 regarding the total number of putative class members, the estimated total amount of workweeks

1 and pay periods they worked, average pay rates, and information regarding other non-hourly
2 compensation, among other relevant data.

3 9. The Parties then engaged Michael Young, Esq., a respected professional neutral
4 with substantial wage and hour and class action experience and, in January 2024, the Parties
5 participated in a full day mediation with Mr. Young. Throughout the day, the arms-length
6 negotiations were hard-fought and adversarial as the Parties exchanged extensive information on
7 their legal and factual positions, made numerous offers and counter-offers, and ultimately were
8 able to reach an agreement with the mediator's assistance. The Parties then collaboratively
9 drafted the Class Action and PAGA Settlement Agreement ("Settlement Agreement") setting
10 forth the settlement terms now before the Court for approval.

11 **THE PROPOSED SETTLEMENT TERMS**

12 10. Under the settlement, YZER will pay \$1,000,000 into a common fund, the Gross
13 Settlement Amount ("GSA"). Attorney's fees of up to \$333,333.33 (33.3% of the GSA), litigation
14 costs of up to \$20,000, settlement administration costs of no more than \$15,000, a service award
15 to Plaintiff of no more than \$10,000, and \$35,000 for alleged PAGA civil penalties, all will be
16 deducted from the GSA. The balance of around \$586,667 will be allocated pro rata to the Class
17 Members based on their weeks worked during the Class Period. No portion of the GSA will
18 revert to Defendants.

19 11. The settlement provides for conditional certification of a settlement class including
20 all current and former non-exempt individuals who worked for YZER, LLC in California at any
21 time within Class Period of July 26, 2021 to April 17, 2024, and all current and former non-
22 exempt individuals who worked for YZER, LLC and who were issued wage statements by
23 PEOPLEASE, LLC in California at any time during the Class Period. The Settlement Class
24 consists of about 514 individuals.

25 12. As noted, the settlement obligates YZER to pay \$1,000,000 to resolve the
26 Settlement Class's claims, inclusive of attorney's fees and costs. At least \$586,667 from the GSA
27 will be distributed to the Participating Class Members. This is a cash settlement that does not
28 require Participating Class Members to submit a claim form to receive their settlement share.

1 Participating Class Members will receive their settlement checks automatically via First Class
2 U.S. Mail. Thirty-three point three percent (33.3%) of each settlement share will be allocated to
3 wages and the remaining 66.7% will be allocated to expenses, penalties, and interest, which
4 allocation is consistent with Defendants' potential liability. YZER will pay any and all applicable
5 employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's
6 approval, any amounts not claimed (because a class member does not cash their settlement check)
7 will be forwarded to the State Controller's Unclaimed Property Fund.

8 13. Each Participating Class Member will receive a share of the Net Settlement
9 Amount based on his or her total weeks worked in California for YZER during the Class Period.
10 Thus, each Class Member's Individual Settlement Payment will be calculated using criteria
11 typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for
12 missed meal and rest breaks, unreimbursed expenses, and potential statutory penalties under
13 applicable law. These methods are intended to ensure each Class Member receives a settlement
14 award corresponding to the relative value of their potential claims. The proposed allocation
15 provides a reasonable way to compensate Class Members based on the amount of time they
16 worked for YZER in California and the amount of unpaid overtime, the number of missed meal
17 breaks and/or rest breaks, etc. The average gross award is estimated to be around \$1,139.

18 14. Subject to the Court's approval, the Parties have agreed on Atticus Administration,
19 LLC ("Atticus") as the Settlement Administrator. Atticus is qualified and has significant
20 experience administering class action settlements, including numerous wage and hour matters.
21 Atticus's fees and costs will not exceed \$15,000.00. If the Court approves less than the above
22 amount, the difference will remain in the Net Settlement Amount for distribution to the
23 Participating Class Members.

24 15. The proposed Notice of Class Action Settlement (Exhibit A to the Settlement
25 Agreement) sets out information about this case and explains the basic settlement terms in plain
26 language. The Notice also sets forth the individualized information used to calculate Class
27 Members' Individual Settlement Payments and each Class Member's estimated settlement award.
28 The Notice likewise details the procedures for Class Members to dispute their individual

1 information, the procedure for submitting an objection to the Settlement, the procedure to request
2 exclusion, and the fact that any final judgment will bind all Class Members who do not opt out.
3 Cal. Rules of Court 3.769(f) and 3.766(d). In sum, the Notice provides the Class Members with
4 the information necessary to evaluate the Settlement and decide whether to participate in, opt out
5 of, or object to the proposed Settlement, and meets all requirements imposed by the California
6 Rules of Court. Coupled with the notice procedure, the Notice provides the best notice
7 practicable.

8 16. Class Members will have sixty (60) days to dispute the information in their Notice
9 used to calculate their settlement award, and also have 60 days to submit any objections to the
10 settlement or to request exclusion. If a Class Member disputes their individual information, the
11 Settlement Administrator will review the Class Member's records and any other information
12 submitted, and make a final determination.

13 17. All Participating Class Members will release Defendants from all claims alleged in
14 the operative complaint, or that could have been brought based on the factual allegations in the
15 operative complaint during the Class Period. Plaintiff and the Aggrieved Employees likewise will
16 release all alleged claims under PAGA alleged in the operative complaint, or that could have been
17 brought based on the factual allegations in the operative complaint during the PAGA Period.

18 18. A modest incentive award for Plaintiff is appropriate under applicable law. She
19 devoted time and resources to the litigation, provided documents, assisted Class Counsel with
20 investigating the claims asserted and in preparing for mediation. The service payment provided to
21 Plaintiff as the class representative is typical in class action cases and reasonable. Defendants will
22 not oppose a request for an enhancement award to Plaintiff of not more than \$10,000.00 in
23 recognition of her time spent on this matter, the risks she undertook on behalf of the class, and the
24 benefit conferred to the class, as addressed in her declaration filed herewith. If the Court
25 approves less than the above amount, the difference will remain in the Net Settlement Amount for
26 distribution to the Participating Class Members.

27 19. The terms of the Parties' settlement also allow Plaintiff's counsel to apply for an
28 award of attorney's fees of up to 33.3% of the GSA, or \$333,333.33 and reimbursement of actual

1 costs and expenses of up to \$20,000.00. At final approval, Plaintiff's counsel will submit a
2 request for attorney's fees and actual litigation costs per the terms of the Settlement Agreement
3 and applicable law, and will provide the Court with appropriate information and evidence
4 regarding hourly rates, tasks performed, and time expended on the case. If the Court approves
5 less than the above amounts, the difference will remain in the Net Settlement Amount for
6 distribution to the Participating Class Members.

7 20. As noted, the Parties allocated \$35,000 to payment of alleged civil penalties under
8 PAGA, which amount Plaintiff submits is fair, reasonable, and adequate, and furthers PAGA's
9 underlying purposes. As required by Labor Code section 2699(l)(2), Plaintiff gave notice of the
10 settlement and the approval hearing to the LWDA via its online portal. A true and correct copy of
11 the LWDA's acknowledgement of receipt is attached hereto as Exhibit 3.

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

13 21. The class is both sufficiently numerous, consisting of approximately 514
14 individuals, and ascertainable by reference to YZER's personnel and payroll records.

15 22. Plaintiff is an adequate class representative, as her claims do not conflict with and
16 are not antagonistic to the claims of other Class Members. Further, her claims are typical as she
17 is a member of the class and her claims arise from the same employment practices and course of
18 conduct giving rise to the claims of the other Class Members.

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

28 24. Resolving this matter as a class action is superior to other available means for the

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

8 **The Proposed Settlement Meets the Kullar Factors and is within the Range of**
9 **Reasonableness**

10 25. Prior to the mediations, the parties engaged in both formal and informal discovery
11 to facilitate settlement discussions. Plaintiff reviewed documents and information regarding
12 YZER's payroll practices, a random sampling of pay stubs and time records from class members,
13 a class list, applicable compensation plans and expense reimbursement plans, meal and rest break
14 policies, arbitration agreements, etc., and information from YZER regarding class size and
15 breakdown, workweeks/pay periods, rates of pay, and other information used to formulate a
16 damages model. Plaintiff then had that information analyzed by a consulting expert to assist in
17 determining potential violation rates and other data used to formulate a damages model.
18 Plaintiff's counsel are confident they obtained sufficient information to understand the law and
19 facts of this case and make an informed decision regarding the proposed settlement and whether it
20 is fair and reasonable.

21 26. Using this data, we estimated Defendants' maximum exposure at about
22 \$6,024,000, including about \$151,000 on the unpaid wage claims, about \$1,826,000 on the meal
23 period claims, about \$1,826,000 on the rest break claims, around \$120,000 on the expense
24 reimbursement claims, approximately \$978,000 on the wage statement claim, and about
25 \$1,123,000 on the waiting time penalties.

26 27. We calculated these amounts as follows:

27 **Unpaid Wages**

28 6,484.5 unpaid hours * \$23.25 avg. OT rate = \$150,760

Meal Period Violations

117,900 shifts * 100% violation rate * \$15.50/hour avg. wage = \$1,825,750

Rest Period Violations

117,900 shifts * 100% violation rate * \$15.50/hour avg. wage = \$1,825,750

Expense Reimbursement

24,000 work weeks * \$5/week = \$120,000

Wage Statement Violations

436 initial violations * \$50/violation + 9,564 subsequent violations * \$100/violation = \$978,200

Waiting Time Penalties

302 former employees * (240 hours * \$15.50/hour avg. wage) = \$1,123,440

28. First, on the unpaid wage claims, Plaintiff first contends YZER paid employees for 40 hours of work each week regardless of how many hours were reflected on employee time punches. Per Plaintiff, she and other class members oftentimes worked over 8 hours on a shift (for daily overtime) or over 40 hours in a week, but did not receive appropriate overtime compensation. On the other hand, YZER argued its policies captured and paid for all time accurately and at the correct rate, and further emphasized employees frequently worked less than 8 hours per shift and accordingly were overpaid for their time in many instances.

