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8 Attorneys for Plaintiff RICARDO RAMIREZ
Individually and on behalf of the State of California,
9 and others similarly situated and aggrieved

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ORANGE**

12 RICARDO RAMIREZ, individually and on
13 behalf of the State of California, and others
similarly situated and aggrieved,

14 Plaintiff,

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16 v.

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18 INGARDIA BROS. PRODUCE, INC., a
California Corporation; and DOES 1-100,
19 inclusive,

20 Defendants.
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Case No.: 30-2023-01336578-CU-OE-CXC

Assigned for All Purposes to:
Hon. Lon Hurwitz
Dept. CX-103

**DECLARATION OF NIKII TRENNER IS
SUPPORT OF MOTION FOR APPROVAL
OF SETTLEMENT UNDER PRIVATE
ATTORNEYS GENERAL ACT**

Date: December 6, 2024
Time: 1:30 p.m.
Dept. CX-103

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1. I am an attorney duly licensed to practice in California and before this Court, and I am associated with Crosner Legal, PC, counsel of record for plaintiff Ricardo Ramirez. I make this declaration in support of Plaintiff's Motion for Approval of Settlement under the Private Attorneys General Act. If called to testify as to the within facts, I would and could competently do so.

2. Attached hereto as Exhibit 1 is a true and correct, fully-executed copy of the Parties' PAGA Settlement Agreement (the "Settlement Agreement"). Attached hereto as Exhibit 2 true and correct copy of the Notice letter the Parties propose to send to the Aggrieved Employees along with their settlement check. Attached hereto as Exhibit 3 is a true and correct copy of Plaintiff's PAGA Notice letter and proof of submission to the Labor & Workforce Development Agency's ("LWDA"). Attached hereto as Exhibit 4 is a true and correct copy of the LWDA's acknowledgement of receipt of the complaint. Attached hereto as Exhibit 5 is a true and correct copy of the LWDA's acknowledgment of receipt of the proposed settlement.

3. I am unaware of any other pending cases that would overlap with the claims alleged in this case or that would impact the claims of the Aggrieved Employees in this case.

BACKGROUND

4. Defendant Ingardia is a wholesale food supplier that services restaurants, hotels, country clubs, resorts, hospitals, caterers, senior living homes, and more, throughout most of Southern California. Plaintiff worked for Defendant as a non-exempt warehouseman from about May 2021 to August 2022. He typically worked between 8-10 hours per day, 6 days per week in the dairy and avocado departments.

5. Plaintiff contends Defendant violated California wage and hour laws in several respects. First, he alleges Ingardia failed to pay all wages due by requiring “off the clock” work, as employees frequently continued working after clocking out in order to completely finish the day’s work. He next contends he and other Aggrieved Employees did not receive all required meal and rest periods, He further alleges employees were required to be available by phone to respond to calls and texts from the restaurant but did not receive any reimbursement. Finally, he alleged

1 Based on these allegations, on July 11, 2023, after appropriate notice to the Labor & Workforce
2 Development Agency (“LWDA”) and exhausting administrative remedies, Plaintiff filed a PAGA-
3 only action against Defendant on behalf of himself and all other similarly aggrieved employees.

4 6. Defendant has at all times denied Plaintiff’s allegations and maintained it complied
5 with all relevant provisions of the Labor Code and Wage Orders. Specifically, Defendant contends
6 among other things that Plaintiff and all alleged aggrieved employees were timely paid for all hours
7 worked at the correct hourly rates in conformance with all applicable laws, that it authorized and
8 permitted Plaintiff and the alleged aggrieved employees to take all required breaks on a fully
9 compliant basis and in accordance with all applicable laws. Ingardia also strongly contends the case
10 cannot be maintained as a representative action because among other things Plaintiff’s off the clock
11 and missed/interrupted/late/short meal and rest period allegations necessarily require detailed
12 individualized assessments and accordingly individualized issues predominate and a trial under
13 PAGA would be unmanageable.

14 7. After Plaintiff his complaint, the Parties then began engaging in discovery and, upon
15 discussing the merits of the case and holding several meet and confer sessions regarding prospective
16 law and motion and discovery issues, agreed to attempt mediation. The Parties further agreed to a
17 protocol for exchanging additional documents and information before the mediation. Through this
18 formal and informal discovery, Defendant provided Plaintiff with information including, inter alia,
19 the number of potential alleged aggrieved employees, the number of aggregate pay periods, sample
20 pay stubs, time and payroll records for a 15% random sampling of Aggrieved Employees, employee
21 handbooks and manuals, and relevant policy documents on Defendant’s time keeping and reporting
22 policies, etc. Plaintiff had that information reviewed by Berger Consulting Group to help evaluate
23 potential violation rates, potential damages, etc.

24 8. The parties then attended a full day mediation before highly-regarded mediator Marc
25 Feder, Esq., who has extensive experience mediating wage and hour class and PAGA actions.
26 Before and during the mediation, Plaintiff and counsel analyzed, researched, and investigated the
27 potential issues, including matters related to the calculation of damages, trial, and appellate issues
28 and risks. During mediation, the Parties vigorously debated the likelihood of Plaintiff’s ability to

1 proceed on a representative basis as to the PAGA claims, the legal grounds for Plaintiff's claims and
2 Defendant's defenses, and the Parties' data analyses and conclusions based on data provided by
3 Defendant. After a contentious full day of negotiations, the Parties were able to reach agreement on
4 all major issues. The Parties then formalized the tentative settlement in the settlement agreement
5 now before the Court for approval.

6 **SUMMARY OF SETTLEMENT TERMS**

7 9. Under the settlement, Defendant will pay a non-reversionary settlement amount of
8 \$450,000 (the "Gross Settlement Amount" or "GSA") within 30 days of the Effective Date. The
9 GSA is inclusive of payments to the LWDA and Aggrieved Employees, costs of settlement
10 administration, Plaintiff's service award, and reasonable attorney's fees and costs. Plaintiff's Counsel
11 seeks a fee equal to one-third (\$150,000.00) of the GSA, and reimbursement of actual litigation costs of
12 \$13,228.91. Plaintiff requests a service award of no more than \$10,000. After payment of settlement
13 administration costs, service award and reasonable attorney's fees and costs from the GSA, the
14 Parties presently estimate about \$272,771.09 will remain (the "Net Settlement Amount" or "NSA").
15 Seventy-five percent of the NSA (about \$204,578.32) will go to the LWDA, and the remaining 25%
16 (about \$68,192.77) will be distributed to the Aggrieved Employees in proportion to the total number
17 of eligible Pay Periods each individual worked during the PAGA Period. I estimate the average
18 award will be about \$239, and the awards will range from about \$3.60 (for an Aggrieved Employee
19 who worked one pay period) to about \$364 (or an Aggrieved Employee who worked during the
20 entire PAGA Period).

21 10. The Parties propose using Simpluris, Inc. ("Simpluris") as the Settlement
22 Administrator. Atticus has extensive experience administering PAGA settlements, and has agreed
23 to cap its fees at \$4,000.00. As noted, Defendant will fund the settlement within 30 days of the
24 Effective Date, and Simpluris thereafter will mail a Notice and settlement check to all PAGA
25 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses
26 identified in Defendant's records. Recipients need not submit claim forms and will automatically
27 receive a Notice and settlement check. Settlement checks will be negotiable for 180 days, after
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1 which time any unclaimed residual funds will be forwarded to the State Controller's Unclaimed
2 Property Fund.

3 11. The release in the Settlement Agreement narrowly releases only civil penalty claims
4 brought under PAGA, as asserted in Plaintiffs' PAGA notice to the LWDA and the operative
5 Complaint. While Plaintiff is entering into a general release of any and all claims against
6 Defendants, the Settlement Agreement protects the rights of the alleged aggrieved employees to
7 bring their own individual claims should they wish. For these reasons, the Parties contend the release
8 narrowly applies only to the PAGA claims alleged or that could have been alleged, based on the
9 factual and legal allegations pled in the operative complaint and Plaintiff's PAGA Notice.

10 **THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE, FURTHERS THE**
11 **PURPOSES UNDERLYING PAGA, AND WARRANTS APPROVAL**

12 12. Plaintiff alleges claims for civil penalties for unpaid wages and meal/rest break
13 violations, as well as derivative wage statement and waiting time penalty claims. First, Plaintiff
14 contends Defendant engaged in improper rounding of employee time punches. While under present
15 law time rounding may be permissible, it must be entirely neutral in its overall effect and employees
16 must not lose compensable hours worked. Here, according to Plaintiff's expert's analysis of the time
17 and pay records, Defendant underpaid 3,637.8 hours and overpaid 74.1 (for an average of 3.7 minutes
18 underpaid per shift), during the PAGA period, which suggests the time rounding favors Defendant
19 considerably. Per Plaintiff's experts, approximately 73.6% of the total pay periods reflect a *net*
20 underpayment of wages due to Defendant's rounding practice.

21 13. Plaintiff also contends Defendants failed to provide proper meal and rest breaks, and
22 that review of the time records provided shows numerous "de facto" violations where meal breaks
23 were not provided at all (especially as to second meal periods), or otherwise non-compliant. Further,
24 Plaintiff contends Ingardia failed to fully relieve employees of all employer control during meal and
25 rest breaks because it prohibited napping and use of personal electronics for certain purposes while
26 on break, and thus employees were not fully able to use their break time as they saw fit. Beyond
27 that, expert analysis of the time records suggested Defendant failed to provide a second meal breaks
28 99.9% of the time, and Plaintiff was not shown a waiver signed by her. Overall, it appeared there were

1 10,305 pay periods containing at least one unique meal break violation (late, short, or missing 1st/2nd
2 meal break) in the time records.

3 14. Lastly, Plaintiff also brings derivative claims for inaccurate wage statements and
4 failure to pay all wages due and owing upon separation of employment under Labor Code §§ 201-
5 203, based on the above-described alleged violations.

6 15. Defendants estimate that, as of the date of this Settlement Agreement, there are
7 approximately 285 Aggrieved Employees who worked approximately 18,885 Pay Periods during
8 the PAGA Period .Based on the data and information provided by Defendant, and with his
9 expert's assistance and analysis, Plaintiff estimated Defendant's theoretical maximum PAGA
10 exposure at about \$6,206,800. Plaintiff, however, discounted that number to account for
11 Defendant's procedural and merits defenses, of which there are many.

