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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 LOS ANGELES**

12 WALTER WALKER, on behalf of the State
of California, and others similarly situated
13 and aggrieved,

14 Plaintiff,

15 v.
16

17 PELICAN PRODUCTS, INC., a Delaware
Corporation; STAFFMARK INVESTMENT
18 LLC, a Delaware Limited Liability
Company; and DOES 1-100, inclusive,
19

20 Defendants.
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Case No.: 23STCV19531

Assigned for All Purposes to:
Hon. Richard L. Fruin
Dept. 15

**DECLARATION OF CHAD SAUNDERS
IN SUPPORT OF MOTION FOR
APPROVAL OF SETTLEMENT UNDER
PRIVATE ATTORNEY'S GENERAL ACT**

Date: November 14, 2024
Time: 9:15 a.m.
Dept.: 15

Reservation: 226528229837

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DECLARATION OF CHAD SAUNDERS

I, CHAD SAUNDERS, Declare:

1. I am an attorney duly licensed to practice in California and before this Court, and I am a partner with Crosner Legal, PC, counsel of record for plaintiff Walter Walker. 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 is a redline of the Settlement Agreement showing the changes made from the Los Angeles Superior Court's Model Agreement. Attached here 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 ("LWDA"). Attached hereto as Exhibit 4 is a true and correct copy of the LWDA's acknowledgment of receipt of the complaint. Attached hereto as Exhibit 5 is a true and correct copy of the LWDA's acknowledgement 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 Pelican Products is an American multinational company that designs and manufactures portable lighting systems, temperature controlled packaging and protective cases. Their products are used in many industries including military, law enforcement, fire safety, and consumer entertainment. The company's flagship product, Pelican cases, are molded plastic cases that seal with an airtight and watertight gasket. Defendant Staffmark Investment is a staffing company that, inter alia, placed works with Pelican. Plaintiff was employed by Defendant Staffmark and placed to work on an assembly line at Pelican's facility in Torrance, California from May 2022, through September 2022. His job was to assemble cases for rifles and other similar products.

5. Plaintiff alleges he was a joint employee of Defendants, and that Defendants committed a number of Labor Code violations as to the aggrieved employees. First, he alleged

1 employees waited in long lines to clock in for their shifts and when clocking back in from their meal
2 breaks because there were only three available time clocks for use by hundreds of employees. Per
3 Plaintiff, this practice results in employees being underpaid by 10-15 minutes per shift. He further
4 alleges employees at Pelican would frequently be instructed to continue working past the fifth hour
5 of their shifts rather than going on their meal breaks, and that Pelican would record that they took
6 precisely 30-minute meal breaks within the fifth hour of work in order to avoid paying meal period
7 premiums and regardless of how much time they were eventually permitted to take their meals. He
8 also contends that employees frequently were not provided with second 10-minute rest periods due
9 to the pressure to complete their work, and did not receive net 10-minute breaks due to the time it
10 takes to walk to and from the break room. Finally, he alleged employees have to pay for many of
11 the tools to do their jobs because the tools provided by Pelican are inadequate or not provided at all.
12 He also alleged other violations and theories in his notice to the Labor & Workforce Development
13 Agency (“LWDA”).

14 6. After appropriate notice to the LWDA, on August 15, 2020, Plaintiff filed the
15 underlying PAGA-only representative action against Defendants, alleging Defendant (1) failed to
16 pay minimum wages for all work performed; (2) failed to pay all overtime wages; (3) failed to
17 provide meal periods; (4) failed to provide rest periods; (5) failed to provide accurate, itemized wage
18 statements; (6) failed to maintain accurate and complete payroll records; (7) maintained unlawful
19 labor conditions; (8) failed to pay employees all wages due at least twice each calendar month; and
20 (9) failed to pay all wages due at termination and during employment; (10) failed to keep
21 timekeeping records; (11) failed to reimburse expenses; (12) failed to provide suitable seating; (13)
22 failed to produce employment records; and (14) failed to provide sick pay, among other violations.

23 7. After Plaintiff filed his complaint, the Parties stipulated to send Plaintiff’s “individual”
24 PAGA claims to arbitration, and to stay the “representative” PAGA claims. They further agreed to
25 attempt an early mediation pending initiation of the individual arbitration, and also agreed to a
26 protocol for exchanging additional documents and information before the mediation. Through this
27 informal discovery, Defendants provided Plaintiff with information including, inter alia, the number
28 of potential aggrieved employees, the number of aggregate pay periods, sample pay stubs and time

records for around 10% of the aggrieved employees,¹ employee handbooks and manuals, and relevant policy documents regarding Defendants' time keeping and reporting policies, information regarding the number of allegedly aggrieved employees, pay periods at issue, etc.

8. The parties then attended a full day mediation before highly-regarded mediator Louis Marlin, Esq., who has extensive experience mediating wage and hour class and PAGA actions. Before and during the mediation, Plaintiff and his counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks. During mediation, the Parties vigorously debated the likelihood of Plaintiff's ability to proceed on a representative basis as to the PAGA claims, the legal grounds for Plaintiff's claims and Defendants' defenses, and the Parties' data analyses and conclusions based on data provided by Defendants. After a contentious full day of negotiations, the Parties reached agreement on all major issues. The Parties subsequently formalized their tentative settlement in the Settlement Agreement before the Court for approval.

SUMMARY OF SETTLEMENT TERMS

9. Under the settlement, Defendants will pay a non-reversionary settlement amount of \$400,000 (the “Gross Settlement Amount” or “GSA”), with \$250,000 to be paid by Pelican and \$150,000 by Staffmark. The GSA is inclusive of payments to the LWDA and Aggrieved Employees, costs of settlement administration, a service award to Plaintiff Walker, and reasonable attorney’s fees and costs. After payment of settlement administration costs, Plaintiff’s service award, and reasonable attorney’s fees and costs from the GSA, Plaintiff presently estimates about \$240,796.52 will remain (the “Net Settlement Amount” or “NSA”). Seventy five percent of the NSA (about \$180,597.39) will go to the LWDA, and the remaining 25% (about \$60,199.13) will be distributed to the Aggrieved Employees in proportion to the total number of Eligible Pay Periods each individual worked during the PAGA Period. I estimate the average award will be about \$73.86.

10. The Parties propose using Simpluris, Inc. as the Settlement Administrator. Simpluris has extensive experience administering PAGA settlements, and has agreed to cap its fees at

¹ Plaintiff's experts at Berger Consulting suggested this sample would be statistically significant and enable them to extrapolate to the entire Aggrieved Employee population.

1 \$3,500.00. No later than fourteen (14) days of the Effective Date or January 22, 2025, whichever occurs
2 latest, Defendants will fund the settlement and then within 14 days thereafter Simpluris will mail a
3 Notice and settlement check to all Aggrieved Employees via regular First-Class U.S. Mail, using
4 the most current, known mailing addresses identified in Defendants' records. Aggrieved Employees
5 need not submit claim forms and will automatically receive a Notice and settlement check.
6 Settlement checks will be negotiable for 180 days, after which time any unclaimed residual funds
7 will be forwarded to the California State Controller's Unclaimed Property Fund.

8 11. The California Supreme Court has explained that a judgment in "a representative
9 action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of
10 2004 ... is binding not only on the named employee plaintiff but also on government agencies and
11 any aggrieved employee not a party to the proceeding." Arias v. Superior Court (2009) 46 Cal.4th
12 969, 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil
13 penalty claims brought under PAGA. Under Arias, the order the Parties request the Court enter is
14 intended to be "binding not only on the named employee plaintiff but also on government agencies
15 and any aggrieved employee not a party to the proceeding." While Plaintiff is entering into a general
16 release any and all claims against Defendant, the Settlement Agreement protects the rights of the
17 Aggrieved Employees to bring their own individual claims should they wish (except for those
18 released in the Settlement). For these reasons, the Parties contend the release applies only to the
19 PAGA claims alleged, and the Settlement Agreement specifically provides the Release is
20 inapplicable to any claims other than those brought under PAGA.

21 **THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE, FURTHERS THE**
22 **PURPOSES UNDERLYING PAGA, AND WARRANTS APPROVAL**

23 12. First, Plaintiff alleged Defendant failed to pay all minimum and overtime wages. Per
24 Plaintiff, the Pelican warehouse where he work is very large and only has three stations where
25 employees can clock in and out, and when a large number of employees for each shift arrive at the
26 same time employees must wait in long lines to clock in for their shifts despite arriving on time and
27 ready to begin. The same is true when they try to clock back in from their meal breaks. This practice
28 results in employees being underpaid by 10-15 minutes per shift.

1 13. Plaintiff next claims that, due to the pressure to complete their work quickly,
2 employees frequently were instructed to continue working past the fifth hour of their shifts rather
3 than going on their meal breaks. When this occurred, Plaintiff alleges Defendants still would record
4 that they took precisely 30-minute meal breaks within the fifth hour of work in order to avoid paying
5 them meal period premiums and regardless of how much time they were eventually permitted to
6 take their meals. According to Plaintiff's expert, about 60% of the pay periods at issue contain at
7 least one unique meal period violation. Plaintiff also claims employees are frequently not provided
8 with second 10-minute rest periods due to the pressure to complete their work, and also do not
9 received net 10-minute breaks due to the time it takes to walk to and from the break room.

10 14. Next, Plaintiff alleged the aggrieved employees have to pay for many of the tools
11 needed to do their jobs because the tools provided by Defendants are inadequate or not provided at
12 all. These items can include hammers, box cutters, gloves, steel-toed boots, and masks, among other
13 things. Plaintiff and the aggrieved employees received no reimbursement for these expenses.

14 15. Plaintiff also brought claims derivative of the foregoing claims, including a
15 derivative wage statement claim based on the alleged failures to pay accurately track and report
16 hours worked and to pay all wages due, and failure to pay all wages due and owing upon separation
17 of employment under Labor Code §§ 201-203. Plaintiff alleged additional violations for failure to
18 provide suitable seating, failure to provide safe work spaces, failure to produce employment records,
19 and failure to provide sick pay. Plaintiff's investigation of these claims, however, suggested they
20 were not particularly viable. For example, it appeared Plaintiff was the only individual for whom
21 employment records were not produced on demand, or that there were any issues related to seating
22 or cognizable safety violations. Accordingly, these claims did not factor significantly in Plaintiff's
23 evaluation of liability and damages.

24 16. For mediation, Defendants indicated they collectively employed approximately 815
25 non-exempt employees in California during the applicable PAGA period, and these individuals
26 worked approximately 25,508 pay periods during that time. Based on the data and information
27 provided by Defendant, Plaintiff estimated Defendants' maximum PAGA exposure at
28 approximately \$8,997,300.

1 17. We calculated these amounts as follows:

2 **Unpaid Wage Claims**

3 25,508 pay periods * 100% violation rate * \$100/violation = 2,550,800

4 **Meal Period Violations**

5 25,508 pay periods * 48.7% violation rate * \$100/violation = \$1,242,200

6 **Rest Period Violations**

7 25,508 pay periods * 100% violation rate * \$100/violation = 2,550,800

8 **Expense Reimbursement (Tools)**

9 815 employees * 1 violation/employee * \$100/violation = \$81,500

10 **Wage Statement Violations**

11 25,508 pay periods * 100% violation rate * \$100/violation = 2,550,800

12 **Untimely Paid Final Wages**

13 212 former employees * 1 violation/employee * \$100/violation = \$21,200

14 18. In response to Plaintiff's unpaid wage claims for alleged "off the clock work" due to
15 waiting in line to clock in, Defendants argued that their time keeping policies are legally compliant
16 and that they accurately tracked and paid for all hours worked. Defendants strongly disputed that
17 employees spent any excessive amount of time waiting to clock in or out, and that clocking in and
18 out was efficiently accomplished given the layout of the facilities, the number of time clocks
19 available, and employee schedules. Per Defendants, to the extent any kind of off the clock work
20 may have happened, it was intermittent, against company policy, and done without company
21 authorization or knowledge.

22 19. For the meal and rest break claims, Defendants likewise offered multiple defenses.
23 First, they emphasized the applicable written meal and rest break policies were compliant, that they
24 authorized and permitted all necessary meal and rest breaks, and that employees received full
25 uninterrupted lunch periods and rest breaks free from employer control as reflected in the time
26 records that showed the vast majority of meal periods were timely and lasted a full 30 minutes.
27 Defendants also emphasized they paid thousands of dollars in meal period premium payments for
28 purportedly non-compliant break violations reflected in the records. As with meal breaks,

1 Defendants argued employees likewise received all required breaks and the breaks lasted a full net
2 10 minutes of break time as required under California law.