29. On the meal and rest break claims, Plaintiff focused primarily on YZER's alleged failure to maintain a California-compliant break policy and to provide Plaintiff and the class members employees with all required meal periods. Per Plaintiff, YZER not only failed to maintain any written policies, but also as a practical matter it was difficult if not impossible for employees to take breaks because of their tight delivery schedules and a requirement that they remain with the delivery vans and cargoes at all times. YZER countered that in many instances Class Members actually took their meal breaks (including second meal breaks) even if not reflected on the time sheets and, accordingly, class certification is not appropriate because individual inquiries would be necessary to determine this question. For the same reasons, YZER contended the claim would fail on the merits because it would be difficult for Plaintiff to show YZER's actual or constructive knowledge that a particular class member worked through a

1 specific lunch period. YZER also contended it maintained a fully-compliant meal break policy at
2 all times, and it always provided the Class Members with the opportunity to take meal breaks and
3 thus met the requirements imposed by California law. Per YZER, if individuals did not take a
4 meal period or rest period, it was in violation of company policy and, once again, a multitude of
5 individual inquiries would be necessary to determine if an individual may have missed a meal
6 break by personal choice or for some other reason.

7 30. The claims for unreimbursed business expenses under Labor Code § 2802
8 revolved around Plaintiff's allegations that YZER required its non-exempt employees to use their
9 personal cell phones for business purposes and while driving their delivery routes without
10 reimbursement for these business expenses. In response, YZER argued there was no need for
11 employees to use personal phones for legitimate work purposes, and that any such use would
12 have been purely for personal convenience. Thus, per YZER, use of personal phones wasn't
13 necessary and therefore not reimbursable.

14 31. Plaintiff's claims for penalties under Labor Code §§ 203 and 226 are derivative of
15 the underlying unpaid minimum and overtime wage and meal/rest break claims and, accordingly,
16 they would essentially rise or fall with Plaintiff's success or failure on her primary claims.
17 Further, Plaintiff had to account for the discretionary nature of such awards and the "good faith"
18 and other defenses available to YZER. For instance, as to Section 203 waiting time penalties,
19 YZER raised a good faith defense to the waiting time penalties as it applies to both meal/rest
20 periods and underpaid overtime premiums.

21 32. As far as potential PAGA liability, the alleged aggrieved employees theoretically
22 are entitled to penalties totaling about \$6 million should Plaintiff prevail on all claims, establish
23 violations of the multiple Labor Code sections at issue, and secure the maximum penalty on all
24 issues and all pay periods. As with the class claims, Plaintiff discounted the potential PAGA
25 penalties based on Defendants' various defenses on the merits and also accounted for the Court's
26 wide discretion to reduce such penalties, or to decline to award penalties at all. Accordingly, the
27 Parties allocated \$35,000 to PAGA penalties. I submit this amount is reasonable under the
28 circumstances and in line with comparable settlements in other wage and hour class actions in

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

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

13 34. Overall, Defendants raised various defenses to Plaintiff's claims on both class
14 certification and the merits that, if successful, could have negatively impacted Plaintiff's claims
15 or reduce potential damages. Plaintiff and I discounted the value of the class claims consistent
16 with the risks discussed above, and carefully weighed the likelihood of the class receiving
17 substantially greater benefit if the litigation continued. We concluded – in light of these very real
18 and substantial risks – settlement on the proposed terms and without prolonged and costly
19 litigation was in the best interests of the class. The overall \$1,000,000 recovery represents a
20 significant percentage of Defendants' potential exposure and, given the multiple litigation risks
21 addressed above, a total recovery for the class of \$1,000,000, with an average award of over
22 \$1,100 per class member, is a fair result within the range of reasonableness considering all
23 potential outcomes.

24 35. I received my bachelor's degree from UC Santa Barbara in 2012, and my J.D.
25 from the USC Gould School of Law in 2016. I have practiced civil litigation for over seven years
26 and previously worked as a litigation attorney at Reisner & King LLP and Weston & Mclevain
27 LLP. I joined Crosner Legal in February 2022 and since then my practice has focused exclusively
28 on representing employees in wage and hour class and PAGA actions.

1 36. Zach Crosner is a 2010 graduate of University San Diego School of Law and he
2 has approximately thirteen years of experience as a practicing attorney. For nearly his entire
3 career, his practice has focused on litigation of wage & hour, consumer, and privacy class
4 action and representative action claims. Following graduation he immediately began working
5 for a nationally recognized plaintiff's complex litigation firm, CaseyGerry, where he worked
6 directly with past presidents of the consumer attorneys and recipients of trial attorneys of the
7 year awards. He also worked for other firms that included former CAALA and CLAY trial
8 attorney of the year recipients. While with these firms, he advocated for the rights of consumers
9 and employees in class action litigation, civil rights and employment litigation, catastrophic
10 injuries, insurance bad faith and appellate litigation.

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

20 38. Mr. Crosner has been selected by Super Lawyers as a "Southern California
21 Rising Star" for employment and labor law consecutively from 2018 through 2023. Super
22 Lawyers has also named him on their "Up-and-Coming 100" Southern California Rising Stars
23 List for consecutive years from 2021 through 2023. Only 2.5% of lawyers within California are
24 named a Super Lawyer Rising Star and even less are added to their Top Lists. Additionally, he
25 has been selected as a Top 40 Under 40 Civil Plaintiff Attorney by the National Trial Lawyers,
26 invitation-only organization composed of the premier trial lawyers, from 2019 through 2023.
27 He is an active participant in advocacy groups, including as an executive board member of the
28 Wage and Hour Committee and the Legislative Committee for the California Employment

1 Lawyers Association; a member of the Grassroots Advocacy Team for the National
2 Employment Lawyers Association; Wage and Hour Committee member and Class Action
3 Committee member for the National Trial Lawyers; a member of the American Association for
4 Justice; and a member of the Pound Civil Justice Institute.

5 39. Jamie Serb is a partner and managing attorney of the wage and hour department
6 with Crosner Legal. She graduated from the University of California, San Diego in 2004 and
7 graduated from California Western School of Law in 2013. She has been a member of the
8 California State Bar since 2013. She began working as a wage and hour class action attorney in
9 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm, APLC; Turley Law Firm,
10 APLC), and has handled wage and hour class actions and PAGA lawsuits on behalf of employees
11 for about 8 years and assisted in recovering millions on behalf of employees.

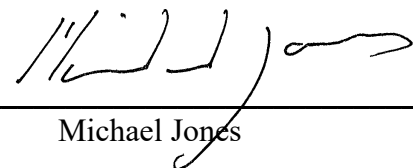
12 40. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
13 action settlements while serving as lead class counsel in recent years, including but not limited to
14 a \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America,*
15 *Inc.*,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

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

20 41. For all the foregoing, reasons I respectfully request the Court grant preliminary
21 approval to the proposed settlement.

22 I declare under penalty of perjury under the laws of California that the foregoing is true
23 and correct. Executed on July 16, 2024, at North Hollywood, California.

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25
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27
28



Michael Jones

EXHIBIT

1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Maria Guadalupe Hernandez (“Plaintiff”) and defendants YZER, LLC (“YZER”) and Peoplease, LLC (“Peoplease”) (collectively, “Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties” and individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendants captioned *Maria Guadalupe Hernandez v. YZER, LLC, Peoplease, LLC, et al*, initiated on January 9, 2023 and pending in Superior Court of the State of California, County of Alameda, Case No. 23CV025345.
- 1.2 “Administrator” or means Atticus Administration, LLC, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means (a) all current and former non-exempt individuals who worked for YZER, LLC in California at any time within the PAGA Period and (b) all current and former non-exempt individuals who worked for YZER, LLC and who were issued wage statements by Peoplease, LLC in California at any time within the PAGA Period.
- 1.5 “Class” means (a) all current and former non-exempt individuals who worked for YZER, LLC in California at any time within the Class Period and (b) all current and former non-exempt individuals who worked for YZER, LLC and who were issued wage statements by Peoplease, LLC in California at any time within the Class Period.
- 1.6 “Class Counsel” means Zach Crosner, Jamie Serb, and Michael Jones of Crosner Legal, PC.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, email address (if reasonably available), and number of Class Period Workweeks and PAGA Pay Periods.



- 1.9 "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10 "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact of Class Members by the Administrator.
- 1.11 "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement.
- 1.12 "Class Period" means the period from July 26, 2021 (the date YZER, LLC began operating in California) to April 17, 2024.
- 1.13 "Class Representative" means Plaintiff Maria Guadalupe Hernandez.
- 1.14 "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15 "Court" means the Superior Court of California, County of Alameda.
- 1.16 "Cy Pres Recipient" means United Way.
- 1.17 "Defense Counsel" means Scopelitis, Garvin, Light, Hanson & Feary, P.C.
- 1.18 "Effective Date" means the date when all of the following events have occurred: (a) this Agreement has been executed by all Parties and by Class Counsel and Defense Counsel; (b) the Court has given Preliminary Approval of the Agreement; (c) notice has been given to the Class Members providing them with an opportunity to opt-out of the Settlement; (d) the Court has held a Final Approval Hearing and entered a Final Approval Order and judgment approving this Agreement from which no appeal can be taken; and (e) in the event there are written objections filed prior to the Final Approval Hearing that are not later withdrawn, the later of the following events: (i) when the period for filing any appeal, writ, or other appellate proceeding opposing the Agreement and Settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; or (ii) when any appeal, writ, or other appellate proceeding opposing the Agreement and Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (iii) when any appeal, writ, or other appellate proceeding has upheld the Court's Final Approval Order with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Agreement and Settlement shall not become effective until the Court's order approving the Agreement and

Settlement is completely final and there is no further recourse for an appellant or objector who seeks to contest the Agreement and Settlement. If no objections are filed, the Effective Date shall be after steps (a) through (d) have been completed.

- 1.19 "Final Approval" or "Final Approval Order" means the Court's Order Granting Final Approval of the Settlement.
- 1.20 "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.
- 1.21 "Final Judgment" means the Judgment entered by the Court upon granting Final Approval of the Settlement.
- 1.22 "Gross Settlement Amount" means \$1,000,000.00, which is the total amount YZER agrees to pay under the Settlement except as provided in paragraph 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the Administrator's Expenses Payment.
- 1.23 "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24 "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25 "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26 "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i) to 75% of the PAGA Penalties.
- 1.27 "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28 "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29 "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.