12 16. We estimated these amounts as follows:

13 **Unpaid Wages/Rounding**

14 18,885 pay periods * 73.6% violation rate * \$100/violation = \$1,389,900

15 **Meal Break Violations**

16 18,885 pay periods * 54.6% violation rate * \$100/violation = \$1,030,500

17 **Rest Break Violations**

18 18,885 pay periods * 100% violation rate * \$100/violation = \$1,888,500

19 **Wage Statement Violations**

20 18,885 pay periods * 100% violation rate * \$100/violation = \$1,888,500

21 **Failure to Pay Wages on Termination**

22 94 former employees * \$100/violation = \$9,400

23 17. In response to Plaintiff's off the clock claims, Defendant emphasized they accurately
24 tracked employee time and paid the allegedly aggrieved employees for all hours worked at the
25 correct rates consistent with their compliant timekeeping and payroll policies. Ingardia disputed
26 Plaintiff's analysis of the time records and contended that any rounding was neutral in its overall
27 effect and accordingly allowed under current law and the See's Candies case, and did not cause the
28 employees to lose any cognizable amount of work time and corresponding pay.

1 18. For the meal and rest break claims, Defendants offered multiple defenses. First,
2 Defendant emphasized that the written meal and rest break policy generally was compliant, that it
3 authorized and permitted all necessary breaks, and that alleged aggrieved employees received full
4 30 minute lunch periods without interruption as reflected in the time records, and that it placed no
5 restrictions on how employees used their break time. Defendant also argued employees typically
6 waived their second meal periods, which waivers are not required to be in writing, and Defendant
7 further represented at least some employees did sign appropriate written waivers. Defendant argued
8 that even to the extent missed/non-compliant breaks occurred, it was in violation of company policy
9 and would require significant individual inquiries to determine the reasons underlying any such
10 alleged violations and whether it was by employee choice or some other reason. Thus, per
11 Defendant, any trial would be unmanageable on a representative basis because of these
12 individualized issues.

13 19. As with meal breaks, Defendants argued the applicable rest break policies complied
14 with California law and authorized and permitted employees to take all required breaks. Defendants
15 further contended that, in light of the fact that recording rest periods is not required, any evidence
16 of failure to authorize rest periods and/or discouragement from taking rest periods would be purely
17 anecdotal and individual issues would predominate on liability. Defendants also contended that they
18 are only liable if Plaintiff can prove, on a shift-by-shift basis, that each alleged aggrieved employee
19 actually did not receive a fully-compliant rest break. This arguably would once again make a trial
20 unmanageable since the instances an employee missed a rest break would have to be tested on a
21 case by case basis to determine compliance.

22 20. On the wage statement and waiting time waiting time penalty claims, Defendant
23 emphasized that, to the extent they are derivative then they rise or fall along with the primary claims,
24 in addition to being subject to “good faith” and other defenses available to Defendant. Accordingly,
25 Plaintiff had to discount the value of these claims significantly in light of these multiple potential
26 defenses. Defendant also contended a substantial discount should be applied to the civil penalties
27 for these derivative (i.e., “stacked”) violations, as it would be unfair to penalize Defendant multiple
28 times for the same violation.

1 21. Defendant also emphasized PAGA gives the Court wide latitude to reduce the
2 amount of civil penalties “based on the facts and circumstances of a particular case” if “to do
3 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor
4 Code § 2699(e)(2). This is particularly true here where the claims essentially are premised on “de
5 facto” violations and that could prove difficult to establish on a representative basis, and in light of
6 many cases that have imposed substantial discounts on PAGA penalties awarded after trial.
7 Additionally, no information came to light suggesting that any violations were knowing and willful
8 by Defendant and thus we believe there is a high likelihood the Court would find imposition of
9 significantly more in penalties would be “unjust, arbitrary, or confiscatory.”

10 22. Thus, Defendant raised various and multi-layered procedural and merits defenses to
11 Plaintiff’s claims, any one of which, if successful, could have decimated Plaintiff’s case. And
12 Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues going
13 forward with this litigation, and it could have taken years to realize any recovery in this action along
14 with the possibility of post-trial appeals. In addition to its merits defenses and arguing trial would
15 be unmanageable, Defendant also intended to raise additional defenses on damages, including the
16 proper measure of civil penalties and the appropriate discount to place on any assessment of such
17 penalties. After accounting for these many and varied risk factors, we applied an 80% risk discount
18 to the PAGA claims, and then assumed the Court would apply a minimum 50% discount to any
19 penalties awarded, resulting in a discounted estimate of about \$620,680 as the potential recovery
20 after trial.

21 23. Although Plaintiff and I believe we could have prevailed, there was no such
22 guarantee. When the risks of overcoming a manageability defense, prevailing at trial on the merits
23 on all claims, and securing maximum civil penalties all are factored into the equation, the settlement
24 value is reasonable and supported. Indeed, to recover maximum penalties Plaintiff would have to
25 shoot the moon and win on liability as to all claims and all pay periods at issue, and convince the
26 Court to award full penalties, which outcome is highly unlikely. Given Defendant’s procedural and
27 merits defenses, as well as the substantial penalty reductions ordered in the cases above – which
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1 occurred after trial – the proposed settlement is eminently reasonable and ensures a fair and adequate
2 recovery on behalf of the Aggrieved Employees and State without further expense or delay.

3 **SUBMISSION TO THE LWDA**

4 24. My office timely served the LWDA with the Settlement Agreement and this
5 Motion, and notified the LWDA of this approval hearing. Accordingly, the LWDA will be able to
6 weigh in as necessary and, importantly, many courts find it persuasive of approval if the LWDA
7 ultimately declines to offer any comment or objection to a proposed PAGA settlement.

8 **PLAINTIFF’S ENHANCEMENT AWARD**

9 25. Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of
10 \$10,000 for his service in bringing these claims on behalf of the LWDA and Aggrieved Employees.
11 The request is reasonable given the risks he undertook on behalf of the Aggrieved Employees, and
12 given he is entering into a full general release of all claims. By contacting and retaining counsel to
13 pursue these claims, Plaintiff helped make this settlement possible for the State and other employees,
14 while shouldering the risk of being liable for Defendant’s litigation costs. Plaintiff also exposed
15 himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple
16 google search) for the benefit of other employees, placing himself at risk of discrimination by future
17 prospective employers. As set forth in more detail in his declaration submitted herewith, among
18 taking many other actions assisting in the successful litigation of this case, Plaintiff provided
19 substantial factual information and documents to counsel, attended numerous meetings/phone
20 conferences with counsel to discuss the case, and kept abreast of all significant developments.
21 Accordingly, the requested service award is appropriate and should be approved.

22 **THE REQUESTED ATTORNEY’S FEES AND COSTS ARE FAIR AND REASONABLE**

23 26. Under the terms of the Settlement Agreement, I respectfully request an award of
24 attorney’s fees to Crosner Legal equal to 1/3 of the total settlement amount, or \$450,000. A one-
25 third common fund attorney fee award is consistent with what courts have awarded Plaintiff’s
26 counsel in other representative actions. Awarding attorney’s fees of one-third of a gross
27 settlement amount is favored by California courts when a fund established for the common benefit
28 of others is involved, such as here.

1 27. There are several additional factors why I believe that the Court should award one-
2 third of the common fund as a reasonable attorney's fee. First, our efforts resulted in a common
3 fund settlement amount of \$450,000.00, which for the reasons explained, is fair and reasonable in
4 light of the risks/defenses Defendants raised in litigation and threatened to raise at trial and in
5 post-trial appeals. Further, this is a significant sum that furthers the purposes underlying PAGA
6 such as augmenting the state's enforcement capabilities, encouraging compliance with Labor Code
7 provisions, and deterring future non-compliance. Moreover, this result was achieved by the work
8 and success of this office, who negotiated the settlement after extensive preparation, informal
9 discovery, and an adversarial mediation.

10 28. Second, Plaintiff faced significant risks going forward with the litigation. As
11 discussed above, Defendants raised various defenses to her claims, anyone of which, if successful,
12 could have decimated Plaintiff's case. Plaintiff faced risky legal issues going forward with this
13 litigation, and it would have taken several more years to realize any recovery in this action along
14 with the possibility of post-trial appeals,

15 29. Third, we are experienced class and representative action litigators, and have
16 achieved several approved PAGA settlements. This experience and expertise, combined with the
17 high quality of work performed, resulted in the settlement achieved in this case.

18 30. I graduated from Trinity Law School in 2017 and joined Mara Law Firm, PC
19 (formerly The Turley and Mara Law Firm, APLC) that same year. I later joined Crosner Legal in
20 2020 and am currently employed as a senior associate in the wage and hour department. I have
21 solely handled wage and hour class actions and PAGA lawsuits for six (6) years. I routinely
22 write and oppose motions, draft complaints, appear before the Court at law and motion and
23 settlement hearings, engage in the discovery process, including drafting Belaire-West notices
24 and meet and confer letters. I have obtained class certification in the following matters:
25 *Hernandez v. Aviation Port Services, LLC*, Kern County Superior Court Case No. BCV-18-
26 100141. I have also assisted in obtaining millions of dollars for employees in the following
27 court-approved class action and/or representative PAGA settlements: *Michael Campbell, et al. v.*
28 *Symons Emergency Specialities, Inc.*, San Bernardino County Superior Court Case No.