3 20. On the expense reimbursement claim, Defendants argued employees were provided
4 with all tools and equipment needed to perform their jobs and, to the extent employees brought their
5 own tools to work it was purely a matter of personal preference and was neither “reasonable” or
6 “necessary.” As such, Defendants argued no reimbursement was owed under Labor Code § 2802.

7 21. Plaintiff also alleged derivative violations of Labor Code § 226 (wage statement
8 violations) and §§ 201-203 (waiting time penalties). The derivative wage statement claims (based
9 on the unpaid wage and meal/rest claims). The waiting time penalties claim, also is entirely
10 derivative and will rise or fall along with the primary claims, in addition to being subject to “good
11 faith” and other defenses available to Defendants. Accordingly, Plaintiff had to discount the value
12 of this claim significantly in light of these multiple potential defenses. Defendants also contended
13 a substantial discount should be applied to the civil penalties for these derivative (i.e., “stacked”)
14 violations, as it would be unfair to penalize Defendants multiple times for the same violation.

15 22. Defendants also emphasized PAGA gives the Court wide latitude to reduce the
16 amount of civil penalties “based on the facts and circumstances of a particular case” if “to do
17 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor
18 Code § 2699(h). I am aware that several state and federal courts in California have applied
19 significant reductions to PAGA civil penalties even after plaintiff prevailed on the merits.

20 23. Defendants raised various and multi-layered defenses to each of Plaintiff’s claims,
21 anyone of which, if successful, could have decimated Plaintiff’s case. And Defendants vowed to
22 raise all these defenses at trial. Accordingly, Plaintiff faced risky issues going forward with this
23 litigation, and it could have taken years to realize any recovery in this action along with the
24 possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be
25 unmanageable, Defendants also intended to raise additional defenses on damages, including the
26 proper measure of civil penalties and the appropriate discount to place on any assessment of such
27 penalties.

24. Although Plaintiff and I counsel believe we could have prevailed, there was no such guarantee. When the risks of overcoming prevailing at trial on the merits on all claims, and securing 100% of the theoretical civil penalties for each and every pay period at issue, all are factored into the equation, the settlement value is reasonable and supported. Of course, to recover anywhere near the maximum penalties Plaintiff would have to shoot the moon and win both liability and maximum penalties on all claims, which outcome, for the reasons discussed, is unlikely. Given Defendants' various procedural and merits defenses, as well as the substantial penalty reductions ordered in the cases above – which occurred after trial – the proposed settlement is eminently reasonable.

SUBMISSION TO THE LWDA

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

THE REQUESTED FEES AND COSTS ARE FAIR AND REASONABLE

26. Under the terms of the Settlement Agreement, my office respectfully request2 an award of attorney's fees equal to 1/3 Gross Settlement Amount, or \$133,333.33. A one-third common fund attorney fee award is consistent with what courts have awarded Plaintiffs' counsel in other representative actions. Awarding attorney's fees of one-third of a gross settlement amount is favored by California courts when a fund established for the common benefit of others is involved, such as here.

27. There are several additional factors why I believe that the Court should award one-third of the common fund as a reasonable attorney's fee. First, counsels' efforts resulted in a common fund settlement amount of \$400,000.00, which for the reasons explained, is fair and reasonable in light of the risks/defenses Defendant raised in litigation and threatened to raise at trial and in post-trial appeals. Further, this is a significant sum that furthers the purposes underlying PAGA such as augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring future non-compliance. Moreover, this

1 result was achieved by the work and success of this office, who negotiated the settlement after
2 extensive preparation, informal discovery, and an adversarial mediation.

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

8 29. Third, Crosner Legal are experienced class and representative action litigators, and
9 have achieved several approved PAGA settlements. This experience and expertise, combined with
10 the high quality of work performed, resulted in the settlement achieved in this case.

11 30. I received a Bachelor of Arts in Philosophy from the University of Maryland
12 Baltimore County in 2001 and a Juris Doctor from New College of California School of Law in
13 2008. While a law student, I completed 600 hours of public interest law apprenticeship, at Legal
14 Services for Children, Disability Rights California, and as a Certified Legal Intern with the Bay
15 Area Legal Aid Housing Clinic. I have been a member of the California Bar since 2008. Since
16 2009, I have been a class action attorney, practicing mainly in the area of California wage and
17 hour law, with the firms of Hoffman & Lazear, Kralowec Law P.C., Sundeen Salinas & Pyle, and
18 Hunter Pyle Law. I joined Crosner Legal in May 2021 as a Senior Associate Attorney and became
19 a partner in 2024. In this role I routinely draft complaints and discovery, brief motions, appear
20 before California courts for law and motion and settlement hearings, lead mediation negotiations,
21 and draft settlement approval documents. I also regularly communicate with class members, co-
22 counsel, and opposing counsel. I have represented thousands of employees in both state and
23 federal courts, involving class actions and PAGA claims, and I have assisted in obtaining millions
24 of dollars for employees during my years of practice.

25 31. I have been approved as Class Counsel by numerous courts throughout California,
26 including in the following cases: *Alonzo, et al. v. First Transit, Inc.* (Los Angeles Superior Court case no.
27 BC433932; settled for \$2 million); *Sadiq v. Greatwide Dedicated Transport II, LLC* (Alameda County
28 Superior Court case no. RG15789114; settled for \$762,500); *Kostyuk v. Golden State Overnight Delivery*

1 *Service, Inc.* (Alameda County Superior Court case no. RG14727191; settled for \$1.25 million); *Newcomb,*
2 *et al. v. J.B. Hunt Transport, Inc.* (Alameda County Superior Court case no. RG16815734; settled for
3 \$750,000); *Hooper v. URS Midwest, Inc.,* (San Bernardino Superior Court Case No. CIV DS1607489;
4 settled for approximately \$3 million); *Brooks, et al. v. Chariot Transit, Inc.* (San Francisco Superior Court
5 case no. CGC-16-554398; settled for \$750,000); *Austin, et al. v. Foodliner, Inc.* (Northern District of
6 California, case number 16-cv-07185-HSG; settled for \$1.2 million); *Castro, et al. v. ABM Industries, Inc.,*
7 *et al.* (Northern District of California, case number 17-cv-03026-YGR; settled for \$5.4 million); *Benton v.*
8 *Northern California InAlliance* (Sacramento County Superior Court, case number 34-2021-00293036;
9 settled for \$650,000); *French v. Lonza, Inc.* (Los Angeles County Superior Court, case number
10 21STCV08097; settled for \$556,500); *McKinnie v. Iron Mountain Secure Shredding, Inc., et al.* (Los
11 Angeles Superior County Superior Court, case number 21STCV05707; settled for \$1.5 million); and *Bland*
12 *v. Marin Airporter* (Marin County Superior Court, case number CIV 2003640; settled for \$450,000).

13 32. Zach Crosner is a 2010 graduate of University San Diego School of Law, and has some 13
14 years of experience as a practicing attorney, all of which have focused on litigation of employment, labor
15 law, consumer, and class action claims. Following graduation, he immediately began working for a
16 nationally recognized plaintiff's complex litigation firm, CaseyGerry, where he had the fortune of working
17 directly with past presidents of the consumer attorneys and recipients of trial attorneys of the year awards.
18 He also worked for former CAALA and CLAY trial attorney of the year recipient, attorney Conal Doyle,
19 as his sole associate attorney. During his tenure at these firms, he focused on advocating for the rights of
20 consumers and employees in class action litigation, civil rights and employment litigation, catastrophic
21 injuries, insurance bad faith and appellate litigation.

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

28 34. Mr. Crosner currently is an executive board member of the Wage and Hour Committee

1 and the Legislative Committee for the California Employment Lawyers Association; a member of the
2 Grassroots Advocacy Team for the National Employment Lawyers Association; Wage and Hour
3 Committee member and Class Action Committee member for the National Trial Lawyers; a member of the
4 American Association for Justice; and member of the Pound Civil Justice Institute. He was selected for
5 2018-20 by Super Lawyers as a “Southern California Rising Star” for employment and labor law.

6 35. Brandon Brouillette is a graduate of Loyola Law School, Los Angeles, from which
7 he received a *juris doctorate* degree in 2009. Prior to attending law school, he attended the
8 University of Southern California, from which he received a bachelors of science in Business
9 Administration in 2006.

10 36. He has been a Partner at Crosner Legal since February 1, 2023. Prior to joining
11 Crosner Legal, he was a Senior Associate and Team Director of a Wage and Hour Litigation Team
12 at Capstone Law APC, which he originally joined as an associate attorney in May 2016.

13 37. Since being admitted to the California State Bar in 2010, Mr. Brouillette’s entire
14 legal career has been dedicated to protecting employee and consumer rights through the
15 prosecution of class action and representative actions filed on behalf of plaintiffs in class actions
16 and statewide representative actions. Throughout his career he has managed or co-managed more
17 than 100 class action and PAGA representative cases, from initial filing of the complaint through
18 final resolution.

19 38. In particular, he has served as class counsel in several certified class action cases,
20 including:

- 21 a. *Party City Wage and Hour Cases*, JCCP4781 (class counsel for certified class of non-
22 exempt hourly employees who worked for Defendants in California)
- 23 b. *Lewis v. Express Messenger Systems*, Los Angeles Superior Court Case No. BC501521
24 (class counsel for certified class of last-mile delivery drivers who were alleged to be
25 misclassified as independent contractors)
- 26 c. *Ramirez-Vivar v. Grifols Diagnostic Solutions, Inc., et al.*, Alameda County Superior
27 Court, Case No. RG21099519 (class counsel for certified classes of non-exempt hourly
28 employees who worked for Defendants in California)

1 d. *Jones v. LA Live* , Los Angeles County Case No. BC687908 (class counsel for certified
2 issue classes consisting of hourly employees who worked at Staples Center and Nokia
3 Theater)

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

7 e. *Cruz v. Walmart*, Los Angeles County Super. Ct. Case No. 18STCV03128 (\$15 million
8 global PAGA settlement on behalf of hourly employees statewide for alleged Labor
9 Code violations.)

10 f. *Vorise v. 24 Hour Fitness USA, Inc.*, Contra Costa County Super. Ct., Case No. C 15-
11 02051 (\$11 million global PAGA settlement on behalf of over 36,000 employees for
12 Labor Code violations.)

13 g. *Gross v. Sodexo*, Kern County Super Ct., Case No. BCV-18-101746 Capstone (\$4.75
14 million class and PAGA settlement on behalf of class of non-hourly employees for
15 Labor Code violations.)