- 1.30 "Operative Complaint" means the Second Amended Complaint to be filed by Plaintiff in accordance with paragraph 5.4.
- 1.31 "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for YZER, LLC for at least one day during the PAGA Period.
- 1.32 "PAGA Period" means the period from January 6, 2022, to April 17, 2024.
- 1.33 "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 1.34 "PAGA Notice" means Plaintiff's January 6, 2023, letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3(a) of the claims alleged in the Operative Complaint.
- 1.35 "PAGA Penalties" means the total amount of PAGA civil penalties (\$35,000.00) to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$8,750.00) and 75% to the LWDA (\$26,250.00) in settlement of PAGA claims.
- 1.36 "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37 "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38 "Released Class Claims" means the claims being released as described in paragraph 5.2 below.
- 1.39 "Released PAGA Claims" means the claims being released as described in paragraph 5.3 below.
- 1.40 "Released Parties" means: (a) Defendants and (b) their past, present, and/or future parent, subsidiary, affiliated, or related entities (including any companies, corporations, partnerships, alter egos, joint venturers, and actual or alleged joint employers), including each related company, corporation, and/or partnership (defined as a company, corporation, and/or partnership that is, directly or indirectly, under common control with that Defendant or any of its parents and/or affiliates), and (c) each of the previously listed persons' and entities' respective past, present, and future agents, contractors, employees, servants, officers, directors, principals, partners, members, trustees, fiduciaries, representatives, shareholders, stockholders, attorneys, equity sponsors, divisions, assigns, predecessors, successors, insurers, and consultants.
- 1.41 "Request for Exclusion" means a Class Member's submission to the Administrator of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.42 "Response Deadline" means 60 days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees and shall be the last date on which

any Class Members may: (a) fax, email, or mail a Request for Exclusion to the Administrator, or (b) fax, email, or mail his or her objection to the Settlement to the Administrator. Class Members to whom Class Notice is resent after having been initially returned undeliverable to the Administrator shall have an additional 14 days beyond the Response Deadline to submit a Request for Exclusion or objection.

1.43 "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.44 "Workweek" means any week during which a Class Member worked for YZER, LLC for at least one day during the Class Period.

2. RECITALS.

2.1 On January 9, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for recovery of unpaid minimum and overtime wages, failure to provide meal and rest breaks, inaccurate wage statements, waiting time penalties, failure to reimburse business expenses, and violation of the unfair competition law. On March 27, 2023, Plaintiff commenced another lawsuit in Alameda County Superior Court, Case No. 23CV030098, alleging a single cause of action against Defendants for violation of the PAGA ("PAGA Action").

2.2 On May 23, 2023, Plaintiff filed a First Amended Complaint in the Action, incorporating Plaintiff's claim under the PAGA. Thereafter, on July 10, 2023, Plaintiff dismissed the standalone PAGA Action without prejudice.

2.3 Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in the Operative Complaint, and deny any and all liability for the causes of action alleged therein.

2.4 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA on January 6, 2023.

2.5 On January 18, 2024, the Parties participated in an all-day mediation presided over by Michael Young, Esq. of Judicate West, which resulted in a mediator's proposal that was later accepted by the Parties.

2.6 Prior to mediation, Plaintiff obtained, through informal discovery, Plaintiff's personnel documents, time, and wage records; a sampling of Class Members' time and wage records; and exemplar arbitration agreements. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.7 The Court has not granted class certification in the Action.

2.8 The Parties, Class Counsel, and Defense Counsel represent that they have no existing conflicts with the Administrator or the Cy Pres Recipient.

3. MONETARY TERMS.

- 3.1 **Gross Settlement Amount.** Except as otherwise provided by paragraph 8 below, YZER shall pay \$1,000,000.00 and no more as the Gross Settlement Amount and shall separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. YZER has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in paragraph 4.3 of this Agreement. None of the Gross Settlement Amount will revert to YZER.
- 3.2 **Payments from the Gross Settlement Amount.** The Administrator shall make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval Order:
- 3.2.1 **To Plaintiff:** Class Representative Service Payment to the Class Representative of not more than \$10,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member), as approved by the Court. Defendants shall not oppose Plaintiff's request to the Court for a Class Representative Service Payment that does not exceed this amount. The failure of the Court to approve the full amount of the Class Representative Service Payment requested shall not impact the enforceability or validity of the remainder of this Agreement, which shall remain in full force and effect. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator shall allocate the remainder to the Net Settlement Amount. The Administrator shall pay the Class Representative Service Payment using an IRS Form 1099. Plaintiff assumes full responsibility and liability for any taxes owed on the Class Representative Service Payment.
- 3.2.2 **To Class Counsel:** A Class Counsel Fees Payment of not more than 33.3% of the Gross Settlement Amount, which is currently estimated to be \$333,333.33, and a Class Counsel Litigation Expenses Payment of not more than \$20,000.00, as approved by the Court. Defendants shall not oppose requests to the Court for these payments provided that the requests do not exceed these amounts. The failure of the Court to approve the full amount of the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment requested shall not impact the enforceability or validity of the remainder of this Agreement, which shall remain in full force and effect. As part of Plaintiff's motion for Final Approval, Plaintiff shall seek approval of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator shall allocate the remainder to the Net Settlement Amount.

Released Parties shall have no liability to Class Counsel or any other Plaintiff's counsel arising from any claim to any portion of any Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. The Administrator shall pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and shall indemnify Defendants, from any dispute or controversy regarding any division or sharing of the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment.

3.2.3 **To the Administrator:** An Administration Expenses Payment not to exceed \$15,000.00, except for a showing of good cause and as approved by the Court. To the extent the Administrator's expenses in administering the Settlement are less than the Administration Expenses Payment or the Court approves payment less than the requested amount, the Administrator shall allocate the remainder to the Net Settlement Amount. If the Administrator's expenses in administering the Settlement exceed \$15,000.00, or the Court approves an Administration Expenses Payment of less than \$15,000.00 and the Administrator incurs expenses in administering the Settlement that are in excess of the Administration Expenses Payment approved by the Court, the Parties shall bear these additional costs of administration equally.

3.2.4 **To Each Participating Class Member:** An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1 **Tax Allocation of Individual Class Payments.** 33.3% of each Participating Class Member's Individual Class Payment shall be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and the amount of the tax withholdings shall be calculated by the Administrator, subject to Defendant's review and approval, and reported on an IRS Form W-2. The remaining 66.7% of each Participating Class Member's Individual Class Payment shall be allocated to settlement of claims for non-wage claims (e.g., interest and penalties) (the "Non-Wage Portion"). The Non-Wage Portions are not subject to tax withholding and shall be reported on an IRS Form 1099. Participating Class Members assume full responsibility and liability for any employee taxes owed on the Wage Portion of their Individual Class Payments and assume full responsibility and

liability for any taxes owed on the Non-Wage Portion of their Individual Class Payments. The Settlement Administrator shall rely upon all tax information reasonably available to and provided by Defendants to issue any IRS Form W-2 and/or IRS Form 1099 required by this Agreement. To the extent Defendants lack sufficient tax information concerning a Participating Class Member or Aggrieved Employee, the Settlement Administrator shall request that the affected Participating Class Member or Aggrieved Employee submit a completed IRS Form W-9 to the Settlement Administrator. If the affected Participating Class Member or Aggrieved Employee refuses or fails to complete or submit a Form W-9 to the Settlement Administrator, then the Settlement Administrator shall make appropriate withholdings from any Individual Class Payment(s) and/or Individual PAGA Payment(s) due to the affected Participating Class Member or Aggrieved Employee under this Agreement.

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

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$35,000.00, with 75% (\$26,250.00) allocated to the LWDA PAGA Payment and 25% (\$8,750.00) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator shall calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$8,750.00) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payments.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 **Class Workweeks and Aggrieved Employee Pay Periods.** As of the date of mediation, YZER estimates there are approximately 514 Class Members who collectively worked a total of approximately 24,000 Workweeks, and approximately 431 of Aggrieved Employees who worked a total of approximately 10,000 PAGA Pay Periods.
- 4.2 **Class Data.** Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendants shall deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. The Class Data shall not be provided to Class Counsel. To protect Class Members' privacy rights, the Administrator shall maintain the Class Data in confidence, shall use the Class Data only for purposes of this Settlement and for no other purpose, and shall restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform their duties under this Agreement. Defendants shall have a continuing duty to immediately notify Class Counsel if they discover that the Class Data omitted identifying information for any Class Member and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will use their best efforts, in good faith, to expeditiously reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3 **Funding of Gross Settlement Amount.** YZER shall fully fund the Gross Settlement Amount, including the amounts necessary to pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments, by transmitting the funds to the Administrator no later than 14 days after the Effective Date or October 9, 2024, whichever date is later. However, in no event shall YZER pay more than the Gross Settlement Amount and YZER's share of the payroll taxes owed on the Wage Portions of the Individual Class Payments.
- 4.4 **Payments from the Gross Settlement Amount.** Within 14 days after YZER transmits the Gross Settlement Amount to the Administrator, the Administrator shall mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Neither Participating Class Members nor Aggrieved Employees shall be required to submit any claim to the Administrator as a condition of receipt of an Individual Class Payment or Individual PAGA Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments or Individual PAGA Payments.

- 4.4.1 The Administrator shall issue checks for the Individual Class Payments and Individual PAGA Payments to the Participating Class Members and Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date when the check will be voided, which date shall not be less than 180 days after the date of mailing ("Void Date"). The Administrator shall cancel all checks not cashed by the Void Date. The Administrator shall issue checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator shall issue checks for Individual PAGA Payments to all Aggrieved Employees, including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update each Class Member's and/or Aggrieved Employee's mailing address using the National Change of Address Database.
- 4.4.2 The Administrator must conduct a Class Member Address Search for all Participating Class Members and Aggrieved Employees whose checks are returned undelivered without a forwarding address. Within 7 days of receiving a returned check, the Administrator shall re-mail a check to any forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Participating Class Members and Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Participating Class Member and/or Aggrieved Employee whose original check was lost or misplaced upon request by the Participating Class Member and/or Aggrieved Employee prior to the Void Date.
- 4.4.3 For any Participating Class Member and/or Aggrieved Employee whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the Void Date, the Administrator shall transmit the funds represented by such checks to the Cy Pres Recipient, which is a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b), in accordance with paragraphs 12.22 and 12.23. The Parties, Class Counsel, and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the Cy Pres Recipient.
- 4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate YZER to confer any additional benefits or make any additional payments to Participating Class Members or Aggrieved

Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

- 4.4.5 The Administrator shall hold back 10% of the Class Counsel Fees Payment in an interest-bearing account pending Class Counsel's submission and the Court's approval of a final compliance status report after disbursement of all payments required by this Agreement.