1 CIVDS1903158; *Amber Collins v. Danbarb, Inc., et al.*, Los Angeles County Superior Court
2 Case No. 20STCV44190; *Michael Elridge v. LA Downtown Medical Center, LLC, et al.*, Los
3 Angeles County Superior Court Case No. 20STCV05951; *Anthony Leon, et al. v. Sierra*
4 *Aluminum Company, et al.*, San Bernardino County Superior Court Case No. CIVDS2010856;
5 *Elaine Moyal v. Cabinets To Go, LLC*, Los Angeles County Superior Court Case No.
6 20STCV32477; *Genevieve Rangel v. Bassett Direct NC, LLC*, Orange County Superior Court
7 Case No. 30-2018-01040101-CU-OE-CXC; *Jacob Buys v. Sizewise Rentals, Inc., et al.*,
8 Sacramento County Superior Court Case No. 34-2018-00225848-CU-OE-GDS; *Alejandro*
9 *Valencia v. VM Tree Service, Inc., et al.*, Riverside County Superior Court Case No.
10 RIC1819395; *Joshua Rael v. Intercontinental Hotels Group Resources, Inc.*, Los Angeles County
11 Superior Court Case No. 19STCV16010; *Angel Cervantez v. Valley Pallet, Inc.*, Sacramento
12 County Superior Court Case No. 34-2018-00234334-CU-OE-GDS; *Tonja Edwards-Bloodsaw v.*
13 *Sandburst Convalescent Group, LTD, et al.*, Los Angeles Superior Court Case No.
14 19STCV15797; *Moriah Holtegaard, et al. v. Howroyd-Wright Employment Agency, Inc. dba*
15 *AppleOne Corporation Services, et al.*, Central District Court of California, Eastern Division,
16 Case No. 5:20-cv-00509 JGB (KKx); *Jade Findley, et al. v. Avenue5 Residential, LLC, et al.*,
17 Los Angeles County Superior Court Case No. 20STCV34633; *Keivan Keyhanzad v. Ryan Cars,*
18 *LLC dba Pomona Kia, et al.*, Riverside County Superior Court Case No. RIC1905276; *Luis*
19 *Bolanos v. FSC Corporation dba Il Pastaio Restaurant, et al.*, Los Angeles County Superior
20 Court Case No. BC722758; *Loretta Cannon v. Pasadena Hospital Association, LTD dba*
21 *Huntington Hospital*, Los Angeles County Superior Court Case No. 19STCV14554; *Nathan*
22 *Kapusta v. Cardinale Motors SLO, Inc., et al.*, Kern County Superior Court Case No. BCV-20-
23 101593; and *Jesse McCauley v. Mullahey Ford, Inc., et al.*, San Luis Obispo County Superior
24 Court Case No. 21CV0001.

25 31. Zach Crosner is a 2010 graduate of University San Diego School of Law, and has
26 some 14 years of experience as a practicing attorney, all of which have focused on litigation of
27 employment, labor law, consumer, and class action claims. Following graduation, he
28 immediately began working for a nationally recognized plaintiff's complex litigation firm,

1 CaseyGerry, where I had the fortune of working directly with past presidents of the consumer
2 attorneys and recipients of trial attorneys of the year awards. He also worked for former
3 CAALA and CLAY trial attorney of the year recipient, attorney Conal Doyle, as his sole
4 associate attorney. During his tenure at these firms, he focused on advocating for the rights of
5 consumers and employees in class action litigation, civil rights and employment litigation,
6 catastrophic injuries, insurance bad faith and appellate litigation.

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

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

21 34. Jamie Serb is a partner with Crosner Legal and head of the firm’s Wage & Hour
22 Department. She graduated from the University of California, San Diego in 2004, graduated
23 from California Western School of Law in 2013, and has been a member of the California Bar
24 since 2013. She gained extensive experience in wage and hour litigation, beginning work as a
25 class action attorney in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm,
26 APLC; Turley Law Firm, APLC). She joined Crosner Legal on January 4, 2021 as an associate
27 attorney. She has handled wage and hour class actions and PAGA lawsuits for over eight years
28 and has assisted in obtaining millions of dollars for employees during her years of practice.

1 35. Kiara Bramasco joined Crosner Legal in 2021, and is head of the firm's
2 Prelitigation Department. She received her undergraduate degree, magna cum laude, from
3 Loyola Marymount University in Political Science, and then received her JD from Loyola Law
4 School in 2018. She then spent several years with well-known plaintiff's firm Moss Bollinger,
5 first as a law clerk and then as an associate, where her practice focused on employment law,
6 particularly wage and hour class action and PAGA litigation.

7 36. Branden Hamilton obtained her undergraduate degree from UCLA in 2004, and her
8 law degree from George Washington University in 2007. She has been affiliated with my firm since
9 2017 and became Of Counsel with Crosner Legal in 2019, and her practice focuses almost
10 exclusively on wage and hour class and representative actions. She has spent her entire career
11 representing plaintiffs in employment litigation, including several years as an associate at well-
12 known plaintiff's firm Carlin & Buchsbaum.

13 37. J. Kirk Donnelly is a 1989 graduate of the College of William and Mary, and a
14 1995 graduate *cum laude* of the University of San Diego School of Law, where he was selected to
15 the Order of the Coif and the Order of Barristers. Prior to 2003, he was a litigation associate with
16 Ross Dixon & Bell, LLP (now Troutman Pepper LLP), in Orange County, California, where his
17 practice focused on complex business, employment, and insurance coverage disputes. In 2003, he
18 became associated with Dostart Clapp & Coveney, LLP, then one of the premiere plaintiffs' wage
19 and hour class action firms in California. In 2008, he founded the Law Offices of J. Kirk
20 Donnelly, APC and, in January 2019, also became Of Counsel to Crosner Legal, P.C. Since 2003,
21 his practice has focused on representing plaintiffs in wage and hour and consumer law matters,
22 including both class actions and individual matters. He has served as class/lead counsel in over 50
23 wage and hour class and PAGA actions.

24 38. Crosner Legal has obtained several multi-million dollar wage and hour class action
25 settlements while serving as lead class counsel in recent years, including but not limited to a \$1.9
26 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America, Inc.*,
27 Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action settlement
28 in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252 (Sacramento

1 Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017 (*Montelone v.*
2 *Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a \$1.8 million
3 wage and hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc. dba*
4 *American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and hour
5 class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160 JGB
6 (C.D. Cal.)), a \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham*
7 *Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million
8 wage and hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-
9 CV-04864-YGR (N.D.Cal.)); a \$2.2 million wage and hour class action settlement in 2021
10 (*Ghorchian, et al. v. West Hills Hospital, et al.*, Case No. LS029737 (Los Angeles Cty. Super.
11 Ct.)); a \$2.85 million dollar wage and hour settlement in 2021 (*Valencia v. The Original*
12 *Mowbray's Tree Service, Inc.*, Case No. CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1
13 million wage and hour class action settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No.
14 21CV382467 (Santa Clara Cty. Super. Ct.)), a \$1.4 million wage and hour class action settlement
15 in 2023 in *Correa, et al. v. FedEx Supply Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino
16 Cty. Super. Ct.), and a \$2.38 million wage and hour class action settlement in 2023 in *Michel, et*
17 *al. v. Valley Thrift Store, Inc.*, Case No. 21STCV00925 (Los Angeles Cty. Super. Ct.)

18 39. Based upon the qualifications and experience set forth above, the following hourly
19 rates are reasonable for attorneys practicing in this area of the law in California: Zachary M.
20 Crosner \$800/hour, Jamie K. Serb, \$750/hour, Nikki Trenner \$700/hour, Kiara Bramasco
21 \$650/hour, Branden Hamilton \$600/hour, and J.Kirk Donnelly \$900/hour.

22 40. I request the Court apply the above hourly billing rates in this case, as it reasonable
23 in the California legal market for attorneys handling wage and hour class and PAGA actions. I
24 have personal knowledge of the hourly rates charged by a number of plaintiff-side wage and hour
25 class action firms in major California legal markets for partner-level attorneys with experience
26 comparable to mine. These rates have ranged from \$750 to \$900 per hour for calendar years
27 2018-2023. Some examples include attorney Ron Makarem of Makarem & Associates in Los
28 Angeles, with 28 years of experience, \$900/hour (2023), Matthew Matern of Matern Law Group

1 in Los Angeles, with approximately 26 years of experience \$850/hour (2018); Craig Ackermann
2 of Ackermann & Tilajef, PC in Los Angeles with approximately 25 years of experience \$850/hour
3 (2021), Michael Singer and Isam Khoury of Cohelan Khoury & Singer in San Diego, 35 years and
4 45 years of experience respectively, both \$825/hour (2018), Zachary Crosner of Crosner Legal PC
5 in Los Angeles, 13 years of experience \$750/hour (2022), and James Kawahito of Kawahito Law
6 Group in Los Angeles, with approximately 16 years of experience \$750/hour (2020).

7 41. The requested rates also comport with the adjusted Laffey Matrix, which provides
8 that reasonable hourly rates for attorneys with 10+ years of experience, such as Mr. Crosner and
9 Ms. Serb, are over \$800/hour. The adjusted Laffey Matrix may be found at
10 <http://www.laffeymatrix.com/see.html>.

11 42. Fourth, Crosner Legal has been representing Plaintiff (and the State of California)
12 in this matter on a strictly contingent basis and as such, had to forego other financial opportunities
13 to litigate other cases, incurred the risk of non-recovery after a substantial investment of time,
14 money, and resources, and have done so since the inception of this case without any payment or
15 compensation. This is not an easy burden for a small firm. If, despite these hardships and risks, the
16 best this office could hope for is merely to be paid our customary hourly rate multiplied by the
17 number of hours worked on the case, then we would not be compensated for the hardships and
18 serious risks it faced litigating this contingency case, and would not be incentivized to take on
19 similar private attorney general cases in the future.

20 43. Fifth, the request for attorney's fees in the amount of one-third of the common fund
21 falls well within the norms accepted by state and federal courts in California in comparable wage
22 and hour actions actually handled by this office. Moreover, the award of a one-third fee recovery
23 under the common fund doctrine was recently approved by the California Supreme Court in
24 Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480. For all of the above reasons, a common
25 fund fee award here in the amount of one-third of the \$450,000 common fund, or \$150,000, is fair
26 and reasonable.

27 44. Attached as Exhibit 6 is a true and correct summary of work performed and hours
28 expended on this matter, which total 161.1 attorney hours. Accordingly, Crosner Legal's lodestar

1 totals approximately \$119,170, exclusive of time for attending the hearing on the approval motion,
2 time to implement and administer the settlement. On a lodestar basis, the requested fees represent
3 the base lodestar with a very reasonable 1.26 upward modified, which I submit is entirely in line
4 with California law and represents a fair return on the contingent risk Crosner Legal assumed in
5 this matter.