16 h. *Campbell v. AEG* (\$1.8M class and PAGA settlement on behalf of group of hourly
17 employees who worked at concert venues in California for alleged Labor Code
18 violations)

19 i. *Fiebelkorn v. AEG*, et al. Los Angeles Superior Court Case No. BC717337 (\$1.75M
20 class settlement on behalf of group of hourly employees who worked at Oakland
21 Coliseum for alleged Labor Code violations)

22 j. *Amaro v. Anaheim Arena Management*, Orange County Superior Court Case No. 30-
23 2017-00917542 (\$2,212,500 class and PAGA settlement on behalf of group of hourly
24 employees who worked at Honda center in Anaheim California for alleged Labor Code
25 violations)

26 k. *Espindola v. Panda Express*, San Bernardino Superior Court Case No. CIVDS1931455
27 (\$3.125M class and PAGA settlement on behalf of hourly employees statewide for
28 alleged Labor Code violations)

- 1 1. *Gold v. Benihana*, San Diego Court Superior Court Case No. 37-2016-00022320-CU-
2 OE-NC (\$2.25M class and PAGA settlement on behalf of hourly employees statewide
3 for alleged Labor Code violations)
- 4 m. *Party City Wage and Hour Cases*, JCCP4781 (\$6.5M class and PAGA settlement on
5 behalf of hourly employees statewide for alleged Labor Code violations)
- 6 n. *Lewis v. Express Messenger Systems*, Los Angeles County Super Court Case No.
7 BC501521 (\$10.5M class and PAGA settlement on behalf of a statewide group of
8 independent contractor last-mile delivery drivers alleged to be misclassified)
- 9 o. *Flores v. Tesla*, Alameda County Superior Court Case No. RG18907072 (\$4M class
10 and PAGA settlement on behalf of statewide group of hourly employees for alleged
11 Labor Code violations)
- 12 p. *Ruiz v. Disney Stores*, San Bernardino Superior Court Case No. CIVDS2016983 (\$2M
13 class and PAGA settlement on behalf of statewide group of hourly employees who
14 worked at retail stores in California for alleged Labor Code violations)
- 15 q. *Ramirez v. Yin Management*, Sacramento County Superior Court Case No. 34-2021-
16 00301530 (\$1.8M class and PAGA settlement on behalf of statewide group of hourly
17 employees who worked at Defendant's McDonald's franchises in California for alleged
18 Labor Code violations).
- 19 r. *Suhartono v. RRG Besh*, Los Angeles County Superior Court Case No. 19STCV22184
20 (\$2.25 class and PAGA settlement on behalf of statewide group of hourly employees
21 who worked at Defendant's McDonald's franchises in California for alleged Labor
22 Code violations).
- 23 s. *Gomes v. Kura Sushi*, Los Angeles County Superior Court Case No. 19STCV18977
24 (\$1.75M class and PAGA settlement on behalf of statewide group of hourly employees
25 who worked at Defendant's restaurants in California for alleged Labor Code violations)
- 26 t. *Saldana v. Hydrochem*, Contra Costa Superior Court Case No. CIVMSC19-02624
27 (\$1.38M class and PAGA settlement on behalf of statewide group of hourly employees
28 for alleged Labor Code violations).

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

3 u. *Lopez v. Seterus, et al.*, Los Angeles Superior Court Case No. BC484297 (\$3M Class
4 settlement on half of thousands of borrowers in California, Florida, and Texas for UCL
5 violations premised on improper late fee collections)

6 v. *McGill v. Citibank*, Riverside County Superior Court Case No. RIC 1109398 (in
7 landmark case that established the ‘McGill rule’ precluding the waiver of public
8 injunctive relief in pre-dispute arbitration agreements, negotiated confidential
9 settlement on behalf of consumer who sued for damages and class injunctive relief
10 stemming from marketing of credit protector plan)

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

14 42. Kiara Bramasco received her undergraduate degree, magna cum laude, from Loyola
15 Marymount University in Political Science, and then received her JD from Loyola Law School in 2018.
16 She then spent several years with well-known plaintiff’s firm Moss Bollinger, first as a law clerk and then
17 as an associate, where her practice focused on employment law, particularly wage and hour class action
18 and PAGA litigation. She joined Crosner Legal in 2021.

19 43. Branden Hamilton obtained her undergraduate degree from UCLA in 2004, and her
20 law degree from George Washington University in 2007. She has been affiliated with my firm since
21 2017 and became Of Counsel with Crosner Legal in 2019, and her practice focuses almost
22 exclusively on wage and hour class and representative actions. She has spent her entire career
23 representing plaintiffs in employment litigation, including several years as an associate at well-
24 known plaintiff’s firm Carlin & Buchsbaum.

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

1 in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252 (Sacramento
2 Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017 (*Montelone v. Ocean*
3 *Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a \$1.8 million wage and
4 hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc. dba American*
5 *Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and hour class action
6 settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160 JGB (C.D. Cal.)), a
7 \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham Vacation*
8 *Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million wage and
9 hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-CV-04864-
10 YGR (N.D.Cal.)); a \$7.25 million wage and hour class action settlement in 2020 in *Avina, et al. v.*
11 *First Alarm Security & Patrol, Inc.*, Case No. 18CV323753 (Santa Clara Cty. Super Ct.); a \$2.2
12 million wage and hour class action settlement in 2021 (*Ghorchian, et al. v. West Hills Hospital, et*
13 *al.*, Case No. LS029737 (Los Angeles Cty. Super. Ct.)); a \$2.85 million dollar wage and hour
14 settlement in 2021 (*Valencia v. The Original Mowbray's Tree Service, Inc.*, Case No.
15 CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1 million wage and hour class action
16 settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super.
17 Ct.)), a \$1.4 million wage and hour class action settlement in 2023 in *Correa, et al. v. FedEx Supply*
18 *Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.), a \$2.38 million wage and
19 hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case No.
20 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million wage and hour class action settlement
21 in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino Cty. Super.
22 Ct.); \$1.015 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo Autism*
23 *Therapy*, Case No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a \$1.15 million wage and
24 hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*, Case No.
25 21STCV18512 (Los Angeles Cty. Super. Ct.); a \$1.5 million wage and hour class action settlement
26 in *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty. Super. Court); a \$1.3
27 million wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*, Case No.
28 20STCV06618 (Los Angeles Cty. Super. Court); a \$1.925 million wage and hour class settlement

1 in 224 in *Lo v. Cyberpower, Inc.*, Case No. 21STCV31479 (Los Angeles Cty. Super. Ct); and a
2 \$1.19 million dollar wage and hour class action settlement in 2024 in *Herrera v. Signature Flight*
3 *Support LLC*, Case No. 22STCV18367 (Los Angeles Cty. Super. Ct.).

4 45. Based upon the qualifications and experience set forth above, I believe the
5 following hourly rates are reasonable: Zach Crosner \$800/hr, Brandon Brouillette and Chad
6 Saunders \$750/hr, Brenden Hamilton \$600/hr; Kiara Bramasco, \$650/hr.

7 46. I request the Court apply the above hourly billing rates in this case, as it reasonable
8 in the California legal market for attorneys handling wage and hour class and PAGA actions. I
9 have personal knowledge of the hourly rates charged by a number of plaintiff-side wage and hour
10 class action firms in major California legal markets for partner-level attorneys with experience
11 comparable to mine. These rates have ranged from \$650 to \$900 per hour for calendar years
12 2018-2023. Some examples include attorney Ron Makarem of Makarem & Associates in Los
13 Angeles, with 28 years of experience, \$900/hour (2023), Matthew Matern of Matern Law Group
14 in Los Angeles, with approximately 26 years of experience \$850/hour (2018); Craig Ackermann
15 of Ackermann & Tilajef, PC in Los Angeles with approximately 25 years of experience \$850/hour
16 (2021), Michael Singer and Isam Khoury of Cohelan Khoury & Singer in San Diego, 35 years and
17 45 years of experience respectively, both \$825/hour (2018), Zachary Crosner of Crosner Legal PC
18 in Los Angeles, 13 years of experience \$750/hour (2022), and James Kawahito of Kawahito Law
19 Group in Los Angeles, with approximately 16 years of experience \$750/hour (2020).

20 47. The requested rates also comport with the adjusted Laffey Matrix, which provides
21 that reasonable hourly rates for attorneys with 10+ years of experience, such as myself, Mr.
22 Crosner, and Mr. Brouillette, are over \$800/hour. The adjusted Laffey Matrix may be found at
23 <http://www.laffeymatrix.com/sec.html>.

24 48. Fourth, Crosner Legal has been representing Plaintiff Murillo (and the State of
25 California) in this matter on a strictly contingent basis and as such, had to forego other financial
26 opportunities to litigate other cases, incurred the risk of non-recovery after a substantial
27 investment of time, money, and resources, and have done so since the inception of this case
28 without any payment or compensation. This is not an easy burden for a small firm. If, despite

1 these hardships and risks, the best this office could hope for is merely to be paid our customary
2 hourly rate multiplied by the number of hours worked on the case, then we would not be
3 compensated for the hardships and serious risks it faced litigating this contingency case, and
4 would not be incentivized to take on similar private attorney general cases in the future.

5 49. Fifth, the request for attorney's fees in the amount of one-third of the common fund
6 falls well within the norms accepted by state and federal courts in California in comparable wage
7 and hour actions actually handled by this office. Moreover, the award of a one-third fee recovery
8 under the common fund doctrine was recently approved by the California Supreme Court in
9 Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480. For all of the above reasons, a common
10 fund fee award here in the amount of one-third of the \$400,000 common fund, or \$133,333.33, is
11 fair and reasonable.

12 50. Crosner Legal expended a total of 211.35 attorney hours on this matter, and
13 accordingly the firm's lodestar totals approximately \$159,148.00, excluding time to be incurred at
14 the hearing on this motion and thereafter to implement and administer the settlement. Crosner
15 Legal's lodestar is summarized in Exhibit 6 hereto. Accordingly, on a lodestar basis, the requested
16 fees are actually lower than the base lodestar and accordingly there is no request to apply a
17 lodestar enhancement.

18 51. As noted, my office counsel has represented Plaintiff for some eighteen months
19 with respect to this matter and has expended a significant amount of time and resources in that
20 representation. We agreed to litigate this case on a purely contingent basis and in so doing
21 assumed considerable risk of non-payment for its fees and costs, as discussed above, and as is the
22 case with these matters in general. Under all relevant factors (as outlined herein and in the
23 accompanying memorandum), we respectfully request the Court award the requested fees of
24 \$133,333.33 based on the common fund theory with a corresponding lodestar cross-check and no
25 lodestar enhancement.

26 52. I also request reimbursement of Crosner Legal's actual out-of-pocket expenses
27 incurred to prosecute this action. These expenses were incidental and necessary to the effective
28 representation of the employees.

53. Crosner Legal's costs are \$12,370.15, including court filing/service of process fees, mediation fees, expert fees, and postage. Notably, the requested costs do not include any and all printing and research charges. 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	\$1,450.00
Mediation Fees	\$9,000.00
Expert Fees	\$1,950.00
PAGA Filing Fee	\$75.00
Postage	\$255.15
Total Costs and Expenses	\$12,370.15

The requested costs are reasonable and uncontested and should be approved in full.

54. Here, pursuant to the Settlement Agreement, Plaintiff seeks an incentive award of \$10,000. This request is reasonable given the much broader release that Plaintiff is agreeing to, as well as his efforts in this case and the risks he undertook on behalf of the Aggrieved Employees. Additionally, by contacting and retaining counsel to pursue these claims, Plaintiff made this settlement possible for the other Aggrieved Employees and the LWDA, while shouldering the risk of being liable for Defendant's litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing them at risk of discrimination by future prospective employers. Among taking many other actions assisting in the successful litigation of this case, Plaintiff provided substantial factual information to counsel, attended numerous meetings with my office to discuss the case, and generally participated in all phases of the litigation. Accordingly,

1 the requested enhancement payments to Plaintiff is appropriate and justified as part of the
2 Settlement.

3 55. For the foregoing reasons, it is respectfully requested that the Court approve the
4 settlement in its entirety.

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct. Executed on October 9, 2024, at Berkeley, California.

7
8 

9 Declarant

EXHIBIT

1

PAGA SETTLEMENT AGREEMENT AND RELEASE

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Walter Walker (“Plaintiff”) and defendants Pelican Products, Inc. and Staffmark Investments, LLC (“Defendants”). The Agreement refers to Plaintiff and Defendants collectively as the “Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1. “Action” means the action Plaintiff filed against Defendants captioned “*WALTER WALKER, on behalf of the State of California, and others similarly situated and aggrieved, Plaintiff, v. PELICAN PRODUCTS, INC., a Delaware Corporation; STAFFMARK INVESTMENT LLC, a Delaware Limited Liability Company; and DOES 1-100, inclusive, Defendants,*” case number 23STCV19531, initiated on August 15, 2023, and pending in the Superior Court of the State of California, County of Los Angeles.

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 the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.

1.4. “Aggrieved Employee” means all non-exempt, hourly workers in California who, at any time during the PAGA Period, were either (i) assigned to work at Pelican Products, Inc. and were employed by Staffmark Investment LLC, or (ii) directly employed by Pelican Products, Inc.

1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendants’ possession, including the name, last-known mailing address, Social Security number, and number of PAGA Pay Periods worked by each Aggrieved Employee.

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 PAGA Settlement.

1.8. “Court” means the Superior Court of California, County of Los Angeles.

1.9. “Complaint” means the operative Complaint in the Action.

1.10. “Defendants” means Pelican Products, Inc. and Staffmark Investment LLC.

1.11. “Defense Counsel” means Greenberg Traurig, LLP for Pelican Products, Inc., and Atkinson, Andelson, Loya, Ruud & Romo for Staffmark Investment LLC.