5. RELEASES OF CLAIMS. On the Effective Date, Plaintiff and Class Members shall release claims against all Released Parties as follows:

- 5.1 **Plaintiff's Release.** Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged based on the facts contained in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

- 5.1.1 **Plaintiff's Waiver of Rights Under California Civil Code Section 1542.** For purposes of Plaintiff's release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

- 5.2 **Release by Participating Class Members:** All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, including, any and all claims involving any alleged failure to pay minimum wages and liquidated



damages; failure to pay overtime wages; failure to authorize and provide meal periods or compensation in lieu thereof; failure to authorize and provide rest periods or compensation in lieu thereof; inaccurate wage statements; failure to timely pay wages upon termination of employment; failure to reimburse business expenses; failure to comply with any provisions of the California Labor Code identified in Plaintiff's claim for civil penalties under PAGA; and violation of the Unfair Competition Law, California Business and Professions Code section 17200 et seq., during the Class Period. Participating Class Members only release these claims for the duration of the Class Period. Except as set forth in paragraph 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3 **Release by Aggrieved Employees:** All Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including claims for any alleged failure to pay minimum wages and liquidated damages; failure to pay overtime wages; failure to authorize and provide meal periods or compensation in lieu thereof; failure to authorize and provide rest periods or compensation in lieu thereof; inaccurate wage statements; failure to timely pay wages upon termination of employment; failure to reimburse business expenses; failure to keep accurate records; failure to produce records; statutory wage violations; refusal to make payment; standard conditions of labor violations; unlawful deductions; sick leave violations; failure to provide supplemental paid sick leave; failure to pay vested vacation wages; unlawful agreements; and unlawful criminal history inquiries during the PAGA Period. Aggrieved Employees only release these claims for the duration of the PAGA Period.

5.4 **Amended PAGA Notice.** In order to effectuate the broadest release possible of any and all claims under PAGA, Class Counsel shall submit an amended PAGA Notice to the LWDA and shall file an amended pleading in the Action incorporating that amended PAGA Notice that incorporates—in addition to all claims alleged in the First Amended Complaint filed in the Action by Plaintiff on May 23, 2023—all PAGA claims alleged in the lawsuit against Defendants captioned *Marta Alicia Garcia Jacinto v. YZER, LLC, et al.*, pending in the Superior Court of California, County of Los Angeles, Case No. 23STCV17662.

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

- 6.1 **Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice of, and memorandum in support of, the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval; (iii) a draft proposed Class Notice; (iii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds, or other misfeasance; (iv) a signed declaration from Plaintiff; (v) a signed declaration from Class Counsel's firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), and this Agreement (Labor Code section 2699, subd. (l)(2)).
- 6.2 **Responsibilities of Counsel.** Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 6.3 **Duty to Cooperate.** If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel agree to expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, the Parties shall meet, confer, and negotiate in good faith for a period of thirty (30) days following any order denying Preliminary Approval to modify the Agreement directly, or with the assistance of a mediator, to address any concerns identified by the Court. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Administrator Expenses Payment shall not constitute a material change to the Agreement within the meaning of this paragraph. If the Parties are unable to secure Preliminary Approval of this Agreement, as modified, after meeting and conferring in good faith, then this Agreement shall be null and void and the Parties shall equally bear any expenses incurred by the Administrator in administering the Settlement up to that point.

7. SETTLEMENT ADMINISTRATION.

- 7.1 **Selection of Administrator.** The Parties have jointly selected the Administrator and verified that, as a condition of appointment, the Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of the Administration Expenses Payment. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 **Employer Identification Number.** The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 7.3 **Qualified Settlement Fund.** The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 **Notice to Class Members.**
- 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator shall send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member and/or Aggrieved Employee, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 7.4.3 Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned as undelivered by the USPS a second time.

- 7.4.4 The deadlines for Class Members' written objections, challenges to any calculation of Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose Class Notice is re-mailed. The Administrator shall inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, Plaintiff, Defendants, Defense Counsel, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members and/or Aggrieved Employees. If the Parties agree, such persons shall be considered Class Members and/or Aggrieved Employees, entitled to the same rights as other Class Members and/or Aggrieved Employees, and the Administrator shall send, via email or overnight delivery, a Class Notice requiring them to object or submit a Request for Exclusion under this Agreement not later than 14 days after receipt of Class Notice, or the deadline contained in the Class Notice, whichever is later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's first and last name and a general statement indicating that he or she requests exclusion from the Class and does not wish to participate in the Settlement. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline, except as provided in paragraph 7.4.4 of this Agreement.
- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. If the Parties disagree as to the validity or authenticity of a Request for Exclusion, they shall confer in good faith to resolve the dispute. In the event that the Parties cannot reach agreement regarding the validity or authenticity

of a Request for Exclusion, the Administrator shall decide the matter and the Administrator's determination shall be final and not appealable or otherwise susceptible to challenge.

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

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the Settlement. Non-Participating Class Members who are Aggrieved Employees shall, notwithstanding any Request for Exclusion, release the claims identified in paragraph 5.3 of this Agreement and are eligible to receive an Individual PAGA Payment.

7.6 **Challenges to Calculation of Workweeks.** Each Class Member shall have 60 days after the Administrator mails Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Workweeks and/or PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email, or mail and, upon receipt of such a challenge, the Administrator shall request that the challenging Class Member submit supporting documentation. In the absence of any contrary documentation provided by the challenging Class Member, the Administrator is entitled to presume that the Workweeks and/or PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. If the Parties disagree as to the allocation or calculation of Workweeks and/or PAGA Pay Periods regarding any Class Member, they shall confer in good faith to resolve the dispute. In the event that the Parties cannot reach agreement concerning the allocation or calculation of Workweeks and/or PAGA Pay Periods regarding any Class Member, the Administrator shall decide the matter and the Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to the Administrator's calculation of Workweeks and/or PAGA Pay Periods, and the Administrator's determination with respect to any such challenges, if applicable, to Defense Counsel and Class Counsel.

7.7 Objections to Settlement.

- 7.7.1 Only Participating Class Members may object to the Settlement and/or this Agreement. Non-Participating Class Members have no right to object to the Settlement.
- 7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. The Administrator shall promptly provide Class Counsel and Defense Counsel with copies of any objections it receives. Class Counsel shall file any objections received with the Court. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).
- 7.7.3 Alternatively, Participating Class Members may also appear in Court (or hire an attorney to appear in Court) to present verbal objections to the Settlement at the Final Approval Hearing.

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

- 7.8.1 **Website, Email Address, and Toll-Free Number.** The Administrator shall establish and maintain and use an internet website to post the following information concerning the Settlement: the date, time, and location for the Final Approval Hearing; copies of the Agreement, Motion for Preliminary Approval, Preliminary Approval, Class Notice, Motion for Final Approval, Final Approval Order, and Judgment. The Administrator shall also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes, and emails.
- 7.8.2 **Requests for Exclusion (Opt-outs) and Exclusion List.** The Administrator shall promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 business days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion received by the Administrator (whether valid or invalid).

Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class

Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.8.3 **Administrator's Declaration.** Not later than 14 days after the Response Deadline, the Administrator shall provide to Class Counsel and Defense Counsel a signed declaration suitable for filing in Court attesting to the Administrator's due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of the Class Notice, monitoring and recording the total number of Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, monitoring and recording the total number of Requests for Exclusion from the Settlement it received (whether valid or invalid), and monitoring and recording the number of written objections. The Administrator shall attach the Exclusion List to its declaration. The Administrator shall supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) with the Court.

7.8.4 **Final Report by Administrator.** Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator shall provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments issued pursuant to this Agreement. At least 15 days before any deadline set by the Court, the Administrator shall prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. The Administrator shall supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.

8.1 Based on its records, YZER estimates that, as of the date of mediation, there are (1) 514 Class Members and 24,000 total Workweeks during the Class Period; and (2) 431 Aggrieved Employees who worked 10,000 total PAGA Pay Periods during the PAGA Period.

8.2 The Gross Settlement Amount was agreed upon based on YZER's representations of the total number of Workweeks in the Class Period and total number of PAGA Pay Periods in the PAGA Period. If the number of Workweeks during the Class

Period exceeds 24,000 by more than 10% (26,400 Workweeks), then YZER shall have the option to either (1) increase the Gross Settlement Amount on a pro rata basis per Workweek exceeding the 10% increase (i.e., if the number of Workweeks increases by 11%, the Gross Settlement Amount shall be increased by 1%); or (2) cap the number of Workweeks at 26,400 by limiting the end dates of the Class Period and PAGA Period to the date on which 26,400 Workweeks have been worked by the Class Members and/or Aggrieved Employees.

9. **DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion exceeds 3% of the total of all Class Members, YZER may, but is not obligated to, withdraw from the Settlement. The Parties agree that, if YZER withdraws, the Settlement shall be void *ab initio*, shall have no force or effect whatsoever, and no Party shall have any further obligation to perform under this Agreement, provided, however, YZER shall remain responsible for paying all expenses of the Administrator incurred up to the date of withdrawal. YZER shall notify Class Counsel and the Court of the exercise of its right to withdraw from the Settlement pursuant to this paragraph not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel.
10. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff shall file with the Court a motion for final approval of the Settlement, a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel as soon as practicable prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
 - 10.1 **Response to Objections.** Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents with the Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
 - 10.2 **Duty to Cooperate.** If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members or Aggrieved Employees), the Parties shall meet, confer, and negotiate in good faith for a period of thirty (30) days following any order denying Final Approval to modify the Agreement directly, or with the assistance of a mediator, to address any concerns identified by the Court. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Administrator Expenses Payment shall not constitute a material change to the Agreement within the meaning of this paragraph. If the Parties are unable to secure Final Approval of this Agreement, as modified, after meeting and conferring in good faith, then this

Agreement shall be null and void and the Parties shall equally bear any expenses incurred by the Administrator in administering the Settlement up to that point.