6 45. As noted, Crosner Legal has represented Plaintiff for some eighteen months with
7 respect to this matter and has expended a significant amount of time and resources in that
8 representation. The firm agreed to litigate this case on a purely contingent basis and in so doing
9 assumed considerable risk of non-payment for its fees and costs, as discussed above, and as is the
10 case with these matters in general. Under all relevant factors (as outlined herein and in the
11 accompanying memorandum), I respectfully request the Court award the requested fees of
12 \$150,000 based on the common fund theory with a corresponding lodestar cross-check and modest
13 1.26 lodestar enhancement.

14 46. I also request reimbursement of Crosner Legal's actual out-of-pocket expenses
15 incurred to prosecute this action. These expenses were incidental and necessary to the effective
16 representation of the employees.

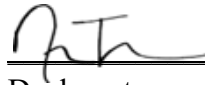
17 47. Crosner Legal's costs are \$13,228.91, including court filing/service of process fees,
18 mediation fees, expert witness fees, and postage. The requested costs are reasonable and
19 uncontested and should be approved in their entirety and as provided for in the Settlement
20 Agreement. A true and correct itemization of the costs and expenses incurred is set forth below:

Expense Category	Amount
Court Filing Fees/Service of Process/Attorney Service	\$1,730.50
Mediation Fees	\$8,000.00
PAGA Filing Fee	\$75.00
Expert Witness Fees	\$3,360.00
Postage	\$63.41

Total Costs and Expenses	\$13,228.91
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48. For the foregoing reasons, it is respectfully requested that the Court approve the settlement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 4, 2024, at San Diego, California.



Declarant

EXHIBIT

1

PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND RELEASE

This Private Attorneys General Act Settlement Agreement and Release (“Agreement” or “Settlement”) is made by and between Plaintiff RICARDO RAMIREZ (“Plaintiff”), individually, and on behalf of all other aggrieved employees (the “Aggrieved Employees” or “PAGA Group” as described below), and as a private attorney general on behalf of the State of California pursuant to Labor Code section 2699, *et seq.*, the California Private Attorneys General Act (“PAGA”) on the one hand, and Defendant INGARDIA BROS. PRODUCE, INC. (“Defendant”), on the other hand. Plaintiff and Defendant are collectively referred to herein as “the Parties.”

This Agreement, and the settlement embodied herein, shall be binding on Plaintiff, the Aggrieved Employees he represents, and Defendant, subject to the approval of the Court.

1. DEFINITIONS.

- 1.1. “Action” means Plaintiff Ricardo Ramirez’s PAGA lawsuit alleging wage and hour violations against Defendant Ingardia Bros. Produce, Inc. captioned *Ricardo Ramirez v. Ingardia Bros. Produce, Inc.*, case number 30-2023-01336578-CU-OE-CXC, initiated on July 11, 2023 and pending in Superior Court of the State of California, County of Orange.
- 1.2. “Administrator” means Simpluris, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount of Administrator that 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 in the amount of \$4,000.00.
- 1.4. “Aggrieved Employee” means all non-exempt employees who worked for Defendant in California during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Approval Order” means the proposed Court Order Granting Approval of the PAGA Settlement.
- 1.8. “Court” means the Superior Court of California, County of Orange.
- 1.9. “Defendant” means named Defendant Ingardia Bros. Produce, Inc.

- 1.10. “Defense Counsel” means Boris Sorsher, Ashton M. Riley, and Andrew S. Wellman of Fisher & Phillips, LLP.
- 1.11. “Effective Date” means the date of entry of the order of the court approving this Agreement and the PAGA Settlement.
- 1.12. “Gross Settlement Amount” means \$450,000.00, which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator’s Expenses Payment.
- 1.13. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.14. “Judgment” means the judgment entered by the Court based upon the Approval Order. The Judgment will have res judicata effect as to the Released Claims for all Aggrieved Employees, who will have no right to opt-out of this Settlement.
- 1.15. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.16. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.17. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Representative Enhancement Payment, LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.18. “PAGA Counsel” means Zachary Crosner, Jamie Serb, and Nikki Trenner of Crosner Legal, PC, the attorneys representing the Plaintiff Ricardo Ramirez.
- 1.19. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.20. “PAGA Representative Enhancement Payment” means the payment to the Plaintiff for initiating the Action and providing services in support of the Action.
- 1.21. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.22. “PAGA Period” means the period from May 7, 2022 through April 18, 2024.

- 1.23. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.24. “PAGA Notice” means the Court approved notice of settlement to be mailed to Aggrieved Employees in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.25. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.
- 1.26. “Plaintiff” means the named Plaintiff Ricardo Ramirez.
- 1.27. “Released PAGA Claims” means the claims being released by Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.28. “Released Parties” means: Defendant and all of their current and former officers, directors, employees and agents.
- 1.29. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS.

2.1. On July 11, 2023, Plaintiff filed a representative action complaint (“Complaint”) pursuant to the California Private Attorneys General Act (“PAGA”) in the Superior Court of California, Orange County entitled *Ricardo Ramirez v. Ingardia Bros. Produce, Inc.*, Case No. 30-2023-01336578-CU-OE-CXC alleging Defendant violated the PAGA by: (1) failing to pay all wages owed, including minimum wage and overtime due to automatic deduction and time rounding, off-the-clock work, unpaid split shift premium payments, unpaid non-piece rate time, and unpaid onboarding/orientation time; (2) failing to provide legally compliant meal periods and failed to pay meal period premiums; (3) failing to provide legally compliant rest periods and failed to pay rest period premiums; (4) failing to provide paid sick leave altogether, including supplemental paid sick leave, and/or improperly calculated the sick leave accrual and the sick leave rate of pay owed to employees; (5) failing to allow employees to use earned vacation/paid time off and/or failed to pay all vested, accrued paid time off to employees upon separation of employment; (6) unlawfully requiring employees to disclose prior salary information in their employment applications and requiring employees to agree to unlawful financial credit checks and unlawful criminal background checks; (7) failing to reimburse employees for business expenses; (8) failed to provide accurate itemized wage statements; (9) failing to maintain accurate records; and (10) failing to pay all wages due at the time of separation.

2.2. During the pendency of the Action, the Parties conducted significant investigation of the facts and law and engaged in an informal discovery exchange prior to mediation. In response to Plaintiff’s Counsel’s informal discovery requests, Defendant provided Plaintiff’s Counsel with information and documents pertaining to Plaintiff and the Aggrieved Employees, and the claims in the Action, including time punch and payroll data, to provide Plaintiff the opportunity to investigate Plaintiff’s allegations and the PAGA claims.

2.3. On April 18, 2024, the Parties attended a full day mediation with experienced wage-and-hour mediator Marc Feder, Esq. As a result, the Parties agreed to settle Plaintiff's representative PAGA claims, taking into account all known facts and circumstances including the difficulty of proving some of Plaintiff's claims, potential defenses asserted by Defendant, the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues.

2.4. The Parties understand, acknowledge, and agree that this PAGA settlement constitutes a compromise of Plaintiff's PAGA Claims, and that it is the desire and intention of the Parties to effect a final and complete resolution of the Representative PAGA Claims that Plaintiff and the Aggrieved Employees have or may have against Defendant and the Released Parties. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by Defendant or the Released Parties of any wrongdoing or liability. Specifically, Defendant and the Released Parties deny any liability or wrongdoing of any kind associated with the claims alleged in the Action and the PAGA Notice. Defendant and the Released Parties, among other things, contend that they have complied at all times with the California Labor Code and all applicable California laws.

2.5. The Parties: (1) believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the PAGA Claims, (2) have investigated the facts relevant to this settlement and this Agreement, and all matters pertaining thereto, and (3) have arrived at the settlement through extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

2.6. The Parties recognize that in accordance with Labor Code section 2699(l), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. *See also Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074 (2017) ("PAGA authorizes a representative action without the need for class certification"); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) ("a PAGA suit is fundamentally different than a class action" in that PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action); *Williams v. Sup. Ct.*, 3 Cal. 5th 531, 546-47 (2017) ("PAGA does not make other potentially aggrieved employees parties or clients of plaintiff's counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class").

2.7. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS

3.1. **Gross Settlement Amount.** Defendant agrees to pay, in accordance with the terms set forth herein, the total sum of Four Hundred, Fifty Thousand Dollars (\$450,000.00) as the non-reversionary gross settlement amount (the "Gross Settlement Amount") in full settlement of the Action. The Gross Settlement Amount, represents the total amount payable under this Settlement by Defendant (subject to the Escalator Clause described below). The Administrator will disburse

the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant or any of the Released Entities.

3.2. **Payments from the Gross Settlement Amount.** The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Approval Order:

3.2.1. **To PAGA Counsel.** PAGA Counsel's attorneys' fees and costs request of up one-third of the Gross Settlement Amount or One Hundred and Fifty Thousand Dollars and Zero Cents (\$150,000.00) ("PAGA Counsel's Fees") and PAGA Counsel's separate request for reasonable litigation costs incurred in this matter ("PAGA Counsel's Costs") not to exceed Twenty Thousand Dollars (\$20,000.00). Defendants will not oppose these requests. To the extent that the Court approves less than the amount of attorney's fees and costs that PAGA Counsel requests, any reduced amount will revert to the PAGA Fund.

3.2.2. **To the Administrator.** Administration costs are estimated not to exceed Four Thousand Dollars (\$4,000.00) to be paid to the Settlement Administrator ("Administration Costs"), except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than Four Thousand Dollars (\$4,000.00), the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3. **To the Plaintiff.** PAGA Representative Enhancement Payment to the Plaintiff of not more than \$10,000 in addition to any Individual PAGA Payment the Plaintiff is entitled to receive as an Aggrieved Employee. Defendant will not oppose Plaintiff's requests for a PAGA Representative Enhancement Payment that does not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for approval of the PAGA settlement that includes a request for approval of the PAGA Representative Enhancement Payment in the Action. If the Court approves a PAGA Representative Enhancement Award less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount.

3.2.4. **To the LWDA and Aggrieved Employees.** PAGA Penalties to be paid from the Gross Settlement Amount, with 75% allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.

3.2.4.2. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.2. **Aggrieved Employee Data.** Within 14 calendar days of the Effective Date, Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. **Funding of Gross Settlement Amount.** Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 calendar days after the Effective Date.