1.12. “Effective Date” means, and refers to, the date the Settlement shall become effective which will be the later of the following: (a) the 61st day (unless the last such date is a weekend or holiday, in which case the next business day shall be used) after the Court enters an order granting approval of this Settlement and entering of judgment in the Action, provided that no timely appeal is taken of the order of approval and the entering of judgment in the Action; or (b) if any timely appeals are filed, the date of the resolution and entry of remittitur (or withdrawal) of any such appeal in a way that does not alter the terms of the settlement.

1.13. “Enhancement Payment” means the Court-approved payment to Plaintiff, in addition to Plaintiff’s Individual PAGA Payment, in exchange for the general release and waiver of claims specified in this Agreement.

1.14. “Gross Settlement Amount” means \$400,000.00, payable \$250,000.00 by Pelican Products, Inc. and \$150,000.00 by Staffmark Investment, LLC, which is the total amount Defendants agree to pay under the Settlement except as provided in Section 8 below. The Gross Settlement Amount will be used to pay the Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Administrator’s Expenses Payment, and the Enhancement Payment.

1.15. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the Net Settlement Amount calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.16. “Judgment” means the judgment entered by the Court following approval of the Settlement.

1.17. “LWDA” means the California Labor and Workforce Development Agency.

1.18. “LWDA PAGA Payment” means the 75% of the Net Settlement Amount paid to the LWDA under Labor Code section 2699, subd. (i).

1.19. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Administration Expenses Payment, and the Enhancement Payment. The remainder is to be paid as follows: 75% to the LWDA as the LWDA PAGA Payment and 25% to the Aggrieved Employees as Individual PAGA Payments.

1.20. “PAGA Counsel” means Zachary Crosner, Brandon Brouillette, and Chad Saunders of Crosner Legal, PC, the attorneys representing Plaintiff in the Action.

1.21. “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.

1.22. “PAGA Pay Period” means any pay period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.

1.23. “PAGA Period” means the period from June 9, 2022 through either the date on which the Court enters the Approval Order or October 20, 2024, whichever occurs first, subject to adjustment by either Defendant as discussed in Section 8 of this Agreement.

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

1.25. “PAGA Notice” means Plaintiff’s PAGA letter sent on June 9, 2023, to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.26. “Plaintiff” means Walter Walker, the named plaintiff in the Action.

1.27. “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel and as described in Section 5 below.

1.28. “Released Parties” means: Defendants and all of their respective present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be liable for any of the Released PAGA Claims, and Defendants’ counsels of record in the Action.

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

2. RECITALS.

2.1. On June 9, 2023, Plaintiff sent a PAGA Notice to Defendants and the LWDA indicating his intention to pursue a PAGA action to recover civil penalties for various purported wage and hour violations of the California Labor Code.

2.2. On August 15, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for various purported wage and hour violations of the California Labor Code, including violations of Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7, 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 6400-6404, 6406-6407, 6409.6, and 6432.

2.3. On July 22, 2024, the Parties participated in an all-day mediation presided over by Louis Marlin, Esq., which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery, Defendants’ wage and hour policies, as well as time and payroll data related to the Aggrieved Employees.

2.5. 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.

2.6. If the Court does not grant approval of the Settlement, the Action shall be returned to its status as of July 22, 2024. For the avoidance of doubt, Plaintiff's non-individual, representative PAGA claim shall remain stayed in Court while he adjudicates his individual claims in arbitration.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Section 8 below, Defendants promise to pay \$400,000.00 and no more as the Gross Settlement Amount. Pelican Products, Inc. will pay \$250,000.00 of the Gross Settlement Amount. Staffmark Investment LLC will pay \$150,000.00 of the Gross Settlement Amount. Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.2 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim form as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

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: A PAGA Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is \$133,333.33. and PAGA Counsel Litigation Expenses Payment of not more than \$15,000.00. Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Parties agree that a decision by the Court to award PAGA Counsel amounts less than the requested PAGA Counsel Fees Payment or PAGA Counsel Litigation Expenses Payment shall not be a basis for Plaintiff to void this Agreement. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment, other than provided for by this Agreement. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Administrator: \$3,500.00 for Administrator Expenses Payment and as approved by the Court. To the extent the Administration Expenses are less than estimated or less than the Court approves, the Administrator will allocate the remainder to the Net Settlement Amount.

3.2.3. To the Plaintiff: In addition to Plaintiff's Individual PAGA Payment, Plaintiff shall be entitled to request, and Defendants will not oppose, an Enhancement Payment of not more than \$10,000.00 subject to the Court's approval. If the Court awards an Enhancement Payment less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Parties agree that a decision by the Court to award Plaintiff an amount

less than the requested Enhancement Payment shall not be a basis for Plaintiff to void this Agreement. The Administrator will pay the Enhancement Payment using an IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Enhancement Payment.

3.2.4. To the LWDA and Aggrieved Employees: The Net Settlement Amount will be allocated as follows: 75% 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 the Net Settlement Amount by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Data. Within fourteen (14) days of the Effective Date, Defendants will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employees' 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. For avoidance of doubt, neither PAGA Counsel nor Plaintiff shall be permitted to review or receive a copy of the Aggrieved Employee Data. Defendants have a continuing duty to immediately notify PAGA Counsel if either of them 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 Defendants 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.

4.2. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than fourteen (14) days of the Effective Date or January 22, 2025, whichever occurs latest.

4.3. Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendants funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, Administration Expenses Payment, Enhancement Payment, PAGA Counsel Fees Payment, and 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.

4.3.1. 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.

4.3.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within seven (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.

4.3.3. 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.

4.3.4. The payment of Individual PAGA Payments shall not obligate Defendants 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. RELEASES OF CLAIMS. Effective on the date when Defendants fully fund the entire Gross Settlement Amount Plaintiff, Aggrieved Employees, and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Defendants and the Released Parties from: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Complaint; (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the PAGA Notice; and (c) any and all known or unknown liabilities, claims, demands for damages, costs, indemnification, contribution, or any other thing for which Plaintiff has or may have, including known or unknown causes of action, claims, or demands for damages, costs, indemnification, or contribution, whether certain or speculative, which may have come into existence at any time prior to the time of execution of this Agreement, or that may be brought in the future in connection with any acts or omissions that have arisen at any time prior to execution of this Agreement, including, but not limited to, any and all claims that Plaintiff has actually alleged or could have alleged to date, any and all claims arising out of Plaintiff's work for Defendants and/or employment status, any claims related to FMLA or CFRA leave, any claims that Plaintiff was wrongfully terminated or have been discriminated against or retaliated against in any way, or that Plaintiff's privacy rights have been violated in any way, any and all claims arising under a "whistleblower" statute (including any claims arising under Labor Code §§ 6310, 1102.5), any and all claims for wage and hour violations, any and all claim for tortious conduct resulting in personal injuries or intentional infliction of emotional distress, any and all claims for violations under the California Business and Professions Code Section 17200, and any and all claims for or related to harassment, discrimination or retaliation on the basis of race, color, national origin, religion, gender, age, sexual orientation, ancestry, medical condition, marital status, pregnancy, physical or mental disability, associational

disability, or other protected class, discharge in violation of public policy and/or violation of any state and federal laws, regulations, or constitutions, including without limitation, the *Age Discrimination in Employment Act* (“ADEA”) and its amendment, the *Older Workers Benefit Protection Act* (“OWBPA”), the *California Fair Employment and Housing Act* (“FEHA”), the *Americans with Disabilities Act*, *Title VII of the Civil Rights Act of 1964*, as amended, Secs. 503 and 504 of the *Rehabilitation Act of 1973*, as amended, *The Fair Labor Standards Act*, as amended, *the National Labor Relations Act*, as amended, *the Labor – Management Relations Act*, as amended, *the Worker Adjustment and Retraining Notification Act of 1988*, as amended, *the Pregnancy Discrimination Act*, *the Employee Retirement Income Security Act of 1974*, as amended, *the Family Medical Leave Act of 1993*, as amended, *the California Family Rights Act*, as amended, and *the California Labor Code*, including divisible individual claims under the *Private Attorneys General Act*, Labor Code § 2698, et seq, and *the California Wage Orders* (“Plaintiff’s Release”).

Plaintiff’s Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at any time. Plaintiff acknowledges that he may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff’s discovery of them.

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

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

5.2 Release by 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 Parties for the duration of the PAGA Period from all claims for civil penalties pursuant to PAGA that were alleged, or reasonably could have been alleged, based on the facts alleged in the Complaint or the PAGA Notice, including, all claims for civil penalties under PAGA for failure to pay for all hours worked, unpaid wages (including minimum wage, straight time, overtime and double time), meal period violations (including meal premiums), rest break violations (including rest premiums), failure to pay premium wages at the correct regular rate, failure to pay final wages, failure to provide accurate wage statements, failure to provide personnel and/or employment records, failure to pay vacation wages, failure to reimburse business expenses, failure to pay split shift premiums, failure to pay reporting time pay, failure to provide sick leave (including supplemental sick leave), failure to pay sick leave, failure to timely pay wages during employment, unlawful noncompete practices, failure to provide suitable resting facilities, seating violations, unlawful deductions, unlawful agreements, unlawful financial and criminal background checks, unlawful PAGA waivers, unlawful inquiries into criminal histories, failure to provide a safe and healthful workplace, failure to keep requisite

payroll records, failure to pay rest periods and nonproductive time for workers paid on a piece rate and/or commission basis, violations of California's Day of Rest Law, and for attorneys' fees and costs.

5.2.1 The Parties agree that there is no statutory right for any Aggrieved Employee to opt out or otherwise exclude themselves from the Settlement and the associated release of claims and rights under the PAGA.

5.3 Release by PAGA Counsel. PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly prepare and file a 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, amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance, all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA, and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. The notice of settlement to be sent to the Aggrieved Employees and the proposed Order Granting Approval of PAGA Settlement are to be mutually agreed upon by the Parties prior to being presented to the Court. Plaintiff will also provide Defendants with the motion for approval of the Settlement at least five (5) business days before the motion is filed with the Court.

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 thirty (30) 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 Order Granting Approval of PAGA Settlement 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.

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

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of providing reports to state and federal tax authorities, if any.

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.

Pelican Products, Inc. estimates that its direct employees worked approximately 23,800 pay periods from June 9, 2022, through July 22, 2024. Staffmark Investment, LLC estimates its employees placed at Pelican worked approximately 1,708 pay periods from June 9, 2022, through July 22, 2024. If either Defendant's pay period number has increased from the earlier of the date the Court enters the Approval Order or October 20, 2024, by more than 7%, then the Gross Settlement Amount paid by that Defendant shall be proportionally increased. For example, if the number is 8% higher, the Gross Settlement Amount will be increased by 1%. In the alternative, either Defendant may elect to shorten the PAGA Period applicable to the direct employees of that same defendant only in order to stay within the 7% cushion.

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 and 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 Defendants that any of the allegations in the Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendants' 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 Plaintiff 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, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

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 approved 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. Plaintiff and PAGA Counsel will not make any public disclosures of any kind regarding the Settlement, including but not limited to postings on PAGA Counsel's website and postings on any social media sites/outlets, with the exception of disclosing the Settlement to the Court and the LWDA. PAGA Counsel will take all steps necessary to ensure Plaintiff is aware of, and will encourage him to adhere to, the restriction against any public disclosures regarding the Settlement. PAGA Counsel will not include or use the Settlement for any marketing or promotional purposes, or for attempting to influence either Defendant's business relationships, either before or after the Court approves of this Settlement. Following approval of the Settlement, Plaintiff and PAGA Counsel will not initiate any communications with the media or third parties regarding this Settlement. If contacted by the media or third parties will only discuss information publicly available. PAGA Counsel will take all steps necessary to ensure Plaintiff is aware of, and will encourage him to adhere to, the restriction against initiating any media comment. Nothing herein will restrict PAGA Counsel from including publicly available information regarding this settlement in future judicial submissions regarding PAGA Counsel's qualifications and experience.

10.11.1 To the extent permitted by law, all agreements made, and orders entered during the 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 and documents provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the 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 Defendants unless, prior to the Administrator's payment of all Settlement Funds, Defendants make a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

10.13 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.