- 10.3 **Continuing Jurisdiction of the Court.** The Parties agree that, after entry of Judgment, the Court shall retain jurisdiction over the Parties, the Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and/or appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If a Participating Class Member who has filed an objection appeals the Judgment, the Parties' obligations to perform under this Agreement shall be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 10.5 **Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment.** If any appellate court with jurisdiction over the Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Participating Class Members or Aggrieved Employees), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing equally any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Administrator Expenses Payment shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.
11. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties shall work together in good faith to jointly submit a proposed amended judgment.
12. **ADDITIONAL PROVISIONS.**
- 12.1 **Government Actions Affecting Settlement.** If any proceeding or action is commenced on or before a date that is one (1) year from the date the Court enters Preliminary Approval of the Settlement by any federal, state, or local government

authority, including, without limitation, the U.S. Department of Labor or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, asserting any claims released by the Settlement, Plaintiff and Class Counsel shall not oppose Defendants arguments asserting that the governmental action is within the scope of the Settlement, the Action, and the Court's order granting Final Approval of the Settlement and entering the Judgment. Additionally, in the event any action is commenced by a governmental authority as stated herein, Defendants shall have the option to seek an order from the Court requesting that Individual Class Payments and Individual PAGA Payments to the Class Members and Aggrieved Employees, respectively, be immediately suspended pending the outcome of the suit or administrative proceeding brought by the governmental authority.

12.2 Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provision to be valid to the fullest extent possible consistent with applicable precedents and other law so as to render all provisions of this Agreement valid and enforceable. Should the Court deem any clause or provision of this Agreement to be invalid, illegal, or unenforceable, the Court shall first attempt to modify or reform the provision or clause as minimally necessary to be valid, lawful, and enforceable. Should the Court deem any clause or provision of this Agreement to be invalid, illegal, or unenforceable and its modification or reformation is not possible, then invalidation of any material provision of the Agreement shall invalidate the Agreement in its entirety, unless the Parties shall subsequently agree in writing that the remaining provisions of the Agreement are to remain in full force and effect. A modification or reversal on appeal of any amount of the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, or Class Representative Service Payment shall not be deemed to be an invalidation of a material provision of this Agreement. The Parties shall be equally responsible for any amount of the Administration Expenses Payment incurred by the Administrator as of the time the Agreement is invalidated.

12.3 No Admission of Liability, Class Certification, or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. In the event that this Settlement is not approved by the Court, fails to become effective, or is reversed, withdrawn, or modified by the Court in such a manner that prevents or prohibits Defendants from obtaining a complete resolution of the claims

as described in this Agreement, any conditional class certification shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative, or arbitral proceeding for any purpose whatsoever or with respect to any issue, substantive or procedural. If, for any reason the Court does not grant Preliminary Approval, Final Approval, or enter Judgment, Defendants reserve the right to contest certification of any class in this Action for any reasons, and Defendants reserve all available defenses to the claims alleged in the Action, and Plaintiff reserves the right to move for class certification on any grounds available to her and to contest Defendants' defenses. The Settlement, this Agreement, and the Parties' willingness to settle the Action shall have no bearing on, and shall not be admissible in connection with any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

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

Handwritten signature and initials in blue ink, located at the bottom right of the page.

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

- 12.16 **Use and Return of Class Data.** Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to the Administrator by Defendants in connection with the Parties' mediation, other settlement negotiations, or in connection with the Settlement, shall only be used with respect to this Settlement, and for no other purpose, and shall not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Effective Date, the Administrator shall destroy all paper and electronic versions of Class Data received from Defendants unless, prior to the Effective Date, Defendants make a written request to the Administrator for the return, rather than the destruction, of Class Data.
- 12.17 **Headings.** The descriptive heading of any paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.18 **Calendar Days.** Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.19 **Notice.** All notices, demands, or other communications between the Parties in connection with this Agreement shall be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email, addressed as follows:

To Plaintiff:

ZACHARY M. CROSNER, ESQ.
zach@crosnerlegal.com
JAMIE SERB, ESQ.
jamie@crosnerlegal.com
MICHAEL JONES, ESQ.
Michael.jones@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (866) 276-7637
Fax: (310) 510-6429

To Defendant YZER, LLC:

JAMES A. ECKHART
jeckhart@scopelitis.com
SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C.
10 West Market St, Ste 1400
Indianapolis, IN 46204



To Defendant Peoplease, LLC:

SPENCER W. WALDRON
swaldron@fisherphillips.com
RYAN W. JEBREIL
rjebreil@fisherphillips.com
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614
Telephone: (949) 851-2424
Facsimile: (949) 851-0152

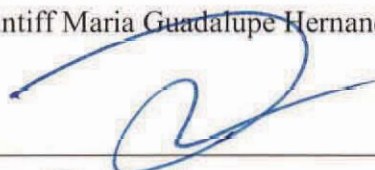
- 12.20 **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically (e.g., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them shall be deemed to be one and the same instrument. Any executed counterpart shall not be admissible in connection with any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 12.21 **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation in the Action shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree, upon the signing of this Agreement and pursuant to Code of Civil Procedure section 583.330, to extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for a period of time sufficient to effectuate all terms of this Agreement.
- 12.22 **Residual Funds.** For ninety (90) days after the Administrator mails the distributions of the Individual Class Payments, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Administration Expenses Payment contemplated by paragraphs 3 and 4, the Administrator may use any residual funds (e.g., from uncashed checks that would otherwise go to the Cy Pres Recipient) to resolve any disputes which may arise.
- 12.23 **Cy Pres Amount.** Within 180 days after the Administrator mails the initial distributions and, if necessary, the redistributions contemplated under paragraphs 3 and 4, the Administrator shall prepare and send to Defense Counsel and Class Counsel an accounting of all distributions from the Gross Settlement Amount that identifies any checks issued but not cashed. Within seven (7) days of providing this accounting to Defense Counsel and Class Counsel, the Administrator shall issue a check to the Cy Pres Recipient comprised of the value of the uncashed checks, if any. Participating Class Members who do not cash their Individual Class Payment checks nevertheless remain bound by the Settlement, including the release of claims.

Dated: 05 / 30 / 2024



Plaintiff Maria Guadalupe Hernandez

Dated: 5/9/24



Name: Rick Lopez
Defendant YZER, LLC

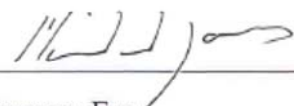
Dated: May 23, 2024



Name: Tanya Yakhnis
Defendant Peoplease, LLC

Dated: May 31, 2024

CROSNER LEGAL, PC



Zachary Crosner, Esq.
Jamie Serb, Esq.
Michael Jones, Esq.
Attorneys for Plaintiff and the Class

Dated: 5/14/24

**SCOPELITIS GARVIN LIGHT HANSON &
FEARY, P.C.**



Andrew J. Butcher
Attorney for YZER, LLC

Dated: 5/24/24

FISHER & PHILLIPS LLP



Spencer W. Waldron
Ryan W. Jebreil
Attorneys for Peoplease, LLC

EXHIBIT

A

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

Maria Guadalupe Hernandez v. YZER, LLC, et al.
Alameda County Superior Court Case No. 23CV025345

IF YOU ARE OR WERE employed by YZER, LLC (“YZER”) as a non-exempt employee in California or are or were issued wage statements by PEOPLEASE, LLC (“PEOPLEASE”) while employed by YZER as a non-exempt employee in California anytime between July 26, 2021 through April 17, 2024 YOU ARE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION SETTLEMENT.

A court approved this notice. This is not an advertisement.

You are not being sued. However, your legal rights are affected whether you act or not.

PLEASE READ THIS NOTICE.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
INCLUDE THE FOLLOWING:	
DO NOTHING	If you do nothing, you will <u>automatically</u> receive a payment from the Settlement. No action is required for you to receive a share of this Settlement.
EXCLUDE YOURSELF (OPT-OUT OF THE SETTLEMENT)	If you exclude yourself from the Settlement, you will not receive a payment from the Settlement. This is the only option that allows you to file your own lawsuit against Defendants for claims released in this Settlement. However, if you exclude yourself and you are an “Aggrieved Employee” (i.e., are or were employed by YZER as a non-exempt employee in California anytime between January 6, 2022 through April 17, 2024 or are or were issued wage statements by PEOPLEASE while employed by YZER as a non-exempt employee in California anytime between January 6, 2022 through April 17, 2024) you will still receive a portion of the monies allocated to settle the claims under the Private Attorneys General Act of 2004 (“PAGA”). See below, at Section 4, for more information.
OBJECT	If you have not requested exclusion, you may object to this Settlement. The Court may or may not agree with your objection. Objecting to the Settlement will not exclude you from receiving a portion of the Settlement. If the Court overrules your objection and approves the Settlement, you will receive a portion of the Settlement. See below, at Section 4, for more information.

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1. *Why Should You Read This Notice?*

This Notice informs you of your rights to share in the Settlement and of the claims being released under the Settlement. You have received this Notice because YZER's records indicate that (1) you are or were employed by YZER in California as a non-exempt employee sometime between July 26, 2021 through April 17, 2024 (this time period is defined as the "Class Period"); and/or (2) while employed by YZER in California during the Class Period, you received a wage statement issued by PEOPLEASE. The Class is comprised of individuals who fit either of these descriptions. All individuals fitting this description are considered "Class Members."

If (1) you are or were employed by YZER in California as a non-exempt employee sometime between January 6, 2022 and April 17, 2024 (defined as the "PAGA Period"); and/or (2) while employed by YZER in California during the PAGA Period, you received a wage statement issued by PEOPLEASE, then you are also an "Aggrieved Employee" and will automatically receive a portion of the PAGA Payment made under this Settlement. All individuals who fit either of these descriptions are considered "Aggrieved Employees."

The Court preliminarily approved the Settlement on <<date>> in Department 23 in the Alameda County Superior Court, State of California. At this hearing, the Court determined that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable and ordered that you receive this Notice.

The Court will hold a Final Approval Hearing concerning the proposed Settlement on <<date>> at <<time>> a.m./p.m. in Department 23 of the Alameda County Superior Court, located at the Rene C. Davidson Courthouse at 1225 Fallon St, Oakland, California 94612. The Final Approval Hearing may be continued to another date without further notice.