4.4. **Payments from the Gross Settlement Amount.** Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the PAGA Representative Enhancement Payments, the Administration Expenses Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by

such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. Aggrieved Employees to whom Individual PAGA Payment checks are resent after having been returned undeliverable to the Settlement Administrator shall have an additional fourteen (14) calendar days beyond the one hundred and eighty (180) day check expiration date set forth in Paragraph 4.4.1.

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

5. RELEASE OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount Plaintiffs will release claims against all Released Entities as follows:

5.1. **Plaintiff's Release.** Plaintiff and his respective former and present spouse, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Entities from any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liabilities, suits, debts, demands, and benefits (including attorneys' fees and costs), of whatever character, in law or in equity, known or unknown, suspected or unsuspected, matured or unmatured, of any kind or nature whatsoever, based on any act, omission, event, occurrence, or nonoccurrence from the beginning of time to the date of execution hereof, including but not limited to any claims or causes of action arising out of or in any way relating to Plaintiff's employment or which have been or could have been made in the Action. These claims include, but are not limited to, claims arising under or for violation of any local, state, federal, or other governmental statute, regulation or ordinance, as amended, or any public policy expressed in any such statute, regulation, or ordinance, including, without limitation, the following: Title VII of the Civil Rights Act of 1964 as amended (race, color, religion, sex (including pregnancy and sexual harassment), and national origin discrimination); 42 U.S.C. §1981 (discrimination in the making and enforcement of contracts, the Federal and California Equal Pay Acts (29 U.S.C. §206(d)(1)); the Fair Labor Standards Act and California Labor Code; the California Fair Employment and Housing Act (*California Govt. Code §12940 et seq.*); the Civil Rights Act of 1991; the Americans with Disabilities Act; the Family Medical Leave Act; the California Family Rights Act; the False Claims Act, California Business & Professions Code § 17200 *et seq.*; the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 *et seq.*) ("ERISA") to the extent permitted by law. Plaintiff acknowledges that he may discover facts or law different from, or in addition to, the facts or law that he 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, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

5.2. **Release by Aggrieved Employees:** All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Entities from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and Plaintiff's respective PAGA Notice including (1) failing to pay all wages owed, including minimum wage and overtime due to automatic deduction and time rounding, off-the-clock work, unpaid split shift premium payments, unpaid non-piece rate time, and unpaid onboarding/orientation time; (2) failing to provide legally compliant meal periods and failed to pay meal period premiums; (3) failing to provide legally compliant rest periods and failed to pay rest period premiums; (4) failing to provide paid sick leave altogether, including supplemental paid sick leave, and/or improperly calculated the sick leave accrual and the sick leave rate of pay owed to employees; (5) failing to allow employees to use earned vacation/paid time off and/or failed to pay all vested, accrued paid time off to employees upon separation of employment; (6) unlawfully requiring employees to disclose prior salary information in their employment applications and requiring employees to agree to unlawful financial credit checks and unlawful criminal background checks; (7) failing to reimburse employees for business expenses; (8) failed to provide accurate itemized wage statements; (9) failing to maintain accurate records; and (10) failing to pay all wages due at the time of separation. Aggrieved Employees shall release the PAGA Released Claims for the entire PAGA Period with respect to all pay periods in which they were employed or jointly employed by one or more of the Released Entities.

5.3. **No Right to Opt-Out.** The Parties agree that there is no statutory right for any Aggrieved Employee to object, opt out or otherwise exclude themselves from the Settlement.

6. **MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

6.1. **Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) 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 Aggrieved Employee Data; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiffs, PAGA Counsel or Defense Counsel; and (iii) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator.

6.2. **Responsibilities of PAGA Counsel.** PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 60 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Approval Order to the Administrator.

6.3. **Duty to Cooperate.** If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA

Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

6.4. **Notice to LWDA.** Pursuant to California Labor Code § 2699(k)(2), the Parties shall submit to the LWDA a copy of this Agreement at the same time that the Parties submit it to the Court for approval.

7. SETTLEMENT ADMINISTRATION.

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

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

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

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

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE. The Gross Settlement Amount was calculated based on the estimate that the Aggrieved Employees worked a total of 18,885 pay periods during the PAGA Period. If the total number of pay periods worked during the PAGA Period is 10% higher than 18,885 (i.e., 20,773 pay periods), then Defendant shall have the option to either: (1) shorten the PAGA Period so that the PAGA Period ends on the date that the pay period count totals 20,773; or (2) supplement the Gross Settlement Amount by an amount equal to the number of pay periods worked in excess of 20,773 pay periods multiplied by the per pay period value, as set forth in paragraph 3, above.

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

9.1. **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA

Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

10.1. **No Admission of Liability or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

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

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

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

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

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

10.7. **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 approval by the Court.

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

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

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

10.11. **Confidentiality.** To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

10.12. **Use and Return of Aggrieved Employee Data.** Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

10.13. **Nondisclosure and Nonpublication.** PAGA Counsel shall not publicize the settlement on their website or in advertising/marketing materials. Plaintiffs and PAGA Counsel agree that they will not issue any press release or initiate any contact with the media about the fact, amount, or terms of the Settlement. If Plaintiffs or PAGA Counsel receive an inquiry about the Settlement from the media, they may respond only after the motion for approval of the Settlement is filed and only by confirming the accurate terms of the Settlement. Nothing in this paragraph shall prevent PAGA Counsel from referring to this case in a declaration establishing qualification as class or PAGA counsel in future cases, and nothing in this paragraph shall prevent Defendants from making any disclosure required by law.

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

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

To Plaintiff:

Zachary M. Crosner (SBN 272295)

zach@crosnerlegal.com

Jamie Serb (SBN 289601)

jamie@crosnerlegal.com

Nikki Trenner (SBN 316007)

nikki@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:

Boris Sorsher (SBN 251718)

bsorsher@fisherphillips.com

Ashton M. Riley (SBN 310528)

ariley@fisherphillips.com

Andrew S. Wellman (SBN 318470)

awellman@fisherphillips.com

FISHER & PHILLIPS LLP

2050 Main Street, Suite 1000

Irvine, California 92614

10.16. **Interim Stay of Proceedings.** The Parties agree to refrain from further litigation of this matter, except such proceedings necessary to implement and obtain Final Judgment.

10.17 **Invalid without Court Approval.** In the event this Agreement is not approved by the Court, it shall be deemed null and void, of no force and effect, and of no probative or evidentiary value, and the Parties hereto represent, warrant, and covenant that it will not be used or referred to for any purpose whatsoever. In the event that the Agreement does not become final for any reason, this Agreement shall be null and void and any order entered by the Court in furtherance thereof shall be treated as void ab initio. In such a case, the Parties shall return to the status quo as if they had not entered into this Agreement. The Settlement Administrator will be paid by Defendants for its costs through the date it is notified that the Settlement will not proceed.

10.17. **Covenants and Representations.** Plaintiff represents and warrants he has not assigned or transferred or purported to assign or transfer, to any person or entity, any claim, right, liability, demand, obligation, expense, action, or causes, or portion thereof, or interest therein, which is or may be subject to this Settlement. Plaintiff acknowledges he has read this Settlement, fully understands his rights, privileges, and duties under the Settlement, and enters into this Settlement

freely and voluntarily, and without duress. Plaintiff further acknowledges he had the opportunity to consult with his attorney to explain the terms of this Settlement and the consequences of signing this Settlement.

10.18. **Termination of Settlement.** If the Court does not approve the Settlement or does not enter judgment as provided for in this Settlement or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or, except as otherwise set forth herein, if one or more of the terms of the Settlement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement, in which case the Settlement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement.

10.19. **Severability.** If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement that can be given effect without the invalid provisions or application, and to this end, the provisions of this Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable Released Party.

10.20. **No Construction Against the Drafter.** Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

10.21. **Choice of Law.** This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

10.22. **Counterparts.** This Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

10.23. **Cooperation.** Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

10.24. **Electronic Signature.** Each Party specifically agrees that an electronic signature shall have the same force and effect as a signed original of the Agreement, and that the Parties may use DocuSign, an electronic signature technology, to expedite the execution of this Agreement pursuant to California Civil Code Section 1633.7.

Dated: 07 / 16 / 2024



Plaintiff RICARDO RAMIREZ

Dated: ____

Defendant INGARDIA BROS. PRODUCE,
INC.

By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: July 16, 2024

CROSNER LEGAL, PC

By: *Nikki Trenner*

Jamie Serb

Gwendolyn “Nikki” Trenner

Attorneys for Plaintiff CROSNER LEGAL, PC
and Aggrieved Employees

Dated: ____

FISHER AND PHILLIPS, LLP

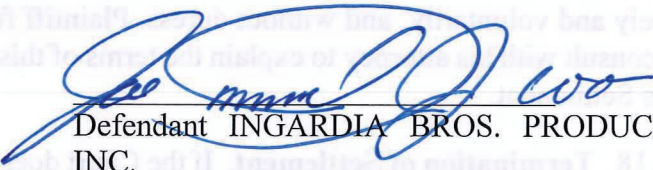
By: _____

Boris Sorsher

Ashton M. Riley

Attorneys for Defendant INGARDIA BROS.
PRODUCE, INC.

Dated: JUN 27 2024


Defendant INGARDIA BROS. PRODUCE,
INC.

By: Joe Ingardia Jr., COO

Its: COO

APPROVED AS TO FORM AND CONTENT:

Dated: _____

CROSNER LEGAL, PC

By: _____

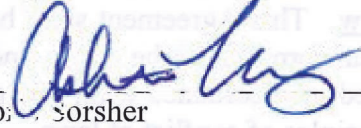
Jamie Serb

Gwendolyn "Nikki" Trenner

Attorneys for Plaintiff CROSNER LEGAL, PC
and Aggrieved Employees

Dated: June 27, 2024

FISHER AND PHILLIPS, LLP

By:  _____

Esq. Sorsher

Ashton M. Riley

Attorneys for Defendant INGARDIA BROS.
PRODUCE, INC.