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

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:

Brandon Brouillette; bbrouillette@crosnerlegal.com
Chad Saunders; chad@crosnerlegal.com
Crosner Legal, PC
9440 Santa Monica Blvd., Suite 301
Beverly Hills, CA 90210
(866) 276-7637

To Defendant Pelican Products, Inc.:

Ashley Farrell Pickett; ashley.farrellpickett@gtlaw.com
Oscar Peralta; oscar.peralta@gtlaw.com
Greenberg Traurig, LLP
1840 Century Park East, Ste. 1900
Los Angeles, CA 90067-2121
310.586.7708

and

Pelican Products, Inc.
23215 Early Avenue, Torrance, CA 90505
legal@pelican.com

To Defendant Staffmark Investment LLC:

Susan Steward; SSteward@aalrr.com
Joshua Carlon; Joshua.Carlon@aalrr.com
Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive, Ste. 300,
Cerritos, CA 90703
(562) 653-3200

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

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

Executed on 09 / 26 / 2024

By: 

Plaintiff, Walter Walker

CROSNER LEGAL, P.C.

Executed on 09/13/2024

By: 

Brandon Brouillette
Chad Saunders
Attorneys for Plaintiff

Executed on _____

By: _____
Defendant, Pelican Products, Inc.

GREENBERG TRAURIG, LLP

Executed on _____

By: _____
Ashley Farrell Pickett
Oscar Peralta
Attorneys for Defendant Pelican Products,
Inc.

Executed on _____

By: _____
Defendant, Staffmark Investment LLC

ATKINSON, ANDELSON, LOYA,
RUUD & ROMO

Executed on _____

By: _____
Susan Steward
Joshua Carlon
Attorneys for Defendant Staffmark
Investment LLC

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Executed on _____

By: _____
Plaintiff, Walter Walker

CROSNER LEGAL, P.C.

Executed on _____

By: _____
Brandon Brouillette
Chad Saunders
Attorneys for Plaintiff

Executed on _____

By: _____
Defendant, Pelican Products, Inc.

GREENBERG TRAURIG, LLP

Executed on _____

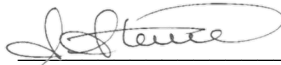
By: _____
Ashley Farrell Pickett
Oscar Peralta
Attorneys for Defendant Pelican Products,
Inc.

Executed on Sep 16, 2024

By: *Suzanne Perry*
Defendant, Staffmark Investment LLC

ATKINSON, ANDELSON, LOYA,
RUUD & ROMO

Executed on September 16, 2024

By: 
Susan Steward
Joshua Carlon
Attorneys for Defendant Staffmark
Investment LLC

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

Executed on _____

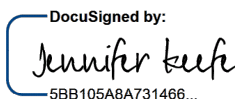
By: _____
Plaintiff, Walter Walker

CROSNER LEGAL, P.C.

Executed on _____

By: _____
Brandon Brouillette
Chad Saunders
Attorneys for Plaintiff

Executed on 10/01/2024 _____

By:  _____
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Defendant, Pelican Products, Inc.

GREENBERG TRAURIG, LLP

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By:  _____
Ashley Farrell Pickett
Oscar Peralta
Attorneys for Defendant Pelican Products,
Inc.

Executed on _____

By: _____
Defendant, Staffmark Investment LLC

ATKINSON, ANDELSON, LOYA,
RUUD & ROMO

Executed on _____

By: _____
Susan Steward
Joshua Carlon
Attorneys for Defendant Staffmark
Investment LLC

EXHIBIT

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~~[MODEL] PAGA SETTLEMENT AGREEMENT~~ AGREEMENT AND RELEASE

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff

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~~Walter Walker (“Plaintiff”) and defendant (“XYZ”) defendants Pelican Products, Inc. and Staffmark Investments, LLC (“Defendants”). The Agreement refers to Plaintiff and XYZ Defendants collectively as the “Parties,” or individually as “Party.”~~

~~1. 1. DEFINITIONS.~~

~~1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations action Plaintiff filed against XYZ Defendants captioned – “WALTER WALKER, on behalf of the State of California, and others similarly situated and aggrieved, Plaintiff, v. PELICAN PRODUCTS, INC., a Delaware Corporation; STAFFMARK INVESTMENT LLC, a Delaware Limited Liability Company; and DOES 1-100, inclusive, Defendants,” case number 23STCV19531, initiated on August 15, 2023, and pending in the Superior Court of the State of California, County of Los Angeles.~~

~~1.2. “Administrator” means NAME, the neutral entity the Parties have agreed to appoint to administer the Settlement.~~

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

~~1.4. “Aggrieved Employee” means [e.g., a person employed by XYZ all non-exempt, hourly workers in California and classified as a who worked for XYZ, at any time during the PAGA Period], were either (i) assigned to work at Pelican Products, Inc. and were employed by Staffmark Investment LLC, or (ii) directly employed by Pelican Products, Inc.~~

~~1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in XYZ’s Defendants’ possession, including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods worked by each Aggrieved Employee.~~

~~1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably~~

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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.

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1.7. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.

1.8. "Court" means the Superior Court of California, County of Los Angeles.

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1.9. "Complaint" means the operative Complaint in the Action.

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1.10. "Defendants" means Pelican Products, Inc. and Staffmark Investment LLC.

1.11. "Defense Counsel" means —Greenberg Traurig, LLP for Pelican Products, Inc., and Atkinson, Andelson, Loya, Ruud & Romo for Staffmark Investment LLC.

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1.9 "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.

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1.12. "Effective Date" means, and refers to, the date the Settlement shall become effective which will be the later of the following: (a) the 61st day (unless the last such date is a weekend or holiday, in which case the next business day shall be used) after the Court enters an order granting approval of this Settlement and entering of judgment in the Action, provided that no timely appeal is taken of the order of approval and the entering of judgment in the Action; or (b) if any timely appeals are filed, the date of the resolution and entry of remittitur (or withdrawal) of any such appeal in a way that does not alter the terms of the settlement.

1.13. "Enhancement Payment" means the Court-approved payment to Plaintiff, in addition to Plaintiff's Individual PAGA Payment, in exchange for the general release and waiver of claims specified in this Agreement.

1.14. "Gross Settlement Amount" means \$400,000.00, payable \$250,000.00 by Pelican Products, Inc. and \$150,000.00 by Staffmark Investment, LLC, which is the total amount XYZ agrees Defendants agree to pay under the Settlement except as provided in Paragraph 9Section 8 below. The Gross Settlement Amount will be used to pay the Individual PAGA Payments, the LWDA

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~~PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment and the Administrator's Expenses Payment, and the Enhancement Payment.~~

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~~1.11 1.15. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA PenaltiesNet Settlement Amount calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.~~

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~~1.12 1.16. "Judgment" means the judgment entered by the Court based upon following approval of the Final Approval Settlement.~~

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~~1.13 1.17. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subdivision (i).~~

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~~1.14 1.18. "LWDA PAGA Payment" means the 75% of the PAGA PenaltiesNet Settlement Amount paid to the LWDA under Labor Code section 2699, subdivisionsubd. (i).~~

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~~1.15 1.19. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court; Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment and the Administration Expenses Payment, and the Enhancement Payment. The remainder is to be paid as follows: 75% to the LWDA as the LWDA PAGA Payment and 25% to the Aggrieved Employees as Individual PAGA Payments.~~

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~~1.16 1.20. "PAGA Counsel" means —Zachary Crosner, Brandon Brouillette, and Chad Saunders of Crosner Legal, PC, the attorneys representing the Plaintiff in the Action.~~

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~~1.17 1.21. "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.~~

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~~1.18 1.22. "PAGA Pay Period" means any Pay Periodpay period during which an Aggrieved Employee worked for XYZDefendants, for at least one day during the PAGA Period.~~

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~~1.19 1.23. "PAGA Period" means the period from —June 9, 2022 through either the date on which the Court enters the Approval Order or October 20, 2024, whichever occurs first, subject to —adjustment by either Defendant as discussed in Section 8 of this Agreement.~~

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~~1.20 1.24. "PAGA" means the Private Attorneys General Act (Lab.Labor Code, §§ 2698, et seq.).~~

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1.24 1.25. "PAGA Notice" means Plaintiff's PAGA letter sent on June 9, 2023, to XYZ Defendants and the LWDA [and Plaintiff's letter to XYZ and the LWDA] providing notice pursuant to Labor Code section 2699.3, subdivision (a).

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1.22 "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.

1.23 1.26. "Plaintiff" means Walter Walker, the named plaintiff in the Action.

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1.24 “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.

1.25 1.27. “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel and as described in ParagraphSection 5 below.

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1.26 1.28. “Released Parties” means XYZ: Defendants and eachall of its former and their respective present directors, officers, and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, owners, [members], officers, directors, employees, agents, attorneys, insurers, predecessors, successors, and assigns [subsidiaries] [affiliates], and any individual or entity which could be liable for any of the Released PAGA Claims, and Defendants’ counsels of record in the Action.

1.27 1.29. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

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1.28 “XYZ” means named Defendant _____.

2. 2. RECITALS.

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2.1. On —June 9, 2023, Plaintiff sent a PAGA Notice to Defendants and the LWDA indicating his intention to pursue a PAGA action to recover civil penalties for various purported wage and hour violations of the California Labor Code.

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2.4 2.2. On August 15, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against XYZ for _____. [The Complaint is the operative complaint in the Action (the “Operative Complaint”).] [On _____, Plaintiff filed a [e.g., First Amended Complaint] alleging causes of action against XYZ for _____. The [e.g., First Amended] Complaint is the operative complaint in the Action (the “Operative Complaint”). XYZ denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liabilityDefendants for the causes of action allegedvarious purported wage and hour violations of the California Labor Code, including violations of Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7, 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 6400-6404, 6406-6407, 6409.6, and 6432.

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2.2 Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff gave timely written notice to XYZ and the LWDA by sending the PAGA Notice.

2.3 2.3. On _____
(type in additional dates)

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☐ July 22, 2024, the Parties participated in an all-day mediation presided over by Louis Marlin, Esq., which led to this Agreement to settle the Action.

☐ _____ (describe alternative means of negotiation) _____

2.4.2.4. Prior to ☐ mediation ☐ negotiating the Settlement, Plaintiff obtained, through

☐ formal ☐ informal discovery, Defendants' wage and hour policies, as well as time and payroll data related to the Aggrieved Employees.

2.5. 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.

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2.6. If the Court does not grant approval of the Settlement, the Action shall be returned to its status as of July 22, 2024. For the avoidance of doubt, Plaintiff's non-individual, representative PAGA claim shall remain stayed in Court while he adjudicates his individual claims in arbitration.

3. MONETARY TERMS.

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3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9Section 8 below, XYZ promises Defendants promise to pay \$400,000.00 and no more as the Gross Settlement Amount. XYZ has Pelican Products, Inc. will pay \$250,000.00 of the Gross Settlement Amount. Staffmark Investment LLC will pay \$150,000.00 of the Gross Settlement Amount. Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.14.2 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim form as a condition of payment. None of the Gross Settlement Amount will revert to XYZ Defendants.

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

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3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than %one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$133,333.33, and PAGA Counsel Litigation Expenses Payment of not more than \$15,000.00. Defendants will not oppose requests for Court approval of these payments, provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Parties agree that a decision by the Court to award PAGA Counsel amounts less than the requested PAGA Counsel Fees Payment or PAGA Counsel Litigation Expenses Payment shall not be a basis for Plaintiff to void this Agreement. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment, other than provided for by this Agreement. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds XYZ Defendants harmless, and indemnifies XYZ Defendants from any dispute or controversy regarding any division or sharing of any of these Payments.

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3.2.2. To the Administrator: A NUMBER for Administrator Expenses Payment not to exceed

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~~\$_____ except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or than estimated or less than the Court approves payment less than \$_____, the Administrator will retain allocate the remainder into the Net Settlement Amount.~~

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~~\$_____ to be paid from the Gross The Net Settlement Amount, with 75% (\$_____) will be allocated as follows: 75% to the LWDA PAGA Payment and 25% (\$_____) allocated to the Individual PAGA Payments.~~

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~~3.2.3.1—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 (\$_____) the Net Settlement Amount by the total number of PAGA Period Pay Periods worked by~~

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all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

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3.2.3.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. 4. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

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4. SETTLEMENT FUNDING AND PAYMENTS.

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4.1 Aggrieved Employee Pay Periods. Based on a review of its records to date, XYZ estimates there are _____ Aggrieved Employees who worked a total _____ of PAGA Pay Periods.