A. How Will I Know If The Court Changes The Date Or Location Of The Final Approval Hearing?

If the Court changes the date of the Final Approval Hearing, **you will not receive notice of the change.** It is strongly suggested that, prior to the scheduled Final Approval hearing, you: (1) contact the Settlement Administrator to find out if the Final Approval hearing is still scheduled for [Date] at [Time] a.m./p.m. in Department 23; (2) contact Class Counsel; or (3) check the Court's docket for this Class Action to see if the hearing is still scheduled on [Date] at [Time] a.m. in Department 23. You can also check the Settlement Administrator's website at [website address] for any updates to the date and time for the Final Approval Hearing.

To check the Court's docket, go to <https://www.alameda.courts.ca.gov/>. Under "Services," click on "View Case Records." Under "eCourt Public Portal," click on the blue "eCourt Public Portal" button. If you do not already have an account, you will need to create an account to access the Court's docket. Click on "Create an Account" and select "Public Users." Fill out your personal information, then click on the green "Create a new account" button at the bottom of the page.

After you have created an account, you can login to your account and access the eCourt Public Portal. Click on "Searches." Click on "Case Number Search." Type in "23CV025345" into the Case Number search bar, select "Civil Unlimited" from the Case Type drop down list, click on the box to indicate you are not a robot, then click the blue "Search" button. This case should appear in the search results as: "Hernandez vs YZER, LLC, a Florida Limited Liability Company, et al." Click on the case name to access the Court's docket, which lists all documents that were filed, all participants in the lawsuit, and any hearings scheduled in the case. This process is free. If you wish to download or view a document, the Court will charge a fee.

Alternatively, you can request any of these documents from Class Counsel and Class Counsel will provide them to you at no charge.

B. Can I Attend the Final Approval Hearing?

You can attend the Final Approval Hearing scheduled for [Date] at [Time] a.m./p.m. in Department 23 of the Alameda Superior Court, located at the Rene C. Davidson Courthouse at 1225 Fallon St, Oakland, California 94612. At the Final Approval Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Settlement will be paid to Class Counsel, Plaintiff, and the Settlement Administrator. The Court will invite comment from objectors, Class Counsel, and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Please check the Court's website for the most current information. You can also contact Class Counsel if you have any questions about how to attend the hearing.

C. If I Do Not Go To The Final Approval Hearing, How Will I Know If The Court Granted Final Approval Of The Settlement And Entered Final Judgment?

You may contact the Settlement Administrator or Class Counsel to find out if the Court granted Final Approval of the Settlement and entered Judgment. If you wish to obtain a copy of the Judgment, it will be posted on the Settlement Administrator's website at [website address] and is also available on the Court's docket. To check the Court's docket, please follow the steps detailed above in Section A on page 2.

2. *What Is this Case About?*

On January 9, 2023, Plaintiff Maria Guadalupe Hernandez filed a class action lawsuit in Alameda County Superior Court, case number 23CV025345. On March 27, 2023, Plaintiff Hernandez filed a representative lawsuit in Alameda County Superior Court, case number 23CV030098, alleging a single cause of action for violation of the Private Attorneys General Act ("PAGA"). On May 23, 2023, Plaintiff filed a First Amended Complaint in the class action lawsuit, adding the PAGA claim to the initial lawsuit. Thereafter, on July 10, 2023, Plaintiff dismissed the second lawsuit. On DATE, Plaintiff filed a Second Amended Complaint, alleging additional claims under PAGA.

The lawsuit alleges the following claims: (1) recovery of unpaid minimum wages and liquidated damages; (2) recovery of unpaid overtime wages; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) violations of Labor Code section 226; (6) failure to timely pay all wages due upon separation of employment; (7) failure to reimburse business expenses; (8) unfair completion; and (9) penalties for violation of the PAGA. The lawsuit seeks recovery of unpaid wages, restitution, damages, statutory penalties, civil penalties, interest, attorney's fees and costs.

Defendants YZER, LLC and PEOPLEASE, LLC (collectively, "Defendants") deny all allegations raised in the lawsuit and believe they have no liability for any of Plaintiff's or the Class Members' claims under any statute, wage order, common law, or equitable theory. The Court has not expressed any opinion as to the validity of the claims raised in these lawsuits and has not ruled on any of the causes of action prior to the Parties' agreement to settle.

The Parties reached a settlement subject to Court approval as represented in the Class Action and PAGA Settlement Agreement (the "Settlement"). Class Counsel believes that the Settlement is fair, reasonable, and adequate, and that it is in the best interests of Class Members. Likewise, Defendants have decided that settlement is favorable because it avoids the time, risk, and expense of a lengthy lawsuit, and settlement immediately resolves, finally and

completely, the pending and potential claims. Defendants do not admit, concede, or imply that they have done anything wrong or legally actionable by settling this lawsuit.

3. *How Will Payments Be Made and How Much Can I Expect to Receive?*

YZER will pay a total sum of \$1,000,000.00 (“Gross Settlement Amount”). The following payments will be deducted from the Gross Settlement Amount: (1) the Class Representative Service Payment, in an amount estimated not to exceed \$10,000.00; (2) the Settlement Administrator’s costs and fees incurred to administer this settlement, in an amount estimated not to exceed \$15,000.00; (3) the PAGA Payment of \$35,000.00 (75% or \$26,250.00 of which will be sent to the California Labor and Workforce Development Agency (“LWDA”) and 25% or \$8,750.00 of which will be distributed proportionately to Aggrieved Employees); (4) attorney’s fees, in an amount not to exceed \$333,333.33 (33.3% of the Gross Settlement Amount); and (5) litigation costs, in an amount not to exceed \$20,000.00. All of these payments are subject to Court approval and the Court has the discretion to award less than the amounts listed above. YZER’s portion of payroll taxes as the Class Members’ current or former employer will be paid by YZER separately from and in addition to the Gross Settlement Amount.

A. When Will Payments Be Made?

The settlement will be funded by YZER no later than 14 days after the Effective Date¹ or October 9, 2024, whichever date is later. The Settlement Administrator will disburse all payments under the Settlement within fourteen (14) days after receipt of all funds due under the Settlement.

B. How Are Payments to Class Members Calculated?

After deducting the above-referenced items, the remaining Net Settlement Amount will be proportionately distributed amongst all Class Members who have not requested exclusion from the Settlement. Each Class Member’s proportionate share of the Net Settlement Amount will be calculated as follows: (a) dividing the Net

¹ “Effective Date” is defined in the Parties’ Settlement as: “the date when all of the following events have occurred: (a) this Agreement has been executed by all Parties and by Class Counsel and Defense Counsel; (b) the Court has given Preliminary Approval of the Agreement; (c) notice has been given to the Class Members providing them with an opportunity to opt-out of the Settlement; (d) the Court has held a Final Approval Hearing and entered a Final Approval Order and judgment approving this Agreement from which no appeal can be taken; and (e) in the event there are written objections filed prior to the Final Approval Hearing that are not later withdrawn, the later of the following events: (i) when the period for filing any appeal, writ, or other appellate proceeding opposing the Agreement and Settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; or (ii) when any appeal, writ, or other appellate proceeding opposing the Agreement and Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (iii) when any appeal, writ, or other appellate proceeding has upheld the Court’s Final Approval Order with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Agreement and Settlement shall not become effective until the Court’s order approving the Agreement and Settlement is completely final and there is no further recourse for an appellant or objector who seeks to contest the Agreement and Settlement. If no objections are filed, the Effective Date shall be after steps (a) through (d) have been completed.”

Settlement Amount by the total number of workweeks worked by all Class Members who did not seek exclusion during the Class Period and (b) multiplying the result by each Class Member's workweeks.

C. How Are Payments to PAGA Members Calculated?

Each Aggrieved Employee will receive a proportionate share of the \$8,750.00 PAGA Payment earmarked for distribution to Aggrieved Employees. This payment will be calculated by dividing the number of pay periods an individual Aggrieved Employee worked for YZER in California during the PAGA Period, by the total number of pay periods by all Aggrieved Employees during the PAGA Period and multiplied by \$8,750.00. The number of pay periods by all Aggrieved Employees will be derived from YZER's records.

D. What Is My Estimated Payment?

Although your exact individual settlement payment cannot be precisely calculated until after the time during which Class Members may request to exclude themselves from the Settlement concludes, based upon the calculations above, your estimated individual settlement payments are as follows:

YZER's records indicate that you were employed approximately [REDACTED] workweeks between July 26, 2021 through April 17, 2024. Based on these records, your total estimated payment as a Class Member would be \$ [REDACTED], less applicable taxes. YZER's records indicate that you were employed approximately [REDACTED] pay periods between January 6, 2022 through April 17, 2024. Based on these records, your total estimated payment as an Aggrieved Employee would be \$ [REDACTED].

E. My Work Week Count Is Incorrect. How Do I Dispute It?

If you think the number of weeks or pay periods you worked during the Class Period or PAGA Period are incorrect, you may contact the Settlement Administrator to dispute your workweek allotment and provide any documentation supporting your dispute. This documentation must be returned by mail to the Settlement Administrator and postmarked on or before the [Response Deadline]. The postmark date will be the exclusive means to determine whether a dispute was submitted on time.

The Settlement Administrator will investigate your dispute, request additional information from YZER, and make a final decision as to the number of eligible workweeks and pay periods that should be used to determine your individual settlement payment. Absent evidence demonstrating YZER's records are incorrect, YZER's records will be presumed correct.

F. How Will My Settlement Payment Be Taxed?

33.3% of each individual settlement payment will be allocated as wages and 66.7% will be allocated as non-wages for penalties and interest. The portion allocated to wages will be reported on an IRS Form W-2 and the portion allocated to non-wages will be reported on an IRS Form 1099 by the Settlement Administrator. No tax withholding shall be made on the non-wages portion of the individual settlement payment. The Settlement Administrator will issue the checks and IRS Forms to each Class Member.

G. What Happens If I Do Not Cash My Settlement Check?

Any checks issued by the Settlement Administrator must be cashed or deposited within 180 calendar days. After 180 calendar days from the date of mailing, the checks shall become null and void, cancelled, and the uncashed

funds shall be donated to the United Way.

H. Moving? Update Your Address With The Settlement Administrator.

It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your payment under the Settlement.