EXHIBIT “A”

**NOTICE OF PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE
OF CLAIMS**

Ricardo Ramirez v. Ingardia Bros. Produce, Inc.
Superior Court of the State of California for the County of Orange
Case No. 30-2023-01336578-CU-OE-CXC

[INSERT DATE OF MAILING]

[INSERT FIRST & LAST NAME]
[INSERT ADDRESS – LINE 1]
[INSERT ADDRESS – LINE 2]

Dear [INSERT FIRST & LAST NAME],

Pursuant to the Order of Honorable Lon Hurwitz of the Superior Court of the State of California for the County of Orange dated [INSERT DATE OF SETTLEMENT APPROVAL], enclosed is your payment from the settlement of the California Private Attorneys General Act of 2004 (“PAGA”) claims in the lawsuit entitled *Ricardo Ramirez v. Ingardia Bros. Produce, Inc.*, Superior Court of the State of California for the County of Orange, Case No. 30-2023-01336578-CU-OE-CXC (the “Action”).

The Action alleges a single claim for civil penalties under the Private Attorneys General Act (“PAGA”) against Defendant Ingardia Bros. Produce, Inc. (“Defendant”), for alleged (1) failing to pay all wages owed, including minimum wage and overtime due to automatic deduction and time rounding, off-the-clock work, unpaid split shift premium payments, unpaid non-piece rate time, and unpaid onboarding/orientation time; (2) failing to provide legally compliant meal periods and failed to pay meal period premiums; (3) failing to provide legally compliant rest periods and failed to pay rest period premiums; (4) failing to provide paid sick leave altogether, including supplemental paid sick leave, and/or improperly calculated the sick leave accrual and the sick leave rate of pay owed to employees; (5) failing to allow employees to use earned vacation/paid time off and/or failed to pay all vested, accrued paid time off to employees upon separation of employment; (6) unlawfully requiring employees to disclose prior salary information in their employment applications and requiring employees to agree to unlawful financial credit checks and unlawful criminal background checks; (7) failing to reimburse employees for business expenses; (8) failed to provide accurate itemized wage statements; (9) failing to maintain accurate records; and (10) failing to pay all wages due at the time of separation.

Plaintiff seeks civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and all current and former non-exempt employees who worked for Defendant in California during the PAGA Period from May 7, 2022 through April 18, 2024 (“Aggrieved Employees”). You have been identified as an eligible Aggrieved Employee in this time period.

Defendant denies Plaintiff’s claims in their entirety and believes that its wage and hour policies and practices fully comply with California law. However, in an effort to avoid the expense and business disruption associated with protracted litigation, Defendant agreed to resolve the Action. The Court has not made any determination about Plaintiff’s allegations. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claims.

Honorable Lon Hurwitz of the Superior Court of the State of California for the County of Orange approved the settlement on [INSERT DATE OF SETTLEMENT APPROVAL]. Pursuant to the PAGA, 75% of PAGA penalties are paid to the State of California, and the remaining 25% of the PAGA penalties are paid directly to the Aggrieved Employees who worked during the PAGA Period from May 7, 2022 through April 18, 2024. Each Individual PAGA Payment was calculated

on a pro rata basis (i.e., proportional) based on the number of pay periods worked by each Aggrieved Employee. To determine an Aggrieved Employee's pro rata share of the Settlement, the settlement administrator will divide the amount of the Aggrieved Employees' 25% share of the PAGA Penalty Allocation by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period and multiply the resulting amount by the number of pay periods worked by that Aggrieved Employee. You worked [INSERT PAY PERIODS WORKED] pay periods during the PAGA Period from May 7, 2022 through April 18, 2024 ("PAGA Period").

The enclosed check is your Individual PAGA Payment. Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the California State Controller's Unclaimed Property Fund in the name of the Aggrieved Employee whose checks were not delivered or cashed. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement. You will be bound by the Released PAGA Claims provision of the settlement even if you do not cash your check and may not opt out or object to the settlement.

You will receive an IRS 1099 Form for the check for this payment amount. You should seek the advice of a tax professional for any tax issues or questions related to this payment. Defendant will not retaliate against, or take any other negative action against, any employee who cashes the settlement check.

In exchange for the Individual PAGA Payments, Plaintiff and all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, all of their current and former officers, directors, employees and agents. (the "Released Parties") from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and Plaintiff's respective PAGA Notice including (1) failing to pay all wages owed, including minimum wage and overtime due to automatic deduction and time rounding, off-the-clock work, unpaid split shift premium payments, unpaid non-piece rate time, and unpaid onboarding/orientation time; (2) failing to provide legally compliant meal periods and failed to pay meal period premiums; (3) failing to provide legally compliant rest periods and failed to pay rest period premiums; (4) failing to provide paid sick leave altogether, including supplemental paid sick leave, and/or improperly calculated the sick leave accrual and the sick leave rate of pay owed to employees; (5) failing to allow employees to use earned vacation/paid time off and/or failed to pay all vested, accrued paid time off to employees upon separation of employment; (6) unlawfully requiring employees to disclose prior salary information in their employment applications and requiring employees to agree to unlawful financial credit checks and unlawful criminal background checks; (7) failing to reimburse employees for business expenses; (8) failed to provide accurate itemized wage statements; (9) failing to maintain accurate records; and (10) failing to pay all wages due at the time of separation. Aggrieved Employees shall release the PAGA Released Claims for the entire PAGA Period with respect to all pay periods in which they were employed or jointly employed by one or more of the Released Entities.

The pleadings and other records in this litigation, including the Settlement Agreement, may be examined online for a fee through the Superior Court of the State of California for the County of Orange Court Docket website, <https://www.occourts.org/online-services/case-access/civil-case-access>. You may also contact [INSERT NAME OF ADMINISTRATOR] toll free at [INSERT ADMINISTRATOR PHONE NUMBER]

PLEASE DO NOT CONTACT THE COURT OR THE JUDGE WITH ANY QUESTIONS ABOUT THE ACTION OR THE SETTLEMENT.

EXHIBIT

2

**NOTICE OF PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE
OF CLAIMS**

Ricardo Ramirez v. Ingardia Bros. Produce, Inc.
Superior Court of the State of California for the County of Orange
Case No. 30-2023-01336578-CU-OE-CXC

[INSERT DATE OF MAILING]

[INSERT FIRST & LAST NAME]
[INSERT ADDRESS – LINE 1]
[INSERT ADDRESS – LINE 2]

Dear [INSERT FIRST & LAST NAME],

Pursuant to the Order of Honorable Lon Hurwitz of the Superior Court of the State of California for the County of Orange dated [INSERT DATE OF SETTLEMENT APPROVAL], enclosed is your payment from the settlement of the California Private Attorneys General Act of 2004 (“PAGA”) claims in the lawsuit entitled *Ricardo Ramirez v. Ingardia Bros. Produce, Inc.*, Superior Court of the State of California for the County of Orange, Case No. 30-2023-01336578-CU-OE-CXC (the “Action”).

The Action alleges a single claim for civil penalties under the Private Attorneys General Act (“PAGA”) against Defendant Ingardia Bros. Produce, Inc. (“Defendant”), for alleged (1) failing to pay all wages owed, including minimum wage and overtime due to automatic deduction and time rounding, off-the-clock work, unpaid split shift premium payments, unpaid non-piece rate time, and unpaid onboarding/orientation time; (2) failing to provide legally compliant meal periods and failed to pay meal period premiums; (3) failing to provide legally compliant rest periods and failed to pay rest period premiums; (4) failing to provide paid sick leave altogether, including supplemental paid sick leave, and/or improperly calculated the sick leave accrual and the sick leave rate of pay owed to employees; (5) failing to allow employees to use earned vacation/paid time off and/or failed to pay all vested, accrued paid time off to employees upon separation of employment; (6) unlawfully requiring employees to disclose prior salary information in their employment applications and requiring employees to agree to unlawful financial credit checks and unlawful criminal background checks; (7) failing to reimburse employees for business expenses; (8) failed to provide accurate itemized wage statements; (9) failing to maintain accurate records; and (10) failing to pay all wages due at the time of separation.

Plaintiff seeks civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and all current and former non-exempt employees who worked for Defendant in California during the PAGA Period from May 7, 2022 through April 18, 2024 (“Aggrieved Employees”). You have been identified as an eligible Aggrieved Employee in this time period.

Defendant denies Plaintiff’s claims in their entirety and believes that its wage and hour policies and practices fully comply with California law. However, in an effort to avoid the expense and business disruption associated with protracted litigation, Defendant agreed to resolve the Action. The Court has not made any determination about Plaintiff’s allegations. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claims.

Honorable Lon Hurwitz of the Superior Court of the State of California for the County of Orange approved the settlement on [INSERT DATE OF SETTLEMENT APPROVAL]. Pursuant to the PAGA, 75% of PAGA penalties are paid to the State of California, and the remaining 25% of the PAGA penalties are paid directly to the Aggrieved Employees who worked during the PAGA Period from May 7, 2022 through April 18, 2024. Each Individual PAGA Payment was calculated

on a pro rata basis (i.e., proportional) based on the number of pay periods worked by each Aggrieved Employee. To determine an Aggrieved Employee's pro rata share of the Settlement, the settlement administrator will divide the amount of the Aggrieved Employees' 25% share of the PAGA Penalty Allocation by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period and multiply the resulting amount by the number of pay periods worked by that Aggrieved Employee. You worked [INSERT PAY PERIODS WORKED] pay periods during the PAGA Period from May 7, 2022 through April 18, 2024 ("PAGA Period").

The enclosed check is your Individual PAGA Payment. Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the California State Controller's Unclaimed Property Fund in the name of the Aggrieved Employee whose checks were not delivered or cashed. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement. You will be bound by the Released PAGA Claims provision of the settlement even if you do not cash your check and may not opt out or object to the settlement.

You will receive an IRS 1099 Form for the check for this payment amount. You should seek the advice of a tax professional for any tax issues or questions related to this payment. Defendant will not retaliate against, or take any other negative action against, any employee who cashes the settlement check.