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4.2 4.1. Aggrieved Employee Data. Within [e.g., 15]fourteen (14) days, XYZ of the Effective Date, Defendants will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employees' 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. XYZ hasFor avoidance of doubt, neither PAGA Counsel nor Plaintiff shall be permitted to review or receive a copy of the Aggrieved Employee Data. Defendants have a continuing duty to immediately notify PAGA Counsel if either of them 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 XYZDefendants 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.

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4.3 4.2. Funding of Gross Settlement Amount, XYZDefendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than [14] days after the Effective Datesixty-one (61) calendar days after the Court enters the Approval Order or January 22, 2025, whichever occurs latest.

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4.4 4.3. Payments from the Gross Settlement Amount, Within [e.g., fourteen (14)] days after XYZDefendants funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, theEnhancement Payment, PAGA Counsel Fees Payment, and 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.

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~~4.4.1~~ 4.3.1. 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.

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~~4.4.2~~ ~~4.3.2.~~ The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within ~~seven (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.

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~~4.4.3~~ ~~4.3.3.~~ 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~~.

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~~4.4.4~~ ~~4.3.4.~~ The payment of Individual PAGA Payments shall not obligate ~~XYZDefendants~~ 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.

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~~5.~~ ~~5.~~ **RELEASES OF CLAIMS.** Effective on the date when ~~XYZDefendants~~ fully ~~funds~~ fund the entire Gross Settlement Amount Plaintiff, ~~Aggrieved Employees~~, and PAGA Counsel will release claims against all Released Parties as follows:

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~~Plaintiff's Release. Plaintiff and his, her or their respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors and assigns generally, release and discharge Released Parties from all claims, transactions or occurrences [that occurred during the PAGA Period], including, but not limited to: all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release").~~ ~~5.1 Plaintiff's Release. Plaintiff and his respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Defendants and the Released Parties from: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Complaint; (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the PAGA Notice; and (c) any and all known or unknown liabilities, claims, demands for damages, costs, indemnification, contribution, or any other thing for which Plaintiff has or may have, including known or unknown causes of action, claims, or demands for damages, costs, indemnification, or contribution, whether certain or speculative, which may have come into existence at any time prior to the time of execution of this Agreement, or that may be brought in the future in connection with any acts or omissions that have arisen at any time prior to execution of this Agreement, including, but not limited to, any and all claims that Plaintiff has actually alleged or could have alleged to date, any and all claims arising out of Plaintiff's work for Defendants and/or employment status, any claims related to FMLA or CFRA leave, any claims that Plaintiff was wrongfully terminated or have been discriminated against or retaliated against in any way, or that Plaintiff's privacy rights have~~

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been violated in any way, any and all claims arising under a “whistleblower” statute (including any claims arising under Labor Code §§ 6310, 1102.5), any and all claims for wage and hour violations, any and all claim for tortious conduct resulting in personal injuries or intentional infliction of emotional distress, any and all claims for violations under the California Business and Professions Code Section 17200, and any and all claims for or related to harassment, discrimination or retaliation on the basis of race, color, national origin, religion, gender, age, sexual orientation, ancestry, medical condition, marital status, pregnancy, physical or mental disability, associational disability, or other protected class, discharge in violation of public policy and/or violation of any state and federal laws, regulations, or constitutions, including without limitation, the *Age Discrimination in Employment Act* (“ADEA”) and its amendment, the *Older Workers Benefit Protection Act* (“OWBPA”), the *California Fair Employment and Housing Act* (“FEHA”), the *Americans with Disabilities Act*, *Title VII of the Civil Rights Act of 1964*, as amended, Secs. 503 and 504 of the *Rehabilitation Act of 1973*, as amended, *The Fair Labor Standards Act*, as amended, the *National Labor Relations Act*, as amended, the *Labor – Management Relations Act*, as amended, the *Worker Adjustment and Retraining Notification Act of 1988*, as amended, the *Pregnancy Discrimination Act*, the *Employee Retirement Income Security Act of 1974*, as amended, the *Family Medical Leave Act of 1993*, as amended, the *California Family Rights Act*, as amended, and the *California Labor Code*, including divisible individual claims under the *Private Attorneys General Act*, Labor Code § 2698, et seq. and the *California Wage Orders* (“Plaintiff’s Release”).

5.1 Plaintiff’s Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at any time ~~or based on occurrences outside the PAGA Period.~~ Plaintiff acknowledges that Plaintiffhe may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff’sPlaintiff’ Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff’s discovery of them.

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

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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.

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 Parties for the duration of the PAGA Period from all claims for PAGA civil penalties pursuant to PAGA that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated alleged in the Operative Complaint ~~[-]~~ and/or the PAGA Notice, including, all claims for civil penalties under PAGA for failure to pay for all hours worked, unpaid wages (including minimum wage, straight time, overtime and double time), meal period violations (including meal premiums), rest break violations (including rest premiums), failure to pay premium wages at the correct regular rate, failure to pay final wages, failure to provide accurate wage statements, failure to provide personnel and/or employment records, failure to pay vacation wages, failure to reimburse business expenses, failure to pay split shift premiums, failure to pay reporting time pay, failure to provide sick leave (including supplemental sick leave), failure to pay sick leave, failure to timely pay wages during employment, unlawful noncompete practices, failure to provide suitable resting facilities, seating violations, unlawful deductions, unlawful agreements, unlawful financial and criminal background checks, unlawful PAGA waivers, unlawful inquiries into criminal histories, failure to provide a safe and healthful workplace, failure to keep requisite payroll records, failure to pay rest periods and nonproductive time for workers paid on a piece rate and/or commission basis, violations of California's Day of Rest Law, and for attorneys' fees and costs.

5.2.1 The Parties agree that there is no statutory right for any Aggrieved Employee to opt out or otherwise exclude themselves from the Settlement and the associated release of claims and rights under the PAGA.

5.3 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT, The Parties

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agree to jointly prepare and file ~~an application or a~~ motion for approval of this Settlement.

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~~6.1~~ **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~~Section 2699, ~~subdivision~~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; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel;

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(iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), ~~Operative~~ Complaint (~~Lab.~~Labor Code, § section 2699, subd. (l)(1)), this Agreement (~~Lab.~~Labor Code, § section 2699, subd. (l)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. The notice of settlement to be sent to the Aggrieved Employees and the proposed Order Granting Approval of PAGA Settlement are to be mutually agreed upon by the Parties prior to being presented to the Court. Plaintiff will also provide Defendants with the motion for approval of the Settlement at least five (5) business days before the motion is filed with the Court.

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~~6.2~~ **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 ~~thirty (30)~~ 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 Preliminary Order Granting Approval of PAGA Settlement to the Administrator.

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6.3 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.

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7. SETTLEMENT ADMINISTRATION.

7.1-7.1

Selection of Administrator. The Parties have jointly selected

NAME to serve as the Administrator and verified that, as a condition of appointment,

NAME 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.

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

7.3 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 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.

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8. AGGRIEVED EMPLOYEE SIZE ESTIMATES and ESCALATOR CLAUSE AND ESCALATOR CLAUSE. Pelican Products, Inc. estimates that its direct employees worked

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approximately 23,800 pay periods from June 9, 2022, through July 22, 2024. Staffmark Investment, LLC estimates its employees placed at Pelican worked approximately 1,708 pay periods from June 9, 2022, through July 22, 2024. If either Defendant's pay period number has increased from the earlier of the date the Court enters the Approval Order or October 20, 2024, by more than 7%, then the Gross Settlement Amount paid by that Defendant shall be proportionally increased. For example, if the number is 8% higher, the Gross Settlement Amount will be increased by 1%. In the alternative, either Defendant may elect to shorten the PAGA Period applicable to the direct employees of that same defendant only in order to stay within the 7% cushion.

Based on its records, XYZ estimates that, as of the date of this Settlement Agreement, there are Aggrieved Employees who worked Pay Periods during the PAGA Period.^{iv}

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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.

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~~9.1~~ 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, and 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.

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10. ADDITIONAL PROVISIONS.

~~10.1~~ 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 XYZ Defendants that any of the allegations in the Operative Complaint have merit or that XYZ has Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that XYZ's Defendants' 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, XYZ reserves Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to contest XYZ's Defendants' 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).

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~~10.2~~ 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.

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~~10.3~~ 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel, separately, warrant and represent that they are authorized by Plaintiff and XYZ 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.

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~~10.4~~ 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

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Agreement that may become

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~~necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.~~

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~~10.5 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.~~

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

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~~10.7 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 approved by the Court.~~

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~~10.8 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.~~

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~~10.9 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.~~

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~~10.10 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.~~

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~~Confidentiality. To the extent permitted by law, all agreements made and orders entered during~~
~~10.11 Confidentiality. Plaintiff and PAGA Counsel will not make any public disclosures of any kind regarding the Settlement, including but not limited to postings on PAGA Counsel's website and postings on any social media sites/outlets, with the exception of disclosing the Settlement to the Court and the LWDA. PAGA Counsel will take all steps necessary to ensure Plaintiff is aware of, and will encourage him to adhere to, the restriction against any public disclosures regarding the Settlement. PAGA Counsel will not include or use the Settlement for any marketing or promotional purposes, or for attempting to influence either Defendant's business relationships, either before or after the Court approves of this Settlement. Following approval of the Settlement, Plaintiff and PAGA Counsel will not initiate any communications with the media or third parties regarding this Settlement. If contacted by the media or third parties will only discuss information publicly available. PAGA Counsel will take all steps necessary to ensure Plaintiff is aware of, and will encourage him~~

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to adhere to, the restriction against initiating any media comment. Nothing herein will restrict PAGA Counsel from including publicly available information regarding this settlement in future judicial submissions regarding PAGA Counsel's qualifications and experience.

~~10.11~~ 10.11.1 To the extent permitted by law, all agreements made, and orders entered during the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

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~~10.12~~ 10.12 Use and Return of Aggrieved Employee Data, Information and documents provided to PAGA Counsel pursuant to Evidence Cal. Evid. Code section §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by XYZ Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or California Rules rule of Court rule 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 XYZ Defendants unless, prior to the Administrator's payment of all Settlement Funds, XYZ makes Defendants make a written request to PAGA Counsel for the return, rather than the destruction destructions, of Aggrieved Employee Data.

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~~10.13~~ 10.13 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.

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~~10.14~~ 10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

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~~10.15~~ 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:

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To Plaintiff:

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To XYZ:

Brandon Brouillette; bbrouillette@crosnerlegal.com

Chad Saunders; chad@crosnerlegal.com

Crosner Legal, PC

9440 Santa Monica Blvd., Suite 301

Beverly Hills, CA 90210

(866) 276-7637

To Defendant Pelican Products, Inc.:

Ashley Farrell Pickett; ashley.farrellpickett@gtlaw.com

Oscar Peralta; oscar.peralta@gtlaw.com

Greenberg Traurig, LLP

1840 Century Park East, Ste. 1900

Los Angeles, CA 90067-2121

310.586.7708

To Defendant Staffmark Investment LLC:

Susan Steward; SSteward@aalrr.com

Joshua Carlon; Joshua.Carlon@aalrr.com

Atkinson, Andelson, Loya, Ruud & Romo

ATTACH A REDLINED VERSION TO THEIR MOTIONS OR APPLICATIONS FOR APPROVAL SO THAT THE COURT CAN EASILY SEE EXACTLY HOW THE PARTIES HAVE MODIFIED THIS MODEL AGREEMENT.

ⁱⁱⁱ The Parties are free to negotiate a payment plan structure, if appropriate, and payment deadlines may fall earlier as necessary thereto.

^{iv} Insert negotiated terms, if any, addressing the possibility that XYZ's estimates of the number of Aggrieved Employees or Pay Periods turn out to be understated such as an ADR clause imposing a duty to engage in good faith negotiations or mediation or an "escalator" clause memorializing XYZ's promise to increase the Gross Settlement Amount in an agreed upon proportion to the percentage by which the calculated number of Aggrieved Employees or Pay Periods exceeds XYZ's estimates.

Executed on _____ By: _____
Defendant, Pelican Products, Inc.

GREENBERG TRAURIG, LLP

Executed on _____ By: _____
Ashley Farrell Pickett
Oscar Peralta
Attorneys for Defendant Pelican Products,
Inc.