4. *What Are My Rights? How Will My Rights Be Affected?*

The purpose of this Notice is to inform you of the proposed Settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are explained below.

Important Note: *Defendants will not retaliate against you in any way for either participating or not participating in this Settlement. California law protects Class Members from retaliation based on their decision to participate in a class action settlement.*

DO NOTHING:	If you do nothing and the Court grants final approval of the Settlement, you will become part of this Class Action and automatically receive an individual settlement payment. You will be bound to the release of the Released Claims as defined in the Settlement and the Judgment. You will also give up your right to pursue the Released Claims as defined below.
REQUEST EXCLUSION (“OPT OUT”):	If you do not want to take part in the Settlement, you must fax, email, or mail a written request for exclusion to the Settlement Administrator. The written request for exclusion must include your full name and a statement indicating that you wish to exclude yourself from the Class and that you do not want to participate in the Settlement. The Request for Exclusion must be timely faxed, emailed, or postmarked on or before [the Response Deadline]. The postmark, fax receipt, or email date will be the exclusive means to determine whether the request for exclusion was submitted on time. Following Final Approval of the Settlement, the Court will enter Judgment. The Judgment will bind all Class Members who do not request exclusion from the Settlement on time. If you request exclusion from the Settlement, you retain your rights to sue the Released Parties for the Released Claims and will not receive an individual settlement payment. However, if you request exclusion from the Settlement and are also an Aggrieved Employee, you will still receive your proportionate payment of the PAGA Payment and will still release the Defendants from any PAGA claims that were alleged in the lawsuit.
OBJECT:	If you have not requested exclusion from (i.e. opted out of) the Settlement, you may object to the Settlement, personally or through an attorney, by faxing, emailing, or mailing your written objection to the Settlement Administrator at [Settlement Administrator’s address]. The written objection should state your full name and a statement that you object to the Settlement, including any facts or arguments in support of the objection. The Settlement Administrator will provide your objection to Class Counsel, who will file it with the Court. The Court will rule on your objection at the Final Approval Hearing.

	You may appear (but are not required to appear) at the Final Approval Hearing, in person or through an attorney. The Court will hear from any Class Member who attends the Final Approval Hearing and asks to speak regarding his or her objection. If counsel will be representing you, the parties request that you provide your counsel's name, address, telephone, and bar number with your statement objecting to the Settlement. The written objection must be postmarked, faxed, or emailed before [the Response Deadline]. The postmark, fax receipt, or email date will be the exclusive means to determine whether the written objection was submitted on time. If the Court rejects or overrules your objection, you will receive your individual settlement payment and be bound by the terms of the Settlement.
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Effect of the Settlement on Your Rights:

A. Class Released Claims

The Judgment entered by the Court upon Final Approval of the Settlement shall have *res judicata* effect and be final and binding upon Plaintiff and all Class Members who have not expressly requested to be excluded from the Settlement. Upon YZER's funding of the Gross Settlement Amount, all Class Members who do not request to be excluded from the Settlement will release the Released Parties² from the following Released Claims for the Class Period:

"All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, including, any and all claims involving any alleged failure to pay minimum wages and liquidated damages; failure to pay overtime wages; failure to authorize and provide meal periods or compensation in lieu thereof; failure to authorize and provide rest periods or compensation in lieu thereof; inaccurate wage statements; failure to timely pay wages upon termination of employment; failure to reimburse business expenses; failure to comply with any provisions of the California Labor Code identified in Plaintiff's claim for civil penalties under PAGA; and violation of the Unfair Competition Law, California Business and Professions Code section 17200 et seq., during the Class Period. Participating Class Members only release these claims for the duration of the Class Period. Except as set forth in paragraph 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period."

B. PAGA Released Claims

² "Released Parties" is defined in the Parties' Settlement as: "(a) Defendants and (b) their past, present, and/or future parent, subsidiary, affiliated, or related entities (including any companies, corporations, partnerships, alter egos, joint venturers, and actual or alleged joint employers), including each related company, corporation, and/or partnership (defined as a company, corporation, and/or partnership that is, directly or indirectly, under common control with that Defendant or any of its parents and/or affiliates), and (c) each of the previously listed persons' and entities' respective past, present, and future agents, contractors, employees, servants, officers, directors, principals, partners, members, trustees, fiduciaries, representatives, shareholders, stockholders, attorneys, equity sponsors, divisions, assigns, predecessors, successors, insurers, and consultants."

The Judgment entered by the Court upon Final Approval of the Settlement shall also have *res judicata* effect and be final and binding upon Plaintiff, Aggrieved Employees, and the California Labor and Workforce Development Agency. If you are an Aggrieved Employee, this Settlement will release the following PAGA Claims, regardless of whether or not you requested exclusion from the Settlement, upon YZER's funding of the Gross Settlement Amount:

"All Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including claims for any alleged failure to pay minimum wages and liquidated damages; failure to pay overtime wages; failure to authorize and provide meal periods or compensation in lieu thereof; failure to authorize and provide rest periods or compensation in lieu thereof; inaccurate wage statements; failure to timely pay wages upon termination of employment; failure to reimburse business expenses; failure to keep accurate records; failure to produce records; statutory wage violations; refusal to make payment; standard conditions of labor violations; unlawful deductions; sick leave violations; failure to provide supplemental paid sick leave; failure to pay vested vacation wages; unlawful agreements; and unlawful criminal history inquiries during the PAGA Period. Aggrieved Employees only release these claims for the duration of the PAGA Period."

5. *Who Are the Attorneys Representing the Parties?*

Class Counsel / Plaintiff's Counsel:

Jamie Serb, Esq.
Zachary Crosner, Esq.
Michael Jones, Esq.
CROSNER LEGAL, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Tel.: (866) 276-7697

YZER's Counsel:

James A. Eckhart
**SCOPELITIS, GARVIN, LIGHT, HANSON
& FEARY, P.C.**
317-492-9306
10 West Market St, Ste 1400
Indianapolis, IN 46204

PEOPLEASE's Counsel:

Spencer W. Waldron
Ryan W. Jebreil
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614
Telephone: (949) 851-2424
Facsimile: (949) 851-0152

You do not need to hire your own attorney because Class Counsel are working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

6. *How Do I Obtain More Information?*

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you can request copies of documents filed with the Court, free of charge, from Class Counsel or the Settlement Administrator.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may call Class Counsel at the information listed above or contact the Settlement Administrator at [phone number].

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

EXHIBIT

2



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

Kiara Bramasco, Esq.
kiara@crosnerlegal.com
direct: (424) 335-5236
office: (310) 496-5818
fax: (310) 510-6429

January 6, 2023

VIA PAGA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

Legallnc Registered Agents, Inc.,
Agent for Service of Process for:
Yzer, LLC
Four Embarcadero Center Suite 1400 #85
San Francisco, CA 94111
Santa Fe Springs, CA 90670

Yzer, LLC
Attn: Human Resources / Legal Department
301 Whipple Road
Union City, CA 94587

Cogency Global Inc.
Agent for Service of Process for:
Peoplease LLC
122 E. 42nd St 18th Fl
New York, NY 10168

CA Registered Corporate (1505)
Agent Authorized Employee(s)
authorized to accept service for
Peoplease LLC:
Erin Haggerty, Connie Mix,
Phillip Morado, Amber Smyth,
Mai Yang, Rebekah D'Angelo,
Alex Gonzalez, and Christen
Vinnola,
1325 J St Ste 1550,
Sacramento, CA 95814

Peoplease LLC
Attn: Human Resources
Department / Legal Department
177 Meeting St Suite 300
Charleston, SC 29401

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Yzer, LLC and Peoplease LLC
Date: January 6, 2023
Subject: *Maria Guadalupe Hernandez v. Yzer, LLC, et. al.*

Introduction

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

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed by any one or more of the EMPLOYER entities at any location in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by any one or more of the EMPLOYER entities at any location in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER.

Said “NON-EXEMPT AGGRIEVED EMPLOYEES” include the following:

- (1) all non-exempt workers who were directly employed by Peoplease LLC regardless of where those non-exempt workers were assigned or staffed to work – in California at any time within one year of the date of this NOTICE;
- (2) all non-exempt workers who were assigned/staffed to work at Yzer, LLC by Peoplease LLC and/or any other staffing/temporary service agencies in California at any time within one year of the date of this NOTICE; and
- (3) all non-exempt workers who were directly employed by Yzer, LLC in California within one year of the date of this NOTICE.

Said “EXEMPT AGGRIEVED EMPLOYEES” include the following:

- (1) all exempt workers who were directly employed by Peoplease LLC regardless of where those exempt workers were assigned or staffed to work – in California at any time within one year of the date of this NOTICE;
- (2) all exempt workers who were assigned/staffed to work at Yzer, LLC by Peoplease LLC and/or any other staffing/temporary service agencies in California at any time within one year of the date of this NOTICE; and

(3) all exempt workers who were directly employed by Yzer, LLC in California within one year of the date of this NOTICE (“EXEMPT AGGRIEVED EMPLOYEES”),

This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State.

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

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

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

COMPLAINANT, on behalf of COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions

of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.6, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

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

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

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

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

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of employer(s) who violated COMPLAINANT’s and other NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ rights by violating various sections of the California Labor Code. The California Legislature defines “other person acting on behalf of an employer” as “a natural

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

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

General Information

EMPLOYER owns, operates or otherwise manages a logistics business specializing in, including but not limited to, courier services and/or the delivery of, including but not limited to, pharmaceuticals, office supplies, auto parts, among other goods, and/or owns, operates or otherwise manages a company that supplies labor and human resources to businesses, including but not limited to, logistics companies.¹ EMPLOYER owns, operates or otherwise manages facilities, and/or locations in California including but not limited to facilities in San Diego, City of Industry and Santa Fe Springs, California. Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California’s labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a delivery driver and/or similar title(s) from in or around July 2021 through on or about August 15, 2022. COMPLAINANT worked for EMPLOYER out of EMPLOYER’s facility located in Santa Fe Springs, California, with routes including but not limited to in City of Industry, Commerce, and Santa Fe Springs, California. COMPLAINANT regularly worked at least eight (8) hours per day, at least (5) days per week. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for

¹ See <https://yzerco.com/opportunities/> (Last visited on January 5, 2023).