In exchange for the Individual PAGA Payments, Plaintiff and all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, all of their current and former officers, directors, employees and agents. (the "Released Parties") from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and Plaintiff's respective PAGA Notice including (1) failing to pay all wages owed, including minimum wage and overtime due to automatic deduction and time rounding, off-the-clock work, unpaid split shift premium payments, unpaid non-piece rate time, and unpaid onboarding/orientation time; (2) failing to provide legally compliant meal periods and failed to pay meal period premiums; (3) failing to provide legally compliant rest periods and failed to pay rest period premiums; (4) failing to provide paid sick leave altogether, including supplemental paid sick leave, and/or improperly calculated the sick leave accrual and the sick leave rate of pay owed to employees; (5) failing to allow employees to use earned vacation/paid time off and/or failed to pay all vested, accrued paid time off to employees upon separation of employment; (6) unlawfully requiring employees to disclose prior salary information in their employment applications and requiring employees to agree to unlawful financial credit checks and unlawful criminal background checks; (7) failing to reimburse employees for business expenses; (8) failed to provide accurate itemized wage statements; (9) failing to maintain accurate records; and (10) failing to pay all wages due at the time of separation. Aggrieved Employees shall release the PAGA Released Claims for the entire PAGA Period with respect to all pay periods in which they were employed or jointly employed by one or more of the Released Entities.

The pleadings and other records in this litigation, including the Settlement Agreement, may be examined online for a fee through the Superior Court of the State of California for the County of Orange Court Docket website, <https://www.occourts.org/online-services/case-access/civil-case-access>. You may also contact [INSERT NAME OF ADMINISTRATOR] toll free at [INSERT ADMINISTRATOR PHONE NUMBER]

PLEASE DO NOT CONTACT THE COURT OR THE JUDGE WITH ANY QUESTIONS ABOUT THE ACTION OR THE SETTLEMENT.

EXHIBIT

3



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

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

May 4, 2023

VIA PAGA ONLINE FILING ONLY:

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

VIA PAGA ONLINE FILING ONLY

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

VIA U.S. CERTIFIED MAIL:

Samuel P Ingardia
Agent For Service of Process For:
Ingardia Bros. Produce, Inc.
700 S Hathaway St
Santa Ana, CA 92705-4126

Ingardia Bros. Produce, Inc.
Attn: Human Resources / Legal
Department
700 S Hathaway St
Santa Ana, CA 92705-4126

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Division of Occupational
Safety and Health (Cal OSHA); and Ingardia Bros. Produce, Inc.
Date: May 4, 2023
Subject: *Ricardo Ramirez v. Ingardia Bros. Produce, Inc.*

Introduction

This office represents COMPLAINANT, Ricardo Ramirez (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 entity and individual managing agents of said entity: Ingardia Bros. Produce, Inc. (hereinafter, this entity and its managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

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

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, 226.2, 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, 6400-6404 and 6406-6407, 6409.6, 6432, 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 wholesale food supplier and/or food manufacturing business headquartered in Orange County, California, and serving customers throughout California, including but not limited to, in Orange County, San Diego County, Riverside County, San Bernardino County and Los Angeles County.¹ Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT worked for EMPLOYER as a warehouse worker, warehouse associate, order puller, pre loader, and/or similar job title(s) and/or position(s) from on or around May 17, 2021, through on or around August 12, 2022. COMPLAINANT worked in the avocado and/or dairy departments. COMPLAINANT regularly worked at least eight (8) to ten (10) hours per day, at least six (6) 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

¹ See <https://www.ingardiabros.com/> (Last visited on May 3, 2023).

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

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

work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

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 sent a written request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to timely produce complete records, including but not limited to, time records, 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), sections 10 and/or 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, sections 6 and/or 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, based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were required to work through their meal periods and/or had their meal periods interrupted and/or cut short due to lack of coverage, the need to keep up with production deadlines, respond to work-related communications and/or complete other work tasks. Based on information and belief, EMPLOYER performed an automatic meal period deduction of at least thirty minutes per shift per NON-EXEMPT AGGRIEVED

EMPLOYEE even though EMPLOYER had actual and/or constructive knowledge that NON-EXEMPT AGGRIEVED EMPLOYEES were frequently required to take shortened and/or interrupted meal periods and/or skip their meal periods completely due to lack of coverage, the need to keep up with production deadlines, respond to work-related communications and/or complete other work tasks.

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

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

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

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

Based on information and belief, per EMPLOYER's uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break. For example, when COMPLAINANT and/or other NON-EXEMPT AGGRIEVED EMPLOYEES worked shifts lasting longer than ten (10) and/or twelve (12) hours, EMPLOYER only allowed for a single meal period per shift, and that single meal period was often cut short, interrupted, on-duty and/or otherwise noncompliant with California meal period law.

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to EMPLOYER's premises), despite having actual and/or constructive knowledge that 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, 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, sections 10(A) and (C) and/or 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

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §§19 and/or 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").

provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §§ 11(A) and/or 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, §§ 11(B) and/or 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 did not have a compliant written rest period policy, nor did EMPLOYER have any sort of compliant rest period policy in practice. For example, per EMPLOYER's unlawful rest period policy and practice, EMPLOYER only allowed for two purported rest periods per shift even on shifts lasting longer than ten (10) and/or fourteen (14) hours, and EMPLOYER required

COMPLAINANT to combine his two purported rest periods into one and tack them onto the end of a purported thirty-minute meal break such that COMPLAINANT was almost always, if not always, denied at least one legally compliant rest period per shift worked. For example, COMPLAINANT was rarely, if ever, afforded a full ten-minute second rest period in the middle of his at least eight-hour work period.

Moreover, based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were unable to take legally compliant rest periods due to lack of coverage, the need to keep up with production deadlines/complete their assigned job duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had their purported rest periods restricted to EMPLOYER's premises.

Furthermore, based on information and belief, EMPLOYER performed an automatic deduction of at least thirty-minutes per shift per NON-EXEMPT AGGRIEVED EMPLOYEE for two fifteen-minute purported rest periods. For example, based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to clock for two purported fifteen minute rest periods per shift even though EMPLOYER had actual and/or constructive knowledge that NON-EXEMPT AGGRIEVED EMPLOYEES were required to take unpaid rest periods that were on duty, cut short, and/or worked through completely, resulting in rest period law violations and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

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, based on information and belief, EMPLOYER had and has an unlawful rest period policy and practice whereby EMPLOYER only allowed/allows for two purported rest periods per shift even on shifts lasting longer than ten (10) and/or fourteen (14) hours and those two purported rest periods were/are typically, if not always, not compliant with California rest period law. For example, when COMPLAINANT and/or other NON-EXEMPT AGGRIEVED EMPLOYEES worked shifts lasting longer than ten (10) hours and/or fourteen (14) hours, they were not provided with any version of a third and/or fourth 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.

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, 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, §§ 11(A) and/or 12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §§19 and/or 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.

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

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, §§19 and/or 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”).

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.

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

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER’s policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For example, based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to be at their assigned workstations at the start of a scheduled shift, thereby forcing NON-EXEMPT AGGRIEVED EMPLOYEES to gather work related equipment and/or safety gear prior to their scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock work.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to undergo security screenings before and/or after a scheduled shift and/or before or after clocking in/out for work, resulting in pre-shift and/or post-shift off-the-clock work.

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

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

Based on information and belief, EMPLOYER did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for time spent donning and doffing personal protective equipment, safety equipment and/or uniforms (e.g., rubber gloves, safety glasses/goggles, safety belts, and/or face masks) during unpaid meal periods, rest periods, before the start of a scheduled shift, and after completing a scheduled shift.

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, at times, EMPLOYER's electronic/biometric 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 and/or rest 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 and/or rest 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.

Furthermore, based on information and belief, at times, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to clock for rest periods that were on duty, cut short, and/or worked through completely, resulting in rest period law violations and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

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

Moreover, based on information and belief, at times, EMPLOYER paid NON-EXEMPT AGGRIEVED EMPLOYEES on a strictly piece-rate basis (e.g., per unit produced, pulled, packed, and/or delivered), at least during some pay periods, during the relevant time period. However, based on information and belief, EMPLOYER failed to separately compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all non-piece rate related activities/all non-productive time,

including but not limited to, all rest breaks and/or time spent preparing/setting up for tasks, waiting between jobs and tasks and/or other waiting time, and/or performing work duties that otherwise fall outside of the piece-rate pay criteria. EMPLOYER's failure to separately compensate NON-EXEMPT AGGRIEVED EMPLOYEES for their rest periods and/or other non-productive time and/or failure to compensate them at the correct rates for all non-productive time including rest periods resulted in the failure to pay NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and violations of California wage and hour laws, including but not limited to, Labor Code sections 226.2 and/or 1197. Based on information and belief, EMPLOYER further failed to include this information on these employees' wage statements required by Labor Code section 226.2.

Moreover, based on information and belief, EMPLOYER failed to pay COMPLAINANT and/or other NON-EXEMPT AGGRIEVED EMPLOYEES split shift premium wages when they worked split shifts during the relevant period.

For example, based on information and belief, at times, EMPLOYER required COMPLAINANT and/or other NON-EXEMPT AGGRIEVED EMPLOYEES to work two separate shifts in the same day. Based on information and belief, EMPLOYER failed to pay COMPLAINANT and/or other NON-EXEMPT AGGRIEVED EMPLOYEES split shift compensation whenever COMPLAINANT's and/or other NON-EXEMPT AGGRIEVED EMPLOYEES' work schedules were interrupted by non-paid non-working periods established by EMPLOYER, which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday..."). *See, also*, Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment).

EMPLOYER also failed to separately itemize these split shift premium wages on COMPLAINANT's and/or other NON-EXEMPT AGGRIEVED EMPLOYEES' wage statements, in violation of Labor Code sections 510, 1194 and all applicable IWC Wage Orders. *See*, https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment on the pay stub provided to the employee, and it should be shown as a separate category such as "Split Shift Premium" and should not be lumped into another category such as wages, bonus, etc. EMPLOYER failed to separately account for the split shift premiums earned by COMPLAINANT and/or other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements.