Executed on _____ By: _____
Defendant, Staffmark Investment LLC

ATKINSON, ANDELSON, LOYA,
RUUD & ROMO

Executed on _____ By: _____
Susan Steward
Joshua Carlon
Attorneys for Defendant Staffmark
Investment LLC

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EXHIBIT

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

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

June 9, 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:

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

Pelican Products, Inc.

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

Pelican Products, Inc.

Attn: Human Resources / Legal Department
23215 Early Avenue
Torrance, CA 90505

C T Corporation System
Agent for Service of Process for:
Staffmark Group, LLC
28 Liberty Street
New York, NY 10005

Staffmark Group, LLC

Attn: CA Registered Agent Authorized
Employees: Amanda Garcia, Gabriela
Sanchez, Daisy Montenegro, Beatrice Casarez-
Barrientez, Jessie Gastelum, John Montijo,
Diana Ruiz, Sarai Marin, Emanuel Jacobo,
Gladys Aguilera, Vivian Imperial, Carlos Paz,
Alberto Damonte, Peter Cayetano, Elsa
Montanez, Xenia Perez, and Yesenia
Carpenter
330 N Brand Blvd #700
Glendale, CA 91203

Staffmark Group, LLC

Attn: Human Resources / Legal Department
201 East 4th St Ste 800
Cincinnati, OH 45202

Pelican Products, Inc.

Attn: Human Resources / Legal Department
3555 NW58th St
Oklahoma City, OK 73008

C T Corporation System

Agent for Service of Process for:

Staffmark Investment LLC

28 Liberty Street
New York, NY 10005

Staffmark Investment LLC

Attn: CA Registered Agent Authorized
Employees: Amanda Garcia, Gabriela
Sanchez, Daisy Montenegro, Beatrice Casarez-
Barrientez, Jessie Gastelum, John Montijo,
Diana Ruiz, Sarai Marin, Emanuel Jacobo,
Gladys Aguilera, Vivian Imperial, Carlos Paz,
Alberto Damonte, Peter Cayetano, Elsa
Montanez, Xenia Perez, and Yesenia
Carpenter
330 N Brand Blvd #700
Glendale, CA 91203

Staffmark Investment LLC

Attn: Human Resources / Legal Department
201 East 4th St Ste 800
Cincinnati, OH 45202

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Division of
Occupational Safety and Health; Pelican Products, Inc.; Staffmark Group, LLC;
and Staffmark Investment LLC

Date: June 9, 2023

Subject: *Walter Walker v. Pelican Products, Inc., et. al.*

Introduction

This office represents PLAINTIFF, Walter Walker (hereinafter “PLAINTIFF”) in connection with PLAINTIFF’s claims under the California Labor Code. PLAINTIFF was, at all relevant times

herein mentioned, an employee of the following entities and individual managing agents of said entities: Pelican Products, Inc.; Staffmark Group, LLC; and Staffmark Investment LLC (hereinafter, these entities and their managing agents are collectively referred to as “DEFENDANTS”). DEFENDANTS may be contacted directly at the addresses listed above.

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

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

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

Said “EXEMPT AGGRIEVED EMPLOYEES” include the following:

- (1) all exempt workers who were directly employed by Staffmark Group, LLC and/or Staffmark Investment LLC regardless of where those exempt workers were assigned or staffed to work – in California at any time within one year of the date of this NOTICE;
- (2) all exempt workers who were assigned/staffed to work at Pelican Products, Inc. and/or by Staffmark Group, LLC and/or Staffmark Investment LLC and/or any other staffing/temporary service agencies at any location in California at any time within one year of the date of this NOTICE; and
- (3) all exempt workers who were directly employed by Pelican Products, Inc. to work at any location in California within one year of the date of this NOTICE (“EXEMPT AGGRIEVED EMPLOYEES”)

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

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

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

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

PLAINTIFF, on behalf of PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that DEFENDANTS have violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.2, 226.7, 245-248.6, 432, 432.5, 432.7, 510, 511, 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 PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

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

control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

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

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

Individual Liability Under Labor Code § 558.1

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

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

PLAINTIFF also offers to DEFENDANTS to place those individuals on notice if DEFENDANTS voluntarily provides their contact information.

General Information

DEFENDANTS own, operate, manage and/or staff its employees to work at including but not limited to warehouses and/or production facilities and/or other facilities and/or other location(s) in California, including but not limited to warehouses and/or production facilities and/or other facilities in Torrance, California. DEFENDANTS, through its various locations serve including but not limited to, the manufacturing and/or warehousing industry.¹ Although DEFENDANTS may operate successful companies or have a noble mission, DEFENDANTS do not comply with California's labor laws.

PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title of warehouse worker and/or a similar title(s) and/or position(s) from on or around May 5, 2022, through on or around August 2, 2022. PLAINTIFF was staffed by Staffmark Group, LLC and/or Staffmark Investment LLC to work at including but not limited to, Pelican Products, Inc. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Torrance, California locations(s). PLAINTIFF regularly worked at least eight (8) hours per day, often working at least eight and one-half hours (8 1/2) to nine (9) hours per day. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked.

Among other things, DEFENDANTS (1) failed and continue to fail to keep accurate and complete time records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continue to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continue to fail to provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continue to refuse to make and/or falsely denied the amount of payments due to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continue to fail to place PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continue to fail to provide legally compliant wage statements to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continue to fail to timely pay wages to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continue to fail to reimburse PLAINTIFF and NON-EXEMPT

¹ See <https://www.pelican.com/> and <https://www.staffmark.com/home/>. Last visited on June 9, 2023.

AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of DEFENDANTS; (12) conducted and continue to conduct illegal criminal and/or financial background checks as a condition of PLAINTIFF's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continue to require PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continue to inquire into PLAINTIFF's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (14) failed and continue to fail to provide suitable seating and suitable resting facilities; and (15) required and continue to require PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment; and (16) fails and continues to fail to provide a safe and healthful workplace to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

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

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

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

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

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

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

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

DEFENDANTS' failure to keep "accurate and complete" payroll records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7.

These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

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

Time and Pay Records

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

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

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

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, DEFENDANTS failed 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. Based on information and belief, DEFENDANTS failed and continue to fail to timely produce complete payroll and personnel records when requested by NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

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

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

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

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

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

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were frequently forced to take late meal periods in order to complete assigned job duties. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were frequently, interrupted during purported meal periods and/or had meal periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned job duties. For example, PLAINTIFF was frequently required to clock out for purported meal periods but to continue working due to the need to complete assigned work tasks. Other times, PLAINTIFF would have to take his meal period late (i.e. after the fifth of work) due to the need to complete assigned work tasks.

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

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

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

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

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

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

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

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

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

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

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

statutes and Wage Order provisions were violated.³ DEFENDANTS' failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

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

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

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

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, DEFENDANTS had no policy in place nor

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

instruction as to the taking of duty-free rest periods. Based on information and belief, DEFENDANTS did not have a compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in practice. For example, based on information and belief, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were at times unable to take compliant rest periods due to their need to complete assigned job duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted to DEFENDANTS' premises.

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

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

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

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

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

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

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

Failure to Provide Suitable Resting Facilities: Per section 13 of all applicable IWC Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: “Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

DEFENDANTS’ locations/facilities are generally similar in layout and design, and there was, and continue to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. DEFENDANTS could have provided NON-EXEMPT AGGRIEVED EMPLOYEES with a resting facility within DEFENDANTS’ facilities/locations with reasonable or no modification, but instead denied and continue to deny, employees with suitable areas to rest (e.g. a 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 DEFENDANTS’ premises which are not designated or reserved for rest, such as their personal vehicles.

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

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

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

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

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”).

under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." *Cal. Lab. Code* § 1194.2.

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

Based on information and belief, DEFENDANTS implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to DEFENDANTS' control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed. For example, as explained above, NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, PLAINTIFF, were frequently required to clock out for purported meal periods but to continue working due to the need to complete assigned job duties, resulting in consistent off-the-clock work and the underpayment of minimum wages and overtime wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For example, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently required to perform pre-shift and/or post-shift off-the-clock work that was neither recorded nor compensated resulting in the underpayment of wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES. For example, 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. For example, based on information and belief, on most if not all days during the relevant period, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to clock out for the end of their shifts but to continue working due to the need to return/maintain tools, clean and/or organize their work stations/areas, provide shift status updates and/or debriefings and/or participate in work meetings, respond to work-related communications and/or perform other work tasks off-the-clock, resulting in the underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. For example, after clocking out for the end of his shifts, PLAINTIFF was usually if not always required to clean his workstation for the next shift worker and/or complete other off-the-clock work tasks, resulting in DEFENDANTS' failure to pay PLAINTIFF for all work time and the consistent underpayment of minimum wages and overtime wages owed to PLAINTIFF.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to be at their assigned workstations at the start of a scheduled shift, thereby forcing NON-EXEMPT AGGRIEVED EMPLOYEES to gather work-related equipment and/or safety gear prior to their scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock work. For example, prior to clocking in for the start of PLAINTIFF's shifts, PLAINTIFF was required to first unbox and/or unpack work-related equipment PLAINTIFF was required to use during his work shifts. This time spent under DEFENDANTS' control, including but not limited to, time spent unboxing and/or unpacking work-related equipment was not recorded and not compensated resulting in DEFENDANTS' failure to pay PLAINTIFF for all hours worked, and the consistent underpayment of minimum wages and overtime wages owed to PLAINTIFF.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to compile tools and/or equipment, set up and/or clean their workstations prior to clocking in for the start of their shifts resulting in DEFENDANTS' failure to pay NON-EXEMPT AGGRIEVED EMPLOYEES for all work time and the underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

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

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were required to wait in line behind other NON-EXEMPT AGGRIEVED EMPLOYEES to access DEFENDANTS' time-keeping computer system and/or terminal and/or were required to spend time initiating, booting up and/or logging onto DEFENDANTS' electronic systems/apps so they could then clock in for the start of their shifts which said time spent under DEFENDANTS' control, including but not limited to, waiting time and/or time spent initiating, booting up and/or logging into DEFENDANTS' computer/electronic time keeping system, was neither recorded nor compensated, resulting in off-the-clock work and violations of California's minimum wage laws, overtime wage laws, among other violations of the Labor Code described herein.

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

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

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform other off-the-clock work for which they were not compensated. For example, based on information and belief, at times, DEFENDANTS' electronic employee time-keeping system/app malfunctioned such that NON-EXEMPT AGGRIEVED EMPLOYEES were required to either

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

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

Based on information and belief, DEFENDANTS failed to pay 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, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to work two separate shifts in the same day. Based on information and belief, DEFENDANTS failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES split shift compensation whenever PLAINTIFF's and/or other NON-EXEMPT AGGRIEVED EMPLOYEES' work schedules were interrupted by non-paid non-working periods established by DEFENDANTS, 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). DEFENDANTS also failed to separately itemize these split shift premium wages on PLAINTIFF'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. DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements.

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

Based on further information and belief, DEFENDANTS implemented a time-rounding system that as applied systematically deprived PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by DEFENDANTS would almost always, if not always, result in understating actual compensable

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

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

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

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

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

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

Namely, DEFENDANTS' automatic deduction and time rounding policies and practices for meal periods and shift start times and shift end times, payment according to scheduled hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal periods and/or

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

time spent restricted to DEFENDANTS' premises and/or subject to DEFENDANTS' control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, DEFENDANTS failed and continue to fail to pay a premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week. For example, PLAINTIFF regularly worked more than eight hours in a day and/or more than forty (40) hours in a week but was not paid a premium wage rate for all hours worked beyond eight (8) hours in a day and/or beyond forty (40) hours in a week, including but not limited to, for time counted by DEFENDANTS as hours worked.