See <https://www.peoplease.com/our-company/> (Last visited on January 5, 2023)

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

Labor Code Violations

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

Based on information and belief, EMPLOYER failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT

and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

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

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

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

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

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

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

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

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

Section (b) of Labor Code section 226 further requires employers to “afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer.” Section (c) of Labor Code section 226 provides that, “an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee’s signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a “reasonable” amount of time, but “not later than 30 calendar days from the date the employer receives a written request.” An employer’s failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee’s personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, COMPLAINANT, through counsel, sent EMPLOYER multiple written requests for time, pay and personnel records including but not limited to a written request for payroll and personnel records mailed to EMPLOYER on or around October 3, 2022, and another written request mailed on or around December 14, 2022. Yet, EMPLOYER failed to timely produce any records at all within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject EMPLOYER to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a

second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, COMPLAINANT did not sign a valid meal period waiver throughout COMPLAINANT's employment by EMPLOYER.

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

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

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, COMPLAINANT was consistently pressured to complete deliveries within specified time windows and/or complete deliveries and/or routes faster and was instructed by her supervisor not to stop/pull over her vehicle to take meal periods and that it was against company policy for her to stop the vehicle anywhere other than at her scheduled pickup and drop off locations. Due to the pressure to complete assigned worked duties and/or explicit instruction from management to remain on duty at all times during her shifts and/or until the completion of her route, COMPLAINANT was rarely, if ever, able to take a timely, uninterrupted, off-duty, thirty-minute meal period. As such, COMPLAINANT

would often eat her meals and/or take purported meal periods while driving between delivery locations, and/or would regularly take late meal periods in order to complete her assigned deliveries. Moreover, on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES frequently received work related communications during any purported meal periods and were required to respond to such work-related communications from other drivers, management, vendors, and/or clients during unpaid meal periods.

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

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal periods. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to remain tethered to their worksites and/or in immediate physical proximity to their assigned vehicles and/or were required to monitor work communication devices and respond to work-related communications during unpaid meal periods. As such, NON-EXEMPT AGGRIEVED EMPLOYEES were not relieved of all duties during unpaid meal periods.

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

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

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

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

interrupted meal periods), despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

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

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

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ EMPLOYER's failure to provide valid meal periods,

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

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 (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 its employees.").

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER

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").

did not have a have a compliant written rest period policy, nor did EMPLOYER have any sort of compliant rest period policy in practice. For example, COMPLAINANT rarely (if ever) received a legally compliant rest period or any form of a rest period. COMPLAINANT was pressured to complete her assigned deliveries and complete her delivery routes and was not afforded with the opportunity to take rest periods. Moreover, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to be responsive to work-related communications throughout their shifts including but not limited to during any purported rest periods.

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

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

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest periods. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to remain tethered to their worksites and/or in immediate physical proximity to their assigned vehicles and/or were required to monitor work communication devices and respond to work-related communications during any purported rest periods. As such, NON-EXEMPT AGGRIEVED EMPLOYEES were not relieved of all duties during any rest periods.

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

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

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

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.

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

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”).

Based on information and belief, EMPLOYER implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to EMPLOYER's control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed. For example, EMPLOYER performed an automatic thirty-minute deduction per shift for meal periods that were cut short, interrupted and/or worked through completely. For instance, COMPLAINANT was rarely, if ever, able to take a thirty-minute off-duty meal period during the relevant period, however, EMPLOYER deducted thirty minutes of time per shift as though COMPLAINANT had been afforded a thirty-minute off-duty meal period per shift when she had not, resulting in the consistent underpayment of wages owed to COMPLAINANT.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER's policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For example, at times COMPLAINANT was required to complete work tasks before clocking in for work and/or after clocking out of work, including but not limited to completing deliveries and/or tasks related to completing deliveries as EMPLOYER did not want COMPLAINANT to continue working overtime hours. As such, COMPLAINANT was at times, forced to complete her work tasks off-the-clock in order to avoid and/or reduce the number of overtime hours worked. EMPLOYER knew that the assigned workload would require COMPLAINANT to work well over eight hours in a shift and knew when COMPLAINANT worked off-the-clock in order to complete assigned deliveries, yet failed to pay COMPLAINANT for all hours worked.

Based on information and belief, EMPLOYER engaged in systemic time record manipulation to shave time worked off COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES' workdays, by, for example, editing electronic time records to delete portions of total hours worked or otherwise understate actual hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. For example, COMPLAINANT reports that during including but not limited to the month of January 2022, she consistently worked an average of at least 8 ½ to ten hours per day, but EMPLOYER would only compensate COMPLAINANT for up to her scheduled eight hours per day.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to undergo security checks/temperature screenings and/or were required to stand in employee lines/undergo other waiting time to access EMPLOYER's electronic time keeping system prior to clocking in for the start of their shifts, before clocking back in from meal periods and/or after clocking out for their shifts, resulting in uncompensated work time, and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

Based on information and belief, COMPLAINANT 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, before starting a shift and clocking in for a shift, NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform work off-the-clock. For example, at times, based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to perform pre-trip inspections and/or complete other work tasks before clocking in for a shift. This work time was completed off-the-clock/outside of the scheduled shift and was uncompensated resulting in unpaid wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

Based on information and belief, at times, EMPLOYER's electronic employee time-keeping system 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 EMPLOYER's control was not recorded and not compensated and resulted in unpaid minimum wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER at times required/requires NON-EXEMPT AGGRIEVED EMPLOYEES to travel between EMPLOYER's facility locations and/or between job sites without compensating NON-EXEMPT AGGRIEVED EMPLOYEES for the travel time.

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

Based on further information and belief, EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. For example, EMPLOYER's issued wage statements and/or pay records evidence rounding to at least the nearest quarter, half and/or whole hour. For instance, EMPLOYER's issued wage statement and/or pay record for COMPLAINANT for pay period beginning on 1/10/22 and ending 1/16/22 shows exactly 39.00 hours worked; EMPLOYER's issued wage statement and/or pay record for pay period beginning 1/17/22 and ending 1/23/22 also shows exactly 39.00 hours worked; EMPLOYER's issued wage statement and/or pay record for pay period beginning 1/31/22 and ending 2/6/22 shows precisely 32.00 hours worked; EMPLOYER's issued wage statement and/or pay record for pay period beginning 2/7/22 and ending 2/13/22 shows exactly 39.00 hours worked; EMPLOYER's issued wage statement and/or pay record for pay period beginning 2/14/22

and ending 2/20/22 also shows exactly 39.00 hours worked. Based on information and belief, EMPLOYER rounded to at least the nearest quarter, half and/or whole hour, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES' total hours worked during most if not all pay periods, resulting in the consistent underpayment of wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER's failure to pay for all time worked by virtue of its time-rounding practices resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

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

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

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.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, EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by

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").

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

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

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

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

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

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

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

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").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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).

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

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

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

Based on information and belief, wage statements issued by EMPLOYER failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE is being paid. For example, EMPLOYER's wage statements issued to COMPLAINANT list a category for "Retro Pay" without including the inclusive dates of the accurate pay period for that "Retro Pay," further failing to list the total hours worked for the pay period, including but not limited to, the total hours worked for the pay period the retroactive pay corresponds with. As a result, the wage statements provided to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES are not accurate and do not include all of the statutorily required information, such

as, but not limited to, the inclusive dates of the period for which the employee is paid, in violation of including but not limited to, Labor Code section (a)(6).

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

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

Based on information and belief, wage statements issued by EMPLOYER failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9). Based on information and belief, at times, EMPLOYER paid NON-EXEMPT AGGRIEVED EMPLOYEES multiple base rates of pay but failed to incorporate the multiple base rates into the regular rate of pay used to calculate the owed overtime rate, thereby failing to display an accurate overtime rate, in violation of Labor Code section 226(a), including but not limited to, section 226(a)(9).

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

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

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

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

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

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

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

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

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

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

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to

them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

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

Failure to Pay Vested Vacation/Paid Time Off:

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

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

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

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

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

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

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

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

Based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED

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

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, EMPLOYER shifted its costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, uniforms/work clothing, protective gear/safety equipment and/or the use of NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' personal mobile phone and data usage for work related purposes including but not limited to receiving and responding to work related messages and/or phone calls. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work related purposes and/or the cost of purchasing and/or maintaining work uniforms/clothing. For example, on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES received calls/messages to their personal cell phones/mobile devices from supervisors and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES regarding scheduling and/or other work tasks but were not provided any and/or full reimbursement from EMPLOYER for this personal cell phone use.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES to use their personal vehicles for work without reimbursing them for the vehicle expenses they incurred in connection therewith. For example, based on information and belief, EMPLOYER failed/fails to reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for the costs associated with travelling between EMPLOYER's various facilities and/or delivery sites, including but not limited to, mileage, wear and tear, and gas when they were required to use their personal vehicles to drive between EMPLOYER's facilities/job sites and/or use their personal vehicles for other business purposes. For instance, at times COMPLAINANT was required to use her personal vehicle for business purposes, including but not limited to, to make deliveries for EMPLOYER, but did not receive any and/or full reimbursement from EMPLOYER for the costs incurred in connection with EMPLOYER's business use of her personal vehicle.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for additional business expenses that are the responsibility of EMPLOYER, including but not limited to, cost of tools, cost of gas, costs of repairs, fines, cleaning fees and/or other work-related fees incurred as a direct consequence of the discharge of their assigned job duties. For example, on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were at times required to purchase hand tools, tires and/or pay for the maintenance of dollies and/or other equipment required to perform their assigned work duties without receiving any and/or full reimbursement from EMPLOYER for the costs they incurred in connection therewith.

As a pattern and practice, EMPLOYER regularly failed to reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT, NON-EXEMPT

AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out EMPLOYER's orders and/or carrying out the duties assigned by EMPLOYER.

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

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law." Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful 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 limits on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

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

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

Unlawful Inquires into Criminal History

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

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

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

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

Conclusion

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

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

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

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

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other

charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Kiara Bramasco
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

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

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

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

Fri, Jan 6, 2023 at 4:56 PM

1/6/2023

LWDA Case No. LWDA-CM-928002-23
Law Firm : Crosner Legal, PC
Plaintiff Name : Maria Guadalupe Hernandez
Employer: Yzer, LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT

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