Based on information and belief, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by 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 wage statements for COMPLAINANT evidence EMPLOYER rounded COMPLAINANT's hours worked to at least the nearest quarter, half, and/or whole hour, resulting in EMPLOYER's failure to compensate COMPLAINANT for all work time. For example, EMPLOYER's wage statements for COMPLAINANT for, including but not limited to, the following pay periods, demonstrate rounding of COMPLAINANT's hours worked to at least the nearest quarter, half and/or whole hour: pay period beginning on June 19, 2022, and ending on June 25, 2022; pay period beginning on June 26, 2022, and ending on July 2, 2022; pay period beginning on July 3, 2022, and ending on July 9, 2022; pay period beginning on July 10, 2022, and ending on July 16, 2022; pay period beginning on July 17, 2022, and ending on July 23, 2022; and pay period beginning on July 24, 2022, and ending on July 30, 2022. Based on information and belief, EMPLOYER also rounded, to at least the nearest quarter, half and/or whole hour, the hours worked of other NON-EXEMPT AGGRIEVED EMPLOYEES during most if not all pay periods during the relevant period, resulting in EMPLOYER's failure to pay NON-EXEMPT AGGRIEVED EMPLOYEES for all time worked. 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, §§19 and/or 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

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, §§19 and/or 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

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 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 sometimes paid NON-EXEMPT AGGRIEVED EMPLOYEES multiple rates of base pay in one workweek but failed to incorporate all multiple rates of base pay into the regular rate of pay for purposes of calculating the owed overtime rate. For example, based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES earned multiple base pay rates during the same workweek, yet, EMPLOYER failed to incorporate all/both base pay rates into the regular rate of pay for purposes of calculating the owed overtime rate, resulting in the miscalculation and underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. As such, EMPLOYER failed to incorporate multiple base rates of pay earned in a workweek by other NON-EXEMPT AGGRIEVED EMPLOYEES into the regular rate of pay used to calculate the owed overtime rate(s), resulting in unpaid wages to NON-EXEMPT AGGRIEVED EMPLOYEES.

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

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §3(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §§19 and/or 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 Labor Code Section 226.2: Labor Code section 226.2 requires an employer to pay employees compensated on a piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any piece-rate pay. This statute further requires an employer to include on the wage statements for these employees the total hours of compensable rest and recovery period, the total hours for other non-productive time, the rates of compensation for these hours, and the gross wages paid for these hours. In addition, the statute requires that employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

Based on information and belief, EMPLOYER failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES who were paid solely on a commission and/or piece rate basis e.g., per unit produced, pulled, packed, and/or delivered) separately for the rest periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based on information and belief, EMPLOYER further failed to include this information on NON-EXEMPT AGGRIEVED EMPLOYEES' wage statements. As such, EMPLOYER failed to comply with Labor Code section 226.2.

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-

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, §§19 and/or 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”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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). For example, as described herein, based on information and belief, EMPLOYER failed to properly blend multiple base rates of pay earned during the workweek and/or failed to incorporate all forms of non-discretionary compensation earned during the pay period, including but not limited to, non-discretionary bonus/incentive pay and/or shift differential pay and/or multiple base rates of pay and/or other non-discretionary compensation into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER issued wage statements that failed to list the number of piece rate units completed/earned during the pay period and the applicable rate of pay for each piece rate unit.

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.

Failure to Provide Suitable Resting Facilities: Per all applicable IWC Wage Orders, employees shall be provided with suitable resting facilities. The Wage Orders provide: "Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

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

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

EMPLOYER's failure to provide suitable resting facilities to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order(s), sections 12(B) and/or 13(B) and the California Labor Code, including but not limited to section 1198.

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

All applicable IWC Wage Orders provide:

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

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be

permitted to use such seats when it does not interfere with the performance of their duties.

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

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

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

EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, EMPLOYER failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 13 (A-B) and/or 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting EMPLOYER to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁹

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

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

Unlawful Deductions: Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee." Based on information and belief EMPLOYER made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES paychecks, including but not limited to, from paychecks of employees correctly classified as

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

exempt, during the relevant period, including but not limited to deducting costs of uniforms and/or other business costs and/or deducting wages for purported overpayments from previous pay periods and/or unlawfully deducting wages for negligently damaged property and/or deducting costs advanced by EMPLOYER from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES' final paychecks. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects EMPLOYER to civil penalties under Labor Code Section 2699.

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

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

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, 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 (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials) to NON-EXEMPT AGGRIEVED

EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

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

Based on information and belief, 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, (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials)

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

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED

EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹⁰

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

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

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

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

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/work shoes/personal protective/safety gear and the use of NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES’ personal mobile phone, internet and/or data usage for work related purposes, including but not limited to, to receive and respond to work related messages and/or phone calls. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were

¹⁰ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

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

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

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of purchasing and/or maintaining work uniforms/clothing/shoes and/or protective gear (e.g., gloves and/or face masks).

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

As explained above, 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/work clothing/work shoes, personal protective/safety gear.

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

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

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with

carrying out their duties required that COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Inquiries into Salary History

Labor code section 432.3 provides in part “(b) An employer shall not, orally or in writing, personally or through an agent, seek salary history information, including compensation and benefits, about an applicant for employment.” Based on information and belief, EMPLOYER has a policy and/or practice of unlawfully asking NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to reveal their salary history when applying for employment with EMPLOYER. For example, when COMPLAINANT applied for employment with EMPLOYER, COMPLAINANT was required to fill out an application that requested, among other things, the following information: Name and address of former employer, length of former employment relationship, and the “starting” and “ending” “hourly rate/salary/pay” of the former employment relationship. Based on information and belief, EMPLOYER required other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose the same or similar information, in violation of Labor Code section 432.3.

Moreover, by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose prior salary information in a written application for employment, EMPLOYER violated Labor Code section 432.5 by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose their salary history as a condition of obtaining employment with EMPLOYER, in violation of California law.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

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

The California Labor Code places certain procedural and substantive limits on employers’ ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act

(ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

Based on further information and belief, EMPLOYER knew that requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful

criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

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

Unlawful Inquires into Criminal History

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

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

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

Unlawful PAGA Waiver

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

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

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

component to a PAGA action because ‘every PAGA action ... is a representative action on behalf of the state.’”)

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

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

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

Specifically, Labor Code section 6400, requires the following:

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

Labor Code section 6401 provides as follows:

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

Labor Code section 6402 prohibits the following:

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

Similarly, Labor Code section 6404 provides as follows:

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

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

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

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

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

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

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

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

Finally, Labor Code section 6407 provides:

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

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

At all relevant times, EMPLOYER employed COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subject to Labor Code sections 6400-6404, 6406, and 6407. At all relevant times, EMPLOYER had and has a policy and practice of failing to furnish and use safety devices and safeguards and of failing to adopt and use practices, means, methods, operations, and/or processes which are reasonably adequate to render such employment and place of employment safe and healthful, pursuant to, including but not limited to, Labor Code section 6401. At all relevant times EMPLOYER had and has a policy and practice of requiring or permitting employees to go or be in in any employment or place of employment which is not safe and healthful, pursuant to Labor Code section 6402. At all relevant times, EMPLOYER had and has a policy and practice of failing or neglecting to: provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe; adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and do every other thing reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code section 6403.

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

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

At all relevant times, EMPLOYER had and has a policy and practice of failing within one business day after EMPLOYER or a representative of EMPLOYER received notice of potential exposure to COVID-19 to provide written notice to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES and/or their exclusive representatives, who were on the premises at the same worksite as a qualifying individual who was within the infectious period that they may have been exposed to COVID-19. Based on further information and belief, EMPLOYER had and has a policy and practice of failing within one business day after EMPLOYER or a representative of EMPLOYER received a notice of potential exposure to COVID-19 to provide NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state or local laws, including but not limited to, workers' compensation, and options for exposed employees, including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the employee. As such, EMPLOYER violated, without limitation, Labor Code sections 6409.6 and 6432.

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

At all relevant times, EMPLOYER had and has a policy and practice of failing to notify the local public health agency in the jurisdiction of the worksite of the names, number, occupation and worksite of employees who had a laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health; a positive COVID-19 diagnosis from a licensed health care provider;

a COVID-19 related order to isolate provided by a public health official; or died due to COVID-19, in the determination of a county public health department or per inclusion in the COVID-19 statistics of a county. As such, EMPLOYER violated, without limitation, Labor Code sections 6409.6 and 6432.

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

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

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

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

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

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. Likewise, COMPLAINANT requests that the Division of Occupational Safety and Health investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, COMPLAINANT requests that the agency and division inform COMPLAINANT if they do not intend to investigate these violations so that COMPLAINANT may file a lawsuit with respect to the allegations discussed in this NOTICE.

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

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

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

Thank you for your attention to this matter.

Best Regards,

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

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

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

Thu, May 4, 2023 at 2:13 PM

5/4/2023

LWDA Case No. LWDA-CM-952818-23
Law Firm : Crosner Legal, PC
Plaintiff Name : Ricardo Ramirez
Employer: Ingardia Bros. Produce, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT

4

Thank you for your Court Complaint Submission.

1 message

DIR PAGA Unit <no-reply@formassembly.com>
To: mathew@crosnerlegal.com

Wed, Sep 4, 2024 at 2:15 PM

09/04/2024 02:16:07 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Complaint

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

5

EXHIBIT

6

Ricardo Ramirez v. Ingardia Bros Produce
(Orange County Superior court Case No. 30-2023-01336578-CU-OE-CXC)

Crosner Legal Time Report

Tasks	Zachary Crosner	Jamie Serb	Nikki Trenner	Kiara Bramasco	Branden Hamilton	J. Kirk Donnelly
Pre-filing Case Investigation	5.5	0.0	0.0	2.2	7.6	0.0
Pleadings and Law and Motion	5.1	0.0	0.0	4.5	0.0	8.8
Discovery and Post-Filing Investigation	7.2	0.0	24.2	0.0	0.0	0.0
Court Appearances	0.0	0.0	0.0	0.0	0.0	0.0
Case Management; Litigation Strategy & Analysis	12.7	18.3	4.8	0.0	0.0	1.0
Mediation and Settlement	4.9	21.6	32.7	0.0	0.0	0.0
Total Hours	35.4	39.9	61.7	6.7	7.6	9.8
Hourly Rate	\$800	\$750	\$700	\$650	\$600	\$900
Lodestar	\$28,320	\$29,925	\$43,190	\$4,355	\$4,560	\$8,820

Total Hours: 161.1
Total Lodestar: \$119,170