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

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

Based on information and belief, DEFENDANTS adopted an Alternative Workweek Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected and/or implemented in accordance with the requirements of California law and/or DEFENDANTS failed to comply with the AWS, and as such, DEFENDANTS violated California's overtime laws, including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and Labor Code section 1198. Based on information and belief, DEFENDANTS failed to properly adopt an AWS in accordance with Labor Code section 511 and 1199, and the applicable Wage Order:

(C) Election Procedures Election procedures for the adoption and repeal of alternative workweek schedules require the following: (1) Each proposal for an alternative workweek schedule shall be in the form of a written agreement proposed by the employer. The proposed agreement must designate a regularly scheduled alternative workweek in which the specified number of workdays and work hours are regularly recurring. The actual days worked within that alternative workweek schedule need not be specified. The employer may propose a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another. (2) In order to be valid, the proposed alternative workweek schedule must be adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall be held during regular working hours at the employees' work site. For purposes of this subsection,

“affected employees in the work unit” may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection is met. (3) Prior to the secret ballot vote, any employer who proposed to institute an alternative workweek schedule shall have made a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees’ wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at least 14 days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. An employer shall provide that disclosure in a non- English language, as well as in English, if at least five (5) percent of the affected employees primarily speak that non-English language. The employer shall mail the written disclosure to employees who do not attend the meeting. Failure to comply with this paragraph shall make the election null and void. (4) Any election to establish or repeal an alternative workweek schedule shall be held at the work site of the affected employees. The employer shall bear the costs of conducting any election held pursuant to this section. Upon a complaint by an affected employee, and after an investigation by the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral third party to conduct the election. (5) Any type of alternative workweek schedule that is authorized by the Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3) of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of the affected employees shall be required to reverse the alternative workweek schedule. The election to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is submitted to the employer, except that the election shall be held not less than 12 months after the date that the same group of employees voted in an election held to adopt or repeal an alternative workweek schedule. The election shall take place during regular working hours at the employees’ work site. If the alternative workweek schedule is revoked, the employer shall comply within 60 days. Upon proper showing of undue hardship, the Division of Labor Standards Enforcement may grant an extension of time for compliance. (6) Only secret ballots may be cast by affected employees in the work unit at any election held pursuant to this section. The results of any election conducted pursuant to this section shall be reported by the employer to the Office of Policy, Research and Legislation within 30 days after the results are final, and the report of election results shall be a public document. The report shall include the final tally of the vote, the size of the unit, and the nature of the business of the employer. (7) Employees affected by a change in the work hours resulting from the adoption of an alternative workweek schedule may not be required to work those new work hours for at least 30 days after the announcement of the final results of the election. (8) Employers shall not intimidate or coerce employees to vote either in support of or in opposition to a proposed alternative workweek.

No employees shall be discharged or discriminated against for expressing opinions concerning the alternative workweek election or for opposing or supporting its adoption or repeal. However, nothing in this section shall prohibit an employer from expressing his/her position concerning that alternative workweek to the affected employees. A violation of this paragraph shall be subject to Labor Code § 98 *et seq.*

On information and belief, PLAINTIFF alleges that DEFENDANTS failed to comply with the above procedures, and thus, failed to properly institute an alternative workweek for the purpose of obtaining a lawful exemption from overtime premiums for its mandated 10-hour/4-day schedule. Based on information and belief, DEFENDANTS also failed to report the results to the Office of Policy, Research, and Legislation, or the DLSE, within thirty after the purported election results, and thus, violated Labor Code §§ 511, 1199, and the Applicable Wage Orders. This conduct results in violations of Labor Code §§ 510, 511, and 1198- 1199, and the Applicable Wage Orders.

These violations subject employer to civil penalties under Labor Code §§ 558 and 2699, and All Applicable Wage Orders. 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.

Moreover, to the extent there was an AWS that was properly adopted, DEFENDANTS violated California's overtime laws as to NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an Alternative Workweek Schedule (AWS) but were required to work shifts shorter than the agreed upon AWS. Under the relevant Wage Order, "If an employer... requires an [AWS] employee to work fewer hours than those that are regularly scheduled by the agreement, the employer shall pay the employee overtime compensation at a rate of one and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours... for the day the employee is required to work the reduced hours." *See* Section 3 of all applicable Wage Orders. Based on information and belief, at times during NON-EXEMPT AGGRIEVED EMPLOYEES' respective employments by DEFENDANTS, NON-EXEMPT AGGRIEVED EMPLOYEES worked subject to an alternative work week schedule in which they worked nine (9) hours per shift, four (4) shifts per week. Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an AWS, were sent home early and/or worked less hours than those that were scheduled under the AWS. On such shortened shifts, NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to overtime pay at 1.5 times the regular rate of pay after the first eight hours of work. Instead, DEFENDANTS paid NON-EXEMPT AGGRIEVED EMPLOYEES their base rate for all hours worked on the shortened shift(s) in violation of the alternative workweek schedule, and in violation of California Labor Code section 510, the applicable Wage Order, and Labor Code section 1198. As such, NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an AWS were also deprived of all owed overtime wages when required to work shortened shifts.

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

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable Wage Orders, §20 (establishing that "i>n addition to any other civil

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, DEFENDANTS failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES who were paid solely on a piece rate and/or commission basis 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, DEFENDANTS further failed to include this information on NON-EXEMPT AGGRIEVED EMPLOYEES' wage statements. As such, DEFENDANTS failed to comply with Labor Code section 226.2.

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

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

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

penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

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

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

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

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

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

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

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

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

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS

violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

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

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

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

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

DEFENDANTS' issued wage statements to PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES that also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by

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).

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

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

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

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

Based on information and belief, wage statements issued by DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9). For example, based on information and belief, DEFENDANTS' wage statements issued to NON-EXEMPT AGGRIEVED EMPLOYEES do not provide an accurate overtime rate(s) because they do not list overtime rate(s) of pay at 1.5 times the regular rate(s) of pay and instead list at least two separate overtime rates of pay and/or list an overtime rate of pay that does not take into account all non-discretionary compensation earned during the pay period, thereby failing to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of including but not limited to, Labor Code section 226(a)(9).

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

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

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

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 DEFENDANTS made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES paychecks 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. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

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

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

Reporting Time Pay Violations:

Section 5 of all applicable IWC Wage Orders, provides as follows:

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage. (B) If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting

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

NON-EXEMPT AGGRIEVED EMPLOYEES were not paid reporting time wages in accordance with California law, including but not limited to the applicable IWC Wage Order. For example, based on information and belief, at times, PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES reported to work for a scheduled shift but were sent home and/or were not put to work and were not paid all owed reporting time pay wages in accordance with California law.

Based on information and belief, DEFENDANTS have a policy and practice of failing to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California law, including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to pay all reporting time wages to PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, section 5(A)-(B) and the California Labor Code, including but not limited to section 1198.

Violation of California Day of Rest Law

Under California law, every employee in California is "entitled" to "one day's rest [from labor] in seven"; and, no employer may "cause" their employees "to work more than six days in seven." *See* Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation of the foregoing sections is a misdemeanor.

Based on information and belief, DEFENDANTS have and continue to have a uniform policy and practice of requiring NON-EXEMPT AGGRIEVED EMPLOYEES to work at least seven days consecutively in a workweek, in violation of including but not limited to, Labor Code Section 551. Based on information and belief, PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES were suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in violation of California law, including but not limited to Labor Code Section 551.

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

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

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

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

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly construed to effectuate

the goal of protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

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

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

DEFENDANTS' NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions, such as, but not limited to, warehouse workers, warehouse associates, production workers, shipping and receiving clerks, process technicians, mechanics, quality inspectors, material handlers, among other related title(s) and/or position(s). The nature of PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁹

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

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

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

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

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

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

Failure to Pay Vested Vacation/Paid Time Off:

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

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

Based on information and belief, DEFENDANTS failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, DEFENDANTS

untimely provide final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials). For example, DEFENDANTS failed to furnish PLAINTIFF with any final paycheck for at least approximately one (1) week following the termination of PLAINTIFF's employment, and PLAINTIFF's late final paycheck was devoid of all wages owed, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates, (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials).

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

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

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

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and

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”).

maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b).

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

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

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

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

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

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

Based on information and belief, DEFENDANTS failed to reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for expenses associated with having to purchase and/or maintain their own hand tools and/or equipment required to perform their assigned job duties. For example, PLAINTIFF was required to purchase tools, including but not limited to, box cutter(s), locks and/or other hand tools and/or equipment required to carry out PLAINTIFF’s assigned job duties, yet DEFENDANTS failed to provide any and/or full reimbursement for these business expenses.

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/or cost of fuel when they were required to drive around and/or between job sites, and/or otherwise use their personal vehicles in carrying out the duties assigned by DEFENDANTS. As such, DEFENDANTS failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at the legally mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

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 DEFENDANTS.

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

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

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

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

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

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

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

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

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

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

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

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

Unlawful Inquires into Criminal History

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

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

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

Unlawful PAGA Waiver

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

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

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

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

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

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

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

Specifically, Labor Code section 6400, requires the following:

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

Labor Code section 6401 provides as follows:

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

Labor Code section 6402 prohibits the following:

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

Similarly, Labor Code section 6404 provides as follows:

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

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

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

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

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

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

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

Finally, Labor Code section 6407 provides:

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

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

At all relevant times, DEFENDANTS employed PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subject to Labor Code sections 6400-6404, 6406, and 6407. At all relevant times, DEFENDANTS had and have a policy and practice of failing to furnish and use safety devices and/or provide reasonable access to sanitation facilities (including, but not limited to, toilet facilities) and/or otherwise comply with sanitation standards reasonably adequate to render such employment and place of employment safe and healthful, pursuant to, including but not limited to, Labor Code section 6401. At all relevant times DEFENDANTS had a policy and practice of requiring or permitting employees to go or be in in any employment or place of employment which is not safe and healthful, pursuant to Labor Code section 6402. At all relevant times, DEFENDANTS had and have a policy and practice of failing or neglecting to: provide and use safety devices and/or provide reasonable access to sanitation facilities (e.g., toilet facilities) and/or otherwise comply with sanitation standards and safeguards reasonably adequate to render the employment and place of employment safe; adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and do every other thing reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code section 6403.

PLAINTIFF is informed and believes and thereon alleges that these failures include, without limitation, failing to disinfect time clocks and/or other surfaces after use by PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; failing to provide adequate protection equipment (e.g., face masks) to PLAINTIFF, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; failing to provide adequate distance in working conditions between PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; failing to provide PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES with adequate and readily accessible sanitation facilities, including but not limited to, washing facilities and/or toilet

facilities and/or otherwise failing to comply with the sanitation standards as set forth in including but not limited to, Labor Code Section 2350 and California Code of Regulations, title 8, sections 3364, 3365 and 3366.

Based on information and belief, DEFENDANTS have a policy and practice of failing to provide adequate and readily accessible sanitation facilities, and to the extent sanitation facilities were provided/made accessible at all to PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES, a regular schedule for servicing, cleaning, and supplying for any sanitation 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 for use for each employee.

Based on further information and belief, to the extent sanitation facilities were provided/made accessible at all to PLAINTIFF, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES, DEFENDANTS failed to maintain facilities that complied with California law, including without limitation, Labor Code Section 2350 and California Code of Regulations, title 8, sections 3364, 3365 and 3366.

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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

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

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

Thank you for your attention to this matter.

Best Regards,

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

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

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

Fri, Jun 9, 2023 at 4:48 PM

6/9/2023

LWDA Case No. LWDA-CM-961021-23

Law Firm : Crosner Legal, PC

Plaintiff Name : Walter Walker

Employer: Pelican Products, 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



Ashley Gutierrez <agutierrez@crosnerlegal.com>

Thank you for your Court Complaint Submission.

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
To: agutierrez@crosnerlegal.com

Tue, Sep 19, 2023 at 12:52 PM

09/19/2023 12:52:41 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

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EXHIBIT

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Walker v. Pelican Products, Inc., et al.
Crosner Legal Time Report

Tasks	Zachary Crosner	Brandon Brouillette	Chad Saunders	Kiara Bramasco	Branden Hamilton
Pre-filing Case Investigation	4.7	0.0	0.0	2.05	5.3
Pleadings and Law and Motion	4.1	3.7	5.2	4.50	5.5
Discovery and Post-Filing Investigation	5.8	18.6	23.5	0.0	0.0
Court Appearances	0.0	0.0	3.7	0.0	0.0
Case Management; Litigation Strategy & Analysis	9.3	22.2	26.9	0.0	0.0
Mediation and Settlement	5.2	28.5	32.6	0.0	0.0
Total Hours	29.1	73.0	91.9	6.55	10.8
Hourly Rate	\$850	\$750	\$750	\$650	\$600
Lodestar	\$24,735	\$54,750	\$68,925	\$4,257.50	\$6,480

Total Hours: 211.35

Total Lodestar: \$159,148